

MINUTES OF THE HOUSE COMMITTEE ON INSURANCE

The meeting was called to order by Chairman Rex Hoy at
Chairperson

3:30 ~~am~~/p.m. on January 26,, 1983 in room 521-S of the Capitol.

All members were present except:

Rep. Sutter and Rep. Webb, who were excused.

Committee staff present:

Wayne Morris, Legislative Research
Gordon Self, Revisor's Office
Mary Sorensen, Committee Secretary

Conferees appearing before the committee:

Fletcher Bell, Insurance Commissioner
L. M. "Bud" Cornish, lobbyist for the Kansas Association of
Property and Casualty Insurance Companies

Others present:

See List (Attachment 1)

Chairman Hoy introduced Fletcher Bell, Insurance Commissioner for the State of Kansas. Mr. Bell referred to Attachment 2, which was furnished to each committee member, and which outlines the bills the Insurance Department is asking the committee to introduce this session. If introduced by the committee, the bills would then be referred back for discussion and possible action. Mr. Bell said the bills requested by the Insurance Department had been divided between the House Insurance Committee and the Senate Committee on Commercial and Financial Institutions; and on Thursday, January 27th, the Senate committee members would be provided with an outline of the bills they would be asked to introduce. A copy of the proposals to be presented to the Senate committee is attached (Attachment 3) and a copy was provided for each Insurance Committee member, for their information. Mr. Bell discussed each proposal briefly, and there were no questions.

L. M. "Bud" Cornish, representing the Kansas Association of Property and Casualty Insurance Companies, then spoke--presenting several bill requests, all dealing with the Kansas No-Fault law. (Attachment 4). Mr. Cornish asked the committee to consider the requests and introduce them as committee bills. These bills, if introduced, would also be referred back to the Insurance Committee for discussion and possible action.

Rep. Blumenthal moved the minutes of the meeting of January 25, 1983, be approved as written. Rep. Mary Jane Johnson seconded. The motion carried.

The meeting adjourned at 4:05 PM.

EXPLANATORY MEMORANDUM FOR
LEGISLATIVE PROPOSAL NO. 1

This is a very simple proposal. It deals only with the monetary limits applicable to the various personal injury protection benefits and it adjusts the tort threshold by an equivalent amount. In other words, this proposal simply takes the dollar amounts that were enacted in 1973 and adjusts them to current levels by applying the actual increases in the indexes that existed when the no-fault act was structured in 1973. For example, the 1973 medical care component of the Consumer Price Index was 137.7. The October 1982 Medical Care Index which was the latest available when we were developing the program, was 338.7. By applying this increase to the \$2,000 medical payments, we find that when measured in today's dollars, that limit should be \$4,900 to be on a parity with 1973. The same type of approach has been used with the other personal injury protection coverages as well as the monetary tort threshold.

With respect to the threshold, however, there is one variation in that the increase has been applied to \$1,000 instead of the \$500 threshold that is actually in the law. The reason for this variation is the fact that, as some will recall, the actuarial report relied upon in 1973 used \$1,000 as the tort threshold that would balance the first party benefit package at that time. The fact that a \$500 threshold was enacted does not alter the fact that the actuarial projection indicated it should have been \$1,000. Thus, \$1,000 is the appropriate base to use in bringing the dollar amounts specified in the bill back to a point that reflects current economic conditions.

In addition to the economic adjustments, this proposal includes a new procedure which, if enacted, would keep the PIP benefits and tort threshold at reasonably current levels. Specifically, this procedure would result in an automatic adjustment of these dollar amounts every three years based on the CPI and other appropriate indexes. The only time an adjustment would not occur would be when the change in the index is less than 10%. This seems to be a remote possibility but it avoids insignificant changes and changes of a fractional nature.

The House Insurance Committee will be requested to introduce this proposal.

LEGISLATIVE PROPOSAL NO. 1

AN ACT relating to insurance; automobile liability insurance; personal injury protection benefits; tort actions; amending K.S.A. 40-3103 and 40-3117 and repealing the existing sections.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

1 Section 1. K.S.A. 40-3103 is hereby amended to read as follows: 40-3103. As
2 used in this act, the following words and phrases shall have the meanings respectively
3 ascribed to them herein: (a) "Commissioner" means the state commissioner of
4 insurance.

5 (b) "Disability benefits" means allowances for loss of monthly earnings due to an
6 injured person's inability to engage in available and appropriate gainful activity,
7 subject to the following conditions and limitations: (1) The injury sustained is the
8 proximate cause of the injured person's inability to engage in available and appropriate
9 gainful activity; (2) subject to the maximum benefits stated herein, allowances shall
10 equal one hundred percent (100%) of any such loss per individual, unless such
11 allowances are deemed not includable in gross income for federal income tax purposes,
12 in which event such allowances shall be limited to eighty-five percent (85%); and
13 (3) allowances shall be made up to a maximum of not less than six twelve hundred
14 ~~fifty~~ dollars ~~(\$650)~~ (\$1200) per month for not to exceed one (1) year after the date the
15 injured person becomes unable to engage in available and appropriate gainful activity.

16 (c) "Director" means the director of vehicles.

17 (d) "Funeral benefits" means allowances for funeral, burial or cremation
18 expenses in an amount not to exceed one thousand twenty-two hundred dollars ~~(\$1,000)~~
19 (\$2,200) per individual.

20 (e) "Highway" means the entire width between the boundary lines of every way
21 publicly maintained, when any part thereof is open to the use of the public for purposes
22 of vehicular travel.

23 (f) "Implement of husbandry" means every vehicle designed or adapted and used
24 exclusively for agricultural operations and only incidentally operated or moved upon
25 the highways.

26 (g) "Insurer" means any insurance company, as defined by K.S.A. 40-201, duly
27 authorized to transact business in this state and which issues policies of motor vehicle
28 liability insurance covering liability arising out of the ownership, operation,
29 maintenance or use of a motor vehicle.

30 (h) "Injured person" means any person suffering injury.

31 (i) "Injury" means bodily harm, sickness, disease or death resulting from an
32 accident arising out of the ownership, maintenance or use of a motor vehicle.

33 (j) "Lienholder" means a person holding a security interest in a vehicle.

34 (k) "Medical benefits" shall mean and include allowances for all reasonable
35 expenses, up to a limit of not less than two thousand forty-nine hundred dollars
36 ~~(\$2,000)~~ (\$4,900), for necessary health care rendered by practitioners licensed by the
37 board of healing arts, surgical, x-ray and dental services, including prosthetic devices
38 and necessary ambulance, hospital and nursing services; and such term also shall
39 include allowances for services recognized and permitted under the laws of this state
40 for an injured person who relies upon spiritual means through prayer alone for healing
41 in accordance with his or her religious beliefs.

42 (l) "Monthly earnings" means: (1) In the case of a regularly employed person or
43 a person regularly self-employed, one-twelfth (1/12) of the annual earnings at the time
44 of injury; or (2) in the case of a person not regularly employed or self-employed, or of
45 an unemployed person, one-twelfth (1/12) of the anticipated annual earnings from the
46 time such person would reasonably have been expected to be regularly employed. In
47 calculating the anticipated annual earnings of an unemployed person who has
48 previously been employed, the insurer shall average the annual compensation of such
49 person for not to exceed five (5) years preceding the year of injury or death, during
50 which such person was employed.

51 (m) "Motor vehicle" means every self-propelled vehicle of a kind required to be
52 registered in this state, including any trailer, semitrailer or pole trailer designed for
53 use with such vehicle, but such term shall not include a motorized bicycle.

54 (n) "Operator" means any person who drives or is in actual physical control of a
55 motor vehicle upon a highway or who is exercising control over or steering a vehicle
56 being towed by a motor vehicle.

57 (o) "Owner" means a person, other than a lienholder, having property in or title
58 to a motor vehicle, including a person who is entitled to the use and possession of a
59 motor vehicle subject to a security interest held by another person; but such term does
60 not include a lessee under a lease not intended as security.

61 (p) "Person" means an individual, partnership, corporation or other association of
62 persons.

63 (q) "Personal injury protection benefits" means the disability benefits, funeral
64 benefits, medical benefits, rehabilitation benefits, substitution benefits, and survivors'
65 benefits required to be provided in motor vehicle liability insurance policies pursuant
66 to this act.

67 (r) "Rehabilitation benefits" means allowances for all reasonable expenses, up to
68 a limit of not less than ~~two thousand forty-nine hundred dollars (\$2,000)~~, (\$4,900), for
69 necessary psychiatric services, occupational therapy and such occupational training
70 and retraining as may be reasonably necessary to enable the injured person to obtain
71 suitable employment.

72 (s) "Relative residing in the same household" means a relative of any degree by
73 blood, marriage or adoption, who usually makes his or her home in the same family
74 unit, whether or not temporarily living elsewhere.

75 (t) "Security interest" means an interest in a vehicle reserved or created by
76 agreement and which secures payment or performance of an obligation. The term
77 includes the interest of a lessor under a lease intended as security.

78 (u) "Self-insurer" means any person effecting self-insurance pursuant to
79 subsection (d) of K.S.A. 1977 Supp. 40-3104.

80 (v) "Special mobile equipment" means every vehicle not designed or used
81 primarily for the transportation of persons or property and only incidentally operated
82 or moved over a highway, including but not limited to: Ditch-digging apparatus, well-
83 boring apparatus and road construction and maintenance machinery such as asphalt
84 spreaders, bituminous mixers, bucket loaders, tractors other than truck tractors,
85 ditchers, levelling graders, finishing machines, motor graders, road rollers, scarifiers,
86 earth moving carryalls and scrapers, power shovels and drag lines, and self-propelled
87 cranes and earth moving equipment. The term does not include house trailers, dump
88 trucks, truck mounted transit mixers, cranes or shovels, or other vehicles designed for
89 the transportation of persons or property to which machinery has been attached.

90 (w) "Substitution benefits" means allowances for appropriate and reasonable
91 expenses incurred in obtaining other ordinary and necessary services in lieu of those
92 that, but for the injury, the injured person would have performed for the benefit of
93 himself or herself or his or her family, subject to a maximum of ~~twelve twenty-two~~
94 dollars (\$12)-(\$22) per day for not longer than three hundred sixty-five (365) days after
95 the date such expenses are incurred.

96 (x) "Survivor" means a decedent's spouse or child under the age of eighteen (18)
97 years, where death of the decedent resulted from an injury.

98 (y) "Survivors' benefits" means total allowances to all survivors for: (1) Loss of
99 an injured person's monthly earnings after his or her death, up to a maximum of not
100 less than ~~six twelve~~ hundred fifty dollars ~~(\$650)~~ (\$1,200) per month; and
101 (2) substitution benefits following the injured person's death. Expenses of the
102 survivors which have been avoided by reason of the injured person's death shall be
103 subtracted from the allowances to which survivors would otherwise be entitled, and
104 survivors' benefits shall not be paid for more than one (1) year after the injured
105 person's death, less the number of months the injured person received disability
106 benefits prior to his or her death.

107 (z) "Uninsured motor vehicle" means any motor vehicle which is not included
108 under an approved self-insurance plan of a self-insurer or for which there is not in
109 effect a motor vehicle liability insurance policy meeting the requirements of this act.

110 (aa) "Any workmen's compensation law" means the workmen's compensation act
111 of Kansas, the United States longshoremen's and harbor workers' compensation act, the
112 federal employer liability acts, and any similar state or federal law.

113 Sec. 2. K.S.A. 40-3117 is hereby amended to read as follows: 40-3117. In any
114 action for tort brought against the owner, operator or occupant of a motor vehicle or
115 against any person legally responsible for the acts or omissions of such owner, operator
116 or occupant, a plaintiff may recover damages in tort for pain, suffering, mental
117 anguish, inconvenience and other non-pecuniary loss because of injury only in the event
118 the injury requires medical treatment of a kind described in this act as medical
119 benefits, having a reasonable value of ~~twenty-five hundred dollars (\$500)~~ (\$2,500) or
120 more, or the injury consists in whole or in part of permanent disfigurement, a fracture
121 to a weight-bearing bone, a compound, comminuted, displaced or compressed fracture,

122 loss of a body member, permanent injury within reasonable medical probability,
123 permanent loss of a bodily function or death. Any person who is entitled to receive
124 free medical and surgical benefits shall be deemed in compliance with the
125 requirements of this section upon a showing that the medical treatment received has
126 an equivalent value of at least twenty-five hundred dollars ~~(\$500)~~ (\$2,500). Any
127 person receiving ordinary and necessary services, normally performed by a nurse, from
128 a relative or a member of his household shall be entitled to include the reasonable
129 value of such services in meeting the requirements of this section. For the purpose of
130 this section, the charges actually made for medical treatment expenses shall not be
131 conclusive as to their reasonable value. Evidence that the reasonable value thereof
132 was an amount different than the amount actually charged shall be admissible in all
133 actions to which this subsection applies.

134 New Sec. 3. With the exception of disability, substitution and survivors benefits,
135 the personal injury protection benefits and the monetary amount or value of the
136 medical services necessary to recover damages in tort for pain, suffering, mental
137 anguish, inconvenience and other non-pecuniary loss shall be increased or decreased by
138 10% for each whole 10% by which the appropriate component or components of the
139 Consumer Price Index for all urban consumers (all items) prepared by the U.S.
140 Department of Labor changes from such index for January 1973. Any increase or
141 decrease so established shall be rounded to the nearest \$10 for all amounts under \$100
142 and to the nearest \$100 for all amounts in excess of \$100. Such increases or decreases
143 for disability, substitution and survivors benefits shall be calculated in the same
144 manner but shall be based on the average weekly earnings of production and
145 nonsupervisory workers on private non-agricultural payrolls (total private) as published
146 by the Bureau of Labor Statistics, U.S. Department of Labor. In the event such index
147 ceases to be maintained, the commissioner shall designate an alternate appropriate
148 index. Any such change shall be made no more frequently than once in any 3 calendar
149 years; shall be calculated by the commissioner on the basis of the information
150 available as of the end of the third quarter of the calendar year preceding the year in
151 which the changes become effective; shall be published in the Kansas Register at least
152 45 days prior to the effective date; and shall remain in effect until changed as
153 provided herein.

154 Sec. 4. K.S.A. 40-3103 and K.S.A. 40-3117 are hereby repealed.

155 Sec. 5. This act shall take effect and be in force from and after its publication
156 in the statute book.

EXPLANATORY MEMORANDUM FOR
LEGISLATIVE PROPOSAL NO. 2

Legislative Proposal No. 2 is an attempt to slow the escalation of health care costs in Kansas. For years Blue Cross and Blue Shield subscribers have maintained that the monetary funnel provided by Blue Cross and Blue Shield actually encourage increasing charges for health care services and provide no incentive for exercising thrift with health care dollars. In addition, public concern has been expressed about the fact that rises in health care costs commonly exceed increases in cost of all other items as measured by the Consumer Price Index.

This proposal addresses these issues by limiting the maximum amount Blue Cross and Blue Shield can increase their payments to participating physicians, hospitals and other members to no more than 104% of the increase in the "overall" Consumer Price Index during the preceding year.

In addition, this proposal is a first step toward implementation of the "preferred provider" concept by directly informing subscribers of the names of Blue Cross and Blue Shield participants. These participants will have, in turn, contractually agreed to accept the schedule of charges and fees established by Blue Cross and Blue Shield as payment for the services performed.

The House Insurance Committee will be requested to introduce this proposal.

LEGISLATIVE PROPOSAL NO. 2

AN ACT relating to nonprofit medical and hospital service corporations; limiting payment to participating members; amending K.S.A. 40-19c10 and repealing the existing section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

1 Section 1. K.S.A. 40-19c10 is hereby amended to read as follows: 40-19c10. (a)
2 No corporation subject to the provisions of the nonprofit medical and hospital service
3 corporation act shall during any one year disburse more than five percent (5%) of the
4 aggregate amount of the payments received from subscribers during that year as
5 expenditures for the soliciting of subscribers, except that during the first year after
6 the issuance of a permit, such corporation may so disburse not more than twenty
7 percentum (20%) of such amount, during the second year not more than fifteen
8 percentum (15%) and during the third year not more than ten percentum (10%).

9 (b) No such corporation shall, during any one year, disburse a sum greater than
10 ten percentum (10%) of the payments received from subscribers during that year as
11 administrative expenses. As used in this section the term "administrative expenses"
12 shall include all expenditures for nonprofessional services including all activities,
13 contractual arrangements and projects authorized by K.S.A. 40-19c04, and in general,
14 all expenses not directly connected with the furnishing of the benefits specified in this
15 act, but not including expenses referred to in subsection (a) hereof.

16 (c) Each corporation organized under the nonprofit medical and hospital service
17 corporation act shall devote a reasonable effort to control costs, including both its
18 administrative costs and cost charged to it by participating hospitals and physicians.
19 Such effort shall include, but not be limited to, a continuing attempt by such
20 corporation through a combination of education, persuasion and financial incentives
21 and disincentives to control cost and to encourage participating physicians and
22 hospitals to control cost by: (1) Elimination of duplicative or unnecessary services,
23 facilities, and equipment; (2) nonprovider participation in the affairs of the
24 corporation; (3) subscriber support of cost containment activities; (4) promotion of
25 sound management practices in participating hospitals; (5) promotion of efficient
26 delivery of health care services by participating physicians; (6) implementation of
27 sound management practices within the nonprofit medical and hospital service
28 corporation; (7) promotion of alternative forms of health care; and (8) engagement in,
29 and evaluation of, cost control experiments, including incentive reimbursement and
30 utilization and peer review programs.

31 (d) Notwithstanding such corporation's compliance, or extent of compliance,
32 with this section, no nonprofit medical and hospital service corporation doing business
33 in this state shall enter into any contract or agreement with any hospital, physician, or
34 other provider of health care service pursuant to K.S.A. 40-19c04 which will permit or
35 require payment of any maximum amount in excess of that paid the previous calendar
36 year for each professional and hospital service provided to subscribers except to the
37 extent any such increase in payments is by a percentage no greater than 104% of the
38 percentage increase in the Consumer Price Index for all urban consumers (all items)
39 compiled by the U.S. Department of Labor for the immediately preceding calendar
40 year. In the event such index ceases to be maintained, the commissioner shall adopt a
41 regulation establishing an appropriate alternate index.

42 (e) Every corporation subject to the provisions of this act shall provide annually
43 to each subscriber a list of the names and addresses of the physicians, hospitals and
44 other providers of health care services who have entered into agreements or contracts
45 with such corporation.

46 Sec. 2. K.S.A. 40-19c10 is hereby repealed.

47 Sec. 3. This act shall take effect and be in force from and after January 1, 1984
48 and its publication in the statute book.

EXPLANATORY MEMORANDUM FOR
LEGISLATIVE PROPOSAL NO. 3

This proposal is a model law developed by the National Association of Insurance Commissioners and its purpose is to provide some minimal assurances regarding the financial stability of health maintenance organizations. Kansas now has six licensed health maintenance organizations authorized to do business in this state and the move towards this alternative form of health care seems to be gathering momentum. As a result, the solvency of these kinds of organizations is becoming a matter of significant interest. Legislative Proposal No. 3 attempts to fill this void in a manner which accommodates the unique characteristics of health maintenance organizations. Kansas laws now governing the formation and licensing of health maintenance organizations do not now provide or require that such organizations meet any kind of minimum financial or deposit requirements. Legislative Proposal No. 3 would fill this need.

The House Insurance Committee will be requested to introduce this proposal.

LEGISLATIVE PROPOSAL NO. 3

AN ACT relating to health maintenance organizations; protection against insolvency; requirements.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

1 New Section 1. (a) Unless otherwise provided below, each health maintenance
2 organization doing business in this state shall deposit with any organization or trustee
3 acceptable to the commissioner through which a custodial or controlled account is
4 utilized, cash, securities, or any combination of these or other measures that is
5 acceptable in the amount set forth in this section.

6 (b) The amount for an organization that is beginning operation shall be the
7 greater of:

8 (1) Five percent (5%) of its estimated expenditures for health care services for
9 its first year of operation,

10 (2) Twice its estimated average monthly uncovered expenditures for its first
11 year of operation, or

12 (3) \$100,000.

13 At the beginning of each succeeding year, unless not applicable, the organization
14 shall deposit with the organization or trustee, cash, securities, or any combination of
15 these or other measures acceptable to the commissioner, in an amount equal to four
16 percent (4%) of its estimated annual uncovered expenditures for that year.

17 (c) Unless not applicable, an organization that is in operation on the effective
18 date of this section shall make a deposit equal to the larger of:

19 (1) One percent (1%) of the preceding twelve (12) months uncovered
20 expenditures, or

21 (2) \$100,000 on the first day of the first fiscal year beginning six (6) months or
22 more after the effective date of this section.

23 In the second fiscal year, if applicable, the amount of the additional deposit shall
24 be equal to two percent (2%) of its estimated annual uncovered expenditures. In the
25 third fiscal year, if applicable, the additional deposit shall be equal to three percent
26 (3%) of its estimated annual uncovered expenditures for that year, and in the fourth
27 fiscal year and subsequent years, if applicable, the additional deposit shall be equal to
28 four percent (4%) of its estimated annual uncovered expenditures for each year. Each
29 year's estimate, after the first year of operation shall reasonably reflect the prior
30 years' operating experience and delivery arrangements.

31 (d) The commissioner may waive any of the deposit requirements set forth in
32 subsections (a) and (b) above whenever satisfied that the organization has sufficient
33 net worth and an adequate history of generating net income to assure its financial
34 viability for the next year, or its performance and obligations are guaranteed by an
35 organization with sufficient net worth and an adequate history of generating net
36 income, or the assets of the organization or its contracts with insurers, hospital or
37 medical service corporations, governments, or other organizations are reasonably
38 sufficient to assure the performance of its obligations.

39 (e) When an organization has achieved a net worth not including land, buildings,
40 and equipment of at least \$1 million or has achieved a net worth including
41 organization-related land, buildings, and equipment of at least \$5 million, the annual
42 deposit requirement shall not apply.

43 The annual deposit requirement shall not apply to an organization if the total
44 amount of the accumulated deposit is equal to 25% of its estimated annual uncovered
45 expenditures for the next calendar year, or the capital and surplus requirements for
46 the formation for admittance of an accident and health insurer in this state, whichever
47 is less.

48 If the organization has a guaranteeing organization which has been in operation
49 for at least five (5) years and has a net worth not including land, buildings and
50 equipment of at least \$1 million or which has been in operation for at least ten (10)
51 years and has a net worth including organization-related land, buildings, and equipment
52 of at least \$5 million, the annual deposit requirement shall not apply; if the
53 guaranteeing organization is sponsoring more than one organization, the net worth
54 requirement shall be increased by a multiple equal to the number of such
55 organizations. This requirement to maintain a deposit in excess of the deposit required
56 of an accident and health insurer shall not apply during any time that the guaranteeing
57 organization maintains for each organization it sponsors a net worth at least equal to

58 the capital and surplus requirements for an accident and health insurer.

59 (f) All income from deposits shall belong to the depositing organization and shall
60 be paid to it as it becomes available. A health maintenance organization that has
61 made a securities deposit may withdraw that deposit or any part thereof after making
62 a substitute deposit of cash, securities, or any combination of these or other measures
63 of equal amount and value. Any securities shall be approved by the commissioner
64 before being substituted.

65 (g) In any year in which an annual deposit is not required of an organization, at
66 the organization's request the commissioner shall reduce the required, previously
67 accumulated deposit by \$100,000 for each \$250,000 of net worth in excess of the
68 amount that allows the organization not to make the annual deposit. If the amount of
69 net worth no longer supports a reduction of its required deposit, the organization shall
70 immediately redeposit \$100,000 for each \$250,000 of reduction in net worth, provided
71 that its total deposit shall not exceed the maximum required under this section.

72 (h) Each health maintenance organization that obtains a certificate of authority
73 after the effective date of this subsection shall have and maintain a capital account of
74 at least \$100,000 in addition to any deposit requirements under this section. The
75 capital account shall be net of any accrued liabilities and be in the form of cash,
76 securities or any combination of these or other measures acceptable to the
77 commissioner.

78 Sec. 2. This act shall take effect and be in force from and after January 1, 1984
79 and its publication in the statute book.

EXPLANATORY MEMORANDUM FOR
LEGISLATIVE PROPOSAL NO. 4

This proposal would authorize the commissioner to charge expenses incurred in administering the Firemen's Relief Fund to the fund itself as opposed to being paid from the insurance department's general fund appropriation.

The Firemen's Relief Fund is a statutory creature and serves as a source of revenue for payment of benefits to firefighters injured in the performance of their duties.

It is supported by a tax imposed on the premiums collected by insurance carriers for insuring property against loss by fire.

Since this is a special restricted fund designed to fulfill a separate, limited, function, Legislative Proposal No. 4 suggests that the fund itself should be responsible for all aspects of its operation including the cost of its administration. A preliminary estimate of the fiscal effect of this proposal indicates that it would reduce general revenue expenditures by approximately \$40,000.

The House Insurance Committee will be requested to introduce this proposal.

LEGISLATIVE PROPOSAL NO. 4

AN ACT relating to the allocation of expenses of administration of the Firemen's Relief Fund, amending K.S.A. 1982 Supp. 40-1706 and repealing the existing section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

1 Section 1. K.S.A. 1982 Supp. 40-1706 is hereby amended to read as follows: 40-
2 1706. Every firemen's relief association which holds firemen's relief association funds
3 created by this article shall, on or before the first day of April of each year, submit to
4 the commissioner of insurance a verified account showing in full the receipts and
5 disbursements and general condition of such funds for the year ending on the preceding
6 December 31, and the commissioner of insurance, if such account or other information
7 shows such funds are not being expended for the purposes of this act, shall notify the
8 county attorney of the county in which any such firemen's relief association is located
9 and it shall be the duty of the county attorney to institute proceedings to recover for
10 the use of the firemen's relief association all moneys expended for purposes not in
11 accordance with the provisions of this act and the commissioner of insurance shall hold
12 any funds of such firemen's relief association until he or she has been notified by the
13 county attorney that such condition has been corrected.

