Approved 2-5-85
Date

MINUTES OF THE House COMMITTEE ON Insurance.

The meeting was called to order by Rep. Rex B. Hoy at
Chairperson

3:30 ~~a~~p.m./p.m. on January 29, 1985 in room 521-S of the Capitol.

All members were present except: representatives Turnquist and DeBaun, who were excused.

Committee staff present:

Melinda Hanson, Research Department
Gordon Self, Revisor of Statutes Office
Margaret Gentry, Secretary

Conferees appearing before the committee:

The Chairman told the Committee that there have been a number of issues discussed regarding the Guaranty Fund Acts; and since 1972, there have been problems with the "no-fault" law. He introduced Melinda Hanson of staff to discuss the two subjects.

Ms. Hanson noted that the insurance industry is one which is completely controlled by the state. She related the history and operation of the guaranty acts, and distributed a detailed memorandum. (Attachment I.) She also distributed a copy of the Acts themselves. (Attachments II and III.) She called attention to SB 16, regarding guaranty associations, which was developed from a 1984 interim study by the Special Committee on Pensions, Investments and Benefits. (Proposal 37.)

Ms. Hanson presented background information on the concept of "no-fault" insurance, and discussed the 1984 interim study by the Special Committee on Judiciary. She noted that HB 2011 (Proposal 28) is the result of this study. She distributed a memorandum which encompassed the concept, types and history of "no-fault", and a copy of the Injury Reparations Act. (Attachments IV and V.)

After a question and answer period, the meeting was adjourned.

Rex B Hoy

1-29-85

NAME	ORG	ADDRESS
Jim Ward	KTLA	112 West 6th, Suite 300
Jim Murphy	Gov. Office	Topeka
Jim McBride	United Way	Topeka
Mark Bennett	Am Ins Assoc	Topeka
Richard Schlegel	ABATE of KS., INC.	Lawrence
Ron Smith	Ks Bus Assn.	Topeka
Larry Magill	IIAK	Topeka
Dick Scott	State Farm	K.C.
Homer Cowan	The Western	Ft Scott
Jim Oliver	PIA of Ks	Topeka
Larry Smith	Western Ins Co	Ft Scott
Dick Brock	Ins Dept	Topeka

Attachment I
1-29-85

MEMORANDUM

January 28, 1985

TO: House Committee on Insurance
Senate Committee on Financial Institutions and Insurance

FROM: Kansas Legislative Research Department

RE: Insurance Guaranty Association Acts

This memorandum will present an overview of the history and operation of insurance guaranty acts in Kansas, an introduction to the issue of tax offsets, and a brief review of the interim study of the guaranty association acts undertaken this past summer by the House Committee on Pensions, Investments, and Benefits.

Introduction

The regulatory framework of the insurance industry is unique because it is controlled by the individual states rather than by the federal government. In 1869, the U.S. Supreme Court stated that issuing an insurance policy was not a transaction of commerce and, therefore, was not subject to federal regulation under the "commerce clause" of the Constitution (Paul v. Virginia, 75 U.S. 168). Although a later Court decision seemed to overturn the Paul result (U.S. v. South-Eastern Underwriters Association, 332 U.S. 533 (1944)), reactive legislation by Congress left no doubt that insurance regulation is primarily the responsibility of the states. The McCarran-Ferguson Act, passed in 1945, held that certain federal laws would apply to the insurance business only "to the extent that such business is not regulated by state law." In addition, the Act declared the continued regulation and taxation of the insurance industry by the states to be "in the public interest."

Insurance Guaranty Association Acts — Kansas

There are two insurance guaranty association acts in Kansas. The first, the Kansas Insurance Guaranty Association Act, covers primarily property and casualty insurance (property insurance provides protection against the loss of, or damage to, real and personal property caused by specified perils; casualty insurance provides protection for the insured's legal liability for injuries to others or for damages to other persons' property). This legislation was a model NAIC bill (the National Association of Insurance Commissioners, whose membership includes insurance regulators from each of the states, routinely develops "model" insurance legislation to recommend to the states.) Enacted in 1970 and amended in 1976, this act is found at K.S.A. 40-2901 through 40-2919.

The second guaranty association act, the Kansas Life and Health Insurance Guaranty Association Act, covers life and health insurance policies. Enacted in 1972, this act was also patterned after an NAIC model and is found at K.S.A. 40-3001 through 40-3018. It was amended during the 1984 Legislative Session.

Attachment I

Although there are two separate acts, the purpose and operation of each is nearly identical. This memorandum, therefore, will refer to "the acts," except in the few instances in which there are differences between them; in such cases, K.S.A. 40-2901 et seq., will be referred to as the "property and casualty guaranty association act." Copies of both acts accompany this memorandum.

Goals and Operation of the Acts

The two main purposes of each act are to: (1) guarantee the payment of insurance benefits when an insurance company becomes insolvent; and (2) aid in the prevention and detection of insurance company insolvencies (K.S.A. 40-2901; 40-3002). To carry out these purposes, the acts have created nonprofit legal entities known as guaranty associations. Each company authorized to sell insurance in Kansas must be a member of the association as a condition of its authority to transact business in the state (K.S.A. 40-2904; 40-3006). Each association exercises its power through a board of directors. The members of the board are selected by the insurance companies, subject to the approval of the Insurance Commissioner (K.S.A. 40-2905; 40-3007). In the event that an insurance company becomes insolvent, the association becomes liable for covered claims, up to a limit of $300,000 per claim (K.S.A. 40-2906; 40-3008).

The acts differ in their respective definitions of "covered claims." "Covered claims" under the property and casualty guaranty association act means property and casualty insurance claims where the insured person is a resident of this state at the time of the insured event or where the property from which the claim arises is located permanently in this state (K.S.A. 40-2903). The life and health guaranty association, however, is liable for all the claims against companies organized under the laws of Kansas (not just claims from Kansas residents) plus the claims of Kansas residents against "foreign" companies (companies organized under the laws of another state but authorized to transact insurance in Kansas) (K.S.A. 40-3008).

Another area of difference concerns the powers and duties of the associations and the period when their powers may be exercised. The property and casualty guaranty association becomes liable for guaranteeing the obligations of insolvent companies and is basically concerned with securing the funds to pay covered claims and necessary expenses (K.S.A. 40-2903 and 2906). The life and health guaranty association act's definition of "impaired" company, however, is broader, including "an insurer deemed by the commissioner after the effective date of this act to be unable or potentially unable to fulfill its contractual obligations" (K.S.A. 40-3005) as well as insolvent companies under a final order of liquidation or rehabilitation. Further, the life and health guaranty association may act prior to an order of liquidation or rehabilitation to guarantee or reinsure the obligations of the impaired company and may, among other powers, loan money to the impaired insurer (K.S.A. 40-3008).

The acts provide similar mechanisms for generating the money to carry out the duty of paying claims to policyholders of the impaired companies and to pay the expenses of the association in carrying out that duty. Each association makes an "assessment" against the amount of the prior year's net premiums of all member companies (K.S.A. 40-2906; 40-3009). Under the acts, the total assessment that may be made in one year is 2 percent of the prior year's net premiums. Under the property and casualty guaranty association act, the assessments are made in the proportion of each company's premiums to total property and casualty premiums in Kansas (K.S.A. 40-2906).

Under the life and health guaranty association act, there are three separate accounts for assessments — one for health insurance, one for life insurance, and one for annuities (annuities are contracts purchased by a person primarily to provide income to that person during the life of that person at a time in the future, sometimes with a remainder of payments to that person's beneficiary, and different from pure life insurance which provides a payment to the insured's beneficiary upon the death of the insured). Assessments are limited to 2 percent of premiums for each type of contract. Assessments under the life and health act are further classified as follows: class A assessments are for meeting administrative expenses; class B assessments are for meeting the obligations of an impaired domestic insurer; and class C assessments are for meeting the obligations of an impaired foreign insurer. Class A and C assessments are made in proportion to each member company's premiums in Kansas for the particular account — life, health, or annuity contracts. Class B assessments are calculated on a state-by-state basis, with each member company's assessment made in proportion to its share of that business in each state (K.S.A. 40-3009).

Premium Tax Offsets

All insurance companies doing business in Kansas are subject to a tax on their gross premiums, at the rate of 2 percent for foreign companies and 1 percent for domestic companies. After crediting not to exceed $68,000 for the Annual Statement Examination Fund and the Examiner Training Fund, all of the net collections from the tax are deposited in the State General Fund, and net collections in FY 1984 were $37,866,000 from foreign companies and $5,059,000 from domestic companies. As recommended by the NAIC and as originally enacted in 1970, the assessments levied by the property and casualty guaranty association were not allowed to be taken as an offset against a company's premium tax liability. Another statute in the original act (and remaining in effect) is K.S.A. 40-2914, which allows such assessments to be included in that company's premiums, and property and casualty premiums typically cover periods of one year or less. In 1976, however, the property and casualty guaranty association act was amended, effective April 2, 1976, to permit a company to offset 20 percent of an assessment per year for five years against the company's premium tax liability (K.S.A. 40-2906a). All 50 states have a property and casualty guaranty association act; 15 states, including Kansas, have a premium tax offset for such assessments.

