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Memorandum

TO: The Honorable Jeff King, Chair
Senate Judiciary Committee

FROM: William W. Sneed, Legislative Counsel
The State Farm Insurance Companies

SUBJECT: S.B. 16

DATE: January 21, 2015

Mr. Chairman, Members of the Committee: My name is Bill Sneed and I am Legislative Counsel for the State Farm Insurance Companies ("State Farm"). State Farm is the largest insurer of homes and automobiles in Kansas. State Farm insures one out of every three cars and one out of every four homes in the United States. Please accept this memorandum as our support and request for favorable passage of S.B. 16.

As you will recall, S.B. 16 was introduced at our request. S.B. 16 was requested as a response to the Supreme Court case of *Bussman v. Safeco*. This statute was originally written in 1893. During the recodification of 1927, it was slightly changed, but basically retained the same language (see attachments). I think we could all agree, and the Supreme Court has recognized, that insurance policies of today are substantially different than those issued in 1927.

I would respectfully request that the Committee refer to the language of the Supreme Court regarding this issue. In reviewing K.S.A. 40-908, the Court stated that "even where a court believes that the legislature has omitted a vital provision in a statute that precludes the intended result, if the omitted provision cannot be found under any reasonable interpretation of the language actually used, then the remedies lie solely with the legislature."

The opinion discusses K.S.A. 40-908 and admits that the end result flies in the face of public policy considerations, and what most believe to be the actual intent of K.S.A. 40-908. Thus, we believe that the Court has invited the Legislature to review K.S.A. 40-908, and based upon S.B. 16, we believe this legislative remedy will in fact reflect the appropriate public policy considerations in the original intent of this statute.

Thus, on behalf of my client, the State Farm Insurance Companies, we respectfully request that the Committee take favorable action and pass S.B. 16 for consideration by the full Senate.

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Thank you, and I will be happy to answer any questions you may have at your convenience.

Respectfully submitted,

William W. Sneed

William W. Sneed

WWS:kjb
Attachments

1893

CHAPTER 101.

MUTUAL LIFE-INSURANCE COMPANIES.

An Act to amend section 3480 of the General Statutes of 1889, relating to mutual life-insurance companies.

Be it enacted by the Legislature of the State of Kansas:

Section 1. That section 3480 of the General Statutes of 1889 be amended so as to read as follows: Section 3480. This act shall apply to all associations or corporations now or hereafter organized in this state or admitted into this state to transact any life or accident business on the assessment plan: *Provided,* This act shall not apply to any association of religious or secret societies now existing or under the supervision of a grand or supreme lodge, nor to any class of mechanics, express, telegraph or railroad employes formed for the mutual benefit of the members thereof and their families, exclusively, nor to the Scandinavian Mutual Aid Association of Galesburg.

Sec. 2. This act shall be in force and effect from and after its publication in the statute book.

Approved March 11, 1893.

CHAPTER 102.

VALUED-POLICY LAW.

An Act defining the liability of fire-insurance companies in certain cases.

Be it enacted by the Legislature of the State of Kansas:

Section 1. Whenever any policy of insurance shall be written to insure any real property in this state against loss by fire, tornado, or lightning, and the property insured shall be wholly destroyed, without criminal fault on the part of the insured or his assigns, the amount of the insurance written in such policy shall be taken conclusively to be the true value of the property insured, and the true amount of loss and measure of damages: *Provided,* That any insurance company may set up fraud in obtaining the policy as a defense to a suit thereon.

SEC. 2. This act shall apply to all policies of insurance hereafter made or written upon real property in this state, and also to the renewal which shall hereafter be made, of all policies heretofore written in this state, and the contracts made by such policies and renewals shall be construed to be contracts made under the laws of this state.

SEC. 3. The court, upon rendering judgment against an insurance company upon any such policy of insurance, shall allow the plaintiff a reasonable sum as attorney's fee, to be taxed as part of the costs.

SEC. 4. This act shall be in full force and effect after its publication in the official state paper.

Approved March 10, 1893.

Published in the official state paper March 31, 1893.

CHAPTER 103.

JUSTICES OF THE PEACE IN KANSAS CITY, KAS.

AN ACT providing for the justices of the peace in Kansas City township, in Wyandotte county, to be elected for certain districts, and have their residence, office and courts therein.

Be it enacted by the Legislature of the State of Kansas:

SECTION 1. That Kansas City township, in Wyandotte county, is, for the purpose hereinafter specified, divided into three districts. The first shall be composed of the first and second wards; the second, of the third and fourth wards; the third, of the fifth and sixth wards, of the city of Kansas City, as the same are now established. Districts.

SEC. 2. Each of the above-described districts shall be entitled to one justice of the peace, who shall be a resident thereof and elected therefor, and who shall hold his office and courts in the district for which he is elected, and shall have and exercise all the powers and perform all the duties prescribed by law in relation to other justices of the peace; and Duties

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SEC. 40-907. Any condition or stipulation in an application, policy or contract of fire insurance hereafter made making the policy void in case the insured premises become vacant, shall not prevent recovery on such policy if it shall be shown by the plaintiff that the insured premises had ceased to be vacant and were occupied at the time of the loss.

SEC. 40-908. That in all actions now pending, or hereafter commenced, in which judgment is rendered against any insurance company on any policy given to insure any property in this state against loss by fire, tornado or lightning, the court in rendering such judgment shall allow the plaintiff a reasonable sum as an attorney's fee to be recovered and collected as a part of the costs: *Provided, however,* That when a tender is made by such insurance company before the commencement of the action in which judgment is rendered and the amount recovered is not in excess of such tender no such costs shall be allowed.