14 Otherwise, he or she shall, within one hundred fifty (150) days thereafter, pay
15 over all of the moneys collected from such insurance companies, associations, and
16 corporations doing business within areas as provided in K.S.A. 40-1702, excepting (a)
17 reasonable and necessary expenses incurred by the insurance department in the
18 administration of the fund and (b) three percent (3%) thereof, which shall be paid by
19 the commissioner of insurance to the treasurer of the Kansas state firemen's
20 association for the education and study of fire prevention and fire extinguishment and
21 said Kansas state firemen's association shall make an annual accounting to the
22 commissioner of insurance, to the treasurer of the firemen's relief association of such
23 city, township, county or fire district, said association to be composed of members of
24 the fire department of such city, township, county or fire district and to be
25 incorporated under the laws of this state. Except as otherwise provided herein,
26 whenever any firemen's relief association shall fail to qualify for funds, as provided in
27 this act, for a period of two (2) consecutive years, the funds on deposit with such
28 association shall be returned by the county attorney to the commissioner of insurance
29 who shall disburse said funds to the Kansas state firemen's association for the
30 education and study of fire prevention and fire extinguishment, except that when a
31 firemen's relief association shall fail to qualify for such funds, as provided in this act,
32 as a result of the territory which it serves being consolidated, merged or annexed with
33 another governmental unit having a qualified firemen's relief association, the funds and
34 obligations of such disqualified association shall be transferred to the surviving
35 firemen's relief association and the disqualified association shall dissolve forthwith
36 under the existing laws of this state. When any fireman, his widow or those dependent
37 upon any member of the disqualified association is receiving reasonable benefits from
38 such association at the time of disqualification, the benefits shall be continued in
39 accordance with the resolution of such disqualified association and disbursed by the
40 surviving association, if the disqualification resulted from consolidation, merger or
41 annexation, or disbursed by the county attorney if disqualification resulted from
42 reasons other than consolidation, merger or annexation, and nothing in this act shall be
43 construed as a bar to the lawful receipt of said benefits. The treasurer of a firemen's
44 relief association shall give bond for the safekeeping of such funds and for faithful
45 performance in such sum with such sureties as may be approved by the governing body
46 of such city, township, county or fire district. All the moneys so received shall be set
47 apart and used by the firemen's relief association of such cities, townships, counties or
48 fire districts solely and entirely for the objects and purposes of this article, and shall
49 be paid to and distributed by the firemen's relief associations of such cities, townships,
50 counties or fire districts, under such provisions as shall be made by the governing body
51 thereof. In all cases involving expenditures or payments in an amount of five hundred
52 dollars (\$500) or more prior certification shall be obtained from the attorney of the
53 governing body that such expenditure or payment complies with the requirements of
54 this article. The officers of such firemen's relief association may invest any amount,
55 not to exceed ninety percent (90%) of all such moneys, in investments authorized by
56 K.S.A. 1979 Supp. 12-1675, and amendments thereto, in the manner prescribed therein
57 or in purchasing bonds of the city, township, county or fire district in which such
58 firemen's relief association is located. When they be not obtainable, United States
59 government bonds may be purchased or any municipal bonds of this state, except that

60 such relief funds shall not be invested under this act in any such bonds where the
61 bonded indebtedness of any municipality shall exceed fifteen percent (15%) of its total
62 assessed valuation, as shown by the last assessment preceding such investment.

63 Such investment must be approved by the governing body of such city, township
64 trustees, county or fire district. It shall be the duty of the attorney of such governing
65 body of such city, township, county or fire district to examine all such bonds as to
66 their validity and report thereon in writing to the governing body and the firemen's
67 relief association of such city, township, county or fire district, and no bonds shall be
68 purchased by said firemen's relief association of such city, township, county or fire
69 district until they have been approved and found valid by the said attorney.

70 Sec. 2. K.S.A. 1982 Supp. 40-1706 is hereby repealed.

71 Sec. 3. This act will take effect and be in force July 1, 1983.

EXPLANATORY MEMORANDUM FOR
LEGISLATIVE PROPOSAL NO. 5

Legislative Proposal No. 5 is a modified version of House Bill 2771 which was considered but not enacted by the 1982 legislature. This proposal, as did House Bill 2771, would prevent a person from being denied insurance benefits because of nonpayment of premium if such nonpayment was due to a physical or mental condition and was so certified by a certified medical professional. Unlike House Bill 2771, however, Legislative Proposal No. 5 is limited to individual accident and sickness policies and its provisions remain effective for only 90 days after the premium was due.

The statutes governing individual accident and health insurance policies in Kansas already require such policies to contain provisions permitting reinstatement of coverage if a premium payment is not made when due. This proposal merely adds to this reinstatement provision by providing that the time the coverage is in force shall not be affected because of the delayed premium payment and such reinstatement will not be subject to approval by the insurer.

The House Insurance Committee will be requested to introduce this proposal.

LEGISLATIVE PROPOSAL NO. 5

AN ACT relating to insurance; individual accident and sickness insurance; reinstatement; physical or mental incapacity; amending K.S.A. 40-2203 and repealing the existing section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

1 Section 1. K.S.A. 40-2203 is hereby amended to read as follows: 40-2203.
2 (A) Required provisions. Except as provided in paragraph (C) of this section every
3 such policy delivered or issued for delivery to any person in this state shall contain the
4 provisions specified in this subsection in the words in which the same appear in this
5 section: Provided, however, That the insurer may, at its option, substitute for one or
6 more of such provisions corresponding provisions of different wording approved by the
7 commissioner of insurance which are in each instance not less favorable in any respect
8 to the insured or the beneficiary. Such provisions shall be preceded individually by the
9 caption appearing in this subsection or at the option of the insurer, by such appropriate
10 individual or group captions or subcaptions as the commissioner of insurance may
11 approve.

12 (1) A provision as follows: "Entire contract; changes: This policy, including the
13 endorsement and the attached papers, if any, constitutes the entire contract of
14 insurance. No change in this policy shall be valid until approved by an executive
15 officer of the insurer and unless such approval be endorsed hereon or attached hereto.
16 No agent has authority to change this policy or to waive any of its provisions."

17 (2) A provision as follows: "Time limit on certain defenses: (a) After two (2)
18 years from the date of issue of this policy no misstatements, except fraudulent
19 misstatement, made by the applicant in the application for such policy shall be used to
20 void the policy or to deny a claim for loss incurred or disability (as defined in the
21 policy) commencing after the expiration of such two (2) year period."

22 The foregoing policy provision shall not be so construed as to affect any legal
23 requirement for avoidance of a policy or denial of a claim during such initial two (2)
24 year period, nor to limit the application of sections 3(B), (1), (2), (3), (4) and (5) in the
25 event of misstatement with respect to age or occupation or other insurance.

26 A policy which the insured has the right to continue in force subject to its terms
27 by the timely payment of premium (1) until at least age fifty (50), or (2) in the case of
28 a policy issued after age forty-four (44), for at least five (5) years from its date of
29 issue, may contain in lieu of the foregoing the following provision (from which the
30 clause in parentheses may be omitted at the insurer's option) under the caption
31 "Incontestable": "After this policy has been in force for a period of two (2) years
32 during the lifetime of the insured (excluding any period during which the insured is
33 disabled), it shall become incontestable as to the statements contained in the
34 application.

35 (b) "No claim for loss incurred or disability (as defined in the policy)
36 commencing after two (2) years from the date of issue of this policy shall be reduced
37 or denied on the ground that a disease or physical condition not excluded from
38 coverage by name or specific description effective on the date of loss has existed prior
39 to the effective date of coverage of this policy."

40 (3) A provision as follows: "Grace period: A grace period of _____" (insert a
41 number not less than "7" for weekly premium policies, "10" for monthly premium
42 policies and "31" for all other policies) "days will be granted for the payment of each
43 premium falling due after the first premium, during which grace period the policy shall
44 continue in force." A policy which contains a cancellation provision may add, at the
45 end of the above provision, "subject to the right of the insurer to cancel in accordance
46 with the cancellation provision hereof." A policy in which the insurer reserves the
47 right to refuse any renewal shall have, at the beginning of the above provision, "Unless
48 not less than five (5) days prior to the premium due date the insurer has delivered to
49 the insured or has mailed to his last address as shown by the records of the insurer
50 written notice of its intention not to renew this policy beyond the period for which the
51 premium has been accepted."

52 (4) A provision as follows: "Reinstatement: If any renewal premium ~~be is~~ not
53 paid within the time granted the insured for payment, a subsequent acceptance of
54 premium by the insurer or by any agent duly authorized by the insurer to accept such
55 premium without requiring in connection therewith an application for reinstatement
56 shall reinstate the policy. ~~Provided, however, That~~ If the insurer or such agent
57 requires an application for reinstatement and issues a conditional receipt for the
58 premium tendered, the policy will be reinstated upon approval of such application by
59 the insurer or, lacking such approval, upon the forty-fifth (45th) day following the date

60 such conditional receipt unless the insurer has previously notified the insured in writing
61 of its disapproval of such application. Except as otherwise provided, the reinstated
62 policy shall cover only loss resulting from such accidental injury as may be sustained
63 after the date of reinstatement and loss due to such sickness as may begin more than
64 ten (10) days after such date. If, within ninety (90) days of the date the premium was
65 due, a licensed practitioner of the healing arts or a certified psychologist, familiar
66 with the insured's medical history, certifies that failure to remit the necessary
67 premium in a timely manner could reasonably be attributed to the insured's physical or
68 mental condition, reinstatement of coverage shall not be subject to approval or receipt
69 of an application and the reinstated policy shall become effective as of the time and
70 date it originally lapsed or was terminated for non-payment of premium. In all other
71 respects the insured and insurer shall have the same rights thereunder as they had
72 under the policy immediately before the due date of the defaulted premium, subject to
73 any provisions endorsed hereon or attached hereto in connection with the
74 reinstatement. Any premium accepted in connection with a reinstatement shall be
75 applied to a period for which premium has not been previously paid, but not to any
76 period more than sixty (60) days prior to the date of reinstatement unless the
77 reinstatement was necessitated by a physical or mental condition as hereinbefore
78 provided." The last sentence of the above provision may be omitted from any policy
79 which the insured has the right to continue in force subject to its terms by the timely
80 payment of premiums (1) until at least age fifty (50) or, (2) in the case of a policy
81 issued after age forty-four (44), for at least five (5) years from its date of issue.

82 (5) A provision as follows: "Notice of claim: Written notice of claim must be
83 given to the insurer within twenty (20) days after the occurrence or commencement of
84 any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice
85 given by or on behalf of the insured or the beneficiary to the insurer at _____"
86 (insert the location of such office as the insurer may designate for the purpose), "or to
87 any authorized agent of the insurer, with information sufficient to identify the insured,
88 shall be deemed notice to the insurer." In a policy providing a loss-of-time benefit
89 which may be payable for at least two (2) years, an insurer may at its option insert the
90 following between the first and second sentences of the above provisions: "Subject to
91 the qualification set forth below, if the insured suffers loss of time on account of
92 disability for which indemnity may be payable for at least two (2) years, he shall, at
93 least once in every six (6) months after having given notice of claim, give to the
94 insurer notice of continuance of said disability, except in the event of legal incapacity.
95 The period of six (6) months following any filing of proof by the insured or any payment
96 by the insurer on account of such claim or any denial of liability in whole or in part by
97 the insurer shall be excluded in applying this provision. Delay in the giving of such
98 notice shall not impair the insured's right to any indemnity which would otherwise have
99 accrued during the period of six (6) months preceding the date on which such notice is
100 actually given.

101 (6) A provision as follows: "Claim forms: The insurer, upon receipt of a notice
102 of claim, will furnish to the claimant such forms as are usually furnished by it for
103 filing proofs of loss. If such forms are not furnished within fifteen (15) days after the
104 giving of such notice the claimant shall be deemed to have complied with the
105 requirements of this policy as to proof of loss upon submitting within the time fixed in
106 the policy for filing proofs of loss, written proof covering the occurrence, the
107 character and the extent of the loss for which claim is made."

108 (7) A provision as follows: "Proofs of loss: Written proof of loss must be
109 furnished to the insurer at its said office in case of claim for loss for which this policy
110 provides any periodic payment contingent upon continuing loss within ninety (90) days
111 after the termination of the period for which the insurer is liable and in case of claim
112 for any other loss within ninety (90) days after the date of such loss. Failure to furnish
113 such proof within the time required shall not invalidate nor reduce any claim if it was
114 not reasonably possible to give proof within such time, provided such proof is furnished
115 as soon as reasonably possible and in no event, except in the absence of legal capacity,
116 later than one year from the time proof is otherwise required."

117 (8) A provision as follows: "Time of payment of claims: Indemnities payable
118 under this policy for any loss other than loss for which this policy provides any periodic
119 payment will be paid immediately upon receipt of due written proof of such loss.
120 Subject to due written proof of loss, all accrued indemnities for loss for which this
121 policy provides periodic payment will be paid _____" (insert period for payment which
122 must not be less frequently than monthly) "and any balance remaining unpaid upon the
123 termination of liability will be paid immediately upon receipt of due written proof."

124 (9) A provision as follows: "Payment of claims: Indemnity for loss of life will be
125 payable in accordance with the beneficiary designation and the provisions respecting
126 such payment which may be prescribed herein and effective at the time of payment. If

127 no such designation or provision is then effective, such indemnity shall be payable to
128 the estate of the insured. Any other accrued indemnities unpaid at the insured's death
129 may, at the option of the insurer, be paid either to such beneficiary or to such estate.
130 All other indemnities will be payable to the insured." The following provisions, or
131 either of them, may be included with the foregoing provision at the option of the
132 insurer: "If any indemnity of this policy shall be payable to the estate of the insured,
133 or to an insured or beneficiary who is a minor or otherwise not competent to give a
134 valid release, the insurer may pay such indemnity, up to an amount not exceeding
135 \$ _____" (insert an amount which shall not exceed \$1,000), "to any relative by
136 blood or connection by marriage of the insured or beneficiary who is deemed by the
137 insurer to be equitably entitled thereto. Any payment made by the insurer in good
138 faith pursuant to this provision shall fully discharge the insurer to the extent of such
139 payment. Subject to any written direction of the insured in the application or
140 otherwise all or a portion of any indemnities provided by this policy on account of
141 hospital, nursing, medical, or surgical services may, at the insurer's option and unless
142 the insured requests otherwise in writing not later than the time of filing proofs of
143 such loss, be paid directly to the hospital or person rendering such services; but it is
144 not required that the service be rendered by a particular hospital or person."

145 (10) A provision as follows: "Physical examinations and autopsy: The insurer at
146 its own expense shall have the right and opportunity to examine the person of the
147 insured when and as often as it may reasonably require during the pendency of a claim
148 hereunder and to make an autopsy in case of death where it is not forbidden by law."

149 (11) A provision as follows: "Legal actions: No action at law or in equity shall
150 be brought to recover on this policy prior to the expiration of sixty days after written
151 proof of loss has been furnished in accordance with the requirements of this policy. No
152 such action shall be brought after the expiration of five (5) years after the time
153 written proof of loss is required to be furnished."

154 (12) A provision as follows: "Change of beneficiary: Unless the insured makes
155 an irrevocable designation of beneficiary, the right to change of beneficiary is
156 reserved to the insured and the consent of the beneficiary or beneficiaries shall not be
157 requisite to surrender or assignment of this policy or to any change of beneficiary or
158 beneficiaries, or to any other changes in this policy."

159 The first clause of this provision, relating to the irrevocable designation of
160 beneficiary, may be omitted at the insurer's option.

161 (B) Other provisions: Except as provided in paragraph (C) of this section, no
162 such policy delivered or issued for delivery to any person in this state shall contain
163 provisions respecting the matters set forth below unless such provisions are in the
164 words in which the same appear in this section: Provided, however, That the insurer
165 may, at its option, use in lieu of any such provision a corresponding provision of
166 different wording approved by the commissioner of insurance which is not less
167 favorable in any respect to the insured or the beneficiary. Any such provision
168 contained in the policy shall be preceded individually by the appropriate caption
169 appearing in this subsection or, at the option of the insurer, by such appropriate
170 individual or group captions or subcaptions as the commissioner of insurance may
171 approve.

172 (1) A provision as follows: "Change of occupation: If the insured be injured or
173 contract sickness after having changed his occupation to one classified by the insurer
174 as more hazardous than that stated in this policy or while doing for compensation
175 anything pertaining to an occupation so classified, the insurer will pay only such
176 portion of the indemnities provided in this policy as the premium paid would have
177 purchased at the rates and within the limits fixed by the insurer for such more
178 hazardous occupation. If the insured changes his occupation to one classified by the
179 insurer as less hazardous than that stated in this policy, the insurer, upon receipt of
180 proof of such change of occupation, will reduce the premium rate accordingly, and will
181 return the excess pro rata unearned premium from the date of change of occupation or
182 from the policy anniversary date immediately preceding receipt of such proof,
183 whichever is the more recent. In applying this provision, the classification of
184 occupational risk and the premium rates shall be such as have been last filed by the
185 insurer prior to the occurrence of the loss for which the insurer is liable or prior to
186 date of proof of change in occupation with the state official having supervision of
187 insurance in the state where the insured resided at the time this policy was issued; but
188 if such filing was not required, then the classification of occupational risk and the
189 premium rates shall be those last made effective by the insurer in such state prior to
190 the occurrence of the loss or prior to the date of proof of change in occupation."

191 (2) A provision as follows: "Misstatement of age: If the age of the insured has
192 been misstated, all amounts payable under this policy shall be such as the premium
193 paid would have purchased at the correct age."

194 (3) A provision as follows: "Other insurance in this insurer: If an accident or
195 sickness or accident and sickness policy or policies previously issued by the insurer to
196 the insured be in force concurrently herewith, making the aggregate indemnity for
197 _____" (insert type of coverage or coverages) "in excess of \$ _____" (insert
198 maximum limit of indemnity or indemnities) "the excess insurance shall be void and all
199 premiums paid for such excess shall be returned to the insured or to his estate"; or, in
200 lieu thereof: "Insurance effective at any one time on the insured under a like policy or
201 policies in this insurer is limited to one such policy elected by the insured, his
202 beneficiary or his estate, as the case may be, and the insurer will return all premiums
203 paid for all other such policies."

204 (4) A provision as follows: "Insurance with other insurers: If there be other
205 valid coverage, not with this insurer, providing benefits for the same loss on a
206 provision of service basis or on an expense incurred basis and of which this insurer has
207 not been given written notice prior to the occurrence or commencement of loss, the
208 only liability under any expense incurred coverage of this policy shall be for such
209 proportion of the loss as the amount which would otherwise have been payable
210 hereunder plus the total of the like amounts under all such other valid coverages for
211 the same loss of which this insurer had notice bears to the total like amounts under all
212 valid coverages for such loss, and for the return of such portion of the premiums paid
213 as shall exceed the pro rata portion for the amount so determined. For the purpose of
214 applying this provision when other coverage is on a provision of service basis, the 'like
215 amount' of such other coverage shall be taken as the amount which the services
216 rendered would have cost in the absence of such coverage." If the foregoing policy
217 provision is included in a policy which also contains the next following policy provision
218 there shall be added to the caption of the foregoing provision the phrase "_____
219 expense incurred benefits." The insurer may, at its option, include in this provision a
220 definition of "other valid coverage," approved as to form by the commissioner of
221 insurance, which definition shall be limited in subject matter to coverage provided by
222 organizations subject to regulation by insurance law or by insurance authorities of this
223 or any other state of the United States or any province of Canada, and by hospital or
224 medical service organizations, and to any other coverage the inclusion of which may be
225 approved by the commissioner of insurance. In the absence of such definition such
226 term shall not include group insurance, automobile medical payments insurance, or
227 coverage provided by hospital or medical service organizations or by union welfare
228 plans or employer or employee benefit organizations. For the purpose of applying the
229 foregoing policy provision respect to any insured, any amount of benefit provided for
230 such insured pursuant to any compulsory benefit statute (including any workmen's
231 compensation or employer's liability statute) whether provided by a governmental
232 agency or otherwise shall in all cases be deemed to be "other valid coverage" of which
233 the insurer has had notice. In applying the foregoing policy provision no third party
234 liability coverage shall be included as "other valid coverage."

235 (5) A provision as follows: "Insurance with other insurers: If there be other
236 valid coverage, not with this insurer, providing benefits for the same loss on other than
237 an expense incurred basis and of which this insurer has not been given written notice
238 prior to the occurrence or commencement of loss, the only liability for such benefits
239 under this policy shall be for such proportion of the indemnities otherwise provided
240 hereunder for such loss as the like indemnities of which the insurer had notice
241 (including the indemnities under this policy) bear to the total amount of all like
242 indemnities for such loss, and the return of such portion of the premium paid as shall
243 exceed the pro rata portion for the indemnities thus determined." If the foregoing
244 policy provision is included in a policy which also contains the next preceding policy
245 provision there shall be added to the caption of the foregoing provision the phrase
246 "_____ other benefits." The insurer may, at its option, include in this provision a
247 definition of "other valid coverage," approved as to form by the commissioner of
248 insurance, which definition shall be limited in subject matter to coverage provided by
249 organizations subject to regulation by insurance law or by insurance authorities of this
250 or any other state of the United States or any province of Canada, and to any other
251 coverage the inclusion of which may be approved by the commissioner of insurance. In
252 the absence of such definition such term shall not include group insurance, or benefits
253 provided by union welfare plans or by employer or employee benefit organizations. For
254 the purpose of applying the foregoing policy provision with respect to any insured, any
255 amount of benefit provided for such insured pursuant to any compulsory benefit statute
256 (including any workmen's compensation or employer's liability statute) whether
257 provided by a governmental agency or otherwise shall in all cases be deemed to be
258 "other valid coverage" of which the insurer has had notice. In applying the foregoing
259 policy provision no third party liability coverage shall be included as "other valid

260 coverage."

261 (6) A provision as follows: "Relation of earnings to insurance: If the total
262 monthly amount of loss of time benefits promised for the same loss under all valid loss
263 of time coverage upon the insured, whether payable on a weekly or monthly basis, shall
264 exceed the monthly earnings of the insured at the time disability commenced or his
265 average monthly earnings for the period of two (2) years immediately preceding a
266 disability for which claim is made, whichever is the greater, the insurer will be liable
267 only for such proportionate amount of such benefits under this policy as the amount of
268 such monthly earnings or such average monthly earnings of the insured bears to the
269 total amount of monthly benefits for the same loss under all such coverage upon the
270 insured at the time such disability commences and for the return of such part of the
271 premiums paid during such two (2) years as shall exceed the pro rata amount of the
272 premiums for the benefits actually paid hereunder; but this shall not operate to reduce
273 the total monthly amount of benefits payable under all such coverage upon the insured
274 below the sum of two hundred dollars (\$200) or the sum of the monthly benefits
275 specified in such coverages, whichever is the lesser, nor shall it operate to reduce
276 benefits other than those payable for loss of time." The foregoing policy provision may
277 be inserted only in a policy which the insured has the right to continue in force subject
278 to its terms by the timely payment of premiums (1) until at least age fifty (50), or (2)
279 in the case of a policy issued after age forty-four (44), for at least five (5) years from
280 its date of issue. The insurer may, at its option, include in this provision a definition
281 of "valid loss of time coverage," approved as to form by the commissioner of
282 insurance, which definition shall be limited in subject matter to coverage provided by
283 governmental agencies or by organizations subject to regulation by insurance law or by
284 insurance authorities of this or any other state of the United States or any province of
285 Canada, or to any other coverage the inclusion of which may be approved by the
286 commissioner of insurance or any combination of such coverages. In the absence of
287 such definition such term shall not include any coverage provided for such insured
288 pursuant to any compulsory benefit statute (including any workmen's compensation or
289 employer's liability statute), or benefits provided by union welfare plans or by
290 employer or employee benefit organizations.

291 (7) A provision as follows: "Unpaid premium: Upon the payment of a claim
292 under this policy, any premium then due and unpaid or covered by any note or written
293 order may be deducted therefrom."

294 (8) A provision as follows: "Cancellation: The insurer may cancel this policy at
295 any time by written notice delivered to the insured, or mailed to his last address as
296 shown by the records of the insurer, stating when, not less than five (5) days
297 thereafter, such cancellation shall be effective; and after the policy has been
298 continued beyond its original term the insured may cancel this policy at any time by
299 written notice delivered or mailed to the insurer, effective upon receipt or on such
300 later date as may be specified in such notice. In the event of cancellation, the insurer
301 will return promptly the unearned portion of any premium paid. If the insured cancels,
302 the earned premium shall be computed by the use of the short-rate table last filed with
303 the state official having supervision of insurance in the state where the insured resided
304 when the policy was issued. If the insurer cancels, the earned premium shall be
305 computed pro rata. Cancellation shall be without prejudice to any claim originating
306 prior to the effective date of cancellation."

307 (9) A provision as follows: "Conformity with state statutes: Any provision of
308 this policy which, on its effective date, is in conflict with the statutes of the state in
309 which the insured resides on such date is hereby amended to conform to the minimum
310 requirements of such statutes."

311 (10) A provision as follows: "Illegal occupation: The insurer shall not be liable
312 for any loss to which a contributing cause was the insured's commission of or attempt
313 to commit a felony or to which a contributing cause was the insured's being engaged in
314 an illegal occupation."

315 (11) A provision as follows: "Intoxicants and narcotics: The insurer shall not be
316 liable for any loss sustained or contracted in consequence of the insured's being
317 intoxicated or under the influence of any narcotic unless administered on the advice of
318 a physician."

319 (C) Inapplicable or inconsistent provisions: If any provision of this section is in
320 whole or in part inapplicable to or inconsistent with the coverage provided by a
321 particular form of policy the insurer, with the approval of the commissioner of
322 insurance, shall omit from such policy any inapplicable provision or part of a provision,
323 and shall modify any inconsistent provision or part of the provision in such manner as
324 to make the provision as contained in the policy consistent with the coverage provided
325 by the policy.

326 (D) Order of certain policy provisions: The provisions which are the subject of
327 subsection (A) and (B) of this section, or any corresponding provisions which are used in
328 lieu thereof in accordance with such subsections, shall be printed in the consecutive
329 order of the provisions in such subsections or, at the option of the insurer, any such
330 provision may appear as a unit in any part of the policy, with other provisions to which
331 it may be logically related, provided the resulting policy, shall not be in whole or in
332 part unintelligible, uncertain, ambiguous, abstruse, or likely to mislead a person to
333 whom the policy is offered, delivered or issued.

334 (E) Third party ownership: The word "insured," as used in this act, shall not be
335 construed as preventing a person other than the insured with a proper insurable
336 interest from making application for and owning a policy covering the insured or from
337 being entitled under such a policy to any indemnities, benefits and rights provided
338 therein.