In contrast to the property and casualty guaranty association act, the life and health act was enacted in 1972 with a premium tax offset provision, K.S.A. 40-3016, which permits a 20 percent offset per year for five years. The act does not, however, contain a section specifically permitting such assessments to be included in premiums. Only 33 states have a life and health guaranty association act; 22 of those states, including Kansas, have a tax offset for life and health assessments.

The premium tax offset provision was provided as an optional provision in the NAIC model life and health legislation. The comments to the NAIC life and health model bill explain the rationale for that organization's recommendation of a different treatment for property and assessments in one instance, and life and health assessments in the other:

> The NAIC model insolvency guaranty bill for property and casualty insurance provides, in section 16, that rates "shall include amounts sufficient to recoup a sum equal to the amounts paid to the Association. . . ." It is obvious that life insurance premiums, and premiums for certain forms of

health insurance, cannot be charged on existing policyholders. Thus, recoupment is virtually unattainable through existing policy premium rates and building such assessments into rates for future policyholders is not only impractical but unfair to all policyholders. The only suitable and practical method of recoupment available to companies writing life and health insurance lies in offsets against premium or other taxes on such companies. The method suggested in this section is not only equitable to the companies involved but also reduces the impact on state revenue by the partial offset over a period of years. To the extent the recovery from the insolvent company exceeds the tax credit received, the state would be the ultimate beneficiary. Such equitable treatment of assessment for tax purposes would have additional positive effects: (1) the state legislature would have an additional incentive for providing adequate funds for insurance department personnel and administration, and (2) participation in the economic loss would be shared, to some degree, by the general public rather than solely by insureds, thus minimizing what might otherwise be a penalty on thrift and savings. It may be advisable in some jurisdictions to provide a cross-reference to the premium or other tax statutes to avoid questions of conflicting statutory provisions.

The potential impact of the premium tax offsets on the State General Fund has been highlighted during the past year by concern over Baldwin-United and six of its insurance subsidiaries which are in rehabilitation proceedings. Two of those subsidiaries — The National Investors Life Insurance Company and University Life Insurance Company of America — are licensed to do business in Kansas and had actively sold annuity contracts in this state, some guaranteeing a 14 percent rate of return per year on the purchaser's investment. In the fall of 1983, the Insurance Commissioner notified the chairmen of the House and Senate Committees on Ways and Means that, at worst, the life and health insurance guaranty association might be liable for $45-$50 million of obligations of these companies in Kansas. Such an obligation would have required the maximum assessment per year against annuity premiums in Kansas, or $2.6 million annually. Because of the high interest rate to be guaranteed and the high level of obligation compared with the relatively low amount of maximum assessment per year, the association would have had to make an assessment of $2.6 million in perpetuity, for those two companies' annuities alone. Therefore, by FY 1988 and beyond, the State General Fund could have received $2.6 million less in premium tax receipts each year. Since that "worst case" estimate in 1983, the probable impact in Kansas of the Baldwin-United insolvencies has lessened. Nevertheless, the case dramatically illustrates the potential effect on the State General Fund of tax offsets operative over an indeterminate period of years.

As a reaction to the situation created by the Baldwin-United insolvency, the 1984 Legislature, with the passage of Sections 3 and 4 of S.B. 551, amended the life and health act to exclude annuities from the act's coverage, beginning July 1, 1985. According to K.S.A. 40-3003, the act will not apply to "any annuity contracts except with respect to contractual obligations of impaired insurers for which the association has become liable prior to July 1, 1985." Thus, although annuities with insurers impaired after July 1, 1985, will not be covered by the Kansas act, the obligations of the Baldwin-United subsidiaries will be covered.

1984 Interim Study

The House Standing Committee on Pensions, Investments, and Benefits was directed under Proposal No. 37 to:

> Review the Kansas insurance guaranty association acts, evaluate the potential impact of recent insurance company insolvencies, and determine whether changes are needed in the coverage and operation of the acts, including the insurance premiums tax offsets for assessments made by the associations.

The Committee held considerable discussion on options in dealing with insurance guaranty fund associations. One option discussed was the establishment of a reinsurance fund, which would protect the guaranty funds against insurance company insolvencies. Another option discussed by the Committee was amendment of the guaranty funds to make the individual consumer or policyholder partially responsible should a company become insolvent. The Committee also reviewed the need for remaining assets of an insolvent insurer to be deposited in the State General Fund in a timely manner. The Committee had hoped to reach a compromise where the policyholder, the insurance companies, the guaranty funds, and the Kansas taxpayers would each be adequately protected. It was the hope of the Committee that additional information and options would be presented to the appropriate committees of the current Legislature.

The Committee recommended the introduction of S.B. 16, which would repeal the insurance premiums tax offset from both guaranty fund assessments (life and health, as well as property and casualty). It was felt that this bill would help limit future exposure of the State General Fund and Kansas taxpayers in the face of insurance company insolvencies. A copy of S.B. 16 is attached to this memorandum. The Committee also requested that the National Association of Insurance Commissioners present to this 1985 Session of the Legislature its revision of the guaranty fund model law, when completed.

A minority report was filed with the majority report of the interim Committee. The dissenting members opposed S.B. 16 and expressed the belief that alternatives less radical than a total elimination of the tax offset should be considered.

Article 29.—KANSAS INSURANCE GUARANTY ASSOCIATION ACT

40-2901. Purpose and construction. The purpose of this act is to provide a mechanism for the payment of covered claims under certain insurance policies, to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer, to assist in the detection and prevention of insurer insolvencies, and to provide an association to assess the cost of such protection among insurers. This act shall be liberally construed to effect such purpose which shall constitute an aid and guide to interpretation.

History: L. 1970, ch. 185, § 1; March 27.

40-2902. Same; application. This act shall apply to the kinds of direct insurance specified in K.S.A. 40-901 and 40-1102 except for the kinds of insurance specified in subsections (a), (e), (f), (g), (h) and (i) of K.S.A. 40-1102: *Provided,* That this act shall apply to accident and sickness coverages written pursuant to K.S.A. 40-1110.

History: L. 1970, ch. 185, § 2; March 27.

40-2903. Same; definitions. As used in this act: (a) "Association" means the Kansas insurance guaranty association created by this act.

(b) "Commissioner" means the commissioner of insurance of this state.

(c) "Covered claim" means an unpaid claim, including one for unearned premiums, which arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this act applies issued by an insurer, if such insurer becomes an insolvent insurer after the effective date of this act and (1) the claimant or insured is a resident of this state at the time of the insured event; or (2) the property from which the claim arises is permanently located in this state. "Covered claim" shall not include any amount due any reinsurer, insurer, insurance pool or underwriting association, as subrogation recoveries or otherwise.

(d) "Insolvent insurer" means (1) an insurer licensed by the commissioner to transact insurance in this state either at the time the policy was issued or when the insured event occurred; and (2) determined to be insolvent by a court of competent jurisdiction.

(e) "Member insurer" means any person who (1) is authorized to write any kind of insurance to which this act applies under K.S.A. 40-2902 including the exchange of reciprocal or inter-insurance contracts; and (2) is licensed by the commissioner to transact insurance in this state: *Provided,* This act shall not apply to those persons transacting business pursuant to the provisions of K.S.A. 40-202.

(f) "Net direct written premiums" means first gross premiums written in this state on insurance policies to which this act applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers.

(g) "Person" means any individual, corporation, partnership, association or voluntary organization.

History: L. 1970, ch. 185, § 3; March 27.

40-2904. Same; creation of nonprofit association, membership; functions. There is created a nonprofit unincorporated legal entity to be known as the Kansas insurance guaranty association. All insurers defined as member insurers in K.S.A. 40-2903(e) shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under a plan of operation established and approved under K.S.A. 40-2907 and shall exercise its powers through a board of directors established under K.S.A. 40-2905.

History: L. 1970, ch. 185, § 4; March 27.

40-2905. Board of directors; selection; vacancies; expenses. (a) The board of directors of the association shall consist of nine (9) persons, of which three (3) members shall serve terms of one (1) year; three (3) members shall serve terms of two (2) years; and, three (3) members shall serve terms of three (3) years. The members of the board shall be selected by member insurers subject to the approval of the commissioner. The successor of each member serving on the board on July 1, 1976, shall be selected to serve for a term of three (3) years. Vacancies on the board shall be filled for the remaining period of the term in the same manner as initial appointments. If no members are selected within sixty (60) days after the effective date of this act, the commissioner may appoint the initial members of the board of directors.

