

## SENATE BILL No. 359

By Committee on Ways and Means

3-26

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AN ACT concerning the Kansas life and health insurance guaranty association; amending K.S.A. 40-3006, 40-3008, as amended by section 3 of 2001 House Bill No. 2115, 40-3011, 40-3016 and 40-3017 and repealing the existing sections.

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

Section 1. K.S.A. 40-3006 is hereby amended to read as follows: 40-3006. (a) There is hereby created a nonprofit legal entity to be known as the Kansas life and health insurance guaranty association. All member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under the plan of operation established and approved under K.S.A. 40-3010 and amendments thereto and shall exercise its powers through a board of directors established under K.S.A. 40-3007 and amendments thereto. For purposes of administration and assessment, the association shall maintain three accounts: (1) The health insurance account;

(2) the life insurance account; and

(3) the annuity account, excluding unallocated annuities.

(b) (1) The association shall come under the immediate supervision of the commissioner and shall be subject to the applicable provisions of the insurance laws of this state.

(2) ~~Meetings or records of the association may be opened upon majority vote of the board of directors of the association~~ shall be subject to the provisions of the Kansas open meetings act, K.S.A. 75-4317 et seq. and amendments thereto.

(3) The records of the association shall be subject to the Kansas open records act, K.S.A. 45-215 et seq. and amendments thereto.

Sec. 2. K.S.A. 40-3008 as amended by section 3 of 2001 House Bill No. 2115 is hereby amended to read as follows: 40-3008. (a) If a member insurer is an impaired domestic insurer, the association may, in its discretion and subject to any conditions imposed by the association that do not impair the contractual obligations of the impaired insurer, that are approved by the commissioner and that are, except in cases of court-ordered conservation or rehabilitation, also approved by the impaired

1 insurer:

2 (1) Guarantee, assume or reinsure, or cause to be guaranteed, as-  
3 sumed or reinsured, any or all of the policies or contracts of the impaired  
4 insurer;

5 (2) provide such moneys, pledges, notes, guarantees or other means  
6 as are proper to effectuate the provisions of paragraph (1) of this subsec-  
7 tion and assure payment of the contractual obligations of the impaired  
8 insurer pending action under paragraph (1); or

9 (3) lend money to the impaired insurer.

10 (b) (1) If a member insurer is an impaired insurer, whether domes-  
11 tic, foreign or alien, and the insurer is not paying claims timely, then  
12 subject to the preconditions specified in paragraph (2) of this subsection,  
13 the association shall, in its discretion, either: (A) Take any of the actions  
14 specified in subsection (a), subject to the conditions therein; or

15 (B) provide substitute benefits in lieu of the contractual obligations  
16 of the impaired insurer solely for health claims, periodic annuity benefit  
17 payments, death benefits, supplemental benefits and cash withdrawals for  
18 policy or contract owners who petition therefor under claims of emer-  
19 gency or hardship in accordance with standards proposed by the associ-  
20 ation and approved by the commissioner.

21 (2) The association shall be subject to the requirements of paragraph  
22 (1) of this subsection only if: (A) The laws of the impaired insurer's state  
23 of domicile provide that: (i) The delinquency proceeding shall not be  
24 dismissed;

25 (ii) neither the impaired insurer nor its assets shall be returned to the  
26 control of its shareholders or private management; and

27 (iii) it shall not be permitted to solicit or accept new business or have  
28 any suspended or revoked license restored; and until all payments of or  
29 on account of the impaired insurer's contractual obligations by all guar-  
30 anty associations, along with all expenses thereof and interest on all such  
31 payments and expenses, shall have been repaid to the guaranty associa-  
32 tions or a plan of repayment by the impaired insurer shall have been  
33 approved by the guaranty associations; and

34 (B) (i) with respect to the impaired insurer who is a domestic insurer,  
35 it has been placed under an order of rehabilitation by a court of com-  
36 petent jurisdiction in this state; or

37 (ii) with respect to the impaired insurer who is a foreign or alien  
38 insurer: (aa) It has been prohibited from soliciting or accepting new busi-  
39 ness in this state;

40 (bb) its certificate of authority has been suspended or revoked in this  
41 state; and

42 (cc) a petition for rehabilitation or liquidation has been filed in a court  
43 of competent jurisdiction in its state of domicile by the commissioner of

1 the state.