339 (F) Requirements of other jurisdictions: (1) Any policy of a foreign or alien
340 insurer, when delivered or issued for delivery to any person in this state, may contain
341 any provision which is not less favorable to the insured or the beneficiary than the
342 provisions of this act and which is prescribed or required by the law of the state under
343 which the insurer is organized. (2) Any policy of a domestic insurer may, when issued
344 for delivery in any other state or country, contain any provision permitted or required
345 by the laws of such other state or country.

346 (G) Filing procedure: The commissioner of insurance may make such reasonable
347 rules and regulations concerning the procedure for the filing or submission of policies
348 subject to this act as are necessary, proper or advisable to the administration of this
349 act. This provision shall not abridge any other authority granted the commissioner of
350 insurance by law.

351 Sec. 2. K.S.A. 40-2203 is hereby repealed.

352 Sec. 3. This act shall take effect and be in force from and after January 1, 1984
353 and its publication in the statute book.

EXPLANATORY MEMORANDUM FOR
LEGISLATIVE PROPOSAL NO. 6

This proposal was suggested by representatives of the National Retired Teachers Association and the American Association of Retired Persons. Its primary purpose is to encourage older adults to participate in driver improvement programs. Under the proposal such encouragement is promoted by requiring insurers to provide for an appropriate reduction in premium for persons who successfully complete an approved motor vehicle accident prevention course. The proposal does not, however, specify the amount of the discount and, therefore, this will ultimately depend on the loss experience developed by persons qualifying for the discount.

The House Insurance Committee will be requested to introduce this proposal.

LEGISLATIVE PROPOSAL NO. 6

AN ACT relating to insurance; concerning motor vehicle insurance; providing for approved motor vehicle accident prevention programs.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

1 Section 1. Any schedule of rates or rating plan for automobile liability and
2 physical damage insurance submitted to or filed with the commissioner pursuant to
3 K.S.A. 40-1113, shall provide for an appropriate reduction in premium charges for
4 those insureds 55 years of age and older for a two-year period after successfully
5 completing a motor vehicle accident prevention course approved by the state
6 department of education. Notwithstanding the foregoing, there shall be no reduction
7 in premiums for a self-instructed course or a course which does not provide for actual
8 classroom or field driving instruction for a minimum number of hours.

9 Sec. 2. Upon each participant's successful completion of the approved course,
10 the sponsoring agency or organization shall immediately notify the state department of
11 education who shall promptly provide the participant a certificate which shall serve as
12 evidence of qualification for the discount on insurance.

13 Sec. 3. Insureds 60 years of age and older shall successfully complete an
14 approved course each two years to continue to be eligible for the premium discount.

15 Sec. 4. This act shall take effect and be in force from and after its publication
16 in the statute book.

EXPLANATORY MEMORANDUM FOR
LEGISLATIVE PROPOSAL NO. 16

Legislative Proposal No. 16 amends K.S.A. 40-235 which prohibits the issuance of any estimate, illustration, circular or statement misrepresenting the terms of any insurance contract. This amendment would add new subsection (b) stating that no preliminary or final policy or contract of insurance written pursuant to K.S.A. 40-1102 et seq., may be written unless and until the insurance company has caused to be conducted a reasonable title search.

The House Committee on Insurance will be requested to introduce this proposal.

LEGISLATIVE PROPOSAL NO. 16

AN ACT relating to insurance; concerning search and examination of title to property and determination of insurability and risk; amending K.S.A. 40-235 and repealing the existing section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

1 Section 1. K.S.A. 40-235 is hereby amended to read as follows: 40-235. (a) No
2 insurance company or fraternal benefit society doing business in this state, and no
3 officer, director, solicitor, or other agent thereof, shall make, issue or circulate, or
4 cause to be issued or circulated, any estimate, illustration, circular or statement of
5 any sort misrepresenting the terms of any policy issued or to be issued by it or the
6 benefits or advantages promised thereby, or the dividends or share of the surplus to be
7 received thereon, or shall use any name or title of any policy or class of policies
8 misrepresenting the true nature thereof. No officer, director, solicitor or agent of any
9 insurance company shall make any misrepresentation to any person insured in any
10 company for the purpose of inducing or tending to induce a policyholder in any
11 company to lapse, forfeit, or surrender ~~his~~ such policyholder's insurance.

12 (b) No preliminary or final policy or contract of insurance of the class
13 authorized to be transacted in this state pursuant to paragraph (e) of K.S.A. 40-1102,
14 and amendments thereto, may be written unless and until the insurance company or its
15 agent has caused to be conducted a reasonable search and examination of the title to
16 the property involved and has caused to be made a determination of insurability of
17 title and the risk in accordance with sound underwriting practices.

18 Sec. 2. K.S.A. 40-235 is hereby repealed.

19 Sec. 3. This act shall take effect and be in force from and after its publication
20 in the statute book.

EXPLANATORY MEMORANDUM FOR
LEGISLATIVE PROPOSAL NO. 17

Legislative Proposal No. 17 would amend K.S.A. 40-2404 which pertains to this department's regulation of insurance companies for violations of certain unfair trade practices. This bill would add a new section to the Unfair Trade Practices Act. Specifically, section (14) prohibits rebates in title insurance in order to foster competition in the title insurance arena from the standpoint of individual purchasers. Currently and in the past the competitive pressure has been exerted between title insurers and local title insurance agents. This kind of competition tends to increase prices for the consumer or, at least it doesn't encourage price reductions.

This bill originated from discussion this department has had with various title insurance interests and was previously introduced by the 1982 legislature and was designed to foster additional comment.

The House Committee on Insurance will be requested to introduce this proposal.

LEGISLATIVE PROPOSAL NO. 17

AN ACT relating to insurance; concerning unfair methods of competition and unfair or deceptive acts or practices in the business of title insurance; amending K.S.A. 40-2404 and repealing the existing section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

1 Section 1. K.S.A. 40-2404 is hereby amended to read as follows: 40-2404. The
2 following are hereby defined as unfair methods of competition and unfair or deceptive
3 acts or practices in the business of insurance:

4 (1) Misrepresentations and false advertising of insurance policies. Making,
5 issuing, circulating, or causing to be made, issued or circulated, any estimate,
6 illustration, circular, statement, sales presentation, omission or comparison which:

7 (a) Misrepresents the benefits, advantages, conditions or terms of any insurance
8 policy;

9 (b) misrepresents the dividends or share of the surplus to be received on any
10 insurance policy;

11 (c) makes any false or misleading statements as to the dividends or share of
12 surplus previously paid on any insurance policy;

13 (d) is misleading or is a misrepresentation as to the financial condition of any
14 person, or as to the legal reserve system upon which any life insurer operates;

15 (e) uses any name of title of any insurance policy or class of insurance policies
16 misrepresenting the true nature thereof;

17 (f) is a misrepresentation for the purpose of inducing or tending to induce the
18 lapse, forfeiture, exchange, conversion or surrender of any insurance policy;

19 (g) is a misrepresentation for the purpose of effecting a pledge or assignment of
20 or effecting a loan against any insurance policy; or

21 (h) misrepresents any insurance policy as being shares of stock.

22 (2) False information and advertising generally. Making, publishing,
23 disseminating, circulating or placing before the public, or causing, directly or
24 indirectly, to be made, published, disseminated, circulated, or placed before the public,
25 in a newspaper, magazine or other publication, or in the form of a notice, circular,
26 pamphlet, letter or poster, or over any radio or television station, or in any other way,
27 an advertisement, announcement or statement containing any assertion,
28 misrepresentation or statement with respect to the business of insurance or with
29 respect to any person in the conduct of such person's insurance business, which is
30 untrue, deceptive or misleading.

31 (3) Defamation. Making, publishing, disseminating, or circulating, directly or
32 indirectly, or aiding, abetting or encouraging the making, publishing, disseminating or
33 circulating of any oral or written statement or any pamphlet, circular, article or
34 literature which is false, or maliciously critical of or derogatory to the financial
35 condition of any person, and which is calculated to injure such person.

36 (4) Boycott, coercion and intimidation. Entering into any agreement to commit,
37 or by any concerted action committing, any act of boycott, coercion or intimidation
38 resulting in or tending to result in unreasonable restraint of the business of insurance,
39 or by any act of boycott, coercion or intimidation monopolizing or attempting to
40 monopolize any part of the business of insurance.

41 (5) False statements and entries. (a) Knowingly filing with any supervisory or
42 other public official, or knowingly making, publishing, disseminating, circulating or
43 delivering to any person, or placing before the public, or knowingly causing directly or
44 indirectly, to be made, published, disseminated, circulated, delivered to any person, or
45 placed before the public, any false material statement of fact as to the financial
46 condition of a person.

47 (b) Knowingly making any false entry of a material fact in any book, report or
48 statement of any person or knowingly omitting to make a true entry of any material
49 fact pertaining to the business of such person in any book, report or statement of such
50 person.

51 (6) Stock operations and advisory board contracts. Issuing or delivering or
52 permitting agents, officers or employees to issue or deliver, agency company stock or
53 other capital stock, or benefit certificates or shares in any common-law corporation,
54 or securities or any special or advisory board contracts or other contracts of any kind
55 promising returns and profits as an inducement to insurance. Nothing herein shall
56 prohibit the acts permitted by K.S.A. 40-232.

57 (7) Unfair discrimination. (a) Making or permitting any unfair discrimination
58 between individuals of the same class and equal expectation of life in the rates

59 charged for any contract of life insurance or life annuity or in the dividends or other
60 benefits payable thereon, or in any other of the terms and conditions of such contract.

61 (b) Making or permitting any unfair discrimination between individuals of the
62 same class and of essentially the same hazard in the amount of premium, policy fees,
63 or rates charged for any policy or contract of accident or health insurance or in the
64 benefits payable thereunder, or in any of the terms or conditions of such contract, or
65 in any other manner whatever.

66 (8) Rebates. (a) Except as otherwise expressly provided by law, knowingly
67 permitting or offering to make or making any contract of life insurance, life annuity or
68 accident and health insurance, or agreement as to such contract other than as plainly
69 expressed in the insurance contract issued thereon, or paying or allowing, or giving or
70 offering to pay, allow, or give, directly or indirectly, as inducement to such insurance,
71 or annuity, any rebate of premiums payable on the contract, or any special favor or
72 advantage in the dividends or other benefits thereon, or any valuable consideration or
73 inducement whatever not specified in the contract; or giving, or selling, or purchasing
74 or offering to give, sell, or purchase as inducement to such insurance contract or
75 annuity or in connection therewith, any stocks, bonds, or other securities of any
76 insurance company or other corporation, association, or partnership, or any dividends
77 or profits accrued thereon, or anything of value whatsoever not specified in the
78 contract.

79 (b) Nothing in subsection (7) or paragraph (a) of this subsection shall be
80 construed as including within the definition of discrimination or rebates of any of the
81 following practices:

82 (i) In the case of any contract of life insurance or life annuity, paying bonuses to
83 policyholders or otherwise abating their premiums in whole or in part out of surplus
84 accumulated from nonparticipating insurance. Any such bonuses or abatement of
85 premiums shall be fair and equitable to policyholders and for the best interests of the
86 company and its policyholders;

87 (ii) in the case of life insurance policies issued on the industrial debit plan,
88 making allowance to policyholders who have continuously for a specified period made
89 premium payments directly to an office of the insurer in an amount which fairly
90 represents the saving in collection expenses;

91 (iii) readjustment of the rate of premium for a group insurance policy based on
92 the loss or expense experience thereunder, at the end of the first or any subsequent
93 policy year of insurance thereunder, which may be made retroactive only for such
94 policy year.

95 (9) Unfair claim settlement practices. Committing or performing with such
96 frequency as to indicate a general business practice of any of the following:

97 (a) Misrepresenting pertinent facts or insurance policy provisions relating to
98 coverages at issue;

99 (b) failing to acknowledge and act reasonably promptly upon communications
100 with respect to claims arising under insurance policies.

101 (c) failing to adopt and implement reasonable standards for the prompt
102 investigation of claims arising under insurance policies;

103 (d) refusing to pay claims without conducting a reasonable investigation based
104 upon all available information;

105 (e) failing to affirm or deny coverage of claims within a reasonable time after
106 proof of loss statements have been completed;

107 (f) not attempting in good faith to effectuate prompt, fair and equitable
108 settlements of claims in which liability has become reasonably clear;

109 (g) compelling insureds to institute litigation to recover amounts due under an
110 insurance policy by offering substantially less than the amounts ultimately recovered
111 in actions brought by such insureds;

112 (h) attempting to settle a claim for less than the amount to which a reasonable
113 person would have believed that such person was entitled by reference to written or
114 printed advertising material accompanying or made part of an application;

115 (i) attempting to settle claims on the basis of an application which was altered
116 without notice to, or knowledge or consent of the insured;

117 (j) making claims payments to insureds or beneficiaries not accompanied by a
118 statement setting forth the coverage under which payments are being made;

119 (k) making known to insureds or claimants a policy of appealing from arbitration
120 awards in favor of insureds or claimants for the purpose of compelling them to accept
121 settlements or compromises less than the amount awarded in arbitration;

122 (l) delaying the investigation or payment of claims by requiring an insured,
123 claimant, or the physician of either to submit a preliminary claim report and then
124 requiring the subsequent submission of formal proof of loss forms, both of which
125 submissions contain substantially the same information;

126 (m) failing to promptly settle claims, where liability has become reasonably
127 clear under one portion of the insurance policy coverage in order to influence
128 settlements under other portions of the insurance policy coverage;

129 (n) failing to promptly provide a reasonable explanation of the basis in the
130 insurance policy in relation to the facts or applicable law for denial of claim or for the
131 offer of a compromise settlement.

132 (10) Failure to maintain complaint handling procedures. Failure of any person,
133 who is an insurer on an insurance policy, to maintain a complete record of all the
134 complaints which it has received since the date of its last examination under K.S.A.
135 40-222; but no such records shall be required for complaints received prior to the
136 effective date of this act. This record shall indicate the total number of complaints,
137 their classification by line of insurance, the nature of each complaint, the disposition
138 of these complaints, the date each complaint was originally received by the insurer,
139 and the date of final disposition of each complaint. For purposes of this subsection,
140 "complaint" shall mean any written communication primarily expressing a grievance
141 related to the acts and practices set out in this section.

142 (11) Misrepresentation in insurance applications. Making false or fraudulent
143 statements or representations on or relative to an application for an insurance policy,
144 for the purpose of obtaining a fee, commission, money or other benefit from any
145 insurer, agent, broker or individual.

146 (12) Statutory violations. Any violation of any of the provisions of K.S.A. 40-
147 1515 or 40-276a.

148 (13) Disclosure of information relating to adverse underwriting decisions, as
149 defined in K.S.A. 40-2,111. Failing to provide applicants, policyholders and individuals
150 proposed for coverage with the information required under K.S.A. 40-2,112 within the
151 time prescribed in such section.

152 (14) Rebates and other inducements in title insurance (a) No title insurance
153 company or title insurance agent, or any officer, employee, attorney, agent or solicitor
154 thereof, may pay, allow or give, or offer to pay, allow or give, directly or indirectly, as
155 an inducement to obtaining any title insurance business, any rebate, reduction or
156 abatement of any rate or charge made incident to the issuance of such insurance, any
157 special favor or advantage not generally available to others of the same classification,
158 or any money, thing of value, or other consideration or material inducement. The
159 words "charge made incident to the issuance of such insurance" includes, without
160 limitations, escrow, settlement and closing charges.

161 (b) No insured named in a title insurance policy or contract nor any other person
162 directly or indirectly connected with the transaction involving the issuance of the
163 policy or contract, including, but not limited to, mortgage lender, real estate broker,
164 builder, attorney, or any officer, employee, agent representative or solicitor thereof,
165 or any other person may knowingly receive or accept, directly or indirectly, any
166 rebate, reduction or abatement of any charge, or any special favor or advantage or any
167 monetary consideration or inducement referred to in paragraph (a) of this subsection.

168 (c) Nothing in this section shall be construed as prohibiting:

169 (i) The payment of reasonable fees for services actually rendered either to a
170 title insurance agent in connection with a title insurance transaction; or

171 (ii) the payment of an earned commission to a duly appointed title insurance
172 agent for services actually performed in the issuance of the policy of title insurance.

173 (iii) The payment of reasonable entertainment and advertising expenses.

174 (d) Nothing in this section prohibits the division of rates and charges between or
175 among a title insurance company and its agent, two or more title insurance companies,
176 one or more title insurance companies and one or more title insurance agents or two or
177 more title insurance agents, provided such division of rates and charges does not
178 constitute an unlawful rebate under the provisions of this section and is not in payment
179 of a forwarding fee or a finder's fee.

180 Sec. 2. K.S.A. 40-2404 is hereby repealed.

181 Sec. 3. This act shall take effect and be in force from and after its publication
182 in the statute book.

EXPLANATORY MEMORANDUM FOR
LEGISLATIVE PROPOSAL NO. 7

Historically, insurance companies have been subject to limitations on the kind and amount of investment opportunities they can engage in. Generally, these limitations have been intended to serve two purposes. First, they were designed to promote investments in property that can be readily converted to cash in order that insurers would be in a constant state of readiness with respect to payment of claims. Second, such limitations have been designed to buttress financial solvency by not permitting investments in overly speculative type of ventures or by placing too large a portion of the company's assets in a single kind of investment medium. These limitations have served their purpose quite well and, as a result, the insuring public has been the beneficiary of an insurance industry that, on an overall basis, has been financially stable.

Legislative Proposal No. 7 does not depart from this historic philosophy. At the same time, however, it recognizes that investment opportunities are constantly changing. It further recognizes that financial institutions are becoming increasingly competitive and that the traditional distinctions that have separated one kind of financial institution from another are disappearing. In one way or another, directly or indirectly, the kinds of products that are available from insurance companies and the price the customers of insurance companies will pay for their products is inextricably influenced by the return insurance companies earn on their investments. As a result, the public would be poorly served by a demand on the part of regulators or legislators that insurance companies be forever tied to overly stringent investment restrictions.

Legislative Proposal No. 7 addresses the changing investment environment by lessening current restrictions; permitting investments in securities not previously specified in the insurance investment statutes, and by recognizing the value of assets already owned by insurance companies but not previously permitted to be treated as a bona fide asset because of insurance accounting principles. As a result enactment of this proposal will permit Kansas domiciled insurance companies to better compete for tomorrow's investment dollars without endangering their ability to meet today's obligations.

The Senate Commercial and Financial Institutions Committee will be requested to introduce this proposal.

LEGISLATIVE PROPOSAL NO. 7

AN ACT relating to insurance; concerning life insurance companies and other than life insurance companies; relating to investments, amending K.S.A. 40-2b06, 40-2b07, 40-2b09, 40-2b10, 40-2b13, 40-2b20, 40-2a08, 40-2a09, 40-2a12, 40-2a13 and 40-2a16, and repealing the existing sections.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

1 Section 1. K.S.A. 40-2b06 is hereby amended to read as follows: 40-2b06. Any
2 life insurance company heretofore or hereafter organized under any law of this state
3 may invest by loans or otherwise, with the direction or approval of a majority of its
4 board of directors or authorized committee thereof, any of its funds, or any part
5 thereof in preferred stocks of, or stocks guaranteed by, a corporation incorporated
6 under the laws of the United States of America, or of any state, district, insular or
7 territorial possession thereof; or of the Dominion of Canada, or any province thereof;
8 in an amount not to exceed ~~twenty-percent-(20%)~~ twenty-five percent (25%) of its
9 admitted assets as shown by the company's last annual report, as filed with the state
10 commissioner of insurance, and which meets the following qualifications:

11 (a) All bonds or other evidences of indebtedness and preferred stocks shown on
12 the last published annual statement of the issuing corporation, if any, senior to the
13 preferred stock acquired must be eligible as investments under K.S.A. 40-2b05 or 40-
14 2b06 as of the date of acquisition;

15 (b) if cumulative preferred, not in arrears as to dividends, or if noncumulative,
16 has paid full dividends in each of the last three (3) years;

17 (c) sinking fund payments are on a current basis;

18 (d) if net earnings available for fixed charges for the most recently completed
19 three fiscal year period is at least equal to one and one-quarter (1¼) times the
20 aggregate fixed charges, plus full contingent interest and preferred dividend
21 requirements of the preferred stock under consideration and those on a parity
22 therewith or having a priority thereto, for the same period; and

23 (e) the corporation must have been in existence for a period of not less than five
24 (5) years.

25 Definitions: (a) "Fixed charges" shall include actual interest incurred in each
26 year on funded and unfunded debt;

27 (b) "net earnings" shall mean income, before deducting interest on funded and
28 unfunded debt, and after deducting operating and maintenance expenses, depreciation
29 and depletion, and all taxes (including income taxes). Extraordinary, nonrecurring
30 items of income or expenses shall be excluded.

31 Sec. 2. K.S.A. 40-2b07 is hereby amended to read as follows: 40-2b07. Any life
32 insurance company heretofore or hereafter organized under any law of this state may
33 invest by loans or otherwise, with the direction or approval of a majority of its board
34 of directors or authorized committee thereof, any of its funds, or any part thereof in
35 the common stock of any corporation organized and doing business under the laws of
36 the United States or any state, or of the District of Columbia, or of the Dominion of
37 Canada, or any province of the Dominion of Canada, in an amount, based upon cost,
38 not exceeding ~~ten-percent-(10%)~~ fifteen percent (15%) of its admitted assets or not
39 exceeding the combined capital and surplus, whichever is the lesser, as shown by the
40 company's last annual report. Such life insurance company may write exchange traded,
41 covered call options on shares it owns and may purchase call options for the sole
42 purpose of closing out a position taken previously with respect to one or more options
43 having been written. The purchase of a call option for any reason other than as a
44 closing transaction and the writing of naked (uncovered) call options are hereby
45 prohibited. Investments in common stocks and the writing of call options shall be
46 further limited as follows:

47 (a) The obligations and preferred stock, if any, shown on the last published
48 annual statement of such corporation must be eligible for investment under K.S.A. 40-
49 2b05 or 40-2b06;

50 (b) cash dividends have been paid during each of the last three (3) years
51 preceding the date of acquisition;

52 (c) the stock is registered with a national securities exchange regulated under
53 the securities exchange act of 1934, as amended, or is regularly traded on a national or
54 regional basis ~~. or is that of a corporation registered and operated as an open-end-~~
55 ~~regulated investment company in accordance with the investment company act of~~
56 ~~1940, as amended;-~~

57 (d) The company shall have earnings in three (3) of the last five (5) years
58 preceding the date of acquisition;

59 (e) at no time shall an insurance company invest in more than five percent (5%)
60 of the total number of the outstanding shares of any one such corporation, nor an
61 amount more than two percent (2%) of the investing insurance company's admitted
62 assets in shares of any one such corporation (determined on the basis of the cost of
63 such shares to the insurance company at time of purchase). ~~With the approval of the~~
64 ~~commissioner of insurance, a company may acquire in excess of five percent (5%) of~~
65 ~~the outstanding shares of another insurance company;~~

66 (f) stock owned by an insurance company that is obligated under an unexpired
67 written call option shall be valued at the lesser of the striking price or current market
68 value. For the purposes of this subsection, "striking price" means the price per share,
69 exclusive of selling costs, the company would receive should the call option be
70 exercised by the holder.

71 Sec. 3. K.S.A. 40-2b09 is hereby amended to read as follows: 40-2b09. Any life
72 insurance company heretofore or hereafter organized under any law of this state may
73 invest by loans or otherwise with the direction or approval of a majority of its board of
74 directors or authorized committee thereof, any of its funds, or any part thereof in:

75 (a) Bonds, notes, obligations or other evidences of indebtedness secured by
76 mortgages or deeds of trust which are a first lien upon unencumbered real property and
77 appurtenances thereto within the United States of America, or any insular or
78 territorial possession of the United States, or the Dominion of Canada, and upon
79 leasehold estates in real property wherein the term of such including any options to
80 extend is not less than fifteen (15) years beyond the maturity of the loan as made or
81 extended: ~~Provided, That~~ At the date of acquisition the total indebtedness secured by
82 such lien shall not exceed ~~seventy-five percent (75%)~~ eighty percent (80%) of the
83 market value of the property upon which it is a lien, unless that portion of the total
84 indebtedness in excess of ~~seventy-five percent (75%)~~ eighty percent (80%) of market
85 value is insured by a mortgage insurance company authorized by the commissioner of
86 insurance to do business in this state. These limitations shall not apply to obligations
87 described in subsections (b), (c), (d), (e) and (f) of this section: ~~And provided further,~~
88 ~~That~~ For the purpose of this section a mortgage or deed of trust shall not be deemed to
89 be other than a first lien upon property within the meaning of this section by reason of
90 the existence of taxes or assessments against real property and appurtenances thereto
91 that are not delinquent, instruments creating or reserving mineral, oil, or timber
92 rights, rights-of-way, joint driveways, sewer rights, rights in walls or by reason of
93 building restrictions or other like restrictive covenants, or when such real estate is
94 subject to lease in whole or in part whereby rents or profits are reserved to the owner
95 or when there is in existence a fixed obligation or lien against the property where an
96 escrow account or indemnification bond is or has been established or obtained
97 sufficient to cover the maximum liability created by such obligation or lien;

98 (b) bonds, notes, or other evidences of indebtedness representing loans and
99 advances of credit that have been issued, guaranteed or insured by the United States
100 government or an agency or instrumentality thereof or insured by any insurance
101 company authorized to transact such business in this state: ~~Provided, That~~ any
102 uninsured or nonguaranteed portion shall not exceed ~~seventy-five percent (75%)~~ eighty
103 percent (80%) of the total amount;

104 (c) contracts of sale, purchase money mortgages or deeds of trust secured by
105 property obtained through foreclosure, or in settlement or satisfaction of any
106 indebtedness;

107 (d) bonds, notes, obligations, or other evidences of indebtedness secured by
108 mortgages or deeds of trust which are a first lien upon unencumbered personal or real
109 or both personal and real property, including a leasehold of real estate, under lease,
110 purchase contract, or lease purchase contract to any governmental body or
111 instrumentality whose obligations qualify under K.S.A. 40-2b01, 40-2b02 or 40-2b03 or
112 to a corporation whose obligations qualify under K.S.A. 40-2b05: ~~Provided, There is~~
113 adequate rental, after making allowance of lessors' or sellers' obligations and
114 liabilities, if any, under the terms of said lease or contract, to retire the loan as to
115 payments of principal and interest: ~~And provided further, That~~ the rentals are pledged
116 or assigned to the lender;

117 (e) bonds, notes or other evidences of indebtedness representing loans and
118 advances of credit that have been issued, guaranteed or insured, in accordance with
119 the terms and provisions of an act of the federal parliament of the Dominion of
120 Canada approved March 18, 1954, cited as the "national housing act, 1954," as
121 heretofore and hereafter amended.

