

MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

The meeting was called to order by Chairman Ruth Teichman at 9:30 A.M. on February 22, 2005 in Room 234-N of the Capitol.

All members were present except:

David Wysong- excused

Committee staff present:

Melissa Calderwood, Kansas Legislative Research Department

Terri Weber, Kansas Legislative Research Department

Ken Wilke, Office of Revisor of Statutes

Sandy Yingling, Committee Secretary

Conferees appearing before the committee:

Kelly Levi, Kansas Insurance Department

Jarrod Forbes, Kansas Insurance Department

Kevin Glendening, OSBC

Bud Burke, CFSA

Larry McGill, KAIA

Doug Wareham, KBA

Others attending:

See attached list.

Madam Chair announced she has five bills to be worked today.

Madam Chair opened discussion on **SB 196**.

SB 196 - Kansas mortgage business act amendments.

Ken Wilke, Office of the Revisor of Statutes, addressed the committee and presented the balloon to **SB 196**. (Attachment 1) Mr. Wilke explained there was a drafting error where a section request inadvertently got omitted from the bill. This balloon adds that section in. This inserts an additional section which amends K.S.A. 9-2203 and it would change subsection c so a violation of the act is now a severity level seven not personal felony with a presumed sentence of imprisonment for a second or subsequent offense. It also basically imposes a five-year statute of limitations in subsection (d) on prosecution. In subsection (e) is designed to make sure that this section does not limit the power of the state to punish a person for any conduct that constitutes another crime. Mr. Wilke stated he has been advised by one of the judicial people that Kansas no longer has common law crimes, so the last four words need to come off and should end after the word "statute." The remaining sections have been renumbered. On the last page there is also an insertion of K.S.A. 9-2203 in section 8, line 16.

Madam Chair asked the Committee if these were the amendments during the hearing on **SB 196**? Mr. Wilke stated that is correct. There were no questions.

Madam Chair offered the amendments to **SB 196**; Senator Barnett seconded. The amendment carried.

Madam Chair stated if there is no further discussion, she would entertain a motion to move the bill out.

Senator Schmidt made a motion to pass **SB 196** out favorable as amended; seconded by Senator Barnett. The motion carried.

Madam Chair announced that Senator Wysong will be carrying **SB 196**.

Madam Chair opened discussion on **SB 103**.

SB 103 - Insurance, effect of military deployment on certain policies.

CONTINUATION SHEET

MINUTES OF THE Senate Financial Institutions and Insurance Committee at 9:30 A.M. on February 22, 2005 in Room 234-N of the Capitol.

Madam Chair stated there were some discrepancies between the insurance department and some of the carriers but she was advised this morning that they have reached an agreement as requested.

Kelly Levi, Kansas Insurance Department, was chosen to present the agreed amendments. Ms. Levi stated in the past there was language presented by Bill Sneed regarding property and casualties. There was also some recommended language from Larrie Ann Lower and Brad Smoot regarding health plan and KID has put together a combination of those two which will offer insurance coverage protection to military personnel. Madam Chair presented some of the agreed language. There were numerous changes which would have been easier to follow if the committee as a whole had a copy of the language, thus Madam Chair delayed discussion on **SB 103** while the committee secretary made copies for the members.

Madam Chair opened discussion on **SB207**.

SB 207 - Insurance department; fraud prevention program.

Senator Steineger stated the insurance department's testimony, given that anyone who has knowledge or suspected knowledge of insurance fraud, has to report it or they are in trouble, seems very broad. Senator Steineger stated that he understands the goal is to help crack down on insurance fraud, but have blanket application to just anyone who might have knowledge seems big to him. Jarrod Forbes commented that it is his understanding that this applies only to people in the insurance industry. Chair Teichman added the intent of the bill is if you are an insurance agent or an insurance company you have to report knowledge of fraud. Chair Teichman suggested the word "mandate" should be changed to "require." The other thing is the **SB 207** does redefine the purpose of the fraudulent act and the act amends the relationship to the various felony classes. Mr. Forbes stated that is just an attempt to increasing the penalties, the monetary fines that go along with those penalties.