2 (c) If a member insurer is an insolvent insurer, the association shall,  
3 in its discretion, either: (1) (A) Guarantee, assume or reinsure, or cause  
4 to be guaranteed, assumed or reinsured, the policies or contracts of the  
5 insolvent insurer;

6 (B) assure payment of the contractual obligations of the insolvent  
7 insurer; and

8 (C) provide such moneys, pledges, guarantees or other means as are  
9 reasonably necessary to discharge such duties; or

10 (2) with respect only to life and health policies, provide benefits and  
11 coverages in accordance with subsection (d).

12 (d) When proceeding under subsection (b)(1)(B) or (c)(2), the asso-  
13 ciation shall, with respect only to life and health insurance policies: (1)  
14 Assure payment of benefits for premiums identical to the premiums and  
15 benefits, except for terms of conversion and renewability, that would have  
16 been payable under the policies of the insolvent insurer, for claims in-  
17 curred: (A) With respect to group policies, not later than the earlier of  
18 the next renewal date under such policies or contracts or 45 days, but in  
19 no event less than 30 days, after the date on which the association be-  
20 comes obligated with respect to such policies;

21 (B) with respect to individual policies, not later than the earlier of  
22 the next renewal date, if any, under such policies or one year, but in no  
23 event less than 30 days, from the date on which the association becomes  
24 obligated with respect to such policies;

25 (2) make diligent efforts to provide all known insureds or group pol-  
26 icyholders with respect to group policies 30 days' notice of the termination  
27 of the benefits provided; and

28 (3) with respect to individual policies, make available to each known  
29 insured, or owner if other than the insured, and with respect to an indi-  
30 vidual formerly insured under a group policy who is not eligible for re-  
31 placement group coverage, make available substitute coverage on an in-  
32 dividual basis in accordance with the provisions of paragraph (4) of this  
33 subsection, if the insureds had a right under law or the terminated policy  
34 to convert coverage to individual coverage or to continue an individual  
35 policy in force until a specified age or for a specified time, during which  
36 the insurer had no right unilaterally to make changes in any provision of  
37 the policy or had a right only to make changes in premium by class;

38 (4) (A) in providing the substitute coverage required under para-  
39 graph (3) of this subsection, the association may offer either to reissue  
40 the terminated coverage or to issue an alternative policy;

41 (B) alternative or reissued policies shall be offered without requiring  
42 evidence of insurability, and shall not provide for any waiting period or  
43 exclusion that would not have applied under the terminated policy; and

1 (C) the association may reinsure any alternative or reissued policy;  
2 (5) (A) alternative policies adopted by the association shall be subject  
3 to the approval of the commissioner. The association may adopt alter-  
4 native policies of various types for future issuance without regard to any  
5 particular impairment or insolvency;

6 (B) alternative policies shall contain at least the minimum statutory  
7 provisions required in this state and provide benefits that shall not be  
8 unreasonable in relation to the premiums charged. The association shall  
9 set the premiums in accordance with a table of rates which it shall adopt.  
10 The premiums shall reflect the amount of insurance to be provided and  
11 the age and class of risk of each insured, but shall not reflect any changes  
12 in the health of the insured after the original policy was last underwritten;

13 (C) any alternative policy issued by the association shall provide cov-  
14 erage of a type similar to that of the policy issued by the impaired or  
15 insolvent insurer, as determined by the association;

16 (6) if the association elects to reissue the insured's terminated cov-  
17 erage at a premium rate different from that charged under the terminated  
18 policy, the premium shall be set by the association in accordance with  
19 the amount of insurance provided and the age and class of risk, subject  
20 to approval by the commissioner and by a court of competent jurisdiction;

21 (7) the association's obligations with respect to coverage under any  
22 policy of the impaired or insolvent insurer or under any reissued or al-  
23 ternative policy shall cease on the date such coverage or policy is replaced  
24 by another similar policy by the policyholder, the insured or the  
25 association.

26 (e) When proceeding under subsection (b)(1)(B) or (c) with respect  
27 to any policy or contract carrying guaranteed minimum interest rates, the  
28 association shall assure the payment or crediting of a rate of interest  
29 consistent with subsection (n)(3).

30 (f) Nonpayment of premiums within 31 days after the date required  
31 under the terms of any guaranteed, assumed, alternative or reissued pol-  
32 icy or contract or substitute coverage shall terminate the association's  
33 obligations under such policy or coverage under this act with respect to  
34 such policy or coverage, except with respect to any claims incurred or any  
35 net cash surrender value which may be due in accordance with the pro-  
36 visions of this act.

37 (g) Premiums due after entry of an order of liquidation of an insolvent  
38 insurer shall belong to and be payable at the direction of the association,  
39 and the association shall be liable for unearned premiums due to policy  
40 or contract owners arising after the entry of such order.