122 (f) Participation in mortgage lending is specifically permitted in this section as
123 between Kansas domiciled life insurance companies, or, between Kansas domiciled life
124 insurance companies and life insurance companies organized under the laws of another
125 country, state, or territory and authorized to do business in the state of Kansas, or,

126 between Kansas domiciled life insurance companies and/or banks, trust companies or
127 savings and loan associations located within the state of Kansas, upon unencumbered
128 real property and appurtenances thereto: Provided, That at the date of acquisition the
129 total indebtedness assumed by such lien should not exceed ~~seventy-five percent (75%)~~
130 eighty percent (80%) of the market value of the property upon which it is a lien, unless
131 that portion of the total indebtedness in excess of ~~seventy-five percent (75%)~~ eighty
132 percent (80%) of market value is insured by a mortgage insurance company authorized
133 by the commissioner of insurance to do business in this state.

134 (g) First mortgage or deeds of trust upon improved real property to be occupied
135 as a personal residence by an officer of the insurer, if said mortgage is at an interest
136 rate that is reasonably competitive with that charged by the other lending institutions
137 in the community. Mortgages or deeds of trust entered into pursuant to this subsection
138 shall be subject to the conditions set forth in subsection (a) of this section relating to
139 mortgages or deeds of trust generally.

140 Sec. 4. K.S.A. 40-2b10 is hereby amended to read as follows: 40-2b10. No life
141 insurance company organized under the laws of this state shall purchase, hold or
142 convey real estate, excepting for the purposes and in the manner herein set forth:

143 (a) Such as shall be requisite for its convenient present and future
144 accommodation in the transaction of its business. In the erection or purchase of any
145 buildings for such purpose, additional space may be included for home office rental
146 income;

147 (b) such as shall have been mortgaged to it in good faith, by way of security for
148 loans previously contracted or for money due;

149 (c) such as shall have been conveyed to it in satisfaction of debts previously
150 contracted in their legitimate business, or for money due;

151 (d) such as shall have been purchased at sales upon judgments, decrees or
152 mortgages obtained or made for such debts; or

153 (e) such as shall have been acquired for development or income purposes.

154 It shall not be lawful for any such company to purchase, hold or convey real
155 estate in any other case or for any other purpose, except nothing in this section shall
156 be deemed to prohibit any such company for purchasing the principal residence owned
157 and inhabited by an employee or prospective employee who is being transferred by the
158 company to a different community; and all such real estate as may be acquired as
159 aforesaid, and which shall not be necessary for the accommodation of such company in
160 the transaction of its business, excepting real estate acquired for development or
161 income purposes, shall be sold and disposed of within five years after such company
162 shall have acquired title thereto, unless the company shall procure a certificate from
163 the commissioner of insurance that the interests of the company will suffer materially
164 by a forced sale thereof in which event the sale may be postponed for such period as
165 the commissioner of insurance shall direct in such certificate. If the company so
166 elects, real estate other than farm properties, which has been acquired under
167 subsections (c) and (d) of this section may be held by it for income purposes . ~~if its~~
168 ~~value together with that of all other real estate owned by the company at the time of~~
169 ~~such election does~~ The company's aggregate investment in real estate as herein
170 provided shall not exceed ~~10%~~ 20% of the admitted assets of the company, as shown by
171 its last annual report as filed with the state commissioner of insurance.

172 Sec. 5. K.S.A. 40-2b13 is hereby amended to read as follows: 40-2b13. Any life
173 insurance company heretofore or hereafter organized under any law of this state may
174 invest by loans or otherwise, with the direction or approval of a majority of its board
175 of directors or authorized committee thereof, any of its funds, or any part thereof in
176 investments whether or not qualified and permitted under this act and notwithstanding
177 any conditions or limitations prescribed therein, except those which require that a
178 corporation be solvent and not have defaulted with respect to the payment of principal
179 or interest, and subject to the provisions of K.S.A. 17-3004, in an aggregate amount
180 not more than ~~five percent (5%)~~ ten percent (10%) of its admitted assets as shown by
181 the company's last annual report as filed with the state insurance commissioner.

182 Sec. 6. K.S.A. 40-2b20 is hereby amended to read as follows: 40-2b20. (a) Any
183 life insurance company heretofore or hereafter organized under any law of this state,
184 with the direction or approval of a majority of its board of directors and approval of
185 the commissioner of insurance, may designate a state or national bank, having trust
186 powers, ~~and having its principal place of business in this state;~~ as trustee to make any
187 investment authorized by this act in the name of the trustee or nominee as a trustee or
188 nominee.

189 Sec. 7. K.S.A. 40-2a08 is hereby amended to read as follows: 40-2a08. Any
190 insurance company other than life heretofore or hereafter organized under any law of
191 this state may invest with the direction or approval of a majority of its board of
192 directors or authorized committee thereof, any of its funds, or any part thereof in the

193 common stock of any corporation organized and doing business under the laws of the
 194 United States of America, or of any state, district, insular or territorial possession
 195 thereof; or of the Dominion of Canada or any province thereof; or of any other country
 196 or subdivision thereof; ~~and the shares of a management type of investment company or~~
 197 ~~investment trust registered with the securities and exchange commission under the~~
 198 ~~investment company act of 1940, as amended.~~ Such insurance company may write
 199 exchange traded, covered call options on shares it owns and may purchase call options
 200 for the sole purpose of closing out a position taken previously with respect to one or
 201 more options having been written. The purchase of a call option for any reason other
 202 than as a closing transaction and the writing of naked (uncovered) call options are
 203 hereby prohibited. Investments in common stocks and the writing of call options shall
 204 be further limited as follows:

205 (a) The obligations and preferred stock, if any, shown on the last published
 206 annual statement of such corporation must be eligible for investment under K.S.A. 40-
 207 2a05 or 40-2a07;

208 (b) cash dividends have been paid during each of the last three (3) years
 209 preceding the date of acquisition;

210 (c) the stock is registered with a national securities exchange regulated under
 211 the securities exchange act of 1934, as amended, or is regularly traded on a national or
 212 regional basis, ~~or is a corporation registered and operated as an open end regulated~~
 213 ~~investment company in accordance with the investment company act of 1940, as~~
 214 ~~amended;~~

215 (d) the company shall have earnings in three (3) of the last five (5) years
 216 preceding the date of acquisition;

217 (e) investments in common stock in any one corporation shall at no time exceed
 218 two percent (2%) of the admitted assets of the investing insurance company, and at no
 219 time shall an insurance company purchase more than five percent (5%) of the
 220 outstanding shares of stock of any one given corporation;

221 ~~(f) investments in shares of a management type of investment company or~~
 222 ~~registered investment trust as described above, shall have assets of not less than~~
 223 ~~twenty five million dollars (\$25,000,000) at the date of purchase, and subsections (a),~~
 224 ~~(b), (c), (d) and (e) of this section need not apply;~~

225 ~~(g)~~ (f) the amount invested under this section, including the amount invested
 226 under K.S.A. 40-2a07, excluding stock of any insurance company qualified under K.S.A.
 227 40-2a09, shall not exceed the excess of surplus as regards policyholders over one
 228 hundred thousand dollars (\$100,000);

229 ~~(h)~~ (g) stock owned by an insurance company that is obligated under an unexpired
 230 written call option shall be valued at the lesser of the striking price or current market
 231 value. For the purposes of this subsection, "striking price" means the price per share,
 232 exclusive of selling costs, the company would receive should the call option be
 233 exercised by the holder.

234 New Sec. 8. Any life insurance company heretofore or hereafter organized under
 235 any law of this state may invest by loans or otherwise, with the direction or approval
 236 of a majority of its board of directors or authorized committee thereof, any of its
 237 funds, or any part thereof in the purchase of fixed wing aircraft, electric or
 238 mechanical machines constituting a word processing system, motor vehicles, and
 239 personal property used as a substitute for or in lieu of improvements upon real
 240 property such as detached modular partition systems, and thereafter may hold such
 241 assets as admitted assets for use in connection with the business of the company if, (1)
 242 the asset or asset system shall have a cost of not less than two thousand five hundred
 243 dollars (\$2,500) and such assets aggregate shall not, irrespective of K.S.A. 40-2b13,
 244 exceed five percent (5%) of the admitted assets of the company; (2) the cost of each
 245 asset or system shall be fully amortized over a reasonable period not to exceed ten (10)
 246 years. If an asset consists of separate but inter-dependent components each
 247 component shall be amortized over a reasonable period not to exceed ten (10) years
 248 commencing with the date of acquisition of each component. Personal property
 249 investments are not deemed eligible for deposit under K.S.A. 40-404 and shall not be
 250 included in the admitted assets for purposes of complying with minimum capital,
 251 surplus, or capital and surplus requirements applicable to issuance or continuation of a
 252 certificate of authority.

253 New Sec. 9. Any life insurance company heretofore or hereafter organized under
 254 any law of this state may invest with the direction or approval of a majority of its
 255 board of directors or authorized committee thereof, any of its funds, or any part
 256 thereof in: (a) Stock in any insurance company, subsection (c) of K.S.A. 40-2b07
 257 notwithstanding. Before more than 5% of the outstanding shares of stock of any
 258 insurance company is acquired, or a tender offer made thereof, prior written approval
 259 of the commissioner of insurance must be secured;

260 (b) stock in an incorporated insurance agency: (1) If 5% or less of the
261 outstanding shares of such incorporated agency is acquired, the provisions of K.S.A.
262 40-2b07 shall apply; (2) if more than 5% of the outstanding shares of such incorporated
263 agency is acquired, or a tender offer is made therefor, the prior approval of the
264 commissioner of insurance shall be required and the provisions of subsection (d) of
265 K.S.A. 40-2b07 shall apply. Invaluing the stock of the agency, the assets of the agency
266 shall be valued as if held directly by an insurance company; and (3) if majority interest
267 in an incorporated insurance agency results from the organization of an agency by the
268 insurance company to which this act applies, such investments shall be subject to the
269 provisions of K.S.A. 40-2b13 until it has produced earnings for three out of five
270 consecutive years. Such stock shall not be eligible for deposit with the commissioner
271 of insurance as part of the legal reserve of such insurance company;

272 (c) stock in a holding corporation: (1) If 5% or less of the outstanding shares of
273 stock of such holding corporation is acquired, the provisions of K.S.A. 40-2b07 shall
274 apply; (2) if at least 75% of the holding corporation's voting stock is acquired, the
275 prior approval of the commissioner of insurance shall be required and the provisions of
276 K.S.A. 40-2b07 shall not apply. No insurer may purchase in excess of 5% of the
277 outstanding voting stock of a holding corporation unless such insurer acquires at least
278 75% of such stock. The commissioner of insurance may direct an insurer to divest of
279 its ownership in a holding corporation acquired pursuant to this subsection if it appears
280 to the commissioner that the continued ownership or operation of the holding
281 corporation is not in the best interest of the policyholders, or if the insurer's ownership
282 in the holding corporation is less than 75% of the outstanding voting stock of the
283 holding corporation. A holding corporation acquired pursuant to this subsection shall
284 not acquire any investment not permitted for life insurance companies pursuant to
285 article 2b of chapter 40 of the Kansas Statutes Annotated. In valuing the stock of any
286 holding corporation acquired under this subsection in the annual financial statement of
287 the insurer, value shall be assigned to the holding corporation's assets as though the
288 assets were owned directly by the insurer. A percentage of the holding corporation's
289 assets exactly equal to the insurer's ownership interest in the holding corporation will
290 be added to the assets of the insurer in application of the insurer's investment
291 limitations set forth in article 2b of chapter 40 of the Kansas Statutes Annotated.
292 Stock in a holding corporation acquired under this subsection shall not be eligible for
293 deposit with the commissioner of insurance as part of the legal reserves of such
294 insurer.

295 New Sec. 10. Any life insurance company heretofore or hereafter organized
296 under any laws of this state may invest, in addition to any other investments permitted
297 by this act, by laws or otherwise, with the direction or approval of a majority of its
298 board of directors or authorized committee thereof, any of its funds, or any part
299 thereof in shares of a corporation registered and operated as an open-end regulated
300 investment company in accordance with the investment company act of 1940, as
301 amended. Investments under this section shall be further limited as follows: (a) The
302 insurance company's aggregate investment under this provision shall not exceed 10% of
303 its admitted assets as shown by the company's last annual report as filed with the state
304 commissioner of insurance.

305 (b) The investment company in which the insurance company acquires shares
306 shall have assets of not less than \$25,000,000 at the date of purchase.

307 (c) The insurance company shall not acquire more than 5% of the outstanding
308 shares of any one investment company.

309 (d) Investments in the shares of any one investment company shall not exceed
310 2% of the admitted assets of the insurance company as shown by the company's last
311 annual report as filed with the state commissioner of insurance (determined on the
312 basis of the cost of such shares to the insurance company at time of purchase).

313 New Sec. 11. Any insurance company other than life heretofore or hereafter
314 organized under any laws of this state may invest, in addition to any other investments
315 permitted by this act, by laws or otherwise, with the direction or approval of a
316 majority of its board of directors or authorized committee thereof, any of its funds, or
317 any part thereof in shares of a corporation registered and operated on an open-end
318 regulated investment company in accordance with the investment company act of
319 1940, as amended. Investments under this section shall be further limited as follows:
320 (a) The insurance company's aggregate investment under this provision shall not exceed
321 10% of its admitted assets as shown by the company's last annual report as filed with
322 the state commissioner of insurance.

323 (b) The investment company in which the insurance company acquires shares
324 shall have assets of not less than \$25,000,000 at the date of purchase.

325 (c) The insurance company shall not acquire more than 5% of the outstanding
326 shares of any one investment company.

327 (d) Investments in the shares of any one investment company shall not exceed
328 2% of the admitted assets of the insurance company as shown by the company's last
329 annual report as filed with the state commissioner of insurance (determined on the
330 basis of the cost of such shares to the insurance company at time of purchase).

331 Sec. 12. K.S.A. 1982 Supp. 40-2a09 is hereby amended as follows: 40-2a09. Any
332 insurance company other than life heretofore or hereafter organized under any law of
333 this state may invest with the direction or approval of a majority of its board of
334 directors or authorized committee thereof, any of its funds, or any part thereof in: (a)
335 Stock in any insurance company, subsection (e) of K.S.A. 40-2a08 notwithstanding.
336 Before more than 5% of the outstanding shares of stock of any insurance company is
337 acquired, or a tender offer made therefor, prior written approval of the commissioner
338 of insurance must be secured;

339 (b) stock in an incorporated insurance agency: (1) If 5% or less of the
340 outstanding shares of stock of such agency is acquired, the provisions of K.S.A. 40-
341 2a08 shall apply; (2) if more than 5% of the outstanding shares of such incorporated
342 agency is acquired, or a tender offer is made therefor, the prior approval of the
343 commissioner of insurance shall be required and the provisions of K.S.A. 40-2a08(d)
344 shall apply. ~~and such stock~~ In valuing the stock of the agency, the assets of the
345 agency shall be valued as if held directly by an insurance company; and (3) if majority
346 interest in an incorporated insurance agency results from the organization of an
347 agency by the insurance company to which this act applies, such investments shall be
348 subject to the provisions of K.S.A. 40-2a16 until it has produced earnings for three out
349 of five consecutive years. Such stock shall not be eligible for deposit with the
350 commissioner of insurance as part of the legal reserve of such insurance company;

351 (c) stock in a holding corporation: (1) If 5% or less of the outstanding shares of
352 stock of such holding corporation is acquired, the provisions of K.S.A. 40-2a08 shall
353 apply;

354 (2) if at least 75% of the holding corporation's voting stock is acquired, the prior
355 approval of the commissioner shall be required and the provisions of K.S.A. 40-2a08
356 shall not apply. No insurer may purchase in excess of 5% of the outstanding voting
357 stock of a holding corporation unless such insurer acquires at least 75% of such stock.
358 The commissioner may direct an insurer to divest of its ownership in a holding
359 corporation acquired pursuant to this subsection if it appears to the commissioner that
360 the continued ownership or operation of the holding corporation is not in the best
361 interest of the policyholders, or if the insurer's ownership in the holding corporation is
362 less than 75% of the outstanding voting stock of the holding corporation. A holding
363 corporation acquired pursuant to this subsection shall not acquire any investment not
364 permitted for insurance companies other than life pursuant to article 2a of chapter 40
365 of the Kansas Statutes Annotated. In valuing the stock of any holding corporation
366 acquired under this subsection in the annual financial statement of the insurer, value
367 shall be assigned to the holding corporation's assets as though the assets were owned
368 directly by the insurer. A percentage of the holding corporation's assets exactly equal
369 to the insurer's ownership interest in the holding corporation will be added to the
370 assets of the insurer in application of the insurer's investment limitations set forth in
371 article 2a of chapter 40 of the Kansas Statutes Annotated. Stock in a holding
372 corporation acquired under this subsection shall not be eligible for deposit with the
373 commissioner of insurance as part of the legal reserves of such insurer.

374 Sec. 13. K.S.A. 40-2a12 is hereby amended to read as follows: 40-2a12. Any
375 insurance company other than life heretofore or hereafter organized under any law of
376 this state may invest with the direction or approval of a majority of its board of
377 directors or authorized committee thereof, any of its funds, or any part thereof in:

378 (a) Bonds, notes, obligations or other evidences of indebtedness secured by
379 mortgages or deeds of trust which are a first lien upon unencumbered real property and
380 appurtenances thereto within the United States of America or any insular or territorial
381 possession of the United States of America or any insular or territorial possession of
382 the United States of America, or the Dominion of Canada, and upon lease-hold estates
383 in real property wherein the term of such including any options to extend is not less
384 than fifteen (15) years beyond the maturity of the loan as made or extended: ~~Provided;~~
385 ~~That~~ At the date of acquisition the total indebtedness secured by such lien shall not
386 exceed ~~seventy-five percent (75%)~~ eighty percent (80%) of the market value of the
387 property upon which it is a lien. These limitations shall not apply to obligations
388 described in subsections (b), (c), (d) and (e) of this section: Provided further, That for

389 the purpose of this section a mortgage or deed of trust shall not be deemed to be other
 390 than a first lien upon property within the meaning of this section by reason of the
 391 existence of taxes or assessments against real property and appurtenances thereto that
 392 are not delinquent, instruments creating or reserving mineral, oil or timber rights,
 393 rights-of-way, joint driveways, sewer rights, rights in walls or by reason of building
 394 restrictions or other like restrictive covenants, or when such real estate is subject to
 395 lease in whole or in part whereby rents or profits are reserved to the owner or when
 396 there is in existence a fixed obligation or lien against the property where an escrow
 397 account or indemnification bond is or has been established or obtained sufficient to
 398 cover the maximum liability created by such obligation or lien;

399 (b) bonds, notes or other evidences of indebtedness representing loans and
 400 advances of credit that have been issued, guaranteed or insured by the United States
 401 government or any agency or instrumentality thereof: ~~Provided, That Any~~ uninsured or
 402 nonguaranteed portion shall not exceed ~~seventy-five percent (75%)~~ eighty percent
 403 (80%) of the total amount;

404 (c) contracts of sale, purchase money mortgages or deeds of trust secured by
 405 property obtained through foreclosure, or in settlement or satisfaction of any
 406 indebtedness;

407 (d) bonds, notes, obligations or other evidences of indebtedness secured by
 408 mortgages or deeds of trust which are a first lien upon unencumbered personal and real
 409 property, including a leasehold of real estate, under lease, purchase contract, or lease
 410 purchase contract to any governmental body or instrumentality whose obligations
 411 qualify under K.S.A. 40-2a01, 40-2a02 or 40-2a03 or to a corporation whose obligations
 412 qualify under K.S.A. 40-2a05: ~~Provided, If~~ there is adequate rental, after making
 413 allowances of lessors' or sellers' obligations and liabilities, if any, under the terms of
 414 said lease or contract, to retire the loan as to payment of principal and interest and
 415 ~~Provided further, That the~~ such rentals are pledged or assigned to the lender;

416 (e) bonds, notes or other evidences of indebtedness representing loans and
 417 advances of credit that have been issued, guaranteed or insured, in accordance with
 418 the terms and provisions of an act of the federal parliament of the Dominion of
 419 Canada approved March 18, 1954, cited as the "national housing act, 1954," as
 420 heretofore and hereafter amended.

421 (f) First mortgage or deeds of trust upon improved real property to be occupied
 422 as a personal residence by an officer of the insurer, if said mortgage is at an interest
 423 rate that is reasonably competitive with that charged by the other lending institutions
 424 in the community. Mortgages or deeds of trust entered into pursuant to this subsection
 425 shall be subject to the conditions set forth in subsection (a) of this section relating to
 426 mortgages or deeds of trust generally.

427 Sec. 14. K.S.A. 40-2a13 is hereby amended to read as follows: 40-2a13. Any
 428 insurance company other than life heretofore or hereafter organized under any law of
 429 this state may invest with the direction or approval of a majority of its board of
 430 directors or authorized committee thereof, any of its funds, or any part thereof in real
 431 estate only if acquired or used for the following purposes and in the following manner:

432 (a) Such as shall be requisite for its convenient present and reasonable future
 433 accommodations in the transaction of its business. In the erection or purchase of any
 434 buildings for such purpose, additional space may be included for home office rental
 435 income; or

436 (b) such as shall have been mortgaged to it in good faith, by way of security for
 437 loans previously contracted or for money due; or

438 (c) such as shall have been conveyed to it in satisfaction of debts previously
 439 contracted in their legitimate business, or for money due; or

440 (d) such as shall have been purchased at sales upon judgments, decrees or
 441 mortgages obtained or made for such debts.

442 (e) such as shall have been acquired for development or income purposes.

443 It shall not be lawful for any such company to purchase, hold or convey real
 444 estate in any other case or for any other purpose; and all such real estate as may be
 445 acquired as aforesaid, and which shall not be necessary for the accommodation of such
 446 company in the transaction of its business, excepting real estate acquired for
 447 development or income purposes, shall be sold and disposed of within five (5) years
 448 after such company shall have acquired title thereto, unless the company shall procure
 449 a certificate from the commissioner of insurance that the interest of the company will
 450 suffer materially by a forced sale thereof, in which event the sale may be postponed
 451 for such period as the commissioner of insurance shall direct in said certificate. If the
 452 company so elects, real estate other than farm properties, which has been acquired

453 under subsections (c) and (d) of this section may be held by it for income purposes.
454 ~~Provided, That its value together with that of all other real estate owned by said~~
455 ~~company at the time of such election does.~~ The company's aggregate investment in real
456 ~~estate as herein provided shall not exceed~~ ten percent (10%) twenty percent (20%) of
457 ~~the admitted assets of said company as shown by its last annual report as filed with the~~
458 ~~state commissioner of insurance.~~

459 ~~Any fire or casualty insurance company incorporated under the laws of this state~~
460 ~~owning real estate which has been acquired as a result of mortgage loans thereon by~~
461 ~~said company, whether by reason of foreclosure proceedings or by direct transfer from~~
462 ~~the mortgagor or which owns a certificate of purchase issued in any foreclosure~~
463 ~~proceedings on real estate in Kansas, may carry such real estate, or certificate, as~~
464 ~~part of its legal reserve. Provided, That the title to any building used as the home~~
465 ~~office and/or general office of a company shall not be deposited as part of the legal~~
466 ~~reserve.~~

467 ~~Such real estate shall first be appraised, at the expense of such company, by~~
468 ~~three (3) disinterested resident freeholders of the county where the land is situated,~~
469 ~~authorized by the commissioner of insurance to make such appraisement, which~~
470 ~~appraisement shall be final, and the value of such real estate for the purpose of such~~
471 ~~reserves shall be the amount when by such appraisal, not exceeding the amount of~~
472 ~~unpaid balance of the face amount of the mortgage loan from which such real estate~~
473 ~~was acquired. Provided, however, That at no time shall the total amount of such real~~
474 ~~estate and/or certificate of purchase exceed fifty percent (50%) of the total amount of~~
475 ~~the gross reserve on all outstanding policies of the company, and reserves not to~~
476 ~~exceed ten percent (10%) of such gross reserve may be on real estate and/or~~
477 ~~certificates of purchase on real estate outside of Kansas. -- The commissioner of~~
478 ~~insurance shall have the right to reject at any time and return any property upon which~~
479 ~~taxes are delinquent, or fire insurance premiums unpaid. Deeds to such real estate and~~
480 ~~assignments of such certificates shall be executed by such company, conveying or~~
481 ~~assigning the title thereto to the then commissioner of insurance of the state of~~
482 ~~Kansas and his successors in office, in trust for the use and benefit of such company,~~
483 ~~and such deeds and such assignment shall be recorded in the office of the register of~~
484 ~~deeds of the county in which such real estate is situated.~~

485 ~~Whenever the redemption period on any certificate signed to the commissioner~~
486 ~~shall have expired the sheriff of the county in which such land is situated shall issue a~~
487 ~~deed to said property to the commissioner of insurance and his successors in office in~~
488 ~~trust for the use and benefit of such company, and such deed shall be recorded and held~~
489 ~~in lieu of said certificate. When any company desires to withdraw such real estate~~
490 ~~from its reserves, the then commissioner of insurance shall, upon request, execute~~
491 ~~deeds to such person or persons, company or corporation, as such insurance company~~
492 ~~shall direct. Said appraisers shall each be allowed not to exceed the sum of twenty-~~
493 ~~five dollars (\$25) per day in full for all services rendered except that the commissioner~~
494 ~~of insurance may appraise real estate outside of Kansas at the expense of the company~~
495 ~~in such manner as he may determine, and may reappraise all real estate once in every~~
496 ~~five (5) years.~~

497 Section 15. K.S.A. 40-2a16 is hereby amended as follows: 40-2a16. Any
498 insurance company other than life heretofore or hereafter organized under any law of
499 this state may invest with the direction or approval of a majority of its board of
500 directors or authorized committee thereof, any of its funds, or any part thereof in
501 investments whether or not qualified and permitted under this act and notwithstanding
502 any conditions or limitations prescribed therein, except that investments shall not be
503 permitted in insolvent organizations or organizations in default with respect to the
504 payment of principal or interest, and subject to the provisions of K.S.A. 17-3004, in an
505 aggregate amount not more than ~~five percent (5%)~~ ten percent (10%) of its admitted
506 assets as shown by the company's last annual report as filed with the commissioner of
507 insurance.

