

Approved: March 11, 2010

Date

MINUTES OF THE HOUSE INSURANCE COMMITTEE

The meeting was called to order by Chairman Clark Shultz at 3:30 p.m. on March 9, 2010, in Room 152-S of the Capitol.

All members were present except.
Representative Davis - excused

Committee staff present:
Bruce Kinzie, Office of the Revisor of Statutes
Sean Ostrow, Office of the Revisor of Statutes
Melissa Calderwood, Kansas Legislative Research Department
Amanda Nguyen, Kansas Legislative Research Department
Sue Fowler, Committee Assistant

Conferees appearing before the Committee:
Rose Rozmiarek, Kansas State Fire Marshall's Office
John Mattox, Kansas Chapter of International Association of Arson Investigators
John H. Meetz, Kansas Insurance Department
David Hanson, Kansas Association of Property Casualty Insurance Companies

Others attending:
See attached list.

Hearing on:
HB 2671 **Fire marshal; investigation of crimes**

Melissa Calderwood, Kansas Legislative Research Department, gave a brief overview on **HB 2671**.

Proponents:
Rose Rozmiarek, Kansas State Fire Marshal's Office, (Attachment 1), appeared before the committee in support of **HB 2671**.
John Mattox, Kansas Chapter of International Association of Arson Investigators, (Attachment 2), presented testimony before the committee in support of **HB 2671**.

Hearing closed on **HB 2671**.

Hearing on:
SB 388 **Changing the effective date for NAIC rules relating to risk-based capital**

Melissa Calderwood, Kansas Legislative Research Department, gave a brief overview on **SB 388**.

Proponents:
John H. Meetz, Kansas Insurance Department, (Attachment 3), gave testimony before the committee in support of **SB 388**.
David Hanson, Kansas Association of Property Casualty Insurance Companies, (Attachment 4), presented testimony before the committee in support of **SB 388**.

Hearing closed on **SB 388**.

Representative Grant moved without objection to pass the March 4, 2010 committee minutes as written.

The next meeting is scheduled for Thursday, March 11, 2010.

The meeting was adjourned at 4:02 p.m.

3/9



STATE OF KANSAS
OFFICE OF THE FIRE MARSHAL

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GOVERNOR FIRE MARSHAL

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Testimony on HB 2671

Insurance Committee

Concerning the law enforcement authority for Fire Investigators

Rose M. Rozmiarek, CPM, CFEI, IAAI-CFI

Kansas State Fire Marshal's Office

Chief of Investigations

Deputy State Fire Marshal

March 9, 2010

Dear House Insurance Committee:

The Kansas State Fire Marshal supports HB 2671, concerning the law enforcement authority granted to fire investigators in the State of Kansas. The agency has had this statute in place for over 20 years without any modifications. A committee was formed to review the statute and associated regulations to address some issues that had come up over the years. The committee consisted of members of the various fire service and law enforcement organizations as well as the Kansas State Fire Marshal's office and the Kansas Law Enforcement Training Center.

This bill improves the law enforcement authority for fire investigators and allows more efficiency and communication with other law enforcement officers. The crimes of arson or insurance fraud are unique crimes that involve specialized investigative skills and knowledge. That is one reason the development of the certified fire investigator was done several years ago. Many times the crime of arson is used to cover up or try to destroy other crimes that are committed such as burglary, theft, embezzlement, drug cases, and even homicide. Not all fire or explosion scenes are criminal in nature but still need to be investigated to determine origin and cause. As the origin and cause is being determined the scene is documented and disturbed. At the time the scene is determined to be criminal in nature the scene is no longer in its original state. Evidence that would be used in court must be properly collected under law enforcement authority. Some of the same evidence collected for the crime of arson could be used for other related crimes for the totality of the circumstances and motive. It has been raised in the past of the use and validity of the evidence in the other associated crimes if the fire investigator can only