(b) In approving selections to the board, the commissioner shall consider among other things whether all member insurers are fairly represented.

(c) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors.

History: L. 1970, ch. 185, § 5; L. 1976, ch. 220, § 1; April 2.

40-2906. Insolvency of insurer; duties of association; powers; certificate of contribution. (a) In the event of the determination of insolvency of a licensed insurer after the effective date of this act, the association shall:

(1) Be obligated to the extent of the covered claims existing prior to the determination of insolvency and arising within thirty (30) days after the determination of insol-

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vency, or before the po' expiration date if less than thirty (30) da,. after the determination, or before the insured replaces the policy or causes its cancellation, if such insured does so within thirty (30) days of the determination, but such obligation shall include only that amount of each covered claim which is more than one hundred dollars ($100) and less than three hundred thousand dollars ($300,000), except that the association shall pay the full amount of any covered claim arising out of a workmen's compensation policy. In no event shall the association be obligated to the policyholder or claimant in an amount in excess of the face amount of the policy from which the claim arises.

(2) Be deemed the insurer to the extent of its obligation on the covered claims and to such extent shall have all rights, duties and obligations of the insolvent insurer as if the insurer had not become insolvent.

(3) Assess insurers amounts necessary to pay the obligations of the association under subsection (1) subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, and the cost of examinations under K.S.A. 40-2911 and other expenses authorized by this act. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year bears to the net direct written premiums of all member insurers for the preceding calendar year. Each member insurer shall be notified of the assessment not later than thirty (30) days before it is due. No member insurer may be assessed in any year an amount greater than two percent (2%) of that member insurer's net direct written premiums for the preceding calendar year. If the maximum assessment, together with the other assets of the association, does not provide in any one year an amount sufficient to make all necessary payments, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance, or if the commissioner advises the association that such assessment would in such commissioner's opinion, be detrimental to the solvency of a member insurer. Each member insurer may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer.

(4) Investigate claims brought against the association and adjust, compr se, settle and pay covered claims to the extent of the association's obligation and deny all other claims and may review settlements, releases and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which such settlements, releases and judgments may be properly contested.

(5) Notify such persons as the commissioner directs under K.S.A. 40-2908 (b) (1).

(6) Handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but such designation may be declined by a member insurer.

(7) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this act.

(b) The association may: (1) Employ or retain such persons as are necessary to handle claims and perform other duties of the association.

(2) Borrow funds necessary to effect the purposes of this act in accordance with the plan of operation.

(3) Sue or be sued.

(4) Negotiate and become a party to such contracts as are necessary to carry out the purposes of this act.

(5) Perform such other acts as are necessary or proper to effectuate the purposes of this act.

(6) Refund to the member insurers in proportion to the contribution of each member insurer to the association that amount by which the assets of the association exceed the liabilities, if, at the end of any calendar year, the board of directors finds that the assets of the association exceed the liabilities of the association as estimated by the board of directors for the coming year.

(c) The association shall issue to each insurer paying an assessment under this act a certificate of contribution, in a form prescribed by the commissioner, for the amount so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the commissioner may approve.

History: L. 1970, ch. 185, § 6; L. 1976, ch. 220, § 2; April 2.

40-2906a. Certificat f contribution as asset of insurer; offset against premium tax liability. (a) Unless a longer period has been allowed by the commissioner, a member insurer shall at its option have the right to show a certificate of contribution as an asset in the form approved by the commissioner pursuant to subsection (c) of K.S.A. 40-2906, at percentages of the original face amount approved by the commissioner, for calendar years as follows:

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

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

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

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

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

(b) The insurer may offset the amount written off by it in a calendar year under subsection (a) against its premium tax liability to this state accrued with respect to business transacted in such year.

(c) Any sums acquired by refund pursuant to subsection (b) of K.S.A. 40-2906, from the association which have theretofore been written off by contributing insurers and offset against premium taxes as provided in subsection (b) of this section, and is not then needed for purposes of this act, shall be paid by the association to the commissioner to be deposited by the commissioner with the state treasurer for credit to the state general fund.

(d) The provisions of K.S.A. 40-2914 shall not apply to amounts written off under subsection (a) of this section.

History: L. 1976, ch. 220, § 3; April 2.

40-2907. Same; plan of operation; rules and regulations of commissioner; compliance with plan; provisions of plan. (a) (1) The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the commissioner.

(2) If the association fails to submit a suitable plan of operation within ninety (90) days following the effective date of this act or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate such reasonable regulations as are necessary or advisable to effectuate the provisions of this act. Such regulations shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(b) All member insurers shall comply with the plan of operation.

(c) The plan of operation shall. (1) Establish the procedures whereby all the powers and duties of the association under K.S.A. 40-2906 will be performed.

(2) Establish procedures for handling assets of the association.

(3) Establish the amount and method of reimbursing members of the board of directors under K.S.A. 40-2905.

(4) Establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the association or its agent and a list of such claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator.

(5) Establish regular places and times for meetings of the board of directors.

(6) Establish procedures for records to be kept of all financial transactions of the association, its agents and the board of directors.

(7) Provide that any member insurer aggrieved by any final action or decision of the association may appeal to the commissioner within thirty (30) days after the action or decision.

(8) Establish the procedures whereby selections for the board of directors will be submitted to the commissioner.

(9) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(d) The plan of operation may provide that any or all powers and duties of the association, except those under K.S.A. 40-2906(a)(3) and (b)(2), are delegated to a corporation, association or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two (2) or more states. Such a corporation, association or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association or organization which extends protection not substantially less favorable and effective than that provided by this act.

History: L. 1970, ch. 185, § 7; March 27.

40-2908. Same; powers and duties of commissioner. (a) The commissioner shall:

(1) Notify the association of the existence of an insolvent insurer not later than three (3) regular business days after he receives notice of the determination of the insolvency.

(2) Upon request of the board of directors, provide the association with a statement of the net direct written premiums of

each member insurer.

(b) The commissioner may: (1) Require that the association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this act. Such notification shall be by mail at their last known address, where available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation shall be sufficient.

(2) Suspend or revoke, pursuant to the provisions of K.S.A. 40-223, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a fine on any member insurer which fails to pay an assessment when due. Such fine shall not exceed five percent (5%) of the unpaid assessment per month, except that no fine shall be less than one hundred dollars ($100) per month.

(3) Revoke the designation of any servicing facility if he finds claims are being handled unsatisfactorily.

(c) Any final action or order of the commissioner under this act shall be subject to judicial review as provided in K.S.A. 40-251.

History: L. 1970, ch. 185, § 8; March 27.

40-2909. Same; assignment of rights to association upon recovery under act; cooperation; actions against insurer; claims against insolvent insurer. (a) Any person recovering under this act shall be deemed to have assigned his rights under the policy to the association to the extent of his recovery from the association. Every insured or claimant seeking the protection of this act shall cooperate with the association to the same extent as such person would have been required to cooperate with the insolvent insurer. The association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out, except such causes of action as the insolvent insurer would have had if such sums had been paid out by the insolvent insurer. In the case of an insolvent insurer operating on a plan with assessment liability, payments of claims of the association shall not operate to reduce the liability of insureds to the receiver, liquidator, or statutory successor for unpaid assessments.

(b) The receiver, liquidator or statutory successor of an insolvent insurer shall be bound by settlements of covered claims by the association or a similar organization in another state. The court having jurisdiction shall grant such claims priority equal to that which the claimant would have been entitled in the absence of this act against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims shall be accorde e same priority as the liquidator's expenses.

(c) The association shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association which shall preserve the rights of the association against the assets of the insolvent insurer.

History: L. 1970, ch. 185, § 9; March 27.

40-2910. Same; claims; exhaustion of rights under policy; recovery reductions. (a) Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim shall be required to exhaust first his right under such policy. Any amount payable on a covered claim under this act shall be reduced by the amount of any recovery under such insurance policy.

(b) Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured except that if it is a first party claim for damage to property with a permanent location, from the association of the location of the property, and if it is a workmen's compensation claim, from the association of the residence of the claimant. Any recovery under this act shall be reduced by the amount of the recovery from any other insurance guaranty association or its equivalent.

History: L. 1970, ch. 185, § 10; March 27.

40-2911. Same; detection and prevention of insurer insolvencies; reports and recommendations. To aid in the detection and prevention of insurer insolvencies: (a) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer. Such reports and recommendations shall not be considered public documents.

(b) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

(c) The board of directors shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report on the history and causes of such insolvency, based on the information available to the association, and submit such report to the commissioner.