SEC. 40-909. The commissioner of insurance may issue to any duly licensed agent a broker's license or permit to negotiate contracts of fire insurance or reinsurance, or to place risks, or effect insurance or reinsurance for other persons or corporations than himself, in companies not authorized to do business in this state, which license or permit may be revoked at any time by the commissioner of insurance for cause. The broker or agent so licensed shall on the first day of January of each year, or within ten days thereafter, file in the insurance department of this state a sworn affidavit and statement to the effect that, after diligent effort, he had been unable to secure the amount of insurance required to protect the property described in his affidavit and statement from loss or damage by fire in regularly admitted companies during the preceding year. Such broker or agent shall keep a separate record book in his office, showing the transactions of fire insurance placed in companies not authorized to do business in this state, the amount of the gross premium charged thereon, the company or association in which placed, the date and term and number of the policy, the situation of the property insured, and the name of the assured; this account to be open at all times to the inspection of the commissioner of insurance of this state.

SEC. 40-910. There shall be embraced in the affidavit required by section 40-909 a full statement of the amount of all premiums received on property situated in this state up to the first day of January in each year for the year next preceding, and he shall transmit to the commissioner of insurance, with such affidavit and statement, a sum equal to two per cent of the gross premiums received from policyholders upon all policies procured by him on property situated in this state written under the provisions of this code. Such agent or broker shall pay the sum of ten dollars per annum to the commissioner of insurance for the license hereinbefore referred to. All license fees and taxes received by the commissioner of insurance

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CHAPTER 199.

RELATING TO ALLOWANCE OF ATTORNEY'S FEES IN ACTIONS ON INSURANCE POLICIES.

House Bill No. 355.

AN ACT amending section 40-908, chapter 231 of the Laws of 1927, relating to the allowance of attorney's fees in actions on insurance policies, and repealing said original section.

Be it enacted by the Legislature of the State of Kansas:

SECTION 1. That section 40-908, chapter 231 of the Laws of 1927, be amended to read as follows: Section 40-908. That in all actions now pending, or hereafter commenced, in which judgment is rendered against any insurance company on any policy given to insure any property in this state against loss by fire, tornado, lightning or hail, the court in rendering such judgment shall allow the plaintiff a reasonable sum as an attorney's fee to be recovered and collected as a part of the costs: *Provided, however,* That when a tender is made by such insurance company before the commencement of the action in which judgment is rendered and the amount recovered is not in excess of such tender no such costs shall be allowed.

SEC. 2. That original section 40-908, chapter 231 of the Laws of 1927, is hereby repealed.

SEC. 3. This act shall take effect and be in force from and after its publication in the official state paper.

Approved March 12, 1929.
Published in official state paper March 14, 1929.

CHAPTER 200.

RELATING TO MUTUAL HAIL INSURANCE COMPANIES.

House Bill No. 421.

AN ACT relating to mutual hail insurance companies, amending section 40-1502, of article 15, chapter 231 of the Laws of 1927, and repealing said original section.

Be it enacted by the Legislature of the State of Kansas:

SECTION 1. That section 40-1502, of article 15, chapter 231 of the Laws of 1927 be amended to read as follows: Section 40-1502. Such persons so desiring to incorporate shall file in the office of the commissioner of insurance a statement signed and duly acknowledged by all of the incorporators stating their purpose of forming a company as expressed in the first section of this article, for the transaction of the business of hail insurance, the number of acres of growing grain owned by each, the amount of insurance subscribed for, the description and location of the grain, the address of each subscriber, and a certified copy of the charter. The charter shall set forth the corpo-

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CHAPTER 257

ATTORNEYS FEES IN INSURANCE POLICY ACTIONS

Senate Bill No. 419

AN ACT relating to insurance; providing for attorney fees in certain actions on insurance policies; amending K. S. A. 40-256 and 40-908 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

SECTION 1. K. S. A. 40-256 is hereby amended to read as follows: 40-256. That in all actions hereafter commenced, in which judgment is rendered against any insurance company as defined in K. S. A. 40-201, and including in addition thereto any reciprocal or interinsurance exchange on any policy or certificate of any type or kind of insurance, if it appear from the evidence that such company or exchange has refused without just cause or excuse to pay the full amount of such loss, the court in rendering such judgment shall allow the plaintiff a reasonable sum as an attorney's fee for services in such action, including proceeding upon appeal, to be recovered and collected as a part of the costs: *Provided, however,* That when a tender is made by such insurance company or exchange before the commencement of the action in which judgment is rendered and the amount recovered is not in excess of such tender no such costs shall be allowed.

SEC. 2. K. S. A. 40-908 is hereby amended to read as follows: 40-908. That in all actions now pending, or hereafter commenced in which judgment is rendered against any insurance company on any policy given to insure any property in this state against loss by fire, tornado, lightning or hail, the court in rendering such judgment shall allow the plaintiff a reasonable sum as an attorney's fee for services in such action including proceeding upon appeal to be recovered and collected as a part of the costs: *Provided, however,* That when a tender is made by such insurance company before the commencement of the action in which judgment is rendered and the amount recovered is not in excess of such tender no such costs shall be allowed.

SEC. 3. K. S. A. 40-256 and 40-908 are hereby repealed.

SEC. 4. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 18, 1967.