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investigate arson or insurance fraud. The statute change addressed in this bill will alleviate any question or possibility of the evidence not being used in the other cases. The addition of the associated crimes would also streamline and be more efficient. This change would also improve the working relationships of the fire investigators and their local law enforcement. The fire investigators do work with their local law enforcement in many cases but as the fire investigator collects evidence or interviews / interrogates potential suspects they would not have to stop and wait for the local officer to assist if the suspect may provide information or evidence on the crimes other than arson or fraud. It will better serve the communities the investigators serve by being more efficient with the tax dollars spent for investigators and other law enforcement by not doubling up on manpower for one given incident. The working relationships of the fire investigators and the local law enforcement would still exist but it would be a much more efficient relationship.

When the bill was given to the reviser, a key change was left out. It involves lines 14 through 16 and addresses the wording of investigation duties and the status of full time personnel. I have provided a copy of the original change as a friendly amendment. The change of the wording is very important and is related to the changes being made to the state regulations that cover fire investigation.

The new regulations that are being implemented will have a new category of and an 'Origin and Cause Specialist' that would not have law enforcement authority. This certification would allow a stepping stone for investigators as well as allow departments to have someone certified to investigate those minor scenes that are clearly non criminal. These positions would not have to attend all the training necessary as the law enforcement authority personnel would need. This would allow departments to be more efficient in that they would not have to call in a fire investigator for each fire that occurs in their area. If the wording is not changed to read 'Fire Investigator' the statute would give this new certified position law enforcement authority without the required training.

The other part left out deals with the elimination of the full time personnel. It was unclear to the CFI committee or the fire investigator community of why it was only full time personnel. The committee felt that if part time or volunteer personnel had the same training and requirements as anyone else they should have the same abilities. Having a part time or volunteer fire department member become a certified fire investigator would be no different than a part time or reserve law enforcement officer.

Again, the Kansas State Fire Marshal's Office and the Certified Fire Investigator Committee urges the committee to favorably pass HB2671 with the friendly amendment provided.

31-157

Chapter 31.--FIRE PROTECTION Article 1.--FIRE SAFETY AND PREVENTION

31-157. Fire marshal deputies and investigatory personnel; law enforcement powers, when; training required, exceptions. (a) The state fire marshal, the state fire marshal's deputies and ~~full-time~~ fire prevention personnel assigned investigation duties who are members of a ~~paid~~ fire department who have been certified *as a fire investigator* by the state fire marshal pursuant to this section shall have the authority to make arrests, carry firearms and conduct searches and seizures while investigating any fire or explosion in which arson or attempted arson is suspected or in which there is an attempt or suspected attempt to defraud an insurance company and any additional crimes associated with or in conjunction with the arson or attempted arson or attempt to defraud an insurance company. Any affidavits necessary to authorize arrests, searches or seizures pursuant to this section shall be made in accordance with K.S.A. 22-2302 and 22-2502, and amendments thereto.

(b) The state fire marshal, with the assistance of an advisory committee appointed pursuant to K.S.A. 31-135 and amendments thereto, shall adopt rules and regulations and specify the number of investigators for departments or areas and establish standards for certification of members of fire departments to make arrests, carry firearms and conduct searches and seizures pursuant to this section. No fire department personnel shall be certified to carry firearms under the provisions of this act without having first successfully completed the firearm training course or courses prescribed for law enforcement officers under K.S.A. 74-5604[*] 07, and amendments thereto.

(c) With the exception of firearms training, nothing in this section shall be construed to require persons employed prior to the effective date of this act to comply with the standards established by the state fire marshal pursuant to this section as a condition of continued employment, and such persons' failure to comply with such standards shall not make such persons ineligible for any promotional examination for which they are otherwise eligible or affect in any way any pension rights to which they are entitled on the effective date of this act.

History: L. 1982, ch. 135, § 1; July 1. Effective as published in the Kansas Registry.