History: L. 1970, ch. 185, § 11; March 27.

40-2912. Same; association deemed insurer; financial report. The association

shall be deemed a cor. ny or insurer within the scope of K.S.A. 40-222 and 40-223 relating to examinations. The board of directors shall submit, not later than March 30 of each year, a financial report for the preceding calendar year in a form approved by the commissioner.

History: L. 1970, ch. 185, § 12; March 27.

40-2913. Same; tax exemptions. The association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions except taxes levied on real or personal property.

History: L. 1970, ch. 185, § 13; March 27.

40-2914. Same; rates and premiums of policies to include amounts of assessments to association. The rates and premiums charged for insurance policies to which this act applies shall include amounts sufficient to recoup a sum equal to the amounts paid to the association by the member insurer less any amounts returned to the member insurer by the association and such rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer.

History: L. 1970, ch. 185, § 14; March 27.

40-2915. Same; liability of parties for actions. There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the association or its agents or employees, the board of directors, or the commissioner or his representatives for any action taken by them in the performance of their powers and duties under this act.

History: L. 1970, ch. 185, § 15; March 27.

40-2916. Same; stay of proceedings to permit defense by association; application to set aside judgment or finding. All proceedings in which the insolvent insurer is a party in any court in this state shall be stayed for sixty (60) days from the date the insolvency is determined to permit proper defense by the association of all pending causes of action. As to any covered claims arising from a judgment under any decision, verdict or finding based on the default of the insolvent insurer or its failure to defend an insured, the association either on its own behalf or on behalf of such insured may apply to have such judgment, order, decision, verdict or finding set aside by the same court or administrator that made such judgment, order, decision, verdict or finding and shall be permitted to defend against such claim on the merits.

History: L. 1970, ch. 185, § 16; March 27.

40-2917. Termination of operation of association, when; discontinuance of payments to association; distribution assets of company. (a) The commissioner shall by order terminate the operation of the Kansas insurance guaranty association as to any kind of insurance covered by this act with respect to which he has found, after hearing, that there is in effect a statutory or voluntary plan which; (1) is a permanent plan which is adequately funded or for which adequate funding is provided; and

(2) extends, or will extend to the Kansas policyholders and residents protection and benefits with respect to insolvent insurers not substantially less favorable and effective to such policyholders and residents than the protection and benefits provided with respect to such kinds of insurance under this act.

(b) The commissioner shall by the same such order authorize discontinuance of future payments by insurers to the Kansas insurance guaranty association with respect to the same kinds of insurance: *Provided,* The assessments and payments shall continue, as necessary, to liquidate covered claims of insurers adjudged insolvent prior to said order and the related expenses not covered by such other plan.

(c) In the event the operation of the Kansas insurance guaranty association shall be so terminated as to all kinds of insurance otherwise within its scope, the association as soon as possible thereafter shall distribute the balance of moneys and assets remaining, after discharge of the functions of the association with respect to prior insurer insolvencies not covered by such other plan, together with related expenses, to the insurers which are then writing in this state policies of the kinds of insurance covered by this act and which had made payments to the association, pro rate upon the basis of the aggregate of such payments made by the respective insurers during the period of five (5) years next preceding the date of such order. Upon completion of such distribution with respect to all of the kinds of insurance covered by this act, this act shall be deemed to have expired.

History: L. 1970, ch. 185, § 17; March 27.

40-2918. Same; rules and regulations. The commissioner may adopt reasonable regulations to carry out the provisions and purposes of this act.

History: L. 1970, ch. 185, § 18; March 27.

40-2919. Same; citation of act. This act shall be known and may be cited as the Kansas insurance guaranty association act.

History: L. 1970, ch. 185, § 19; March 27.

Article 30.—LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION

40-3001. Name and citation of act. This act shall be known and may be cited as the Kansas life and health insurance guaranty association act.

History: L. 1972, ch. 190, § 1; July 1.

Sec. 3. On July 1, 1985, K.S.A. 40-3002 is hereby amended to read as follows: 40-3002. The purpose of this act is to protect policyowners, insureds, beneficiaries, ~~annuitants,~~ payees, and assignees of life insurance policies, health insurance policies, ~~annuity contracts,~~ and supplemental contracts, subject to certain limitations, against failure in the performance of contractual obligations due to the impairment of the insurer issuing such policies or contracts. To provide this protection: (1) An association of insurers is created to enable the guaranty of payment of benefits and of continuation of coverages; (2) members of the association are subject to assessment to provide funds to carry out the purpose of this act; and (3) the association is authorized to assist the commissioner, in the prescribed manner, in the detection and prevention of insurer impairments. (S.B. 551)

Sec. 4. On July 1, 1985, K.S.A. 40-3003 is hereby amended to read as follows: 40-3003. (a) This act shall apply to direct life insurance policies, health insurance policies, ~~annuity contracts,~~ and contracts supplemental to life and health insurance policies ~~and annuity contracts~~ issued by persons authorized to transact insurance in this state at any time.

(b) This act shall not apply to:

(1) Any such policies or contracts, or any part of such policies or contracts, under which the risk is borne by the policyholder;

(2) Any such policy or contract or part thereof assumed by the impaired insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued;

(3) Any such policy or contract issued by persons transacting business pursuant to the provisions of K.S.A. 40-202 *and amendments thereto; and*

(4) Any annuity contracts except with respect to contractual obligations of impaired insurers for which the association has become liable prior to July 1, 1985. (S.B. 551)

40-3004. Liberal construction. This act shall be liberally construed to effect the purpose under K.S.A. 40-3002 which shall constitute an aid and guide to interpretation.

History: L. 1972, ch. 190, § 4; July 1.

40-3005. Definitions. As used in this act:

(a) "Account" means either of the three accounts created under K.S.A. 40-3006.

(b) "Association" means the Kansas life and health insurance guaranty association created under K.S.A. 40-3006.

(c) "Commissioner" means the commissioner of insurance of this state.

(d) "Contractual obligation" means any obligation under covered policies.

(e) "Covered policy" means any policy or contract within the scope of this act under K.S.A. 40-3003.

(f) "Impaired insurer" means: (1) An insurer which after the effective date of this act, becomes insolvent and is placed under a final order of liquidation, rehabilitation, or conservation by a court of competent jurisdiction, or (2) an insurer deemed by the commissioner after the effective date of this act to be unable or potentially unable to fulfill its contractual obligations.

(g) "Member insurer" means any person authorized to transact in this state any kind of insurance to which this act applies under K.S.A. 40-3003.

(h) "Premiums" means direct gross insurance premiums and annuity considerations written on covered policies, less return premiums and considerations thereon and dividends paid or credited to policyholders on such direct business. "Premiums" do not include premiums and considerations on contracts between insurers and reinsurers. As used in K.S.A. 40-3009 "premiums" are those for the calendar year preceding the determination of impairment.

(i) "Person" means any individual, corporation, partnership, association or voluntary organization.

(j) "Resident" means any person who resides in this state at the time the impairment is determined and to whom contractual obligations are owed.

History: L. 1972, ch. 190, § 5; July 1.

40-3006. Kansas life and health guaranty association; creation; plan of operation; under supervision of commissioner and insurance laws of state. (a) There is created a nonprofit legal entity to be known as the Kansas life and health insurance guaranty association. All member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under the plan of operation established and approved under K.S.A. 40-3010 and shall exercise its powers through a board of directors established under K.S.A. 40-3007. For purposes of administration and assessment, the association shall maintain three (3) accounts:

(1) The health insurance account;

(2) The life insurance account; and

(3) The annuity account.

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

History: L. 1972, ch. 190, § 6; July 1

40-3007. Board of directors of association; selection; approval; vacancies; compensation. (a) The board of directors of the association shall consist of not less than five (5) nor more than nine (9) members serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term in the manner described in the plan of operation. To select the initial board of directors, and initally organize the association the commissioner shall give notice to al

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member insurers of the time and place of the organizational meeting. In determining voting rights at the organizational meeting each member insurer shall be entitled to one (1) vote in person or by proxy. If the board of directors is not selected within sixty (60) days after notice of the organizational meeting, the commissioner may appoint the initial members.

(b) In approving selections or in appointing members to the board, the commissioner shall consider, among other things, whether all member insurers are fairly represented.

(c) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors but members of the board shall not otherwise be compensated by the association for their services.

History: L. 1972, ch. 190, § 7; July 1.