Madam Chair asked if there is also an amendment dealing with the appointment special prosecutor which reads . . . "the Commissioner may refer evidence to the A.G. or district or county attorney who may institute the appropriate criminal proceedings" . . . is that one of the amendments? Mr. Forbes stated it is one of the amendments that go along with the anti-fraud division. Mr. Forbes stated the KID's anti-fraud division is made of special prosecutors appointed by the attorney general. Madam Chair announced she thinks this is a good bill.

Mr. Forbes stated **SB 207** is set up in such a way that it would allow KID to prosecute crimes that the AG or the district or county attorney does not either want to or have the time.

Ken Wilke added that during the department's original testimony that it should be noted on page 3, line 6 that it should be a Class A misdemeanor instead of a Class C. Madam Chair confirmed that Class C would be changed to Class A.

Senator Steineger moved to adopt the Advisor's amendment; Senator Schmidt seconded. The amendment carried.

Madam Chair went back on the bill and announced she would entertain a motion to move it out.

Senator Steineger made a motion that we report **SB 207** favorable for passage as amended; Senator Wilson seconded. Ken Wilke asked if the technical amendments were all there were? Madam Chair answered, just the technical amendment. The motion as amended carried.

Madam Chair returned to **SB 103**.

Kelly Levi explained the proposed changes. (Attachment 2) Senator Brungardt asked in simple terms, what exactly does **SB 103** do? Ms. Levi answered it allows military personnel who get deployed and goes on the federal military insurance to come back on their health insurance with the original coverage. They would not be required to do medical testing. They are able to get back into the original policy. Senator Brungardt asked what happens to the premiums in the meantime? Ms. Levi stated the premiums are not affected based solely

CONTINUATION SHEET

MINUTES OF THE Senate Financial Institutions and Insurance Committee at 9:30 A.M. on February 22, 2005 in Room 234-N of the Capitol.

on the military employment. Senator Brungardt asked, who is to pay the premiums? Larrie Ann Lower answered they are not required to make the payments, because they are allowed to go off the policy while they are deployed.

Senator Brownlee stated in all due respect that the balloon is unreadable and she would not feel comfortable taking any action. Madam Chair stated she would address that concern.

Ken Wilke stated in subsection c on page 3, the referral to notification by providing a single written notice to either: 1) to a policy holder . . . "and" . . . 2) by mailing, do you mean "either or" or "one and two?" Ms. Levi did not have an answer.

Madam Chair announced her suggestion to the committee since this was a last minute compromise, was to ask the Senate President to bless **SB 103**.

Madam Chair agreed with Senator Brownlee there is no way to comprehend this without seeing it written out and apologized to Ken Wilke.

Madam Chair opened discussion of **SB 140**.

SB 140 - Limitation on insurance value on improvements on real property.

Madam Chair reminded the committee she had requested agreed language from all the parties involved. Madam Chair held the discussion on **SB 140** while the committee secretary made copies of Larry McGill's language. Madam Chair apologized to the committee for the interruption.

Madam Chair opened discussion on **SB 223**.

SB223 - Payday loans; changes affecting fees and military personnel.

Madam Chair addressed the changes to the amendment to **SB 223**. (Attachment 3)

Starting with line 32 "an amount equal to 15% of the amount of the cash advance plus a \$5 administrative fee" should read "an amount equal to 15% of the amount of the cash advance."

The next balloon is on line 34, where it reads a minimum of 7 days which is changed to 14. Madam Chair asked why have a minimum? Senator Wilson said, in his opinion it should stay 7 days. Senator Barone asked, with no minimum term, could they make a loan for one day? The minimum term could offer some consumer protection. Madam Chair stated she believed the committee would like to leave it at 7 days and not change to 14 days. It was agreed to leave it at 7 days.

