

Testimony before House Judiciary Committee

HB 2537– regarding to availability of a hearing before the Kansas Insurance Department

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In-person oral testimony in support

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Mr. Chairman and members of the Committee

Thanks for the opportunity to appear in support of this proposed change in the statute governing hearings before the Kansas Insurance Department. The need for the bill arises out of a couple of cases I handled for clients that involved Final Orders issued by the Kansas Insurance Department, one during a prior administration and one under the current administration. Both cases ended up in District Court under the Kansas Judicial Review Act.

In both cases, a letter Order was issued wherein the Commissioner indicated the Order was a Final Order and subject to review in accordance with the Kansas Judicial Review Act. Both cases involved a formal request by the affected parties for a hearing pursuant to the Kansas Administrative Procedures Act. The Department took the position that in the absence of a statute requiring a hearing, one would not be granted. I took the position that, following the language of KSA 40-2115, if the Order was one that met the definition of an agency order under KAPA a hearing was contemplated in accordance with the provisions of KAPA. Hence, the need for clarity.

In the earlier case, the Shawnee County District Court reversed former Commissioner Seltzer, based in part because there was nothing in the agency record on review that supported his decision and there was nothing in the record explaining the basis for the decision. In that case, there was no hearing and the “record” consisted mainly of e-mails going back and forth between the Department’s attorney and me. On remand after the new administration took over, a hearing was agreed to be held but the matter settled in the meantime.

In order to clarify the law going forward, and for the benefit of future parties, I worked with the Kansas Insurance Department on the language you have before you. They have voiced their support for the language and I believe you have written testimony to that effect. It will benefit all parties and the Court in that we will be ensuring that parties have an opportunity for a formal hearing where an adequate record can be made, and matters that end up in judicial review have a full and complete agency record for the Court to review.

The new language is simple and appears on page 2 of the bill. If the matter involves an order of the Commissioner that meets the definition of an order under KSA 77-502 of KAPA, then the Commissioner must conduct a hearing if requested by a party subject to the order.

KSA 77-502 defines "Order" as "a state agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interest of one or more specific persons."

With that explanation, I will be happy to answer any questions the Committee may have.