40-3008. Powers of association. In addition to the powers and duties enumerated in other sections of this act:

(a) If a domestic insurer is an impaired insurer, the association may, prior to an order of liquidation or rehabilitation, and subject to any conditions imposed by the association other than those which impair the contractual obligations of the impaired insurer, and approved by the impaired insurer and the commissioner:

(1) Guarantee or reinsure, or cause to be guaranteed, assumed, or reinsured, all the covered policies of the impaired insurer;

(2) Provide such moneys, pledges, notes, guarantees, or other means as are proper to effectuate subsection (1), and assure payment of the contractual obligations of the impaired insurer pending action under subsection (1);

(3) Loan money to the impaired insurer;

(b) If a foreign or alien insurer is an impaired insurer, the association may, prior to an order of liquidation, rehabilitation, or conservation, with respect to the covered policies of residents and subject to any conditions imposed by the association other than those which impair the contractual obligations of the impaired insurer, and approved by the impaired insurer and the commissioner:

(1) Guarantee or reinsure, or cause to be guaranteed, assumed, or reinsured, the impaired insurer's covered policies of residents;

(2) Provide such moneys, pledges, notes, guarantees or other means as are proper to effectuate subsection (1), and assure payment of the impaired insurer's contractual obligations to residents pending action under subsection (1);

(3) Loan money to the impaired insurer.

(c) If a domestic insurer is an impaired insurer under an order of liquidation or rehabilitation, the association shall, subject to the approval of the commissioner:

(1) Guarantee, assume or reinsure, or cause to be guaranteed, assumed or reinsured the covered policies of the impaired insurer;

(2) assure payment of the contractual obligations of the impaired insurer, and

(3) provide such moneys, pledges, notes, guarantees, or other means as are reasonably necessary to discharge such duties.

If the association fails to act within a reasonable period of time, the commissioner shall have the powers and duties of the association, on behalf of the association, under this act with respect to such domestic impaired insurer.

(d) If a foreign or alien insurer is an impaired insurer under an order of liquidation, rehabilitation, or conservation, the association shall, subject to the approval of the commissioner:

(1) Guarantee, assume, or reinsure or cause to be guaranteed, assumed, or reinsured the covered policies of residents;

(2) Assure payment of the contractual obligations of the impaired insurer to residents; and

(3) Provide such moneys, pledges, notes, guarantees, or other means as are reasonably necessary to discharge such duties.

If the association fails to act within a reasonable period of time, the commissioner, on behalf of the association, shall have the powers and duties of the association under this act with respect to such foreign or alien impaired insurer.

(e) (1) In carrying out its duties under subsections (c) and (d), the association may request that there be imposed policy liens, contract liens, moratoriums on payments, or other similar means and such liens, moratoriums, or similar means may be imposed if the commissioner:

(A) Finds that the amounts which can be assessed under this act are less than the amounts needed to assure full and prompt performance of the impaired insurer's contractual obligations, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of policy or contract liens, moratoriums, or similar means to be in the public interest, and

(B) Approves the specific policy liens, contract liens, moratoriums, or similar means to be used.

(2) Before being obligated under subsections (c) and (d) the association may request that there be imposed temporary moratoriums or liens on payments of cash values and policy loans and such temporary moratoriums and liens may be imposed if they are approved by the commissioner.

(f) The association shall have no liability under this section for any covered policy of a foreign or alien insurer whose domiciliary jurisdiction or state of entry provides by

statute or regulation, for idents of this state protection substantia.., similar to that provided by this act for residents of other states.

(g) The association may render assistance and advice to the commissioner, upon his request, concerning rehabilitation, payment of claims, continuations of coverage, or the performance of other contractual obligations of any impaired insurer.

(h) The association shall have standing to appear before any court in this state with jurisdiction over an impaired insurer concerning which the association is or may become obligated under this act. Such standing shall extend to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring or guaranteeing the covered policies of the impaired insurer and the determination of the covered policies and contractual obligations.

(i) (1) Any person receiving benefits under this act shall be deemed to have assigned his rights under the covered policy to the association to the extent of the benefits received because of this act whether the benefits are payments of contractual obligations or continuation of coverage. The association may require an assignment to it of such rights by any payee, policy or contract owner, beneficiary, insured or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this act upon such person. The association shall be subrogated to these rights against the assets of any impaired insurer.

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

(j) The contractual obligations of the impaired insurer for which the association becomes or may become liable shall be as great as but no greater than the contractual obligations of the impaired insurer would have been in the absence of an impairment unless such obligations are reduced as permitted by subsection (e) but the association shall have no liability with respect to any portion of a covered policy to the extent that the death benefit coverage on any one life exceeds an aggregate of three hundred thousand dollars ($300,000).

(k) The association may:

(1) Enter into such contracts as are necessary or proper to carry out the provisions and purposes of this act.

(2) Sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments under K.S.A. 40-3009.

(3) Borrow money to effect the purposes of this act. Any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as itted assets.

(4) Employ or retain such persons as are necessary to handle the financial transactions of the association, and to perform such other functions as become necessary or proper under this act.

(5) Negotiate and contract with any liquidator, rehabilitator, conservator, or ancillary receiver to carry out the powers and duties of the association.

(6) Take such legal action as may be necessary to avoid payment of improper claims.

(7) Exercise, for the purposes of this act and to the extent approved by the commissioner, the powers of a domestic life or health insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform the contractual obligations of the impaired insurer.

History: L. 1972, ch. 190, § 8; July 1.

40-3009. Assessment of member insurers to provide funds for administration of association; classes of assessment; limitations; refunds to insurers; certificates of contribution. (a) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at such times and for such amounts as the board finds necessary. The board shall collect the assessments after thirty (30) days written notice to the member insurers before payment is due.

(b) There shall be three classes of assessments, as follows:

(1) Class A assessments shall be made for the purpose of meeting administrative costs and other general expenses not related to a particular impaired insurer.

(2) Class B assessments shall be made to the extent necessary to carry out the powers and duties of the association under K.S.A. 40-3008 with regard to an impaired domestic insurer.

(3) Class C assessments shall be made to the extent necessary to carry out the powers and duties of the association under K.S.A. 40-3008 with regard to an impaired foreign or alien insurer.

(c) (1) The amount of any class A assessment for each account shall be determined by the board. The amount of any class B or C assessment shall be divided among the accounts in the proportion that the premiums received by the impaired insurer on the policies covered by each account bears to the premiums received by such insurer on all covered policies.

(2) Class A and class C assessments against member insurers for each account shall be in the proportion that the premiums received on business in this state by each assessed member insurer on policies cov-

ered by each account rs to such premiums received on business in this state by all assessed member insurers.

(3) Class B assessments for each account shall be made separately for each state in which the impaired domestic insurer was authorized to transact insurance at any time, in the proportion that the premiums received on business in such state by the impaired insurer on policies covered by such account bears to such premiums received in all such states by the impaired insurer. The assessments against member insurers shall be in the proportion that the premiums received on business in each such state by each assessed member insurer on policies covered by each account bears to such premiums received on business in each state by all assessed member insurers.

(4) Assessments for funds to meet the requirements of the association with respect to an impaired insurer shall not be made until necessary to implement the purposes of this act. Classification of assessments under subsection (b) and computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(d) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. The total of all assessments upon a member insurer for each account shall not in any one calendar year exceed two percent (2%) of such insurer's premiums in this state on the policies covered by the account.

(e) In the event an assessment against a member insurer is abated, or deferred, in whole or in part, because of the limitations set forth in subsection (d), the amount by which such assessment is abated or deferred, shall be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. If the maximum assessment, together with the other assets of the association in either account, does not provide in any one year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by this act.

(f) The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that amount, including assets accruing from net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing enses of the association and for future ...ses if refunds are impractical.

(g) The association shall issue to each insurer paying an assessment under this act a certificate of contribution, in a form prescribed by the commissioner, for the amount so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the commissioner may approve.

History: L. 1972, ch. 190, § 9; July 1.

40-3010. Plan of operation; amendments; effective date; powers of commissioner; rules and regulations; mandatory and permissive provision of plan; reimbursement for certain payments. (a) (1) The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the commissioner.

(2) If the association fails to submit a suitable plan of operation within one hundred eighty (180) days following the effective date of this act or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this act. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(b) All member insurers shall comply with the plan of operation.

(c) The plan of operation shall, in addition to requirements enumerated elsewhere in this act:

(1) Establish procedures for handling the assets of the association.

(2) Establish the amount and method of reimbursing members of the board of directors under K.S.A. 40-3007.

(3) Establish regular places and times for meetings of the board of directors.

(4) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors.

(5) Establish the procedures whereby selections for the board of directors will be made and submitted to the commissioner.

(6) Establish any additional procedures for assessments under K.S.A. 40-3009.

(7) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(d) The plan of operation may provide that any or all powers and duties of the association, except those under K.S.A. 40-3008 subsection (k)(3) and K.S.A. 40-3009, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two (2) or more states. Such a corporation, association, or organization shall be reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this act.