41 (h) The protection provided by this act shall not apply where any  
42 guaranty protection is provided to residents of this state by the laws of  
43 the domiciliary state or jurisdiction of the impaired or insolvent insurer

1 other than this state.

2 (i) In carrying out its duties under subsections (b) and (c), the asso-  
3 ciation may, subject to approval by the court: (1) Impose permanent pol-  
4 icy or contract liens in connection with any guarantee, assumption or  
5 reinsurance agreement, if the association finds that the amounts which  
6 can be assessed under this act are less than the amounts needed to assure  
7 full and prompt performance of the association's duties under this act, or  
8 that the economic or financial conditions as they affect member insurers  
9 are sufficiently adverse to render the imposition of such permanent policy  
10 or contract liens to be in the public interest; and

11 (2) impose temporary moratoriums or liens on payments of cash val-  
12 ues and policy loans, or any other right to withdraw funds held in con-  
13 junction with policies or contracts, in addition to any contractual provi-  
14 sions for deferral of cash or policy loan value.

15 (j) If the association fails to act within a reasonable period of time as  
16 provided in subsections (b)(1)(B), (c) and (d) of this section, the com-  
17 missioner shall have the powers and duties of the association under this  
18 act with respect to impaired or insolvent insurers.

19 (k) The association may render assistance and advice to the commis-  
20 sioner, upon request, concerning rehabilitation, payment of claims, con-  
21 tinuance of coverage or the performance of other contractual obligations  
22 of any impaired or insolvent insurer.

23 (l) The association shall have standing to appear before any court in  
24 this state with jurisdiction over an impaired or insolvent insurer concern-  
25 ing which the association is or may become obligated under this act. Such  
26 standing shall extend to all matters germane to the powers and duties of  
27 the association, including, but not limited to, proposals for reinsuring or  
28 guaranteeing the covered policies of the impaired insurer and the deter-  
29 mination of the covered policies or contracts and contractual obligations.  
30 The association shall also have the right to appear or intervene before a  
31 court in another state with jurisdiction over an impaired or insolvent in-  
32 surer for which the association is or may become obligated or with juris-  
33 diction over a third party against whom the association may have rights  
34 through subrogation of the insurer's policyholders.

35 (m) (1) Any person receiving benefits under this act shall be deemed  
36 to have assigned the rights under any cause of action relating to the cov-  
37 ered policy or contract to the association to the extent of the benefits  
38 received because of this act, whether the benefits are payments of or on  
39 account of contractual obligations, continuation of coverage or provision  
40 of substitute or alternative coverages. The association may require an  
41 assignment to it of such rights and cause of action by any payee, policy  
42 or contract owner, beneficiary, insured or annuitant as a condition prec-  
43 edent to the receipt of any right or benefits conferred by this act upon

1 such person.

2 (2) The subrogation rights of the association under this subsection  
3 shall have the same priority against the assets of the impaired or insolvent  
4 insurer as that possessed by the person entitled to receive benefits under  
5 this act.

6 (3) In addition to paragraphs (1) and (2), the association shall have  
7 all common-law rights of subrogation and any other equitable or legal  
8 remedy which would have been available to the impaired or insolvent  
9 insurer or holder of a policy or contract with respect to such policy or  
10 contracts.

11 (n) The contractual obligations of the impaired or insolvent insurer  
12 for which the association becomes, or may become, liable shall be as great  
13 as but no greater than the contractual obligations of the impaired or in-  
14 solvent insurer would have been in the absence of an impairment or  
15 insolvency unless such obligations are reduced as permitted by subsection  
16 (e) but the association shall not provide coverage for: (1) Any portion of  
17 a policy or contract not guaranteed by the insurer, or under which the  
18 risk is borne by the policy or contract holder;

19 (2) any policy or contract of reinsurance, unless assumption certifi-  
20 cates have been issued;

21 (3) any portion of a policy or contract to the extent that the rate of  
22 interest on which it is based: (A) Averaged over the period of four years  
23 prior to the date on which the association becomes obligated with respect  
24 to such policy or contract, exceeds a rate of interest determined by sub-  
25 tracting two percentage points from Moody's corporate bond yield aver-  
26 age averaged for that same four-year period or for such lesser period if  
27 the policy or contract was issued less than four years before the association  
28 became obligated; and

29 (B) on and after the date on which the association becomes obligated  
30 with respect to such policy or contract, exceeds the rate of interest de-  
31 termined by subtracting three percentage points from Moody's corporate  
32 bond yield average as most recently available;