508 New Sec. 16. Any insurance company other than life heretofore or hereafter
509 organized under any law of this state may invest by loans or otherwise, with the
510 direction or approval of a majority of its board of directors or authorized committee
511 thereof, and of its funds, or any part thereof in the purchase of fixed wing aircraft,
512 electric or mechanical machines constituting a word processing system, motor
513 vehicles, and personal property used as a substitute for or in lieu of improvements upon
514 real property such as detached modular systems, and thereafter may hold such assets
515 as admitted assets for use in connection with the business of the company if, (1) the
516 assets or asset system shall have a cost of not less than two thousand five hundred

517 dollars (\$2,500) and such assets aggregate shall not, irrespective of K.S.A. 40-2a16
518 exceed five percent (5%) of the admitted assets of the company; (2) the cost of each
519 asset or system shall be fully amortized over a reasonable period not to exceed ten (10)
520 years. If an asset consists of separate but inter-dependent components each
521 component shall be amortized over a reasonable period not to exceed ten (10) years
522 commencing with the date of acquisition of each component. Personal property
523 investments are not deemed eligible for deposit and shall not be included in the
524 admitted assets for purposes of complying with minimum capital, surplus, or capital
525 and surplus requirements applicable to issuance or continuation of a certificate of
526 authority.

527 Sec. 17. K.S.A. 40-2b06, 40-2b07, 40-2b09, 40-2b10, 40-2b13, 40-2b20, 40-2a08,
528 40-2a09, 40-2a12, 40-2a13 and 40-2a16 are hereby repealed.

529 Sec. 18. This act shall take effect and be in force from and after its publication
530 in the statute book.

EXPLANATORY MEMORANDUM FOR
LEGISLATIVE PROPOSAL NO. 8

Legislative Proposal No. 8 is a model act of the National Association of Insurance Commissioners. The NAIC model act and consequently the Kansas proposal is designed to address a serious problem that has arisen as a result of a federal preemption of state insurance regulation contained in the Employee Retirement Income Security Act of 1974 (ERISA). In essence, this federal act provides that no state law shall apply to employee welfare plans that qualify under the provisions of the ERISA act. Unfortunately, this opened the door for opportunists, particularly with respect to health insurance, whereby entrepreneurs would put together a plan; pay no attention to state laws because they would claim to be exempt under ERISA; proceed to sell health insurance to unsuspecting groups of persons; and, too many times it has been discovered that no one is around or no money is available when the time arrives for payment of claims.

This proposal represents one of a series of steps that are being taken at both the state and federal levels to gain control of a bad situation. This proposal would give the commissioner authority to determine whether a particular firm or plan was qualified under ERISA or subject to jurisdiction of another state or state agency. If not, the firm or plan would be subject to the laws of Kansas.

The Senate Commercial and Financial Institutions Committee will be requested to introduce this proposal.

LEGISLATIVE PROPOSAL NO. 8

AN ACT relating to insurance; health care benefits; jurisdiction; evidence required; disclosure.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

1 Section 1. Notwithstanding any other provision of law, and except as provided
2 herein, any person or other entity which provides coverage in this state for medical,
3 surgical, chiropractic, physical therapy, speech pathology, audiology, professional
4 mental health, dental, hospital, or optometric expenses, whether such coverage is by
5 direct payment, reimbursement, or otherwise, shall be presumed to be subject to the
6 jurisdiction of the commissioner of insurance unless the person or other entity
7 conclusively shows that while providing such services it is subject to the jurisdiction of
8 another agency of this or another state, any subdivisions thereof, or the federal
9 government.

10 Sec. 2. A person or entity may show that it is subject to the jurisdiction of
11 another agency of this or another state, any subdivision thereof, or the federal
12 government by providing to the commissioner the appropriate certificate, license or
13 other document issued by the other governmental agency which permits or qualifies it
14 to provide those services.

15 Sec. 3. Any person or entity unable to show under section 2 of this act that it is
16 subject to the jurisdiction of another agency of this or another state, any subdivision
17 thereof, or the federal government shall submit to an examination by the insurance
18 commissioner to determine the organization and solvency of the person or the entity,
19 and to determine whether or not such person or entity complies with the applicable
20 provisions of this code.

21 Sec. 4. Any person or entity unable to show that it is subject to the jurisdiction
22 of another agency of this or another state, any subdivision thereof, or the federal
23 government, shall be subject to all appropriate provisions of this code regarding the
24 conduct of its business.

25 Sec. 5. Any production agency or administrator which advertises, sells,
26 transacts, or administers coverage in this state described in section 1 of this act which
27 is provided by any person or entity described in section 3 of this act shall, if that
28 coverage is not fully insured or otherwise fully covered by an admitted insurer or other
29 entity licensed to transact an insurance business in this state advise any purchaser,
30 prospective purchaser, and covered person of such lack of insurance or other coverage.

31 Any administrator which advertises or administers coverage in this state,
32 described in section 1 of this act which is provided by any person or entity described in
33 section 3 of this act shall advise any production agency of the elements of the
34 coverage including the amount of "stop-loss" insurance in effect.

35 Sec. 6. This act shall take effect and be in force from and after its publication
36 in the statute book.

EXPLANATORY MEMORANDUM FOR
LEGISLATIVE PROPOSAL NO. 9

Legislative Proposal No. 9 will, if enacted, provide persons from circumventing the effects of having their agents licenses suspended or revoked by entering into some type of contractual or employment arrangement. Current Kansas law provides that agents licensing laws do not apply to traveling representatives. In the past, some contractual or employment arrangement has been made in order that persons whose license has been suspended or revoked can qualify as a salaried traveling representative. As a result, there have been instances where persons have had their agents license suspended or revoked and they have continued to transact business. Legislative Proposal No.9 is intended to prevent this kind of activity.

The Senate Commercial and Financial Institutions Committee will be requested to introduce this proposal.

LEGISLATIVE PROPOSAL NO. 9

AN ACT relating to insurance; agents' or brokers' licenses; revocation or suspension; amending K.S.A. 40-242 and repealing the existing section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

Section 1. K.S.A. 40-242 is hereby amended to read as follows: K.S.A. 40-242.

(a) The commissioner of insurance may revoke or suspend the license of any broker or agent in the event that investigation by the commissioner discloses the fact that such license was obtained by fraud or misrepresentations or that the holder of such license had misrepresented the provisions, terms and conditions contained in any contract of insurance or that the holder of such license has rebated the whole or any part of any insurance premium or offered in connection with the presentation of a contract of insurance any other inducement not contained in the contract of insurance, or that the holder of such license has intentionally omitted any material fact in such presentation, or that the holder of such license has made any misleading representations or incomplete comparisons of policies to any person for the purposes of inducing or tending to induce such persons to lapse, forfeit or surrender his insurance then in force, or in the event that the interests of the insurer or the insurable interests of the public are not properly served under said license.

(b) The commissioner of insurance, before revoking or suspending any license, shall give to the broker or agent, and the company or companies represented by him or her, reasonable notice of a hearing to be held by the commissioner of insurance, at which hearing such broker or agent and the company or companies represented by him or her shall be given full opportunity to present such evidence as they deem pertinent to the issue involved. The commissioner, upon such hearing, may administer oaths, examine and cross-examine witnesses, receive oral and documentary evidence, and shall have the power to subpoena witnesses, compel their attendance, and require the production of books, papers, records, correspondence, or other documents relevant to the inquiry and in case of a refusal of any person to comply with any subpoena issued hereunder or to testify with respect to any matter concerning which he may be lawfully interrogated, the district court of Shawnee county or the county where such party resides, on the application of the commissioner, may issue an order requiring such person to comply with such subpoena and to testify; and any failure to obey any such order of the court may be punished by the court as a contempt thereof. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to such person the fees for one day's attendance and the mileage provided by law. The commissioner shall present the proper voucher for such sums as shall be required to make the service of subpoenas as herein provided and the proper official shall thereupon issue warrants in the amounts necessary. Statements of charges, notices, orders, and other processes of the commissioner, under this act may be served by anyone duly authorized by the commissioner, either in the manner provided by law for service of process in civil actions, or by registering and mailing a copy thereof to the person affected by such statement, notice, order, or other process at his or its residence or principal office or place of business. The verified return by the person so serving such statement, notice, order, or other process, setting forth the manner of such service, shall be proof of the same, and the return postcard receipt for such statement, notice, order or other process, registered and mailed as aforesaid, shall be proof of the service of the same.

(c) Nothing contained in this act shall require the observance at any such hearing of formal rules of pleading or evidence.

(d) The lapse or suspension of any license by operation of law, by failure to renew or by its voluntary surrender shall not deprive the commissioner of jurisdiction or right to institute or proceed with any disciplinary proceeding against such licensee, to render a decision suspending or revoking such license, or to establish and make a record of the facts of any violation of law for any lawful purpose. No such disciplinary proceedings shall be instituted against any licensee after the expiration of two (2) years from the termination of such license.

(e) No person whose license as an agent or broker has been suspended or revoked shall be employed by any insurance company doing business in this state either directly, indirectly, as an independent contractor or otherwise to negotiate or effect contracts of insurance, suretyship or indemnity or do any act toward soliciting or otherwise transacting the business of insurance during the period of such suspension or revocation.

59 Sec. 2. K.S.A. 40-252 is hereby repealed.

60 Sec. 3. This act shall take effect and be in force from and after its publication
61 in the statute book.

EXPLANATORY MEMORANDUM FOR
LEGISLATIVE PROPOSAL NO. 10

Legislative Proposal No. 10 is an amendment to the laws governing insurance holding companies. The amendment specifically would remove the provisions which provide that the commissioner may disapprove a merger or other acquisition under the holding company act if approval thereof would adversely affect the interest of securityholders. This is an amendment adopted by the National Association of Insurance Commissioners which the Kansas law is patterned after and arises from constitutional questions which have been raised in various jurisdictions including the United States Supreme Court.

The Senate Commercial and Financial Institutions Committee will be requested to introduce this proposal.

LEGISLATIVE PROPOSAL NO. 10

AN ACT relating to insurance; amending K.S.A. 40-3304 and repealing the existing section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

1 Section 1. K.S.A. 40-3304 is hereby amended to read as follows: 40-3304. (a) No
2 person other than the issuer shall make a tender offer for or a request or invitation for
3 tenders of, or enter into any agreement to exchange securities for, seek to acquire, or
4 acquire, in the open market or otherwise, any voting security of a domestic insurer if,
5 after the consummation thereof, such person would, directly or indirectly (or by
6 conversion or by exercise of any right to acquire) be in control of such insurer, and no
7 person shall enter into an agreement to merge with or otherwise to acquire control of
8 a domestic insurer unless, at the time any such offer, request, or invitation is made or
9 any such agreement is entered into, or prior to the acquisition of such securities if no
10 offer or agreement is involved, such person has filed with the commissioner of
11 insurance and has sent to such insurer, and such insurer has sent to its shareholders, a
12 statement containing the information required by this section and such offer, request,
13 invitation, agreement or acquisition has been approved by the commissioner of
14 insurance in the manner hereinafter prescribed. The requirements of this section shall
15 not apply to the merger or consolidation of those companies subject to the
16 requirements of K.S.A. 40-507 and 40-1216 to 40-1225, inclusive.

17 (1) For the purposes of this section a domestic insurer shall include any other
18 person controlling a domestic insurer unless such other person is either directly or
19 through its affiliates primarily engaged in business other than the business of
20 insurance.

21 (b) The statement to be filed with the commissioner of insurance hereunder shall
22 be made under oath or affirmation and shall contain the following information:

23 (1) The name and address of each person by whom or on whose behalf the merger
24 or other acquisition of control referred to in subsection (a) of this section is to be
25 affected (hereinafter called "acquiring party"), and (A) if such person is an individual,
26 such individual's principal occupation and all offices and positions held during the past
27 five (5) years, and any conviction of crimes other than minor traffic violations during
28 the past ten (10) years; (B) if such person is not an individual, a report of the nature of
29 its business operations during the past five (5) years or for such lesser period as such
30 person and any predecessors thereof shall have been in existence; an informative
31 description of the business intended to be done by such person and such person's
32 subsidiaries; and a list of all individuals who are or who have been selected to become
33 directors or executive officers of such person, or who perform or will perform
34 functions appropriate to such positions. Such list shall include for each such individual
35 the information required by paragraph (A) of this subsection.

36 (2) The source, nature and amount of the consideration used or to be used in
37 effecting the merger or other acquisition of control, a description of any transaction
38 wherein funds were or are to be obtained for any such purpose, and the identity of
39 persons furnishing such consideration, except that where a source of such consideration
40 is a loan made in the lender's ordinary course of business, the identity of the lender
41 shall remain confidential, if the person filing such statement so requests.

42 (3) Fully audited financial information as to the earnings and financial condition
43 of each acquiring party for the preceding five (5) fiscal years of each such acquiring
44 party (or for such lesser period as such acquiring party and any predecessors thereof
45 shall have been in existence), and similar unaudited information as of a date not earlier
46 than ninety (90) days prior to the filing of the statement.

47 (4) Any plans or proposals which each acquiring party may have to liquidate such
48 insurer, to sell its assets or merge or consolidate it with any person, or to make any
49 other material change in its business or corporate structure or management.

50 (5) The number of shares of any security referred to in subsection (a) of this
51 section which each acquiring party proposes to acquire, and the terms of the offer,
52 request, invitation, agreement, or acquisition referred to in subsection (a) of this
53 section, and a statement as to the method by which the fairness of the proposal was
54 arrived at.

55 (6) The amount of each class of any security referred to in subsection (a) of this
56 section which is beneficially owned or concerning which there is a right to acquire
57 beneficial ownership by each acquiring party.

58 (7) A full description of any contracts, arrangements or understandings with
59 respect to any security referred to in subsection (a) of this section in which any
60 acquiring party is involved, including but not limited to transfer of any of the

61 securities, joint ventures, loan or option arrangements, puts or calls, guarantees of
62 loans, guarantees against loss or guarantees of profits, division of losses or profits, or
63 the giving or withholding of proxies. Such description shall identify the persons with
64 whom such contracts, arrangements or understandings have been entered into.

65 (8) A description of the purchase of any security referred to in subsection (a) of
66 this section during the twelve (12) calendar months preceding the filing of the
67 statement, by any acquiring party, including the dates of purchase, names of the
68 purchasers, and consideration paid or agreed to be paid therefor.

69 (9) A description of any recommendations to purchase any security referred to in
70 subsection (a) of this section made during the twelve (12) calendar months preceding
71 the filing of the statement, by any acquiring party, or by anyone based upon interviews
72 or at the suggestion of such acquiring party.

73 (10) Copies of all tender offers for, requests or invitations for tenders of,
74 exchange offers for, and agreements to acquire or exchange any securities referred to
75 in subsection (a) of this section, and (if distributed) of additional soliciting material
76 relating thereto.

77 (11) The terms of any agreement, contract or understanding made with any
78 broker-dealer as to solicitation of securities referred to in subsection (a) of this
79 section for tender, and the amount of any fees, commissions or other compensation to
80 be paid to broker-dealers with regard thereto.

81 (12) Such additional information as the commissioner of insurance may by rule or
82 regulation prescribe as necessary or appropriate for the protection of policyholders and
83 securityholders of the insurer or in the public interest.

84 If the person required to file the statement referred to in subsection (a) of this
85 section is a partnership, limited partnership, syndicate or other group, the
86 commissioner of insurance may require that the information called for by paragraphs
87 (1) through (12) of subsection (b) of this section shall be given with respect to each
88 partner of such partnership or limited partnership, each member of such syndicate or
89 group, and each person who controls such partner or member. If any such partner,
90 member or person is a corporation or the person required to file the statement
91 referred to in subsection (a) of this section is a corporation, the commissioner of
92 insurance may require that the information called for by paragraphs (1) through (12) of
93 subsection (b) of this section shall be given with respect to such corporation, each
94 officer and director of such corporation, and each person who is directly or indirectly
95 the beneficial owner of more than ten percent (10%) of the outstanding voting
96 securities of such corporation.

97 If any material change occurs in the facts set forth in the statement filed with
98 the commissioner of insurance and sent to such insurer pursuant to this section, and
99 amendment setting forth such change, together with copies of all documents and other
100 material relevant to such change, shall be filed with the commissioner of insurance and
101 sent to such insurer within two (2) business days after the person learns of such change.
102 Such insurer shall send such amendment to its shareholders.

103 (c) If any offer, request, invitation, agreement or acquisition referred to in
104 subsection (a) of this section is proposed to be made by means of a registration
105 statement under the securities act of 1933 or in circumstances requiring the disclosure
106 of similar information under the securities exchange act of 1934, or under a state law
107 requiring similar registration or disclosure, the person required to file the statement
108 referred to in subsection (a) of this section may utilize such documents in furnishing
109 the information called for by that statement.

110 (d) (1) The commissioner of insurance shall approve any merger or other
111 acquisition of control referred to in subsection (a) of this section unless, after a public
112 hearing thereon, said commissioner finds that:

113 (A) after the change of control the domestic insurer referred to in subsection (a)
114 of this section would not be able to satisfy the requirements for the issuance of a
115 license to write the line or lines of insurance for which it is presently licensed;

116 (B) the effect of the merger or other acquisition of control would be
117 substantially to lessen competition in insurance in this state or tend to create a
118 monopoly therein;

119 (C) the financial condition of any acquiring party is such as might jeopardize the
120 financial stability of the insurer, or prejudice the interest of its policyholders ~~or the~~
121 ~~interests of any remaining securityholders who are unaffiliated with such acquiring~~
122 ~~party;~~

123 ~~(D) the terms of the offer, request, invitation, agreement or acquisition referred~~
124 ~~to in subsection (a) of this section are unfair and unreasonable to the securityholders of~~
125 ~~the insurer;~~

126 ~~(E)~~ (D) the plans or proposals which the acquiring party has to liquidate the
127 insurer, sell its assets or consolidate or merge it with any person, or to make any other
128 material change in its business or corporate structure or management, are unfair and
129 unreasonable to policyholders of the insurer and not in the public interest; or

130 ~~(F)~~ (E) the competence, experience and integrity of those persons who would
131 control the operation of the insurer are such that it would not be in the interest of
132 policyholders of the insurer and of the public to permit the merger or other acquisition
133 of control.

134 (2) The public hearing referred to in paragraph (1) of subsection (d) of this
135 section shall be held as soon as practical after the statement required by this
136 subsection (a) of this section is filed, and at least twenty (20) days' notice thereof shall
137 be given by the commissioner of insurance to the person filing the statement. Not less
138 than seven (7) days' notice of such public hearing shall be given by the person filing the
139 statement to the insurer and to such other persons as may be designated by the
140 commissioner of insurance. The insurer shall give such notice to its securityholders.
141 The commissioner of insurance shall issue an order after the conclusion of such hearing
142 setting forth said commissioner's findings. At such hearing, the person filing the
143 statement, the insurer, any person to whom notice of hearing was sent, and any other
144 person whose interests may be affected thereby shall have the right to present
145 evidence, examine and cross-examine witnesses, and offer oral and written arguments.

146 (e) All statements, amendments, or other material filed pursuant to subsection
147 (a) or (b) of this section, and all notices of public hearings held pursuant to subsection
148 (d) of this section, shall be mailed by the insurer to its shareholders within five (5)
149 business days after the insurer has received such statements, amendments, other
150 material, or notices. The expenses of mailing shall be borne by the person making the
151 filing. As security for the payment of such expenses, such person shall file with the
152 commissioner of insurance an acceptable bond or other deposit in an amount to be
153 determined by the commissioner of insurance.

154 (f) The provisions of this section shall not apply to:

155 (1) any offers, requests, invitations, agreements or acquisitions by the person
156 referred to in subsection (a) of this section of any voting security referred to in
157 subsection (a) of this section which, immediately prior to the consummation of such
158 offer, request, invitation, agreement or acquisition, was not issued and outstanding;

159 (2) any offer, request, invitation, agreement or acquisition which the
160 commissioner of insurance by order shall exempt therefrom as (A) not having been
161 made or entered into for the purpose and not having the effect of changing or
162 influencing the control of a domestic insurer, or (B) as otherwise not comprehended
163 within the purposes of this section.

164 (g) The following shall be violations of this section:

165 (1) the failure to file any statement, amendment or other material required to
166 be filed pursuant to subsection (a) or (b) of this section; or

167 (2) the effectuation or any attempt to effectuate an acquisition of control of, or
168 merger with, a domestic insurer unless the commissioner of insurance has given his or
169 her approval thereto.

170 (h) The courts of this state are hereby vested with jurisdiction over every
171 security holder of a domestic insurer and every person not resident, domiciled, or
172 authorized to do business in this state who files a statement with the commissioner of
173 insurance under this section, and over all actions involving such person arising out of
174 violations of this section, and each person shall be deemed to have performed acts
175 equivalent to and constituting an appointment by such a person of the commissioner of
176 insurance to be such person's true and lawful attorney upon whom may be served all
177 lawful process in any action, suit or proceeding arising out of violations of this section.
178 Copies of all such lawful process shall be served on the commissioner of insurance and
179 transmitted by registered or certified mail by the commissioner of insurance to such
180 person at such person's last known address.

181 Sec. 2. K.S.A. 40-3304 is hereby repealed.

182 Sec. 3. This act shall take effect and be in force from and after its publication
183 in the statute book.

EXPLANATORY MEMORANDUM FOR
LEGISLATIVE PROPOSAL NO. 11

This legislative proposal is principally designed to address an administrative problem. Currently, the laws governing agents licensing provide that the fee charged for taking an examination an agents license is not refundable. Conversely, no such provision is contained in the law regarding the fee for the insurance company certification that is required before an agent can transact business. Although it is not required, many applicants send the certification fee with their fee for the examination. When this occurs and the applicant then fails the examination, considerable time and expense is involved in producing the voucher, obtaining the warrant, recording the transaction and performing all the other details involved in returning the certification fee. Enactment of this proposal would alleviate this problem yet applicants can also avoid the risk by simply delaying submission of the certification fee until they are qualified for a license.

The provision added regarding insurance on growing crops is merely a technical change designed to assure that Kansas agents will not be denied the opportunity to sell federal crop insurance because of a unique provision in Kansas laws.

Finally, new section 2 would permit the commissioner to establish fees for services performed for the individual benefit of the requesting agent or company. Such fees would be established by regulation so all of the safeguards against the establishment of unreasonable or unnecessary fees would be present.

The Senate Commercial and Financial Institutions Committee will be requested to introduce this proposal.

LEGISLATIVE PROPOSAL NO. 11

AN ACT relating to insurance; agents licensing; fees to be established; authority to adopt regulations; agents certification fees to be retained; equivalent of certification; amending K.S.A. 40-241i and repealing the existing section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

1 Section 1. K.S.A. 40-241i is hereby amended to read as follows: 40-241i. Any
2 company authorized to transact business in this state may, upon determining that the
3 agent is of good business reputation and has had experience in insurance or will
4 immediately receive a course of instruction in insurance and on the policies and policy
5 forms of such company, certify such agent as the agent of the company under the
6 license in effect for the agent. The certification shall be made to the commissioner on
7 a form prescribed by him or her immediately upon appointment of the agent, shall be
8 accompanied by the certification fees set forth in K.S.A. 40-252 and shall remain in
9 effect until the first day of May unless the commissioner is notified to the contrary or
10 the license of the certified agent is terminated. The certification fees shall not be
11 returned for any reason.

12 With respect to insurance on growing crops, evidence satisfactory to the
13 commissioner that the agent is qualified to transact insurance in accordance with
14 standards or procedures established by any branch of the federal government shall be
15 deemed to be the equivalent of certification by a company.

16 New Sec. 2. Except as otherwise specifically provided for herein, the
17 commissioner may adopt regulations establishing reasonable fees necessary to
18 accommodate the cost of issuing duplicate agents licenses, certifications of individual
19 agent qualifications or credentials to other supervisory authorities, and similar
20 functions performed by the commissioner for the benefit of insurance agents or
21 companies or both.

22 Sec. 3. K.S.A. 40-241i is hereby repealed.

23 Sec. 4. This act shall take effect and be in force from and after its publication
24 in the statute book.

EXPLANATORY MEMORANDUM FOR
LEGISLATIVE PROPOSAL NO. 12

Legislative Proposal No. 12 amends the Kansas Health Care Provider Insurance Availability Act to maintain the financial integrity of the Health Care Stabilization Fund and to address some administrative matters.

This proposal seeks to amend subsection (b) of K.S.A. 40-3403 of the Health Care Provider Insurance Availability Act so as to allow for the reasonable and necessary expenses incurred by the Commissioner in administering the Health Care Stabilization Fund to be paid from the Health Care Stabilization Fund. At the present time, these expenses are charged to the Kansas Insurance Department Budget, and eventually the State General Fund. The cost of those reasonable and necessary expenses is tentatively estimated to be approximately one hundred thousand dollars (\$100,000) and include the payment of approximately four salaried personnel and the incidental expenses of filing, mailing, computer time, etc., necessary to manage the Fund.

Subsection (c) is amended to authorize a payment by the Fund of more than three hundred thousand dollars (\$300,000) per year by the Fund when a judgment is rendered against it is so large that ten percent (10%) of it is greater than the three hundred thousand dollars (\$300,000) figure. The basis for this proposal is to assure the Fund will be able to pay whatever judgments are rendered against it, thereby avoiding the dilemma of being unable to pay the judgment principal and post judgment interest of a large judgment.

Legislative Proposal No. 12 seeks to amend K.S.A. 40-3404(a) and (c) to eliminate the ten million dollars (\$10,000,000) balance of the Fund and add new subsection (c) to require a minimum annual surcharge on all health care providers.