**KANSAS CHAPTER - INTERNATIONAL ASSOCIATION
OF ARSON INVESTIGATORS**

Good afternoon Chairman Shultz and committee members. My name is John Mattox, and I am here representing the Kansas Chapter of the International Association of Arson Investigators (KCIAA) in support of House Bill 2671. The Kansas Chapter of the International Association of Arson Investigators (KCIAAI) is an association consisting of over 350 members from across the State of Kansas, which include Federal, State, Local fire and arson investigators as well as investigators from private insurance companies.

I am here to encourage your support of House Bill 2671. This Bill improves the clarity and portability in defining fire investigators, levels of certification and defining what the training expectations and requirements are for fire investigators. This Bill also broadens the law enforcement powers to allow investigators to investigate any additional crimes associated with or in conjunction with the arson or attempted arson. We strongly believe that any part-time or full-time investigator have law enforcement authority based on the needs of their community. We are also in favor of the amendments that were previously presented by the State Fire Marshals' Office. Thank you for the opportunity to appear before this Committee today.

Respectfully Submitted,

John W. Mattox, Fire Marshal

President, Kansas Chapter of the International Association of Arson Investigators



Kansas Insurance Department

Sandy Praeger, Commissioner of Insurance

TESTIMONY ON SB 388

HOUSE INSURANCE COMMITTEE March 9, 2010

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify in support of Senate Bill 388. This bill pertains to risk-based capital (RBC) instructions that have previously been updated yearly through legislation. Last year the routine bill was altered to allow subsequent RBC updates to be made with rules and regulations rather than yearly legislation, however if either of two "triggers" are met then the new RBC instructions must be instituted statutorily as they have been in the past. This bill seeks to achieve that.

First I will explain what RBC is and what it is used for. RBC is a method used by the Kansas Insurance Department to measure the minimum amount of capital that an insurance company needs to support its overall business operations. If a company falls below certain RBC requirements then the Insurance Department will go through a number of steps to determine the financial "health" of the company in question, with the ultimate goal of bringing that company back to a level where it is capable of meeting its contractual obligation to Kansas policy holders.

In an attempt to allow for a legislative review process in the event of major changes to the national RBC factors, two triggers were employed that require the Kansas Insurance Department to update these changes statutorily. If an insurer's total adjusted capital or RBC report varied by more than 2.5% based upon changes made in the RBC factors then the new standards must be adopted through statute. In this case you can see from the attachment that most domestic property and casualty companies' scores have changed by more than 2.5%. Property and casualty insurance companies' expressed the need for these triggers and therefore those projections are being shared. However, no companies will see a change in their regulatory control level (trigger number two).

While the trigger was met a review of the newest RBC formula led us to the conclusion that these changes are nonetheless appropriate especially considering the regulatory action level would not be affected for a single domestic property and casualty insurer. We also understand that the domestic property and casualty industry agrees with this assessment.

These safety triggers were put in place to ensure that Kansas insurers would not be drastically affected by regulatory formulas from one year to the next without a diligent review by the industry and Kansas Legislature. While we believe the trigger may be set slightly low at 2.5%

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we do believe the mechanism worked and in this case we are not asking for the statute to be changed, other than the effective date for RBC instructions.

Despite current economic conditions and record storm losses Kansas property and casualty insurance companies are in a sound financial state and behave as good stewards of the public trust. It is for these reasons that we would ask the committee to recommend SB 388 favorable for passage.

Thank you for the opportunity to appear and I would be happy to stand for questions at the appropriate time.