33 (4) any plan or program of an employer, association or similar entity  
34 to provide life, health or annuity benefits to its employees or members  
35 to the extent that such plan or program is self-funded or uninsured, in-  
36 cluding but not limited, to benefits payable by an employer, association  
37 or similar entity under: (A) A multiple employer welfare arrangement as  
38 defined in section 514 of the employee retirement income security act of  
39 1974, as amended;

40 (B) a minimum premium group insurance plan;

41 (C) a stop-loss group insurance plan; or

42 (D) an administrative services only contract;

43 (5) any portion of a policy or contract to the extent that it provides

1 dividends or experience rating credits, or provides that any fees or allow-  
2 ances be paid to any person, including the policy or contract holder, in  
3 connection with the service to or administration of such policy or contract;

4 (6) any policy or contract issued in this state by a member insurer at  
5 a time when it was not licensed or did not have a certificate of authority  
6 to issue such policy or contract in this state; and

7 (7) any unallocated annuity contract, except as provided in subsection  
8 (b) of K.S.A. 40-3003 and amendments thereto.

9 (o) The benefits for which the association may become liable shall in  
10 no event exceed the lesser of: (1) The contractual obligations for which  
11 the insurer is liable or would have been liable if it were not an impaired  
12 or insolvent insurer; or

13 (2) with respect to any one life, regardless of the number of policies  
14 or contracts: (A) \$300,000 in life insurance death benefits, but not more  
15 than \$100,000 in net cash surrender and net cash withdrawal values for  
16 life insurance;

17 (B) \$100,000 in health insurance benefits, including any net cash sur-  
18 render and net cash withdrawal values; or

19 (C) \$100,000 in the present value of annuity benefits, including net  
20 cash surrender and net cash withdrawal values;

21 (D) In no event shall the association be liable to expend more than  
22 \$300,000 in the aggregate with respect to any one life as provided in  
23 paragraph (A), (B) or (C) of this subsection.

24 (E) Any increased limits of liability of the guaranty association by this  
25 act shall not apply to an impaired or insolvent insurer for which the guar-  
26 anty association becomes liable prior to July 1, 1993.

27 The provisions of subsection (o) shall not apply to annuity contracts for  
28 future economic loss procured pursuant to a judgment or settlement  
29 agreement in a medical malpractice liability action.

30 (p) The association may: (1) Enter into such contracts as are necessary  
31 or proper to carry out the provisions and purposes of this act;

32 (2) sue or be sued, including taking any legal actions necessary or  
33 proper to recover any unpaid assessments under K.S.A. 40-3009 and  
34 amendments thereto, and, *subject to the provisions of subsection (b) of*  
35 *section 5, and amendments thereto*, to settle claims or potential claims  
36 against ~~the~~ *the association*;

37 (3) borrow money to effect the purposes of this act. Any notes or  
38 other evidence of indebtedness of the association not in default shall be  
39 legal investments for domestic insurers and may be carried as admitted  
40 assets;

41 (4) employ or retain such persons as are necessary to handle the fi-  
42 nancial transactions of the association, and to perform such other func-  
43 tions as become necessary or proper under this act;

1 (5) take such legal action as may be necessary to avoid payment of  
2 improper claims; or

3 (6) exercise, for the purposes of this act and to the extent approved  
4 by the commissioner, the powers of a domestic life or health insurer, but  
5 in no case may the association issue insurance policies or annuity contracts  
6 other than those issued to perform its obligations under this act.

7 (q) The association may join an organization of one or more other  
8 state associations of similar purposes to further the purposes and admin-  
9 ister the powers and duties of the association.

10 (r) The association shall pay any and all persons who, as a provider,  
11 may have claims as a result of a member insurer being found insolvent  
12 between March 1, 1999 and June 1, 1999.

13 Sec. 3. K.S.A. 40-3011 is hereby amended to read as follows: 40-  
14 3011. In addition to the duties and powers enumerated in this act: (a)  
15 The commissioner shall: (1) Upon request of the board of directors, pro-  
16 vide the association with a statement of the premiums in this and any  
17 other appropriate state for each member insurer;

18 (2) when an impairment is declared and the amount of the impair-  
19 ment is determined, serve a demand upon the impaired insurer to make  
20 good the impairment within a reasonable time; notice to the impaired  
21 insurer shall constitute notice to its shareholders, if any; the failure of the  
22 insurer to promptly comply with such demand shall not excuse the as-  
23 sociation from the performance of its powers and duties under this act;

24 (3) in any liquidation or rehabilitation proceeding involving a domes-  
25 tic insurer, be appointed as the liquidator or rehabilitator.

