

HCS HB 1344 -- RESERVATION OF RIGHTS

SPONSOR: Gosen

COMMITTEE ACTION: Voted "Do Pass" by the Committee on Insurance Policy by a vote of 6 to 3.

This bill allows an insurer to provide an insured person with a statement of reservation of rights which gives reasons why the insurer is not required to defend or indemnify the insured individual without the possibility that the statement would be used in a civil action to show proof of a breach of duty on the part of the insurer.

An insurer must have an opportunity to defend or decline to defend an insured individual with whom it has a contract in an action against the individual leading to a claim against the insurer. A creditor must show that the insurer had the opportunity in order to collect a garnishment against the insurer.

An insurer cannot be forced to enter into a contract to limit recovery between its insured and a third party who has an unliquidated damage claim against the insured.

PROPOSERS: Supporters say that the bill is consistent with most other state laws which allow an insurance company to defend its insured in court while still reserving the right to determine whether or not policy coverage applies based on facts and evidence determined during and after the trial. The bill encourages insurance companies to provide a full defense and results in a full determination of all issues based on evidence rather than allowing the possibility of uncontested settlements.

Testifying for the bill were Representative Gosen; Missouri Insurance Coalition; National Association of Mutual Insurance Companies; Missouri Association of Criminal Defense Lawyers; and Missouri Chamber of Commerce.

OPPOSERS: Those testifying in opposition to the bill say that it results in a conflict of interest in which an insurer attempts to gather evidence proving that coverage does not apply to its insured while at the same time purporting to defend the insured in court. If an insurer will not guarantee its coverage, the insured should be able to enter into a settlement agreement with the plaintiff that limits liability to the insurance company. If an insurance company wishes to have a full trial on the coverage issue prior to the result in the underlying tort case, it is allowed to do so by filing a declaratory judgment motion in a separate case.

Testifying against the bill were Missouri Association of Trial Attorneys and Kirk Presley.