History: L. 1972, ch. 190, § 10; July 1.

40-3011. Additional powers of commissioner; revocation of authority; appeals; judicial review; notice of effect of act. In addition to the duties and powers enumerated elsewhere in this act: (a) The commissioner shall: (1) Notify the board of directors of the existence of an impaired insurer not later than three days after a determination of impairment is made or he receives notice of impairment.

(2) Upon request of the board of directors, provide the association with a statement of the premiums in the appropriate states for each member insurer.

(3) When an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time. Notice to the impaired insurer shall constitute notice to its shareholders, if any. The failure of the insurer to promptly comply with such demand shall not excuse the association from the performance of its powers and duties under this act.

(4) In any liquidation or rehabilitation proceeding involving a domestic insurer, be appointed as the liquidator or rehabilitator. If a foreign or alien member insurer is subject to a liquidation proceeding in its domiciliary jurisdiction or state of entry, the commissioner shall be appointed conservator.

(b) The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative the commissioner may levy a forfeiture on any member insurer which fails to pay an assessment when due. Such forfeiture shall not exceed five percent (5%) of the unpaid assessment per month, but no forfeiture shall be less than one hundred dollars ($100) per month.

(c) Any action of the board of directors or the association may be appealed to the commissioner by any member insurer if such appeal is taken within thirty (30) days of the action being appealed. Any final action or order of the commissioner shall be subject to judicial review in a court of competent jurisdiction.

(d) The liquidator, rehabilitator, or conservator of any impaired insurer may notify all interested persons of the effect of this act.

History: L. 1972, ch. 190, § 11; July 1.

40-3012. Reports and recommendations to commissioner; not public. To aid in the detection and prevention of insurer impairments: (a) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer. Such reports and recommendations shall not be considered public documents.

(b) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer impairments.

(c) The board of directors shall, at the conclusion of any insurer impairment in which the association carried out its duties under this act or exercised any of its powers under this act, prepare a report on the history and causes of such impairment, based on the information available to the association, and submit such report to the commissioner.

History: L. 1972, ch. 190, § 12; July 1.

40-3013. Liability for unpaid assessments of insureds of impaired insurers under plan; records of negotiations; public, when; association deemed creditor, when; use of assets of impaired insurer; equitable distribution of rights; unfair practices; recovery of distributions. (a) Nothing in this act shall be construed to reduce the liability for unpaid assessments of the insureds of an impaired insurer operating under a plan with assessment liability.

(b) Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties under K.S.A. 40-3008. Records of such negotiations or meetings shall be made public only upon the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired insurer, upon the termination of the impairment of the insurer, or upon the order of a court of competent jurisdiction. Nothing in this subsection shall limit the duty of the association to render a report of its activities under K.S.A. 40-3014.

(c) For the purpose of carrying out its obligations under this act, the association shall be deemed to be a creditor of the im-

paired insurer to the e: t of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to K.S.A. 40-3008 subsection (h). All assets of the impaired insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired insurer as required by this act. Assets attributable to covered policies, as used in this subsection, is that proportion of the assets which the reserves that should have been established for such policies bear to the reserve that should have been established for all policies of insurance written by the impaired insurer.

(d) (1) Prior to the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders and policyowners of the impaired insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of such impaired insurer. In such a determination, consideration shall be given to the welfare of the policyholders of the continuing or successor insurer.

(2) No distribution to stockholders, if any, of an impaired insurer shall be made until and unless the total amount of assessments levied by the association with respect to such insurer have been fully recovered by the association.

(e) It shall be a prohibited unfair trade practice for any person to make use in any manner of the protection afforded by this act in the sale of insurance.

(f) (1) If an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under such order shall have a right to recover on behalf of the insurer, from any affiliate that controlled it, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the five years preceding the petition for liquidation or rehabilitation subject to the limitations of subsections (2) to (4).

(2) No such dividend shall be recoverable if the insurer shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(3) Any person who was an affiliate that controlled the insurer at the time the distributions were paid shall be liable up to the amount of distributions he received. Any person who was an affiliate that controlled the insurer at the time the distributions were declared, shall be liable up to the amount of distributions he would have received if they had been paid immediately. If two persons are liable with respect to the same tributions, they shall be jointly and severally liable.

(4) The maximum amount recoverable under this subsection shall be the amount needed in excess of all other available assets of the impaired insurer to pay the contractual obligations of the impaired insurer.

(5) If any person liable under subsection (3) is insolvent, all its affiliates that controlled it at the time the dividend was paid, shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

History: L. 1972, ch. 190, § 13; July 1.

40-3014. Examination and regulation by commissioner; report. The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit to the commissioner, not later than May 1 of each year, a financial report for the preceding calendar year in a form approved by the commissioner and a report of its activities during the preceding calendar year.

History: L. 1972, ch. 190, § 14; July 1.

40-3015. Association exempt from certain fees and taxes. The association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions, except taxes levied on real property.

History: L. 1972, ch. 190, § 15; July 1.

40-3016. Certificates of contributions as assets; percentage offset; refunds, disposition. (a) Unless a longer period has been allowed by the commissioner, a member insurer shall at its option have the right to show a certificate of contribution as an asset in the form approved by the commissioner pursuant to K.S.A. 40-3009, subsection (g), at percentages of the original face amount approved by the commissioner, for calendar years as follows:

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

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

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

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

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

(b) The insurer may offset the amount written off by it in a calendar year under subsection (a) above, against its premium tax liability to this state accrued with respect to business transacted in such year.

(c) Any sums acquired by refund, pursuant to K.S.A. 40-3009, subsection (f), from the association which have theretofore been written off by contributing insurers and offset against premium taxes as provided in subsection (b) above, and is not then needed for purposes of this act, shall be paid by the

association to the commissioner and by him deposited with the state treasurer for credit to the general fund of this state.

History: L. 1972, ch. 190, § 16; July 1.

40-3017. Liabilities of parties for acts. There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer or its agents or employees, the association or its agents or employees, members of the board of directors, or the commissioner or his representatives, for any action taken by them in the performance of their powers and duties under this act.

History: L. 1972, ch. 190, § 17; July 1.

40-3018. Stay of proceedings; actions to set aside judgments and defend suits. All proceedings in which the impaired insurer is a party in any court in this state shall be stayed sixty (60) days from the date an order of liquidation, rehabilitation, or conservation is final to permit proper legal action by the association on any matters germane to its powers or duties. As to a judgment under any decision, order, verdict, or finding based on default the association may apply to have such judgment set aside by the same court that made such judgment and shall be permitted to defend against such suit on the merits.

History: L. 1972, ch. 190, § 18; July 1.

Attachment IV
1-29-85

MEMORANDUM

January 28, 1985

TO: House Insurance Committee

FROM: Kansas Legislative Research Department

RE: No-Fault Automobile Insurance

Introduction

This memorandum presents background information on the concept of "no-fault" auto insurance, the types of "no-fault" auto insurance plans, a summary of the various states' provisions regarding "no-fault", a brief history and summary of the Kansas Act, a review of recent proposed amendments to the Act, and a summary of the interim study of certain aspects of the "no-fault" law undertaken by the Special Committee on Judiciary this past summer.

The Concept of "No-Fault"

There are many definitions and classifications of "no-fault." In essence, however, "no-fault" insurance is a form of insurance by which a person's financial losses resulting from an automobile accident are paid by that person's own insurer, regardless of who was at fault. Because the benefits are paid by one's own insurance company, the insurance is said to be "first-party," and the package of various benefits is usually called personal injury protection or "PIP" benefits. PIP benefits typically include reimbursement for items such as the cost of medical treatment, rehabilitation expenses, and the loss of wages.

Types of No-Fault

Analysts of no-fault laws generally classify such laws as "add-on", "modified," or "pure" no-fault plans. An "add-on" plan would merely add to the standard automobile insurance policy additional first-party protection payable to the insured without regard to fault, but would impose no limitations on court actions.

The second category, "modified" no-fault plans, are similar to "add-on" no-fault plans in that they add first party benefits, but they make the purchase of insurance mandatory and impose some limits on a person's ability to sue in court for damages. Such plans allow persons to sue for nonpecuniary losses, such as for pain and suffering, but only if the injured party has sustained an injury of a specified magnitude or one incurring medical expenses of a certain amount. These limits for lawsuits are referred to as "tort thresholds."

The final category, "pure" no-fault plans, would abolish all tort liability and substitute an exclusive insurance remedy in its stead, as is done for work-related injuries under the workers' compensation system. No state has enacted a pure no-fault plan.