26 (b) The commissioner may suspend or revoke, after notice and hear-  
27 ing in accordance with the provisions of the Kansas administrative pro-  
28 cedure act, the certificate of authority to transact insurance in this state  
29 of any member insurer which fails to pay an assessment when due or fails  
30 to comply with the plan of operation. As an alternative the commissioner  
31 may levy a forfeiture on any member insurer which fails to pay an as-  
32 sessment when due. Such forfeiture shall not exceed 5% of the unpaid  
33 assessment per month, but no forfeiture shall be less than \$100 per  
34 month.

35 (c) (1) Any action of the board of directors or the association may be  
36 appealed to the commissioner by any member insurer if such appeal is  
37 taken within ~~60~~ 30 days of the final action being appealed. *The final action*  
38 *appealed from shall contain any findings and conclusions necessary to*  
39 *support the decision. Such appeal shall be subject to the provisions of the*  
40 *Kansas administrative procedure act, K.S.A. 77-501 et seq., and amend-*  
41 *ments thereto, and the act for judicial review and civil enforcement of*  
42 *agency actions, K.S.A. 77-601 et seq. and amendments thereto.*

43 (2) If a member company is appealing an assessment, the amount



1 assessed shall be paid to the association and available to meet association  
2 obligations during the pendency of an appeal. If the appeal on the as-  
3 sessment is upheld, the amount paid in error shall be returned to the  
4 member insurer.

5 (d) The liquidator, rehabilitator or conservator of any impaired in-  
6 surer may notify all interested persons of the effect of this act.

7 Sec. 4. K.S.A. 40-3016 is hereby amended to read as follows: 40-  
8 3016. (a) Unless a longer period has been allowed by the commissioner,  
9 a member insurer shall at ~~its~~ *such insurer's* option have the right to show  
10 a certificate of contribution as an asset in the form approved by the com-  
11 missioner pursuant to K.S.A. 40-3009, subsection (g), at percentages of  
12 the original face amount approved by the commissioner, for calendar  
13 years as follows:

14 (1) One hundred percent (~~100%~~) for the calendar year of issuance;

15 (2) eighty percent (~~80%~~) for the first calendar year after the year of  
16 issuance;

17 (3) sixty percent (~~60%~~) for the second calendar year after the year of  
18 issuance;

19 (4) forty percent (~~40%~~) for the third calendar year after the year of  
20 issuance;

21 (5) twenty percent (~~20%~~) for the fourth calendar year after the year  
22 of issuance.

23 (b) *Except as provided in subsection (d)*, the insurer may offset the  
24 amount written off by ~~it~~ *such insurer* in a calendar year under subsection  
25 (a) above, against its premium tax liability to this state accrued with re-  
26 spect to business transacted in such year.

27 (c) Any sums acquired by refund, pursuant to K.S.A. 40-3009, sub-  
28 section (f), from the association which have theretofore been written off  
29 by contributing insurers and offset against premium taxes as provided in  
30 subsection (b) above, and is not then needed for purposes of this act, shall  
31 be paid by the association to the commissioner and by ~~him~~ *the commis-*  
32 *sioner* deposited with the state treasurer for credit to the general fund of  
33 this state.

34 (d) *No offset shall be allowed for any amount attributable to the pay-*  
35 *ment of any claim and the accrued interest thereon described in subsection*  
36 *(b) of K.S.A. 40-3017 and amendments thereto.*

37 Sec. 5. K.S.A. 40-3017 is hereby amended to read as follows: 40-  
38 3017. (a) *Except as provided in subsection (b)*, there shall be no liability  
39 on the part of and no cause of action of any nature shall arise against any  
40 member insurer or its agents or employees, the association or its agents  
41 or employees, members of the board of directors, or the commissioner  
42 or the commissioner's representatives, for any action or omission by them  
43 in the performance of their powers and duties under this act. Such im-

1 munity shall extend to the participation in any organization of one or more  
2 other state associations of similar purposes and to any such organization  
3 and its agents or employees.

4 *(b) Whenever the association receives from a provider a valid claim*  
5 *for providing medical services to an insured covered under any health*  
6 *insurance contract or policy issued, such claim shall be paid by the as-*  
7 *sociation within 60 days after receipt of such claim. If a valid claim is not*  
8 *paid as required by this subsection, interest shall accrue at the rate of*  
9 *1½% for each month, or fraction thereof, on the unpaid balance of such*  
10 *claim.*

11 Sec. 6. K.S.A. 40-3006, 40-3008, as amended by section 3 of 2001  
12 House Bill No. 2115, 40-3011, 40-3016 and 40-3017 are hereby repealed.

13 Sec. 7. This act shall take effect and be in force from and after its  
14 publication in the statute book.

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