Proposed subsection (c) will require the assessment of annual surcharges of forty-five percent (45%) on all health care providers complying with the Health Care Provider Insurance Availability Act for the first time and twenty-five percent (25%) thereafter. If the balance of the Fund is projected to fall below ten million dollars (\$10,000,000) during any fiscal year, the Commissioner would be authorized to assess surcharges in excess of those minimum prescribed amounts, not to exceed sixty-five percent (65%). This proposal would provide for the gradual growth of the balance of the Fund which is essential to assure solvency and avoid the imposition of assessment of an excessively large surcharge in any given year. The forty-five percent (45%) surcharge figure for first time compliers is based upon the surcharge figure imposed on health care providers at the initiation of the Act. The twenty-five percent (25%) figure reflects a modest annual surcharge to maintain a reasonably reliable flow of money into the Fund to help offset the increased obligations that have arisen and will probably continue to arise as the Fund continues to mature.

Finally, this proposal seeks to delete language of K.S.A. 40-3411 to limit a primary insurance carrier's right of settling claims under their one hundred thousand dollars (\$100,000) coverage and exposing the Fund to further liability. On occasion, plaintiffs have attempted to settle with primary carriers in amounts less than their limits on the condition that plaintiffs can then proceed against the Fund. Plaintiffs have argued that the language (to be deleted) authorizes such settlement by the primary carrier. It is the Fund's position that such a settlement violates the intent of the Kansas Health Care Provider Insurance Availability Act which requires the primary carrier to be responsible for the first one hundred thousand dollars (\$100,000) of any claim or settlement. If plaintiffs are authorized to settle with the primary carrier on this basis, the primary carriers will, in essence, be providing funds to finance plaintiffs lawsuit against the Fund. This, in turn, exposes the Fund to greater liability. Further, the language seems to remove any motive for the primary carrier to observe its obligation to the Fund to attempt to settle the case within the primary insurer's policy limits.

The Senate Committee on Public Health and Welfare will be requested to introduce this proposal.

LEGISLATIVE PROPOSAL NO. 12

AN ACT relating to insurance; health care provider insurance availability act; limitation on primary insurer's right of settlement; limiting liability of fund; minimum annual surcharge, removal of limitation on amount in fund; amending K.S.A. 1982 Supp. 40-3403, 40-3404 and 40-3411 and repealing the existing sections.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

1 Section 1. K.S.A. 1982 Supp. 40-3403 is hereby amended to read as follows: 40-
2 3403. (a) For the purpose of paying damages for personal injury or death arising out of
3 the rendering of or the failure to render professional services by a health care
4 provider, self-insurer or inactive health care provider subsequent to the time that such
5 health care provider or self-insurer has qualified for coverage under the provisions of
6 this act, there is hereby established the health care stabilization fund. The fund shall
7 be held in trust in a segregated fund in the state treasury. The commissioner shall
8 administer the fund or contract for the administration of the fund with an insurance
9 company authorized to do business in this state.

10 (b) Subject to subsection (e), the fund shall be liable to pay: (1) Any amount due
11 from a judgment or settlement which is in excess of the basic coverage liability of all
12 liable resident health care providers or resident self-insurers for any such injury or
13 death arising out of the rendering of or the failure to render professional services
14 within or without this state; (2) any amount due from a judgment or settlement which
15 is in excess of the basic coverage liability of all liable nonresident health care
16 providers or nonresident self-insurers for any such injury or death arising out of the
17 rendering or the failure to render professional services within this state. In no event
18 shall the fund be obligated for claims against nonresident health care providers or
19 nonresident self-insurers who have not complied with this act or for claims against
20 nonresident health care providers or nonresident self-insurers that arose outside of this
21 state; (3) any amount due from a judgment or settlement against a resident inactive
22 health care provider for any such injury or death; (4) any amount due from a judgment
23 or settlement against a nonresident inactive health care provider for any injury or
24 death arising out of the rendering or failure to render professional services within this
25 state. In no event shall the fund be obligated for claims against: (A) Nonresident
26 inactive health care providers who have not complied with this act; or (B) nonresident
27 inactive health care providers for claims that arose outside of this state, unless such
28 health care provider was a resident health care provider or resident self-insurer at the
29 time such act occurred; (5) reasonable and necessary expenses for attorney's fees
30 incurred in defending the fund against claims; (6) any amounts expended for
31 reinsurance obtained to protect the best interests of the fund purchased by the
32 committee on surety bonds and insurance pursuant to K.S.A. 1980 Supp. 75-4401; (7)
33 reasonable and necessary actuarial expenses incurred in administering the act; and (8)
34 annually to the plan or plans, any amount assessed or assessable from insurers under
35 any plan or plans existing pursuant to K.S.A. 40-3413; and (9) reasonable and necessary
36 expenses incurred by the insurance department in the administration of the fund.

37 (c) All amounts for which the fund is liable pursuant to paragraphs (1), (2), (3) or
38 (4) of subsection (b) of this section shall be paid promptly and in full if less than three
39 hundred thousand dollars (\$300,000) or if three hundred thousand dollars (\$300,000) or
40 more by installment payments of three hundred thousand dollars (\$300,000) or 10% of
41 the amount of the judgement whichever is greater per fiscal year, the first installment
42 to be paid within sixty (60) days after the fund becomes liable and each subsequent
43 installment to be paid annually on the same date of the year the first installment was
44 paid, until the claim has been paid in full. Any attorney's fees payable from such
45 installment shall be similarly prorated.

46 (d) A health care provider shall be deemed to have qualified for coverage under
47 the fund: (1) On and after the effective date of this act if basic coverage is then in
48 effect; (2) subsequent to the effective date of this act, at such time as basic coverage
49 becomes effective; or (3) upon qualifying as a self-insurer pursuant to K.S.A. 40-3414.

50 Sec. 2. K.S.A. 40-3404 is hereby amended to read as follows: 40-3404. (a) The
51 commissioner shall levy an annual premium surcharge on each health care provider who
52 has obtained basic coverage and upon each self-insurer for each fiscal year. Such
53 premium surcharge shall be an amount equal to a percentage of the annual premium
54 paid by the health care provider for the basic coverage required to be maintained as a
55 condition to coverage by the fund by subsection (a) of K.S.A. 40-3402. The annual
56 premium surcharge upon each self-insurer shall be an amount equal to a percentage of

57 the amount such self-insurer would pay for the basic coverage as calculated in
58 accordance with rating procedures approved by the commissioner pursuant to K.S.A.
59 40-3413. The commissioner shall determine the applicable percentage, of not less than
60 twenty-five percent (25%) but not to exceed sixty-five percent (65%), to be used in
61 computing the premium surcharge in each fiscal year. Such determination shall be
62 based upon actuarial principles and calculated to accumulate approximately ten million
63 dollars (\$10,000,000) within a ten-year period following the effective date of this act.
64 Such premium surcharge shall not be less than forty percent (40%) of the annual basic
65 coverage premium for any fiscal year until the fund accumulates five million dollars
66 (\$5,000,000).

67 (b) In the case of a resident health care provider who is not a self-insurer, the
68 premium surcharge shall be collected in addition to the annual premium for the basic
69 coverage by the insurer and shall not be subject to the provisions of K.S.A. 40-252, 40-
70 1113 and 40-2801 et seq. The amount of the premium surcharge shall be shown
71 separately on the policy or an endorsement thereto and shall be specifically identified
72 as such. Such premium surcharge shall be due and payable by the insurer to the
73 commissioner within thirty (30) days after the annual premium for the basic coverage
74 is received by the insurer, but in the event basic coverage is in effect at the time this
75 act becomes effective, such surcharge shall be based upon the unearned premium until
76 policy expiration and annually thereafter. Within fifteen (15) days immediately
77 following the effective date of this act, the commissioner shall send to each insurer
78 information necessary for their compliance with this subsection. The certificate of
79 authority of any insurer who fails to comply with the provisions of this subsection shall
80 be suspended pursuant to K.S.A. 40-222 until such insurer shall pay the annual premium
81 surcharge due and payable to the commissioner. In the case of a nonresident health
82 care provider or a self-insurer, the premium surcharge shall be collected in the manner
83 prescribed in K.S.A. 40-3402.

84 (c) ~~If the fund exceeds the sum of ten million dollars (\$10,000,000) at the end of~~
85 ~~any fiscal year after the payment of all claims and expenses, the commissioner shall~~
86 ~~reduce the surcharge in order to maintain the fund at an approximate level of ten~~
87 ~~million dollars (\$10,000,000).~~

88 (d) (c) Each health care provider initially complying with the basic coverage
89 requirement of K.S.A. 40-3402 shall be subject to a minimum annual premium
90 surcharge of twenty-five percent (25%) forty-five percent (45%), without regard to any
91 annual premium surcharge or fund limitations contained in subsection (a) or (c), and
92 this minimum surcharge shall be applicable to only the first twelve-month period such
93 health care provider complies with the basic coverage requirement. Thereafter, all
94 health care providers shall be subjected to a minimum premium surcharge twenty-five
95 percent (25%) each year the balance in the health care stabilization fund equals or
96 exceeds ten million dollars (\$10,000,000). The provisions of this subsection (d) (c) shall
97 be applicable to resident, nonresident and self-insured health care providers, and the
98 minimum surcharge shall be applicable to only the first twelve-month period such
99 health care provider complies with the basic coverage requirement.

100 Sec. 3. K.S.A. 40-3411 is hereby amended to read as follows: 40-3411. (a) In any
101 claim in which the insurer of a health care provider or inactive health care provider
102 covered by the fund has agreed to settle its liability on a claim against its insured or
103 when the self-insurer has agreed to settle liability on a claim and the claimant's
104 demand is in an amount in excess of such settlement, to which the commissioner does
105 not agree, or where the claim is against an inactive health care provider covered by
106 the fund who does not have liability insurance in effect which is applicable to the
107 claim and the claimant and commissioner cannot agree upon a settlement, an action
108 must be commenced by the claimant against the health care provider or inactive
109 health care provider in a court of appropriate jurisdiction for such damages as are
110 reasonable in the premises. If an action is already pending against the health care
111 provider or inactive health care provider, the pending action shall be conducted in all
112 respects as if the insurer or self-insurer had not agreed to settle.

113 (b) Any such action against a health care provider covered by the fund or
114 inactive health care provider covered by the fund who has liability insurance in effect
115 which is applicable to the claim shall be defended by the insurer or self-insurer in all
116 respects as if the insurer or self-insurer had not agreed to settle its liability. The
117 insurer or self-insurer shall be reimbursed from the fund for the costs of such defense
118 incurred after the settlement agreement was reached, including a reasonable
119 attorney's fee; ~~except that if the insurer or self-insurer settles the claim for an~~
120 ~~amount less than one hundred thousand dollars (\$100,000); the insurer or self-insurer~~
121 ~~shall be responsible for all defense costs until the insurer's or self-insurer's total~~
122 ~~combined payments equal one hundred thousand dollars (\$100,000) with respect to such~~
123 ~~claim, and neither the health care provider, unless such provider is a self-insurer, or~~

124 ~~the fund shall be obligated to pay the difference between such settlement and one~~
125 ~~hundred thousand dollars (\$100,000).~~ The commissioner is authorized to employ
126 independent counsel in any such action against a health care provider or an inactive
127 health care provider covered by the fund.

128 (c) In any such action the health care provider or the inactive health care
129 provider against whom claim is made shall be obligated to attend hearings and trials,
130 as necessary, and to give evidence.

131 (d) The costs of the action shall be assessed against the fund if the recovery is in
132 excess of the amount offered by the commissioner to settle the case and against the
133 claimant if the recovery is less than such amount.

134 Sec. 4. K.S.A. 1982 Supp. 40-3403, 40-3404 and 40-3411 are hereby repealed.

135 Sec. 5. This act will take effect and be in force from and after its publication in
136 the statute book.

EXPLANATORY MEMORANDUM FOR
LEGISLATIVE PROPOSAL NO.13

Legislative Proposal No. 13 recommends the establishment of a State Health Care Commission to address the always increasing and already critical issue of health care costs. The commission envisioned by this proposal would not perform a regulatory function and would have no authority to do so. The commission would, however, be required to look at the causes of the health care cost problems in the broadest possible sense and would be statutorily unfettered with respect to the recommendations they propose to the Governor and the Legislature to alleviate what is an unbearable situation.

The proposal itself is relatively simple. It creates a health care commission, identifies its charge, provides a funding mechanism for its operation and imposes a deadline for completion of its work. But, despite this simplicity, the fact that the commission would be a statutory creature endowed with the necessary support facilities to carry-out its mission and given life by the Legislature with approval of the Governor gives it an authoritative presence that no voluntary ad hoc group could have. At the same time it avoids the inevitable controversy that would surround attempts to create some type of regulatory mechanism without credible, Kansas oriented, findings as to whether such a mechanism would be appropriate, how such a mechanism should be structured, some reasonable definition of the results that might be anticipated, and a thorough exploration of alternatives.

Health care costs have reached an intolerable magnitude. Something must be done and this proposal represents a reasonable, positive attempt to address the subject in a way that will generate productive results.

The Senate Public Health and Welfare Committee will be requested to introduce this proposal.

LEGISLATIVE PROPOSAL NO. 13

AN ACT relating to health care; establishing a state health care commission; purpose, funding; authority.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

1 Section 1. (a) There is hereby created an independent state health care
2 commission which is hereby directed to review, evaluate and develop appropriate
3 recommendations to address the high cost of health care in Kansas. This shall include
4 a study of (1) the medical necessity of health care services rendered to citizens of this
5 state; (2) the quality of the health care services rendered in this state; (3) the
6 reasonableness of the charges made for the rendering of such health care services
7 either individually, collectively, or both; (4) the efficacy of existing laws and
8 administrative implementation in providing public assurances that health care
9 providers licensed or certified to render professional services in Kansas are adequately
10 qualified and reasonably competent; (5) the need to implement statutory cost control
11 measures with respect to the sale and purchase of prescription drugs and the purchase
12 of medical equipment and supplies by health care providers or patients; and, (6) such
13 other elements, systems, and procedures of the Kansas health care delivery system as
14 the commission deems necessary.

15 (b) The jurisdiction and powers of the commission shall specifically include
16 authority to obtain any relevant information regarding the charges made and services
17 performed by any person engaged directly or indirectly in the delivery of health care
18 services in this state. The commission is also empowered to require the submission of
19 reports and information which among other things is or may be relevant to establishing
20 community guidelines designed to generate less costly delivery of adequate health care
21 services.

22 (c) The commission shall be comprised of eleven members including the
23 Secretary of Health and Environment, the Commissioner of Insurance, the Secretary of
24 Social and Rehabilitation Services and eight people appointed by the governor. Four of
25 the appointed members shall have no connection with the management or policies of
26 any health care facility or related institutions and at least two of the four shall
27 represent consumer interests. One member shall represent health insurers, one shall
28 represent both nonprofit service corporations and nonprofit hospital, medical, surgical
29 plans, one shall represent the state hospital association, and one shall represent the
30 state medical society. Of the initial appointees, two shall be appointed for four years,
31 two for three years, two for two years and two for one year. Thereafter, all
32 appointments shall be for terms of four years and no member shall be eligible for
33 appointment to more than two consecutive terms.

34 (d) The governor shall appoint a chairman and vice-chairman. Meetings shall be
35 held as frequently as the commission's duties require. Six members shall constitute a
36 quorum, but a vacancy in the commission membership does not impair its power to act.
37 Action of the commission shall be effective as determined by a simple majority of six
38 members. Members may receive compensation and reimbursement for expenses as
39 provided for in the commission budget. The commission may apply for, receive and
40 accept grants, gifts, payments and other funds, advances, appropriations, properties or
41 services from the United States, the State of Kansas or any other governmental body,
42 agency or agencies or from any other public or private corporation or person, and enter
43 into agreements with respect thereto including the undertaking of studies, plans,
44 demonstrations or projects. The commission shall annually prepare and submit a
45 budget for the performance of its functions under this act to the governor for
46 approval. Upon approval, the commission shall equitably assess the cost of the
47 approved budget on health care facilities, physicians and other health care providers
48 licensed to render services in this state.

49 (e) The commission shall employ a staff, and may, irrespective of the provisions
50 of K.S.A. 75-3738 to 75-3744 inclusive, enter into contracts with individuals or firms
51 to perform any and all duties prescribed by the commission incident to carrying out the
52 requirements of this act. The commission may appoint advisory committees composed
53 of interested groups including representatives of consumers, health care providers and
54 insurance carriers and shall coordinate its activities with other state or federal
55 agencies to avoid a duplication of effort.

56 Sec. 3. The commission shall annually make a report to the governor and the
57 legislature reviewing its activities, future programs, and recommendations for
58 legislation.

59 Sec. 4. The provisions of this act shall expire as of the date the commission
60 tenders its final report or December 31, 1986 whichever is later unless extended by a
61 specific act of the legislature.

62 Sec. 5. This act shall take effect and be in force from and after its publication
63 in the statute book.

EXPLANATORY MEMORANDUM FOR
LEGISLATIVE PROPOSAL NO. 14

This proposal would authorize the commissioner to charge expenses incurred in administering the Workers' Compensation Fund to the fund itself as opposed to being paid from the insurance department's general fund appropriation.

The Workers' Compensation Fund is a statutory creature and serves as a source of revenue for payment of second injury claims, claims due employees of an insolvent self insurer and so forth. It is supported by a state general fund entitlement and assessments against insurance carriers and self-insurers who insure payment of compensation under the Kansas Workers' Compensation Act.

Since this is a special restricted fund designed to fulfill a separate, limited, function, Legislative Proposal No. 14 suggests that the fund itself should be responsible for all aspects of its operation including the cost of its administration. A preliminary estimate of the fiscal effect of this proposal indicates that it would reduce general revenue expenditures by approximately \$100,000.

The House Labor and Industry Committee will be requested to introduce this proposal.

LEGISLATIVE PROPOSAL NO. 14

AN ACT relating to the allocation of expenses of administration of the Kansas Workers' Compensation Fund, amending K.S.A. 1982 Supp. 44-566a and repealing the existing section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

1 Section 1. K.S.A. 1982 Supp. 44-566a is hereby amended to read as follows: 44-
2 566a. (a) There is hereby created in the state treasury the workers' compensation
3 fund. The workmen's compensation fund created by this section is hereby abolished,
4 and on July 1, 1982, the director of accounts and reports shall transfer all moneys in
5 the workmen's compensation fund. All amounts which are required to be paid out of
6 the workmen's compensation fund for liability arising from injuries occurring prior to
7 July 1, 1982, whether reduced to award or not, shall be paid out of the workers'
8 compensation fund. The commissioner of insurance shall be responsible for
9 administering the workers' compensation fund, and all payments from the workers'
10 compensation fund shall be upon warrants of the director of accounts and reports
11 issued pursuant to vouchers approved by the commissioner of insurance or a person or
12 persons designated by the commissioner. The commissioner of insurance annually shall
13 report to the governor and the legislature the receipts and disbursements from the
14 workers' compensation fund during the preceding fiscal year.

15 (b) (1) Each September the commissioner of insurance shall certify, with the
16 commissioner's annual budget request, the amount of state general fund entitlement of
17 the workers' compensation fund for the ensuing fiscal year. Such entitlement shall be
18 equal to the sum of the amounts paid from the workers' compensation fund during the
19 preceding fiscal year in payment of awards made to handicapped employees in
20 accordance with the provisions of K.S.A. 44-569 and amendments thereto, including
21 attorneys' fees, less the sum of the amounts deposited during the preceding fiscal year
22 to the credit of the workers' compensation fund in accordance with the provisions of
23 K.S.A. 44-570 and amendments thereto, except that no state general fund entitlement
24 for a fiscal year shall be more than \$4,000,000. For the purpose of providing funds to
25 meet and pay awards made to handicapped employees, within appropriations therefor,
26 there shall be transferred not later than July 1 each year, or more frequently by
27 appropriation acts of the legislature, from the state general fund to the workers'
28 compensation fund, the amount certified by the commissioner of insurance to be the
29 entitlement of the workers' compensation fund from the state general fund, or a part
30 thereof followed by supplemental certifications to complete the entitlement for each
31 such fiscal year, subject to the limitation of a total amount of \$4,000,000 for any such
32 fiscal year.

33 (2) On July 1 each year, the commissioner of insurance shall impose an
34 assessment against all insurance carriers and self-insurers insuring the payment of
35 compensation under the workmen's compensation act, the proceeds of which shall be
36 credited to the workers' compensation fund. The total amount of each such assessment
37 shall be equal to an amount sufficient, in the opinion of the commissioner of insurance,
38 to pay all amounts, including attorneys' fees and costs, and reasonable and necessary
39 expenses incurred by the Insurance Department in the administration of the fund,
40 which may be required to be paid from such fund during the current fiscal year, less
41 amounts required to be transferred from the state general fund to the workers'
42 compensation fund. The total amount of each such assessment shall be apportioned
43 among those upon whom it is imposed, such that each is assessed an amount that bears
44 the same relation to such total assessment as the amount of money paid or payable in
45 workmen's compensation claims by such insurance carrier or self-insurer in the
46 immediately preceding calendar year bears to all such claims paid or payable during
47 such calendar year. Not later than September 1 each year, the commissioner of
48 insurance shall notify all such insurance carriers and self-insurers of the amount of
49 each assessment imposed under this subsection on such carrier or self-insurer, and the
50 same shall be due and payable on the October 1 following.

51 (3) The commissioner of insurance shall remit all moneys received by or for such
52 commissioner under this subsection to the state treasurer. Upon receipt of any such
53 remittance the state treasurer shall deposit the entire amount thereof in the state
54 treasury to the credit of the workers' compensation fund.

55 (c) Whenever the workers' compensation fund may be made liable for the
56 payment of any amounts in proceedings under the workmen's compensation act, the
57 commissioner of insurance, in the capacity of administrator of such fund, shall be
58 impleaded in such proceedings and shall represent and defend the workers'
59 compensation fund. The commissioner of insurance shall be deemed impleaded in any
60 such proceedings whenever written notice of the proceedings setting forth the nature
61 of the liability asserted against the workers' compensation fund, is given to the
62 commissioner of insurance. The commissioner of insurance may be made a party in
63 this manner by any party to the proceedings. A copy of the written notice shall be
64 given to the director and to all other parties to the proceedings.

65 The director or administrative law judge shall dismiss the workers' compensation
66 fund from any proceeding where the director has determined that there is insufficient
67 evidence to indicate involvement by the workers' compensation fund.

68 (d) The commissioner of insurance, in the capacity of administrator of the
69 workers' compensation fund may make settlements of any amounts which may be
70 payable from the workers' compensation fund with regard to any claim under the
71 workmen's compensation act, subject to the approval of the director.

72 (e) The workers' compensation fund shall be liable for:

73 (1) Payment of awards to handicapped employees in accordance with the
74 provisions of K.S.A. 44-569 and amendments thereto;

75 (2) payment of workmen's compensation benefits to an employee who is unable
76 to receive such benefits from such employee's employer under the conditions
77 prescribed by K.S.A. 44-532a and amendments thereto;

78 (3) reimbursement of an employer or insurance carrier pursuant to the provisions
79 of K.S.A. 44-534a and amendments thereto, subsection (d) of K.S.A. 44-556 and
80 amendments thereto, subsection (c) of K.S.A. 44-569 and amendments thereto and
81 K.S.A. 44-569a and amendments thereto; and

82 (4) any other payments or disbursements provided by law.

83 (f) If it is determined that the workers' compensation fund is not liable as
84 described in subsection (e) of this section, attorney's fees incurred by the workers'
85 compensation fund may be assessed against the party who has impleaded the workers'
86 compensation fund other than impleadings pursuant to K.S.A. 44-532a and amendments
87 thereto.

88 (g) The legislature shall provide for the implementation of the workers'
89 compensation fund as provided in this section and shall be responsible for ensuring the
90 fund's adequacy to meet and pay claims awarded against it.

91 Sec. 2. K.S.A. 1982 Supp. 44-566a is hereby repealed.

92 Sec. 3. This act will take effect and be in force from and after July 1, 1983 and
93 its publication in the statute book.

EXPLANATORY MEMORANDUM FOR
LEGISLATIVE PROPOSAL NO. 15

Legislative Proposal No. 15 seeks to amend K.S.A. 60-471 to expand the collateral source rule exception to include evidence of reimbursement or indemnification that are receivable in the future. This bill was introduced in the 1981 Session as Senate Bill No. 333 but efforts for passage at that time were frustrated due to a preliminary finding of unconstitutionality by United States District Court Judge Theis. However, since that time the constitutionality has been upheld by United States District Court Judge Rogers.

The Senate Committee on Judiciary will be requested to introduce this proposal.

LEGISLATIVE PROPOSAL NO. 15

AN ACT relating to the admissibility of evidence of payments or services received by an injured party from sources collateral to the wrongdoers in certain professional liability actions; amending K.S.A. 60-471 and repealing the existing section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

1 Section 1. K.S.A. 60-471 is hereby amended to read as follows: 60-471. (a) In
2 any action for damages for personal injuries or death arising out of the rendering of or
3 the failure to render professional services by any health care provider, evidence of any
4 reimbursement or indemnification received or receivable in the future by a party for
5 damages sustained from such injury or death, excluding payments from insurance paid
6 for in whole or in part by such party or his or her employer, and services provided by a
7 health maintenance organization to treat any such injury, excluding services paid for in
8 whole or in part by such party or his or her employer, shall be admissible for
9 consideration by the trier of fact subject to the provisions of subsection (b). Such
10 evidence shall be accorded such weight as the trier of fact shall choose to ascribe to
11 that evidence in determining the amount of damages to be awarded to such party.

12 (b) As a condition precedent to presenting evidence of reimbursement or
13 indemnification received or receivable in the future by a party for damages sustained
14 from such injury or death or services provided by a health maintenance organization,
15 the party against whom claim is made in any such action shall make disclosure of such
16 evidence at a pretrial conference on such action. Upon such disclosure, the claimant
17 shall be allowed an opportunity to show that an obligation exists to reimburse the
18 person making the initial reimbursement or indemnification or providing the services
19 from any damages awarded in such action. The claimant shall specify in such showing
20 the amount of any such obligation. Upon such showing by the claimant, the court shall
21 include in its order that any evidence of such reimbursement or indemnification or the
22 providing of such services, to the extent that the same is an obligation on the
23 claimant, shall not be admissible into evidence at the trial of the action.