No-Fault Activity in the States

Massachusetts, which in the 1920s became the first state to adopt a compulsory auto insurance requirement, became, in 1970, the first state to enact a no-fault plan. A total of 26 jurisdictions have enacted no-fault plans. No-fault legislation is currently in effect in 23 states plus the District of Columbia; North Dakota was the last state to enact a no-fault law, in 1975, and Washington, D.C. became the newest no-fault jurisdiction with the passage of its act in 1982, effective in 1983.

Eight states have add-on plans, that is, providing for no-fault benefits but imposing no restraints on lawsuits. Five of the eight states — Arkansas, South Carolina, South Dakota, Texas, and Virginia — mandate the offering of no-fault benefits, but do not require its purchase. The three other states — Delaware, Maryland, and Oregon — require the purchase of specified no-fault benefits.

Sixteen jurisdictions have modified no-fault plans. They are: Colorado; Connecticut; District of Columbia; Florida; Georgia; Hawaii; Kansas; Kentucky; Massachusetts; Michigan; Minnesota; New Jersey; New York; North Dakota; Pennsylvania; and Utah. All 16 jurisdictions have some type of "verbal" threshold, that is, a person may sue for nonpecuniary loss if the injury is of a type listed in the statutes. In addition, 13 of the 16 jurisdictions also have a medical expense threshold which allows a person to sue if the injury requires treatment whose cost exceeds a stated dollar amount.

History of the Kansas No-Fault Law

The Kansas Automobile Injury Reparations Act (also referred to as "KAIRA" or the Kansas no-fault law) was enacted in 1973 with the passage of Substitute for H.B. 1129, effective January 1, 1974. The Act was quickly challenged, however, by a plaintiff seeking a judgment declaring the Act unconstitutional and enjoining the defendant state officials from implementing and enforcing it. The Shawnee County District Court on January 4, 1974, found Substitute for H.B. 1129 to be unconstitutional upon the grounds that (1) the title of the Act was defective because it made no mention of first party coverage; (2) the reimbursement provisions violated equal protection; and (3) the tort threshold denied due process and equal protection under the federal and state constitutions. That decision was stayed, however, by both the District Court and the Kansas Supreme Court.

While the appeal of the District Court opinion was pending, the 1974 Legislature passed S.B. 918 which was signed by the Governor on February 19, 1974 and became effective upon publication in the official state paper on February 22, 1974. Thus, S.B. 918 became the effective no-fault law of Kansas on that date, repealing the original no-fault law, although the latter statutes had been effective for 53 days —from January 1, 1974 through February 22, 1974.

The court decided the constitutional issues raised against both laws, and upheld the provisions of each Act. The public policy recognized by the court was stated as follows:

> It is evident the Legislature was concerned with the possible burden on society occasioned by inadequate or nonexistent compensation for economic loss suffered by motor vehicle accident victims, particularly when viewed in the context of the large number of persons and total financial

loss involved. By requiring motor vehicle liability policies to include first party PIP benefits, the Legislature may have eliminated the former necessity of resorting to litigation in many cases. The requirement of PIP coverage bears a reasonable relation to the subject of reparation for losses arising out of the ownership and operation of motor vehicles. Hence, the Kansas no-fault insurance plan being reasonably directed toward problems that affect the public welfare, including the economic welfare of the state and its citizens, the Act represents a proper and legitimate exercise of the police power of the state (214 Kan. 589, at page 608).

The Court summarized its opinion by stating:

The court is of the opinion that the provisions of S.B. 918 containing basic no-fault concepts as set forth and discussed above, are not unconstitutional for any of the reasons urged by the parties upon the grounds they violate the due process and equal protection clauses of the Kansas Constitution or the Fourteenth Amendment to the Constitution of the United States, or any of the other provisions of the state or federal constitutions urged (214 Kan. 589, at page 618).

Since that decision there have been at least 47 other appellate court decisions interpreting or applying the Kansas Act.

Summary of the Kansas Act

As stated above, the Kansas Act is a modified no-fault law. According to K.S.A. 40-3102, the purpose of the Act is "to provide a means of compensating persons promptly for accidental bodily injury arising out of the ownership, operation, maintenance, or use of motor vehicles in lieu of liability for damages to the extent provided herein." To these ends, sections of the Kansas no-fault law require insurance with specified coverages, provide PIP benefits, and limit tort actions to recover for pain and suffering to cases where the medical treatment received or injuries sustained are of a particular magnitude. A copy of the act accompanies this memorandum.

K.S.A. 40-3103 contains definitions and defines PIP benefits to mean the "disability benefits, funeral benefits, medical benefits, rehabilitation benefits, substitution benefits and survivors' benefits required to be provided in motor vehicle liability insurance policies pursuant to this act." Each type of benefit, and the minimum dollar amounts therefor are listed in various subsections of that statute.

The compulsory insurance requirement is contained in K.S.A. 1984 Supp. 40-3104. Subsection (a) states that "Every owner shall provide motor vehicle liability insurance coverage in accordance with the provisions of this act for every motor vehicle owned by such person; unless such motor vehicle is included under an approved self-insurance plan as provided in subsection (f) or is expressly exempted from the provisions of this act." Subsection (b) prohibits the owner of an uninsured vehicle from allowing that vehicle to be operated upon a highway, and subsection (c) prohibits persons from knowingly driving an uninsured vehicle. Thus, all motor vehicles in Kansas must be insured, unless they are exempt or owned by an authorized self-insurer (when one person owns more than 25 vehicles).

During the 1984 Legislative Session, the statute was amended to strengthen enforcement provisions of the mandatory insurance requirement. The change requires that drivers display evidence of financial security upon demand of a law enforcement officer. Evidence of financial security and verification of such evidence will take place in the same manner as provided for in the statute. Violation of the insurance requirement is made a class B misdemeanor. Existing law also requires the suspension of the of the owner's registration and driving privileges for failure to maintain financial security. Motor carriers regulated by the Kansas Corporation Commission and new car franchisees are exempted from the provisions of the section.

Four narrow classes of vehicles exempt from the Act are listed in K.S.A. 40-3105. In addition, the Act extends the insurance requirement to nonresidents driving in Kansas. K.S.A. 40-3106 prohibits nonresidents from driving in Kansas unless their vehicle is insured or they have qualified as a self-insurer. All insurance companies authorized to transact the business of auto insurance in this state must file, as a condition of doing business in Kansas, a form declaring that their liability policies, wherever issued, will be deemed to provide the required insurance.

Another section of the law prescribes the contents of the required motor vehicle liability policies. K.S.A. 40-3107 and 40-284 require the following insurance coverages: minimum bodily injury liability limits of $25,000 per person and $50,000 per accident; a PIP benefits package containing disability benefits of $650 per person, per month, survivor's benefits of $650 per person, per month, medical expense benefits of $2,000 per person, funeral expense benefits of $1,000 per person, rehabilitation expense benefits of $2,000 per person, and substitute service expense benefits of $12 per day, per person; and uninsured motorists coverage equal to the bodily injury liability limits in the policy, (but the insured may reject uninsured motorist limits in excess of the minimum liability limits), with the uninsured motorists coverage containing underinsured coverage equal to the uninsured motorists coverage. The uninsured motorists coverage allows a person to recover from their own company damages for bodily injury resulting from the actions of an uninsured motorist. The underinsured portion of such coverage allows a person to recover from their own company damages in excess of the liability limits of the party at fault, up to one's own liability limits. Motorcycle drivers are authorized to reject the PIP benefits coverage.

The 1984 Legislature adopted legislation amending K.S.A. 40-284 and K.S.A. 40-3107 as follows:

> The uninsured motorist coverage provisions in K.S.A. 40-284 were amended to: (1) allow insurers to limit such coverage when the uninsured vehicle is owned by any governmental entity; (2) limit application of the "physical contact" requirement to cases where there is no reliable competent evidence from a disinterested witness to prove the fact of the accident; and (3) allow insurers to limit coverage to the extent that personal injury protection (P.I.P.) benefits apply.
>
> The liability coverage provisions in K.S.A. 40-3107 were amended to: (1) allow an exclusion for damages from an intentional act; (2) allow an exclusion for damages to a person insured under a nuclear energy liability policy; (3) allow certain "commercial" exclusions such as where workers' compensation insurance applies; and (4) delete the family member exclusion.
>
> In addition, the P.I.P. benefits in K.S.A. 40-3109 were amended to:

1. require the provision of such benefits when the insured is injured while not occupying a vehicle, but is injured by physical contact with a motor vehicle, whether the injury occurs within or without Kansas (such coverage had been required only for such injury within Kansas); and

2. provide that where two or more insurers are liable to pay P.I.P. benefits, the primary coverage shall be provided by the policy covering the motor vehicle occupied by the injured person or the motor vehicle causing such physical contact.