John Meetz
Government Affairs Liaison

<u>Company</u>	<u>2008 RBC</u>	<u>2008 Projected RBC using 2009 Factors</u>	<u>% Change</u>
	5062.083%	5050.467%	-11.616%
	4539.854%	4444.976%	-94.878%
	2276.980%	2159.774%	-117.206%
	2252.609%	2118.499%	-134.110%
	2152.125%	2152.125%	0.000%
	2063.910%	1821.559%	-242.351%
	1935.338%	1865.248%	-70.090%
	1574.871%	1441.962%	-132.909%
	1233.341%	1194.922%	-38.419%
	1199.925%	1204.652%	4.727%
	1148.022%	1204.982%	56.960%
	948.070%	873.551%	-74.519%
	905.940%	905.438%	-0.502%
	867.024%	850.593%	-16.431%
	841.302%	911.195%	69.893%
	782.468%	740.963%	-41.505%
	758.557%	743.689%	-14.868%
	735.530%	669.376%	-66.154%
	721.801%	695.051%	-26.750%
	593.622%	575.345%	-18.277%
	477.914%	466.541%	-11.373%
	329.841%	331.373%	1.532%
	233.330%	233.332%	0.002%

KANSAS ASSOCIATION OF P&C INSURANCE COS.

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Kansas Association of
Property & Casualty Ins. Cos.

**House Insurance Committee
Testimony on Senate Bill 388**

Member Companies:

Armed Forces Insurance
Exchange
Ft. Leavenworth

Bremen Farmers Mutual
Insurance Co.
Bremen

Columbia Insurance Group
Salina

Farm Bureau Mutual
Insurance Company
Manhattan

Farmers Alliance Mutual
Insurance Company
McPherson

Farmers Mutual Insurance Co.
Ellinwood

Federated Rural Electric
Insurance Exchange
Lenexa

Kansas Mutual Insurance Co.
Topeka

Marysville Mutual Insurance Co.
Marysville

Mutual Aid Association of the
Church of the Brethren
Abilene

Mutual Aid eXchange
Overland Park

Upland Mutual Insurance Co.
Chapman

March 9, 2010

Mr. Chairman and Members of the Committee:

Thank you for this opportunity to present information on behalf of the Kansas Association of Property and Casualty Insurance Companies, our state trade association for domestic property and casualty insurance companies in Kansas.

The risk-based capital provisions referenced in the Bill were developed by the NAIC for adoption and use by the states as a standardized method of monitoring the solvency of insurers and assessing the need for regulatory control levels. For a number of years, legislation was introduced to annually update changes that the NAIC adopted in the instructions and formula used to determine risk-based capital scores, thereby allowing our companies to bring any concerns to you and avoiding constitutional problems of allowing the NAIC and/or the Insurance Commissioner to exercise legislative powers in adopting changes without any guidelines or restrictions. Last year, legislation was passed, which not only approved last year's update of the NAIC's model rules and regulations, but also established criteria that would permit the Insurance Commissioner to adopt new updates adopted by the NAIC, subject to two guidelines established as exceptions. If the NAIC changes are projected to cause more than a 2.5% reduction in the adjusted capital of our domestic companies or cause a change in the applicable control level, then the new instructions and formula should not be adopted in rules and regulations until approved by the Legislature. We had hoped that those changes meant that we would not have to bring this bill back to you this year, but we did not anticipate the severity of either the continued storm losses nor of the economic downturn. Nevertheless, we believe the restrictions adopted last year have worked and are appropriate, as most companies have had to pay for record storm losses, as well as substantial reductions in investment income, and yet remain in fairly good shape. Although we regret having to bring this back to you so soon, the criteria established last year did work in bringing it back to you when conditions warranted legislative oversight.

Therefore, the bill before you seeks legislative approval to adopt the NAIC updates through the end of last year, as we have done in previous years. It is our understanding that some of these changes could result in more than a 2.5% reduction in the adjusted capital of a number of our domestic companies but would not warrant in the applicable control level of those companies. Therefore, we do not believe the updated formula and instructions will adversely affect our domestic companies. We very much appreciate the work of Insurance Commissioner Sandy Praeger and her staff in analyzing these changes and we certainly appreciate your consideration in light of the developments over the past year. Thank you again.

Respectfully,

DAVID A. HANSON