24 (c) As used in this section: (1) "Health care provider" means a person licensed
25 to practice the healing arts or engaged in a post-graduate training program approved
26 by the state board of healing arts, a person who holds a temporary permit to practice
27 any branch of the healing arts, licensed medical care facility, health maintenance
28 organization, licensed dentist, licensed professional nurse, licensed practical nurse,
29 licensed optometrist, registered podiatrist, registered pharmacist, professional
30 corporation organized pursuant to the professional corporation law of Kansas by
31 persons who are authorized by such law to form such a corporation and who are health
32 care providers as defined by this subsection, registered physical therapist or an officer,
33 employee or agent thereof acting in the course and scope of his or her employment or
34 agency; and (2) "professional services" means those services which require licensure,
35 registration or certification by agencies of the state for the performance thereof.

36 Sec. 2. K.S.A. 60-471 is hereby repealed.

37 Sec. 3. This act shall take effect and be in force from and after publication in
38 the statute book.

EXPLANATORY MEMORANDUM FOR
LEGISLATIVE PROPOSAL NO. 18

Legislative Proposal No. 18 amends K.S.A. 40-3403 of the Kansas Health Care Provider Insurance Availability Act to place a cap or limit of one million dollars on the liability of the Health Care Stabilization Fund arising from any one claim. The purpose of this proposal is to protect the long term solvency of the Fund by eliminating the possibility of settlements or judgments being rendered against it in intolerable amounts. While this proposal would have no immediate effect of saving the Fund a great deal of money because, to date, the Fund has never paid over a million dollars in any one claim, it would avoid the catastrophic effect of an astronomical judgment or settlement.

The Senate Committee on Public Health and Welfare will be requested to introduce this proposal.

LEGISLATIVE PROPOSAL NO. 18

AN ACT relating to insurance; health care provider insurance availability act; limitation on primary insurer's right of settlement; amending K.S.A. 1982 Supp. 40-3403 and repealing the existing sections.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

1 Section 1. K.S.A. 1982 Supp. 40-3403 is hereby amended to read as follows: 40-
2 3403. (a) For the purpose of paying damages for personal injury or death arising out of
3 the rendering of or the failure to render professional services by a health care
4 provider, self-insurer or inactive health care provider subsequent to the time that such
5 health care provider or self-insurer has qualified for coverage under the provisions of
6 this act, there is hereby established the health care stabilization fund. The fund shall
7 be held in trust in a segregated fund in the state treasury. The commissioner shall
8 administer the fund or contract for the administration of the fund with an insurance
9 company authorized to do business in this state.

10 (b) The fund shall be liable to pay: (1) Any amount due from a judgment or
11 settlement which is in excess of the basic coverage liability of all liable resident
12 health care providers or resident self-insurers for any such injury or death arising out
13 of the rendering of or the failure to render professional services within or without this
14 state; (2) any amount due from a judgment or settlement which is in excess of the
15 basic coverage liability of all liable nonresident health care providers or nonresident
16 self-insurers for any such injury or death arising out of the rendering or the failure to
17 render professional services within this state. In no event shall the fund be obligated
18 for claims against nonresident health care providers or nonresident self-insurers who
19 have not complied with this act or for claims against nonresident health care providers
20 or nonresident self-insurers that arose outside of this state; (3) any amount due from a
21 judgment or settlement against a resident inactive health care provider for any such
22 injury or death; (4) any amount due from a judgment or settlement against a
23 nonresident inactive health care provider for any injury or death arising out of the
24 rendering or failure to render professional services within this state. In no event shall
25 the fund be obligated for claims against: (A) Nonresident inactive health care
26 providers who have not complied with this act; or (B) nonresident inactive health care
27 providers for claims that arose outside of this state, unless such health care provider
28 was a resident health care provider or resident self-insurer at the time such act
29 occurred; (5) reasonable and necessary expenses for attorney's fees incurred in
30 defending the fund against claims; (6) any amounts expended for reinsurance obtained
31 to protect the best interests of the fund purchased by the committee on surety bonds
32 and insurance pursuant to K.S.A. 1980 Supp. 75-4401; (7) reasonable and necessary
33 actuarial expenses incurred in administering the act; and (8) annually to the plan or
34 plans, any amount assessed or assessable from insurers under any plan or plans existing
35 pursuant to K.S.A. 40-3413.

36 (c) All amounts for which the fund is liable pursuant to paragraphs (1), (2), (3) or
37 (4) of subsection (b) of this section shall be paid promptly and in full if less than three
38 hundred thousand dollars (\$300,000) or if three hundred thousand dollars (\$300,000) or
39 more by installment payments of three hundred thousand dollars (\$300,000) per fiscal
40 year, the first installment to be paid within sixty (60) days after the fund becomes
41 liable and each subsequent installment to be paid annually on the same date of the year
42 the first installment was paid, until the claim has been paid in full. Any attorney's
43 fees payable from such installment shall be similarly prorated.

44 (d) A health care provider shall be deemed to have qualified for coverage under
45 the fund: (1) On and after the effective date of this act if basic coverage is then in
46 effect; (2) subsequent to the effective date of this act, at such time as basic coverage
47 becomes effective; or (3) upon qualifying as a self-insurer pursuant to K.S.A. 40-3414.

48 (e) In no event shall the fund be liable pursuant to paragraphs (1), (2), (3) or (4) in
49 an amount in excess of one million dollars for payment of any judgment or settlement
50 arising under this act against any active or inactive health care provider in any one
51 claim.

52 Sec. 2. K.S.A. 1982 Supp. 40-3403 is hereby repealed.

53 Sec. 3. This act will take effect and be in force from and after its publication in
54 the statute book.

Attachment 4

Farm Mut. Auto. Ins. Co., 2 K.A.2d 253, 261, 577 P.2d 1202.

3. Tort of bad faith not recognized in Kansas. Spencer v. Aetna Life & Casualty Ins. Co., 227 K. 914, 923, 611 P.2d 149.

4. Applied in holding no recovery of attorney fees. Coe v. Security National Ins. Co., 228 K. 624, 631, 620 P.2d 1108.

5. In exercise of inherent powers, trial court did not abuse discretion in refusing deposition of out-of-state physician in action for overdue personal injury protection (PIP) benefits, attorney fees and interest. Wilson v. American Fidelity Ins. Co., 229 K. 416, 421, 625 P.2d 1117.

6. Where personal injury protection benefits properly denied and there is no obligation for payment of disability benefits, insurer not liable for attorney fees. Morgan v. State Farm Mut. Auto. Ins. Co., 5 K.A.2d 135, 142, 143, 613 P.2d 684.

40-3112. Rehabilitation procedures or treatment and rehabilitative occupational training or retraining. Whenever an injured person claims entitlement to rehabilitation benefits, the insurer or self-insurer responsible for paying personal injury protection benefits to such injured person shall be responsible for rehabilitation procedures or treatment and rehabilitative occupational training or retraining for the injured person in accordance with the following standards:

(a) A procedure or treatment, whether or not involving surgery, shall be recognized and medically accepted;

(b) A course of occupational training or retraining shall be a recognized form of training and be reasonable and appropriate for the particular case;

(c) A procedure, treatment or training shall contribute substantially to rehabilitation; and

(d) The cost of a procedure, treatment or training shall be reasonable in relation to its probable rehabilitation effects.

History: L. 1974, ch. 193, § 12; Feb. 22.

Source or prior law:

L. 1973, ch. 198, § 12.

40-3113.

History: L. 1974, ch. 193, § 13; Repealed, L. 1977, ch. 164, § 5; July 1.

Source or prior law:

L. 1973, ch. 198, § 13.

Law Review and Bar Journal References:

Reason for repealing section cited in "Legislation 1977," David J. Heinemann, 46 J.B.A.K. 69, 78 (1977).

CASE ANNOTATIONS

1. History and content of section noted in holding no-fault insurance act constitutional. Manzanares v. Bell, 214 K. 589, 594, 522 P.2d 1291.

2. Section designed to prevent duplicative recovery;

not so vague as to render it unconstitutional. Manzanares v. Bell, 214 K. 589, 592, 594, 617, 522 P.2d 1291.

3. Provisions for reimbursement and indemnity do not apply to survivors' benefits under act. Farm & City Ins. Co. v. American Standard Ins. Co., 220 K. 325, 327, 328, 335, 336, 337, 338, 339, 340, 552 P.2d 1363.

4. Insurer entitled to full reimbursement of personal injury protection benefits paid to insured without deduction of attorney fees or costs. Eason v. Farmers Insurance Co., 221 K. 415, 417, 418, 419, 420, 421, 424, 426, 428, 429, 431, 432, 433, 434, 435, 437, 438, 560 P.2d 117; Davis v. Western Insurance Companies, 221 K. 441, 443, 560 P.2d 133.

5. Construed; when law changed after policy purchased, new section controlled; right to setoff limited to duplicative benefit payments. Kaup v. Western Cas. & Sur. Co., 432 F. Supp. 922, 926.

6. Applied; nonresident owner of motor vehicle operated on Kansas highways subject to act. Mayer v. Harris, 224 K. 231, 233, 579 P.2d 715.

7. Cited in construing 40-3113a; application of provisions of 40-3113a relating to attorney fees retroactive. Nitchals v. Williams, 225 K. 285, 287, 294, 590 P.2d 582.

8. Action by insurer to recover PIP benefits paid; property loss recoverable under liability portion of policy. United States Fidelity & Guar. v. Farm Bureau Mut. Ins. Co., 2 K.A.2d 581, 584 P.2d 1264.

9. Action by insurer to recover PIP benefits limited by two year statute of limitations. Farmers Ins. Co. v. Farm Bureau Mut. Ins. Co., 227 K. 533, 534, 535, 536, 537, 538, 539, 608 P.2d 923.

10. Repeal of statute can only operate prospectively unless statutory language indicates contrary legislative intent. Davis v. Hughes, 229 K. 91, 92, 93, 100, 101, 102, 622 P.2d 641.

11. Trial court erred in finding insurer could not recover against insured who settled with third-party tortfeasor before insurer notified third party of its interests. Hawkeye Security Ins. Co. v. Nelson, 6 K.A.2d 17, 18, 626 P.2d 795.

40-3113a. Remedy against a tortfeasor, insurer or self-insurer subrogated, when; credits against future payments; limitation of actions; attorney fees.

(a) When the injury for which personal injury protection benefits are payable under this act are caused under circumstances creating a legal liability against a tortfeasor pursuant to K.S.A. 40-3117, the injured person, his or her dependents or personal representatives shall have the right to pursue his, her or their remedy by proper action in a court of competent jurisdiction against such tortfeasor.

(b) In the event of recovery from such tortfeasor by the injured person, his or her dependents or personal representatives by judgment, settlement or otherwise, the insurer or self-insurer shall be subrogated to the extent of duplicative personal injury protection benefits provided to date of such recovery and shall have a lien therefor against such recovery and the insurer or

self-insurer must protect and ensure judgment in a recovery other injured person personal representation of per fits, the amount or recovery and recovered amount of per efits paid to the judgment, settlement shall be credited to said personal (c) In the event her dependent fails to communicate tortfeasor within the date of the injury, such assignment to the cause of action person, the dependent personal representation have against such and to the extent which are duplicative protection benefits insurer may enforce name or in the representative or person for their appear by proper competent jurisdiction (d) In the event K.S.A. 60-258a right of subrogation percentage of the injured person. (e) Pursuant shall fix attorney proportionately and the injured amounts determined History: L. Law Review and Discussed and Fault—The Insurance New Statute," Vol 1 (1977). Discussed in Charles H. O'Brien, CAS 1. Construed; se

is hereby repealed.

Atch. 4

self-insurer may intervene in any action to protect and enforce such lien. Whenever any judgment in any such action, settlement or recovery otherwise shall be recovered by the injured person, his or her dependents or personal representatives prior to the completion of personal injury protection benefits, the amount of such judgment, settlement or recovery otherwise actually paid and recovered which is in excess of the amount of personal injury protection benefits paid to the date of recovery of such judgment, settlement or recovery otherwise shall be credited against future payments of said personal injury protection benefits.

(c) In the event an injured person, his or her dependents or personal representative fails to commence an action against such tortfeasor within eighteen (18) months after the date of the accident resulting in the injury, such failure shall operate as an assignment to the insurer or self-insurer of any cause of action in tort which the injured person, the dependents of such person or personal representatives of such person may have against such tortfeasor for the purpose and to the extent of recovery of damages which are duplicative of personal injury protection benefits. Such insurer or self-insurer may enforce same in his or her own name or in the name of the injured person, representative or dependents of the injured person for their benefit as their interest may appear by proper action in any court of competent jurisdiction.

(d) In the event of a recovery pursuant to K.S.A. 60-258a, the insurer or self-insurer's right of subrogation shall be reduced by the percentage of negligence attributable to the injured person.

(e) Pursuant to this section, the court shall fix attorney fees which shall be paid proportionately by the insurer or self-insurer and the injured person, his or her dependents or personal representatives in the amounts determined by the court.

History: L. 1977, ch. 164, § 4; July 1.

Law Review and Bar Journal References:

Discussed and compared with old statute in "No Fault—The Insurer's Reimbursement Rights Under the New Statute," William R. Sampson, 46 J.B.A.K. 211 (1977).

Discussed in "Survey of Kansas Law: Insurance," Charles H. Oldfather, Jr., 27 K.L.R. 255 (1979).

CASE ANNOTATIONS

1. Construed; section applied retroactively with re-

gard to insurer's rights concerning recovery of attorney fees. *Nitchals v. Williams*, 225 K. 285, 288, 289, 290, 292, 294, 295, 590 P.2d 582.

2. Recovery duplicative where settlement includes elements of damage represented by PIP benefits. *Russell v. Mackey*, 225 K. 588, 589, 590, 591, 592, 593, 594, 595, 592 P.2d 902.

3. Cited; section not to be applied retroactively with regard to insured's substantive legal rights. *Farmers Ins. Co. v. Farm Bureau Mut. Ins. Co.*, 227 K. 533, 534, 535, 608 P.2d 923.

4. Cause of action accrued on date of accident; plaintiff real party in interest. *Dinesen v. Towle*, 3 K.A.2d 505, 508, 597 P.2d 264.

5. Proportionate payment of attorney fees authorized even though one insurance carrier insured all relevant persons involved in accident. *Ballweg v. Farmers Ins. Co.*, 228 K. 506, 508, 509, 511, 618 P.2d 1171.

6. Repeal of statute allowing setoff of personal injury protection provisions and uninsured motorist provisions was to operate prospectively. *Davis v. Hughes*, 229 K. 91, 101, 103, 622 P.2d 641.

7. No statute authorizes plaintiff's attorney to collect fees from subrogated insurer's portion of settlement fund. *Quesenbury v. Wichita Coca Cola Bottling Co.*, 229 K. 501, 503, 625 P.2d 1129.

8. Insurance policy provisions more favorable to insured than statutory requirements; ambiguity construed in favor of insured. *Howard v. Farmers Ins. Co.*, 5 K.A.2d 499, 500, 501, 502, 503, 619 P.2d 160.

9. Trial court erred in finding insurer could not recover against insured who settled with third-party tortfeasor before insurer notified third party of its interests. *Hawkeye Security Ins. Co. v. Nelson*, 6 K.A.2d 17, 18, 626 P.2d 795.

10. Statute to be applied prospectively only to settlements and judgments resulting from causes of action arising on or after July 1, 1977. *Grizzle v. Jacobberger*, 6 K.A.2d 42, 43, 44, 626 P.2d 813.

40-3114. Duty of employer, physician, hospital, clinic or medical institution to furnish information upon request of insurer or self-insurer; settlement of dispute by district court; copy of information to insured.

(a) Whenever a request is made by a self-insurer or an insurer providing personal injury protection benefits under this act and against whom a claim has been made:

(1) Every employer shall furnish forthwith, in a form approved by the commissioner, a sworn statement of the earnings since the time of the injury, and for a reasonable period before the injury, of the employee upon whose injury the claim is based.

(2) Every physician, hospital, clinic or other medical institution providing, before or after injury upon which a claim for personal injury protection benefits is based, any products, services or accommodations in relation to that or any other injury, or in relation to a condition claimed to be connected

tions, penalties. (a) Insurers and self-insurers are hereby directed to organize and maintain an assigned claims plan to provide that any person, who suffers injury in this state may obtain personal injury protection benefits through said plan if:

(1) Personal injury protection benefits are not available to the injured person, except that personal injury protection benefits shall not be deemed unavailable to any person suffering injury while he was the operator of a motorcycle or motor-driven cycle, for which the owner thereof has rejected personal injury protection benefits pursuant to subsection (f) of K.S.A. 40-3107;

(2) Motor vehicle liability insurance of [or] self-insurance applicable to the injury cannot be identified;

(3) Personal injury protection benefits applicable to the injury are inadequate to provide the contracted-for benefits because of financial inability of an insurer or self-insurer to fulfill its obligation; however, benefits available through the assigned claims plan shall be excess over any benefits paid or payable through the Kansas insurance guaranty association. If the personal injury protection benefits are not paid by the Kansas insurance guaranty association within the limitation of time specified in this act, such benefits shall be paid by the assigned claims plan. Payments made by the assigned claims plan pursuant to this section shall constitute covered claims under K.S.A. 40-2901 *et seq.*

(b) If a claim qualifies for assignment under this section, the assigned claims plan or any insurer or self-insurer to whom the claim is assigned shall be subrogated to all of the rights of the claimant against any insurer or self-insurer, its successor in interest or substitute, legally obligated to provide personal injury protection benefits to the claimant, for any of such benefits provided by the assignment.

(c) A person shall not be entitled to personal injury protection benefits through the assigned claims plan with respect to injury which he has sustained if, at the time of such injury, he was the owner of a motor vehicle or which a policy of motor vehicle liability insurance is required under this act and he failed to have such policy in effect.

(d) The assigned claims plan shall be governed by such rules and regulations as are necessary for its operation and for the assessment of costs, which shall be ap-

proved by the commissioner. Any claim brought through said plan shall be assigned to an insurer or self-insurer, in accordance with the approved regulations of operation, and such insurer or self-insurer, after the assignment, shall have the same rights and obligations it would have if, prior to such assignment, it had issued a motor vehicle liability insurance policy providing personal injury protection benefits applicable to the loss or expenses incurred or was a self-insurer providing such benefits. Any party accepting benefits hereunder shall have such rights and obligations as he would have if a motor vehicle liability insurance policy providing personal injury protection benefits were issued to him.

(e) No insurer may write any motor vehicle liability insurance policy in this state unless the insurer participates in the assigned claims plan organized pursuant to this section, nor shall any person qualify as a self-insurer pursuant to subsection (d) of K.S.A. 40-3104, unless he agrees to participate in such assigned claims plan. Any insurer who violates this subsection shall be assessed a civil penalty of not more than five thousand dollars (\$5,000) for each policy he issues in violation thereof.

History: L. 1974, ch. 193, § 16; Feb. 22.

Source or prior law:

L. 1973, ch. 198, § 16.

Law Review and Bar Journal References:

Cited in comment, "No-Fault Automobile Insurance," Barry W. McCormick and Lynn Franklin Taylor II, 23 K.L.R. 141, 148 (1974).

Mentioned in note concerning the Kansas uninsured motorist statute, 16 W.L.J. 764, 768 (1977).

CASE ANNOTATIONS

1. History and content of section noted in holding no-fault insurance act constitutional. *Manzanares v. Bell*, 214 K. 589, 594, 522 P.2d 1291.

2. Applied in construing 40-3109 and 40-3113; right of insurer as to reimbursement and indemnity determined. *Farm & City Ins. Co. v. American Standard Ins. Co.*, 220 K. 325, 334, 552 P.2d 1363.

40-3117. Tort actions; conditions precedent to recovery of damages for pain and suffering. ^(a) In any action for tort brought

against the owner, operator or occupant of a motor vehicle or against any person legally responsible for the acts or omissions of such owner, operator or occupant, a plaintiff may recover damages in tort for pain, suffering, mental anguish, inconvenience and other non-pecuniary loss because of injury only in the event the injury requires medical treat-

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real benefits, having a reasonable value of five hundred dollars (\$500) or more, or the injury consists in whole or in part of permanent disfigurement, a fracture to a weight-bearing bone, a compound, comminuted, displaced or compressed fracture, loss of a body member, permanent injury within reasonable medical probability, permanent loss of a bodily function or death. Any person who is entitled to receive free medical and surgical benefits shall be deemed in compliance with the requirements of this section upon a showing that the medical treatment received has an equivalent value of at least five hundred dollars (\$500). Any person receiving ordinary and necessary services, normally performed by a nurse, from a relative or a member of his household shall be entitled to include the reasonable value of such services in meeting the requirements of this section. For the purpose of this section, the charges actually made for medical treatment expenses shall not be conclusive as to their reasonable value. Evidence that the reasonable value thereof was an amount different than the amount actually charged shall be admissible in all actions to which this subsection applies.

History: L. 1974, ch. 193, § 17; Feb. 22.

Source or prior law:

L. 1973, ch. 198, § 17.

Law Review and Bar Journal References:

Cited in comment, "No-Fault Automobile Insurance," Barry W. McCormick and Lynn Franklin Taylor II, 23 K.L.R. 141, 143 (1974).

Cited in note concerning wrongful death, Mark A. Buck, 17 W.L.J. 26, 82 (1977).

Mentioned in "No Fault—The Insurer's Reimbursement Rights Under the New Statute," William R. Sampson, 46 J.B.A.K. 211, 219 (1977).

Discussed in "Survey of Kansas Law: Insurance," Charles H. Oldfather, Jr., 27 K.L.R. 255 (1979).

"Insurer's Bad Faith: A New Tort for Kansas?," Janet Amerine and Jan E. Montgomery, 19 W.L.J. 467, 485 (1980).

CASE ANNOTATIONS

1. Section held not invidiously discriminatory in upholding constitutionality of no-fault insurance act. *Manzanares v. Bell*, 214 K. 589, 592, 595, 597, 617, 618, 522 P.2d 1291.

2. History and content of section noted in holding no-fault insurance act constitutional. *Manzanares v. Bell*, 214 K. 589, 595, 522 P.2d 1291.

3. Section does not require permanent disfigurement to be "significant". *Smith v. Marshall*, 2 K.A.2d 213, 577 P.2d 362. Reversed: 225 K. 70, 71, 587 P.2d 320.

4. Section requires injury to be of some severity (dissenting opinion). *Smith v. Marshall*, 2 K.A.2d 213, 577 P.2d 362.

5. Plaintiff's injury insufficient to satisfy threshold requirements of section; summary judgment proper. *Smith v. Marshall*, 225 K. 70, 71, 587 P.2d 320.

6. Plaintiff's injury insufficient to satisfy threshold requirements of section; summary judgment proper. *Smith v. Marshall*, 225 K. 70, 71, 587 P.2d 320.

7. Mentioned in action by insurer to recover PIP benefits paid; two year statute of limitations applies. *Farmers Ins. Co. v. Farm Bureau Mut. Ins. Co.*, 227 K. 533, 537, 608 P.2d 923.

8. Cause of action accrued on date of accident and not on date statutory threshold of \$500 reached. *Dinensen v. Towle*, 3 K.A.2d 505, 506, 507, 508, 597 P.2d 264.

9. Monetary threshold must be met not later than the date of trial or the date the cause of action is barred by statute of limitation; trial court erred in reducing jury verdict for future medical expenses and eliminating award for pain and suffering. *Key v. Clegg*, 4 K.A.2d 267, 268, 270, 271, 272, 273, 274, 604 P.2d 1212.

10. Attainment of threshold amount not condition precedent to filing suit; action for property damage does not render rule against splitting cause of action or doctrine of res judicata inapplicable. *Pretz v. Lamont*, 6 K.A.2d 31, 35, 36, 626 P.2d 806.

40-3118. Financial security as prerequisite to motor vehicle registration; certification procedure; termination of required insurance; notice by insurer; notice by director; hearing; revocation of registration, effect; reregistration; unlawful acts, classification of violations; prima facie evidence of operation of vehicle without financial security; powers of director and secretary; refund of unearned premium. (a) No motor vehicle shall be registered in this state unless the owner at the time of registration, has in effect a policy of motor vehicle liability insurance covering such motor vehicle, as provided in this act, or is a self-insurer thereof. As used in this section, the term "financial security" shall mean and include such policy or self-insurance. The director shall require that the owner certify that the owner has such financial security, and the owner of each motor vehicle registered in this state shall maintain financial security continuously throughout the period of registration. When an owner certifies that such financial security is a motor vehicle liability insurance policy meeting the requirements of this act, the director may require that the owner or owner's insurance company produce records to prove the fact of such insurance. Failure to produce such records shall be prima facie evidence that no financial security exists with regard to the vehicle concerned. It shall be the duty of insurance companies, upon the request of the director,

(b)

In any such action in tort for pecuniary or non-pecuniary loss because of injury, the amount of any settlement or judgment shall be reduced by any personal injury protection benefits, paid or payable to the injured person as specified in K.S.A. 40-3103(q) or such other or excess personal injury protection benefits which are available to the injured person.

Law Review and Bar Journal References:
"New Kansas Usury Laws and Interest Rate Regulation," Robert G. Martin, 20 W.L.J. 572, 588 (1981).
"Interest Rates in Kansas: The Decline and Fall of Ezekiel," Barkley Clark, 49 J.B.A.K. 81, 92 (1980).

40-283. Same; interest not subject to certain provisions. The provisions of K.S.A. 40-252, 40-928 and 40-1113 shall not apply to any interest permitted or required by this act; nor shall such interest be subject to the provisions of any rules or regulations, adopted pursuant to or to carry out the foregoing statutory provisions, and which are in conflict with the provisions of this act.

History: L. 1968, ch. 73, § 2; July 1.

40-283a. Premium financing or extension of credit for term exceeding one year prohibited; renewal of agreement at expiration of term. From and after the effective date of this act, no life insurance company authorized to do business in this state nor any insurance agent thereof shall enter into or arrange for an agreement with a purchaser or prospective purchaser of any life insurance policy to finance the cost of any premium or extend credit in the amount of any premium for a term exceeding one year. At the expiration of any such term, such life insurance company or agent may enter into or arrange for a new agreement to finance the cost of any premiums or extend credit in the amount of any premium for an additional term of not to exceed one year.

History: L. 1976, ch. 213, § 1; July 1.