The balloon on page 3, line 6 after the word "charges or interest . . ." the balloon would read "or which results in more fees; charges or interest being paid by the consumer." There is an AG opinion pending on whether this language is appropriate. After discussion from Senator Wilson, Senator Barone, Senator Brungardt and Mr. Glendening, Chair Teichman explained that this would not allow a Payday loan company to go to somebody outside of our borders who charge a higher rate than we do, 25% to 35%. Mr. Glendening stated that is correct, but an out-of-state bank can charge what their own state allows. Sonya Allen explained that an out-of-state bank cannot bring a branch into Kansas without merger or requisition.

The new section to address is, Payday loans to military personnel, which says they cannot garnish wages, defer collections, cannot be contacted by the military chain of command to try to collect. Senator Barone asked if other creditors such as MasterCard have the privilege of pursuing the military personnel? Madam Chair answered that this section only applies to Payday loans. Senator Barone asked, what about other creditors? Madam Chair said another bill would need to address that issue. Senator Brownlee asked if the interest would continue to accrue? Steve Shaller, attorney, answered it would fall under creditor freezing of interest covered under federal law.

CONTINUATION SHEET

MINUTES OF THE Senate Financial Institutions and Insurance Committee at 9:30 A.M. on February 22, 2005 in Room 234-N of the Capitol.

Senator Brownlee moved to adopt the amendments on page 3, lines 6 and 11; Senator Brungardt seconded. The as amendments carried.

Senator Brungardt made a motion that we report **SB 223** favorable for passage as amended; Senator Brownlee seconded. The motion as amended carried.

Madam Chair readdressed **SB 140**.

The balloon being offered by Larry McGill strikes line 25 through 28 on page 1 and inserted the new language (Attachment 4). Senator Brungardt asked, why does the balloon bring in lender? Mr. McGill answered, the lenders of last year said that if the insurance companies are prohibited from insuring for greater than replacement costs, they would not oppose the bill. The bill was drafted accordingly. When the insurance companies came back saying they are the ones to decide on recommend replacement cost, not the lender, they were afraid the language created new liability for them. The courts have generally said that the assured needs to establish the value of their property. Mr. McGill stated they are trying not to increase their potential liability for establishing the replacement costs.

Senator Wilson stated his original concern was with the insurance companies which required him to over insure his home. Senator Wilson asked if would be appropriate, in this particular balloon, that says no lien holder or mortgagees or an insurance provider may require the insurance to be fair about this? Larry McGill stated a situation like Senator Wilson's would occur on an older home where the replacement cost is greater than the market value. Senator Wilson stated his home was only a year and a half old. The language Senator Wilson is offering states "no lien holder or mortgagee or insurance provider may require insurance on improvements to real property that includes land value." Mr. McGill stated he has no problem with that language.

Senator Brownlee stated she was not aware that in the course of a mortgage loan that the lien holder or mortgagee has to improve the amount of the insurance on the home. Mr. McGill stated they require a certain amount of insurance in order to close the loan and that is where the issue comes up. Often the agent is caught in the middle between an insurance company who says they will only insure for 100% replacement cost and lender who has a loan for more than that amount and wants the policy of insurance equal to the loan. Senator Brownlee stated she believes the original language is good.

Senator Barone supports Senator Wilson's language that the insurance department has concurred. Senator Brungardt asked for Mr. Sneed's opinion. Mr. Sneed stated they oppose the bill as it was originally drafted.

Madam Chair called on Doug Wareham. Mr. Wareham stated they oppose Mr. Gills third amendment and he believes Senator Wilson's language seems fair but unnecessary.

Ken Wilke suggested a change in the language from "may" to "shall." Senator Wilson asked Mr. Wilke if his language was back to the original bill? Mr. Wilke stated that we would be basically back to what we started with.

Madam Chair asked what the wishes of the committee were for **SB 140**?

Senator Brungardt moved to accept the bill with the language that offered not including Mr. Wilson's suggestion; Senator Schmidt seconded. Madam Chair asked for a show of hands. The show of hands was a 3 to 3 count. Madam Chair stated the language would be put in.

Senator Brungardt moved to pass **SB 140** favorably for passage; Senator Wilson seconded. The motion carried.

Meeting adjourned 10:31 a.m.