40-284. Coverage relating to injury or death caused by uninsured motorist; rejection; renewal policies; providing for underinsured coverage; antistacking provision; exclusions or limitations of coverage. (a) No automobile liability insurance policy covering liability arising out of the ownership, maintenance, or use of any motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state, unless the policy contains or has endorsed thereon, a provision with coverage limits equal to the limits of liability coverage for bodily injury or death in such au-

sums which the insured or the insured's legal representative shall be legally entitled to recover as damages from the uninsured owner or operator of a motor vehicle because of bodily injury, sickness or disease, including death, resulting therefrom, sustained by the insured, caused by accident and arising out of ownership, maintenance or use of such motor vehicle, or providing for such payment irrespective of legal liability of the insured or any other person or organization.

(b) Any uninsured motorist coverage shall include an underinsured motorist provision which enables the insured or the insured's legal representative to recover from the insurer the amount of damages for bodily injury or death to which the insured is legally entitled from the owner or operator of another motor vehicle with coverage limits equal to the limits of liability provided by such uninsured motorist coverage to the extent such coverage exceeds the limits of the bodily injury coverage carried by the owner or operator of the other motor vehicle.

(c) The insured named in the policy shall have the right to reject, in writing, the uninsured motorists coverage required by subsection (a) which is in excess of the limits for bodily injury or death set forth in K.S.A. 40-3107. Unless the insured named in the policy requests such coverage in writing, such coverage need not be provided in or supplemental to a renewal policy where the named insured had rejected the coverage in connection with a policy previously issued to the insured by the same insurer.

(d) Coverage under the policy shall be limited to the extent that the total limits available cannot exceed the highest limits of any single applicable policy, regardless of the number of policies involved, persons covered, claims made, vehicles or premiums shown on the policy or premiums paid or vehicles involved in an accident.

(e) Any insurer may provide for the exclusion or limitation of coverage when:

(1) The insured is occupying an uninsured automobile owned or provided for the insured's regular use;

(2) the uninsured automobile is owned by a self-insurer or the federal government;

or if a lesser amount, the insured's proportionate share of payment when the limits of the bodily injury coverage carried by the owner or operator of the other motor vehicle has been exhausted.

or struck by or trailer

any governmental entity

- (3) ~~there is no evidence of physical contact with the uninsured motor vehicle;~~
- (4) to the extent that workers' compensation benefits apply; and
- (5) suit is filed against the uninsured motorist without notice to the insurance carrier.

History: L. 1968, ch. 273, § 1; L. 1981, ch. 191, § 1; Jan. 1, 1982.

Revisor's Notes:

Policies, or endorsements thereon, complying with this section unaffected by uniform arbitration act, see 5-419.

Referred to in 40-3113.

Law Review and Bar Journal References:

"Uninsured Motorist Coverage," Alan I. Widiss, 40 J.B.A.K. 199, 200, 231 (1971).

"Uninsured Motorist Coverage," Alan I. Widiss, 41 J.B.A.K. 19, 79, 80 (1972).

Cited in comment on uninsured motorist coverage concerning the effect of settlement with an insured joint tortfeasor on the amount of recovery, M. Kim Moore, 12 W.L.J. 253, 256 (1973).

Cited in "Comparative Negligence Update—A Discussion of Selected Issues," Donald W. Vasos, 44 J.B.A.K. 13, 17 (1975).

Cited in note on recovery under uninsured motorist insurance where no physical contact occurred with hit-run vehicle, Ellen S. Holmes, 23 K.L.R. 335 (1975).

Discussed in note concerning the Kansas uninsured motorist statute, 16 W.L.J. 764 (1977).

CASE ANNOTATIONS

1. Mentioned as being effective after execution of insurance contract under consideration. *Sturdy v. Allied Mutual Ins. Co.*, 203 K. 783, 785, 457 P.2d 34.

2. Mentioned; insurance carrier which has issued uninsured motorist policy may intervene in action brought by its insured against an uninsured motorist. *Rawlins v. Stanley*, 207 K. 564, 567, 486 P.2d 840.

3. Uninsured motorist coverage hereunder does not impose absolute liability on insurer. *Bachman v. American Mutual Insurance Company of Boston*, 338 F.Supp. 1372, 1373, 1374, 1375.

4. Term "legally entitled to recover as damages" construed; establishment of fault, extent of damage. *Winner v. Ratzlaff*, 211 K. 59, 62, 64, 505 P.2d 606.

5. Discussed; insurance policy provisions limiting, conditioning and diluting uninsured motorist coverage held void. *Clayton v. Alliance Mutual Casualty Co.*, 212 K. 640, 646, 648, 650, 651, 512 P.2d 507. Rehearing denied: 213 K. 84, 515 P.2d 1115.

6. Where policy provision more restrictive than statute requiring coverage, statute will prevail. *Clayton v. Alliance Mutual Casualty Co.*, 213 K. 84, 515 P.2d 1115.

7. Policy clause excluding coverage of insured person occupying named insured's insured automobile injured by named insured's uninsured automobile is void hereunder. *Forrester v. State Farm Mutual Automobile Ins. Co.*, 213 K. 442, 443, 444, 445, 449, 450, 517 P.2d 173.

8. Contents noted in discussing history of no-fault insurance act (40-3101 et seq.). *Manzanares v. Bell*, 214

effective date; accident covered. *Van Hoozer v. Farmers Insurance Exchange*, 219 K. 595, 598, 599, 600, 601, 602, 603, 606, 607, 610, 549 P.2d 1354.

10. Provisions of policy purporting to limit insurer's liability to one policy void. *Van Hoozer v. Farmers Insurance Exchange*, 219 K. 595, 598, 599, 600, 601, 602, 603, 606, 607, 610, 549 P.2d 1354.

11. Provisions purporting to reduce amounts payable under policy by amounts of workmen's compensation benefits void. *Van Hoozer v. Farmers Insurance Exchange*, 219 K. 595, 598, 599, 600, 601, 602, 603, 606, 607, 610, 549 P.2d 1354.

12. Uninsured motorist authorized to "stack" coverages up to but not more than full amount of damages sustained. *Welch v. Hartford Casualty Ins. Co.*, 221 K. 344, 345, 346, 347, 348, 349, 350, 559 P.2d 362.

13. Section cited; award in excess of uninsured motorist coverage; trial court erred. *Hammerman v. Southwestern Ins. Group*, 1 K.A.2d 445, 447, 571 P.2d 1.

14. Section construed; physical contact requirement in hit and run clauses in the uninsured motorist provisions of automobile insurance is void. *Simpson v. Farmers Ins. Co.*, 225 K. 508, 510, 511, 512, 515, 516, 592 P.2d 445.

15. Provision excluding government-owned vehicle from definition of uninsured motor vehicle held void as attempt to reduce coverage required hereunder. *Hillhouse v. Farmers Ins. Co.*, 226 K. 68, 69, 595 P.2d 1102.

16. Passenger of unauthorized user of a vehicle, who is not within policy definition of "insured," is not within mandated coverage. *Farmers Ins. Co. v. Schiller*, 226 K. 155, 162, 597 P.2d 238.

17. Exclusionary clause in uninsured motorist policy not in conflict with coverage mandated hereunder. *Benson v. Farmers Ins. Co.*, 227 K. 833, 836, 837, 610 P.2d 605.

18. Nothing hereunder grants any type of authorized exclusion prohibiting "stacking." *McNemee v. Farmers Insurance Group*, 228 K. 211, 212, 215, 612 P.2d 645.

19. Where two vehicles are insured in a single policy with separate premiums, injured insured may stack the two uninsured motorist coverages. *Davis v. Hughes*, 229 K. 91, 92, 95, 100, 622 P.2d 641.

20. Any insurance policy provision which attempts to dilute, condition or limit minimum coverage requirements of the K.A.I.R.A. is void and invalid; policies may allow or exclude coverage above statutory limits. *DeWitt v. Young*, 229 K. 474, 478, 625 P.2d 478.

21. Policy provisions which purport to condition, limit or dilute unqualified uninsured motorist coverage mandated by statute are void and unenforceable. *Barnett v. Crosby*, 5 K.A.2d 98, 99, 612 P.2d 1250.

22. Statute does not address stacking, nor does it require equal treatment of all classes of insureds. *Burke v. AID Ins. Co.*, 487 F.Supp. 831, 835.

40-285. Same; "uninsured motor vehicle" includes vehicle whose insurer is insolvent. For the purpose of this act, the term "uninsured motor vehicle" shall, subject to the terms and conditions of such coverage, be deemed to include an insured motor vehicle whose liability insurer thereof is

there is no reliable competent evidence to prove the facts of the accident from a disinterested witness not making claim under the policy.

to the extent that personal injury protection benefits apply.

not apply to coverage for a rented residence or rented private garage;

(4) for any obligation of an insured, or the insured's insurer under any type of workers' compensation or disability or similar law;

(5) for liability assumed by an insured under any contract or agreement; and

(6) if two or more vehicle liability policies apply to the same accident, the total limits of liability under all such policies shall not exceed that of the policy with the highest limit of liability.

History: L. 1974, ch. 193, § 7; L. 1981, ch. 191, § 2; Jan. 1, 1982.

Source or prior law:

L. 1973, ch. 198, § 7.

Law Review and Bar Journal References:

Cited in comment, "No-Fault Automobile Insurance," Barry W. McCormick and Lynn Franklin Taylor II, 23 K.L.R. 141, 148 (1974).

Limits mentioned in note concerning the Kansas uninsured motorist statute, 16 W.L.J. 764, 765 (1977).

Mentioned in "Comparative Fault and Strick Products Liability in Kansas: Reflections on the Distinction Between Initial Liability and Ultimate Loss Allocation," William Edward Westerbeke and Hal D. Meltzer, 28 K.L.R. 25, 91 (1979).

"Insurer's Bad Faith: A New Tort for Kansas?," Janet Amerine and Jan E. Montgomery, 19 W.L.J. 467, 485 (1980).

CASE ANNOTATIONS

1. Contents of section noted in upholding constitutionality of no-fault insurance act. *Manzanares v. Bell*, 214 K. 589, 594, 596, 624, 522 P.2d 1291.

2. Applied in construing 40-3109 and 40-3113; right of insurer as to reimbursement and indemnity determined. *Farm & City Ins. Co. v. American Standard Ins. Co.*, 220 K. 325, 331, 333, 335, 552 P.2d 1363.

3. Survivors benefits; statutory language considered and applied. *Hand v. State Farm Mut. Auto. Ins. Co.*, 2 K.A.2d 253, 255, 577 P.2d 1202.

4. Applied; nonresident owner of motor vehicle operated on Kansas highways subject to act. *Mayer v. Harris*, 224 K. 231, 232, 579 P.2d 715.

5. Subsection (b) must be read into insurance policy (dissenting opinion). *Farmers Ins. Co. v. Schiller*, 226 K. 155, 166, 597 P.2d 238.

6. Decisions holding direct action against insurance company authorized under 6-1,128 distinguished from such an action under this section, which is prohibited. *White v. Goodville Mut. Cas. Co.*, 226 K. 191, 193, 194, 195, 196, 596 P.2d 1229.

7. Unemancipated minor child may recover damages against parent for personal injuries caused by parent's negligent operation of motor vehicle. *Nocktonick v. Nocktonick*, 227 K. 758, 768, 611 P.2d 135.

8. Any insurance policy provision which attempts to dilute, condition or limit minimum coverage requirements of the K.A.I.R.A. is void and invalid; policies may allow or exclude coverage above statutory limits. *DeWitt v. Young*, 229 K. 474, 476, 477, 480, 625 P.2d

favor of the insured. *Howard v. Farmers Ins. Co.*, 5 K.A.2d 499, 506, 619 P.2d 160.

40-3108. Personal injury protection benefits; authorized exclusions. Any insurer may exclude benefits required by subsection (f) of K.S.A. 40-3107: (a) For injury sustained by the named insured and relatives residing in the same household while occupying another motor vehicle owned by the named insured and not insured under the policy, or for injury sustained by any person operating the insured motor vehicle without the expressed or implied consent of the insured; and

(b) to any person suffering injury, if such person: (1) Caused injury to himself intentionally; (2) was an intentional converter of a motor vehicle at the time the injury was sustained; (3) was injured as a result of conduct within the course of a business of repairing, servicing or otherwise maintaining motor vehicles, unless such conduct occurred off of the business premises; or (4) was injured as a result of conduct in the course of loading and unloading a motor vehicle, unless the conduct occurred while occupying, entering into or alighting from such vehicle.

History: L. 1974, ch. 193, § 8; Feb. 22.

Source or prior law:

L. 1973, ch. 198, § 8.

Law Review and Bar Journal References:

Cited in comment, "No-Fault Automobile Insurance," Barry W. McCormick and Lynn Franklin Taylor II, 23 K.L.R. 141, 148 (1974).

CASE ANNOTATIONS

1. Applied in construing 40-3109 and 40-3113; right of insurer as to reimbursement and indemnity determined. *Farm & City Ins. Co. v. American Standard Ins. Co.*, 220 K. 325, 331, 335, 552 P.2d 1363.

2. Statute permits insurers to exclude benefits required by Automobile Injury Reparations Act so as to preclude "stacking" personal injury protection benefits. *McNemee v. Farmers Insurance Group*, 228 K. 211, 213, 214, 215, 612 P.2d 645.

3. Endorsements in automobile insurance policies excluding stacking of personal injury protection are valid. *Davis v. Hughes*, 229 K. 91, 99, 100, 622 P.2d 641.

4. Any insurance policy provision which attempts to dilute, condition or limit minimum coverage requirements of the K.A.I.R.A. is void and invalid; policies may allow or exclude coverage above statutory limits. *DeWitt v. Young*, 229 K. 474, 478, 625 P.2d 478.

5. Mini-bike operated on highway is vehicle for which insurance is required. *Kresyman v. State Farm Ins.*, 5 K.2d 666, 669, 623 P.2d 524.

(7) for any damages while the motor vehicle is being used without a reasonable belief that the person is entitled to do so.

(8) for any damages arising from an intentional act.

(9) for any damages for that person who is insured under a nuclear energy liability policy or would be insured under such policy.

40-3107. Motor vehicle liability insurance policies; required contents; exclusions of coverage. Every policy of motor vehicle liability insurance issued by an insurer to an owner residing in this state shall:

(a) Designate by explicit description or by appropriate reference of all vehicles with respect to which coverage is thereby to be granted;

(b) insure the person named therein and any other person, as insured, using any such vehicle with the expressed or implied consent of such named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of any such vehicle within the United States of America or the Dominion of Canada, subject to the limits stated in such policy;

(c) state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor and the policy period;

(d) contain an agreement or be endorsed that insurance is provided thereunder in accordance with the coverage required by this act;

(e) contain stated limits of liability, exclusive of interest and costs, with respect to each vehicle for which coverage is thereby granted, not less than \$25,000 because of bodily injury to, or death of, one person in any one accident and, subject to the limit for one person, to a limit of not less than \$50,000 because of bodily injury to, or death of, two or more persons in any one accident, and to a limit of not less than \$10,000 because of harm to or destruction of property of others in any one accident;

(f) include personal injury protection benefits to the named insured, relatives residing in the same household, persons operating the insured motor vehicle, passengers in such motor vehicle and other persons struck by such motor vehicle and suffering bodily injury while not an occupant of a motor vehicle, not exceeding the limits prescribed for each of such benefits, for loss sustained by any such person as a

including such benefits for injury to a person which occurs while the named insured is operating or is a passenger on such motorcycle or motor-driven cycle; and unless the named insured requests such coverage in writing, such coverage need not be provided in or supplemental to a renewal policy when the named insured has rejected the coverage in connection with a policy previously issued by the same insurer. The fact that the insured has rejected such coverage shall not cause such motorcycle or motor-driven cycle to be an uninsured motor vehicle;

(g) notwithstanding any omitted or inconsistent language, any contract of insurance which an insurer represents as or which purports to be a motor vehicle liability insurance policy meeting the requirements of this act shall be construed to obligate the insurer to meet all the mandatory requirements and obligations of this act;

(h) notwithstanding any other provision contained in this section, any insurer may exclude coverage required by subsections (a), (b), (c) and (d) of this section while any insured vehicles are:

(1) Rented to others or used to carry persons for a charge, however, such exclusion shall not apply to the use of a private passenger car on a share the expense basis;

(2) being repaired, serviced or used by any person employed or engaged in any way in the automobile business. This does not apply to the named insured, spouse or relative residents; or the agents, employers, or partners of the named insured, spouse or resident relative; and

(i) in addition to the provisions of subsection (h) and notwithstanding any other provision contained in subsections (a), (b), (c) and (d) of this section, any insurer may exclude coverage for:

(1) ~~Any bodily injury to any insured or any family member of an insured residing in the insured's household;~~

(2) for any damages for which the United States government might be liable for the insured's use of the vehicle;

(3) for any damages to property owned by, rented to, or in charge of or transported by an insured, however, this exclusion shall

employees,

for any

person injured while operating the insured motor vehicle or for bodily injury to any person related to and residing in the same household with such operator.

not apply to coverage for a rented residence or rented private garage;

(4) for any obligation of an insured, or the insured's insurer under any type of workers' compensation or disability or similar law;

(5) for liability assumed by an insured under any contract or agreement; and

(6) if two or more vehicle liability policies apply to the same accident, the total limits of liability under all such policies shall not exceed that of the policy with the highest limit of liability.

History: L. 1974, ch. 193, § 7; L. 1981, ch. 191, § 2; Jan. 1, 1982.

Source or prior law:

L. 1973, ch. 198, § 7.

Law Review and Bar Journal References:

Cited in comment, "No-Fault Automobile Insurance," Barry W. McCormick and Lynn Franklin Taylor II, 23 K.L.R. 141, 148 (1974).

Limits mentioned in note concerning the Kansas uninsured motorist statute, 16 W.L.J. 764, 765 (1977).

Mentioned in "Comparative Fault and Strick Products Liability in Kansas: Reflections on the Distinction Between Initial Liability and Ultimate Loss Allocation," William Edward Westerbeke and Hal D. Meltzer, 28 K.L.R. 25, 91 (1979).

"Insurer's Bad Faith: A New Tort for Kansas?," Janet Amerine and Jan E. Montgomery, 19 W.L.J. 467, 485 (1980).

CASE ANNOTATIONS

1. Contents of section noted in upholding constitutionality of no-fault insurance act. *Manzanares v. Bell*, 214 K. 589, 594, 596, 624, 522 P.2d 1291.

2. Applied in construing 40-3109 and 40-3113; right of insurer as to reimbursement and indemnity determined. *Farm & City Ins. Co. v. American Standard Ins. Co.*, 220 K. 325, 331, 333, 335, 552 P.2d 1363.

3. Survivors benefits; statutory language considered and applied. *Hand v. State Farm Mut. Auto. Ins. Co.*, 2 K.A.2d 253, 255, 577 P.2d 1202.

4. Applied; nonresident owner of motor vehicle operated on Kansas highways subject to act. *Mayer v. Harris*, 224 K. 231, 232, 579 P.2d 715.

5. Subsection (b) must be read into insurance policy (dissenting opinion). *Farmers Ins. Co. v. Schiller*, 226 K. 155, 166, 597 P.2d 238.

6. Decisions holding direct action against insurance company authorized under 6-1,128 distinguished from such an action under this section, which is prohibited. *White v. Goodville Mut. Cas. Co.*, 226 K. 191, 193, 194, 195, 196, 596 P.2d 1229.

7. Unemancipated minor child may recover damages against parent for personal injuries caused by parent's negligent operation of motor vehicle. *Nocktonick v. Nocktonick*, 227 K. 758, 768, 611 P.2d 135.

8. Any insurance policy provision which attempts to dilute, condition or limit minimum coverage requirements of the K.A.I.R.A. is void and invalid; policies may allow or exclude coverage above statutory limits. *DeWitt v. Young*, 229 K. 474, 476, 477, 480, 625 P.2d 478.

9. Ambiguous insurance policy to be construed in

favor of the insured. *Howard v. Farmers Ins. Co.*, 5 K.A.2d 499, 506, 619 P.2d 160.

40-3108. Personal injury protection benefits; authorized exclusions. Any insurer may exclude benefits required by subsection (f) of K.S.A. 40-3107: (a) For injury sustained by the named insured and relatives residing in the same household while occupying another motor vehicle owned by the named insured and not insured under the policy, or for injury sustained by any person operating the insured motor vehicle without the expressed or implied consent of the insured; and

(b) to any person suffering injury, if such person: (1) Caused injury to himself intentionally; (2) was an intentional converter of a motor vehicle at the time the injury was sustained; (3) was injured as a result of conduct within the course of a business of repairing, servicing or otherwise maintaining motor vehicles, unless such conduct occurred off of the business premises; or (4) was injured as a result of conduct in the course of loading and unloading a motor vehicle, unless the conduct occurred while occupying, entering into or alighting from such vehicle.

History: L. 1974, ch. 193, § 8; Feb. 22.

Source or prior law:

L. 1973, ch. 198, § 8.

Law Review and Bar Journal References:

Cited in comment, "No-Fault Automobile Insurance," Barry W. McCormick and Lynn Franklin Taylor II, 23 K.L.R. 141, 148 (1974).

CASE ANNOTATIONS

1. Applied in construing 40-3109 and 40-3113; right of insurer as to reimbursement and indemnity determined. *Farm & City Ins. Co. v. American Standard Ins. Co.*, 220 K. 325, 331, 335, 552 P.2d 1363.

2. Statute permits insurers to exclude benefits required by Automobile Injury Reparations Act so as to preclude "stacking" personal injury protection benefits. *McNemee v. Farmers Insurance Group*, 228 K. 211, 213, 214, 215, 612 P.2d 645.

3. Endorsements in automobile insurance policies excluding stacking of personal injury protection are valid. *Davis v. Hughes*, 229 K. 91, 99, 100, 622 P.2d 641.

4. Any insurance policy provision which attempts to dilute, condition or limit minimum coverage requirements of the K.A.I.R.A. is void and invalid; policies may allow or exclude coverage above statutory limits. *DeWitt v. Young*, 229 K. 474, 478, 625 P.2d 478.

5. Mini-bike operated on highway is vehicle for which insurance is required. *Kresyman v. State Farm Ins.*, 5 K.2d 666, 669, 623 P.2d 524.

40-3109. Same; injuries for which payment of benefits required; liability for

insurer or the insurer of the owner of a motor vehicle covered by a policy of motor vehicle liability insurance meeting the requirements of this act shall pay any personal injury protection benefits which are required to be provided by this act or in such owner's policy of motor vehicle liability insurance for any injury:

~~(1) Sustained in this state by the owner while occupying a motor vehicle not excluded by subsection (a) of K.S.A. 40-3108, or while not an occupant of a motor vehicle if the injury is caused by physical contact with a motor vehicle;~~

~~(2) sustained outside this state, but within the United States of America, its territories or possessions or Canada, by the owner while occupying the owner's motor vehicle;~~

(2) ~~(3)~~ sustained by a relative of the owner residing in the same household, under the circumstances described in paragraph (1) or (2) of this subsection, if the relative at the time of the accident is not himself the owner of a motor vehicle with respect to which a motor vehicle liability insurance policy is required by this act;

(3) ~~(4)~~ sustained in this state by any other person while occupying such motor vehicle or, if a resident of this state, while not an occupant of such motor vehicle, if the injury is caused by physical contact with such motor vehicle and the injured person is not himself the owner of a motor vehicle with respect to which a motor vehicle liability insurance policy is required under this act.

(b) If two (2) or more insurers or self-insurers are liable to pay personal injury protection benefits for the same injury to any one (1) person, the maximum benefits payable shall be the ~~total of the various maximum benefits provided by this act, and any insurer or self-insurer paying the benefits shall be entitled to recover from each of the other insurers or self-insurers an equitable pro rata share of the benefits paid and expenses incurred in processing the claim.~~

History: L. 1974, ch. 193, § 9; Feb. 22,

Source or prior law:

L. 1973, ch. 198, § 9.

Law Review and Bar Journal References:

Discussed in "Survey of Kansas Law: Insurance," Charles H. Oldfather, Jr., 27 K.L.R. 255, 260, 261 (1979).

(4) modifies both preceding clauses, qualification relates to both occupant and pedestrian. Farm & City Ins. Co. v. American Standard Ins. Co., 220 K. 325, 328, 331, 333, 334, 335, 552 P.2d 1363.

2. Insurer of motor vehicle not liable for personal injury protection (PIP) benefits to permissive user required to maintain own liability coverage. Dreiling v. State Farm Mut. Auto. Ins. Co., 227 K. 851, 852, 855, 610 P.2d 611.

3. Motorcycle operated on highway is vehicle for which insurance is required for purposes of subsection (a)(3). Kresyman v. State Farm Ins., 5 K.A.2d 666, 667, 623 P.2d 524.

40-3110. Same; primary status of benefits, exception; when payable; time limitation on claims; overdue payments. (a) Except for benefits payable under any workmen's compensation law, which shall be credited against the personal injury protection benefits provided by subsection (f) of K.S.A. 40-3107, personal injury protection benefits due from an insurer or self-insurer under this act shall be primary and shall be due and payable as loss accrues, upon receipt of reasonable proof of such loss and the amount of expenses and loss incurred which are covered by the policy issued in compliance with this act. An insurer or self-insurer may require written notice to be given as soon as practicable after an accident involving a motor vehicle with respect to which the insurer's policy of motor vehicle liability insurance affords the coverage required by this act. No claim for personal injury protection benefits may be made after two (2) years from the date of the injury.

(b) Personal injury protection benefits payable under this act shall be overdue if not paid within thirty (30) days after the insurer or self-insurer is furnished written notice of the fact of a covered loss and of the amount of same, except that disability benefits payable under this act shall be paid not less than every two (2) weeks after such notice. If such written notice is not furnished as to the entire claim, any partial amounts supported by written notice is overdue if not paid within thirty (30) days after such written notice is furnished. Any part or all of the remainder of the claim that is subsequently supported by written notice is overdue if not paid within thirty (30) days after such written notice is so furnished: *Provided*, That no such payment shall be deemed overdue where the insurer or self-insurer has reasonable proof to establish that

(1) Sustained within the United States of America, its territories or possessions or Canada by the owner while:

- (a) occupying a motor vehicle not excluded by subsection (a) of K.S.A. 40-3108 or
- (b) not an occupant of a motor vehicle if the injury is caused by physical contact with a motor vehicle;

highest limit of any one policy providing such personal injury protection benefits. The policy providing coverage for the motor vehicle occupied by the injured person or providing coverage for the motor vehicle with which physical contact caused personal injury shall provide the primary personal injury protection coverage.