The Kansas tort threshold is contained in K.S.A. 40-3117. It requires that an injured party sustain one of the following before suing for nonpecuniary loss: medical expenses of $500 or more; permanent disfigurement; the fracture of a weightbearing bone; a compound, comminuted, displaced or compressed fracture; the loss of a body member; permanent injury or loss of a body function; or death. The importance of the tort threshold in the no-fault plan is seen in K.S.A. 40-3121, which declares that K.S.A. 40-3117 is nonseverable.

The 1971 Special Committee on No-Fault Insurance recommended passage of a no-fault bill with a $500 medical expense tort threshold. An actuarial report commissioned by the Insurance Commissioner in 1972 recommended a PIP benefits package and a $1,000 tort threshold.

The amount of required PIP benefits and the medical expense portion of the tort threshold have remained unchanged since the original 1973 legislation.

Tort Thresholds in Other States

As stated above, 16 jurisdictions have at least a verbal threshold. All 16 allow suits for nonpecuniary loss in cases of death or disfigurement, although some states, such as Kansas, require "serious," or "permanent" disfigurement. Four states allow suits if any fracture occurs, and two other states, including Kansas, require a fracture to be of a particular type.

The current medical expense thresholds of the 13 jurisdictions with such provisions are as follows:

New Jersey	- $200 or more (see below for other option)
Connecticut	- more than $400
KANSAS	- $500 or more
Georgia, Massachusetts, and Utah	- more than $500
Pennsylvania	- more than $750
Kentucky, North Dakota	- more than $1,000
New Jersey	- $1,500 or more (adjusted annually for inflation, if option chosen by insured)
Colorado	- $2,500 or more
Hawaii	- $3,600 or more (adjusted annually to produce an amount which exceeds the medical expenses of 90 percent of the prior year's claims)
Minnesota	- more than $4,000
D. C.	- more than $5,000

Florida, Michigan, and New York have only a verbal threshold.

1983 and 1984 Proposed Changes in Kansas PIP Benefits and Tort Threshold

In 1983 the Insurance Commissioner requested introduction and passage of H.B. 2248. That bill would have amended the no-fault law to increase both the minimum PIP benefits and the medical expense portion of the tort threshold. The PIP benefits were increased by application of the increases in various components of the Consumer Price Index for all Consumers (CPI-U) since 1973 to the dollar amounts enacted by the no-fault law in 1973. The medical expense portion of the tort threshold was also similarly increased, but the base used was $1,000, rather than the existing $500 amount; the 1973 Actuarial Report by Nelson and Warren, Inc., estimated that a $1,000 medical expense tort threshold should keep premiums under no-fault approximately the same as those for the former bodily injury and uninsured motorist coverages. H.B. 2248 was recommended by the House Committee on Insurance, but was referred back to the Committee in 1983 and died there at the end of the 1984 Session.

In 1984 a bill on the same subject, H.B. 2833, was considered and passed by the Legislature, but was vetoed by the Governor and did not become law. The following table summarizes the provisions of those two bills.

Section 1 of each bill would have amended K.S.A. 40-3103 to increase the first party PIP benefits as follows:

PIP Benefits	Current	1983 H.B. 2248	1984 H.B. 2833, As Recommended by House Committee	1984 H.B. 2833 As Amended by House Committee of the Whole	1984 H.B. 2833, As Amended by Senate Committee and as Passed by the 1984 Legislature
Disability (loss of earnings)	$650/person/month	$1,200/person/month	$1,200/person/month	$1,200/person/month	$1,200/prson/month
Survivor's benefit	$650/person/month	$1,200/person/month	$1,200/person/month	$1,200/person/month	$1,200/person/month
Medical expense	$2,000/person	$4,900/person	$5,000/person	$5,000/person	$5,000/person
Funeral expense	$1,000/person	$2,000/person	$2,500/person	$2,500/person	$2,500/person
Rehabilitation expense	$2,000/person	$4,900/person	$5,000/person	$5,000/person	$5,000/person
Substitute service expense	$12/day/person	$22/day/person	$22/day/person	$22/day/person	$22/day/person

Section 2 of each bill would have amended K.S.A. 40-3117 to increase the tort threshold — the amount of medical expenses or types of injury that must be incurred before an injured party may sue for pain and suffering and other nonpecuniary loss — as follows:

Tort Threshold	Current	H.B. 2248	H.B. 2833, As Recommended by House Committee	H.B. 2833, As Amended by House Committee of the Whole	H.B. 2833, As Amended by Senate Committee and as Passed by 1984 Legislature
Medical Expenses Incurred Before Suit	$500	$2,500	$5,000	$1,500	$1,500
or					
Permanent Disfigurement	Yes	Yes	Yes	Yes	Yes
or					
Weightbearing Bone Fractured	Yes	Yes	No	Yes	Yes
or					
Compound, Comminuted, Displaced or Compressed Fracture	Yes	Yes	No	Yes	Yes
or					
Loss of Body Member	Yes	Yes	Yes	Yes	Yes
or					
Permanent Injury or Loss of Body Function	Yes	Yes	Yes	Yes	Yes
or					
Death	Yes	Yes	Yes	Yes	Yes

Section 3 of all three versions of H.B. 2933 would have enacted a new section to allow insurers to reduce uninsured and underinsured awards by the amount of PIP benefits recovered by the insured under the Act.

Section 4 of the House Committee version and the House Committee of the Whole version of H.B. 2833 and Section 3 of H.B. 2248 would have enacted a new

section to index the monetary amounts in the PIP benefits and the tort threshold no more than once every three years. This section was not part of the final version of H.B. 2833.

On April 16, 1984, the Governor vetoed H.B. 2833, stating in part:

> While some justifiable arguments can be made to raise the [PIP] benefit package because of inflation in health care and living costs, using an increase in the threshold to finance those benefits seems unduly harsh to injured Kansas citizens. Most drivers currently choose to purchase insurance benefits which exceed the mandatory minimum, and since the package is available for only a few dollars a year, it unfairly penalizes all the citizens in Kansas to raise the threshold to fund these additional benefits . . . .
>
> H.B. 2833 would eliminate access to the courts for certain Kansas citizens. There is little evidence to indicate that our courts are unduly burdened with automobile law suits. I am reluctant to restrict rights of all of the citizens of this State unless there is compelling evidence that the benefits received outweigh any potential harm. There is no demonstration that H.B. 2833 would enhance the protection for Kansas drivers. For these reasons, I veto House Bill No. 2833.

1984 Interim Study

Proposal No. 28 directed the Special Committee on Judiciary to:

> study the Kansas Automobile Injury Reparations Act (the "no-fault" law) and determine whether changes are needed in the tort threshold, the level of personal injury protection benefits, and other aspects of the Act.

After spending a considerable amount of time discussing the proposal, the Committee heard testimony by the Kansas Insurance Department and representatives of the insurance profession and the legal community. After extensive debate the Committee voted to make the following recommendations:

> PIP Benefits. The Committee recommended increasing the minimum PIP benefits specified in K.S.A. 40-3103 to the levels proposed in 1984 H.B. 2833, as summarized below.

PIP Benefits	Current	Proposed
Disability (loss of earnings)	$650/person/month	$1,200/person/month
Survivor's benefit	$650/person/month	$1,200/person/month
Medical expense	$2,000/person	$5,000/person
Funeral expense	$1,000/person	$2,500/person
Rehabilitation expense	$2,000/person	$5,000/person
Substitute service expense	$12/day/person	$22/day/person

Indexing. The Committee recommended that no provision be added to the no-fault law which would index, or automatically adjust for inflation, the dollar amounts of the PIP benefits or the tort threshold. The Committee believed that amendments to these crucial portions of the no-fault law should be made only by the Legislature.

Tort Threshold. The Committee by a majority vote after a strenuous debate decided that no change should be made in the tort threshold. The main focus of the debate was whether the $500 medical expense portion of the tort threshold should be raised. The Committee was made aware that the medical care portion of the CPI-U index (for all urban consumers) had changed from 137.7 in 1973 to 357.3 in 1983. The 1983 figure is 259 percent of the 1973 figure, which indicates serious erosion of this portion of the threshold. The Committee was also told by insurers that the medical expense portion of the tort threshold would have to be raised to $2,500 to offset premium increases which would be necessitated by the PIP benefit increases recommended.

On the other hand, the Committee was advised by two major insurers that the PIP benefit increases recommended without any threshold change, would only increase premiums by $3.10 per six-month period by State Farm Insurance Companies and by $2.50 per six-month period by the Western Insurance Companies. The majority of the Committee felt that this premium increase was negligible considering the overall premium costs of automobile insurance and was justified to insure those who experience pain and suffering as a result of an automobile accident be fully compensated.

The Committee did consider raising the medical expense portion of the tort threshold to $1,000, but the majority felt the insurance premium relief, if any, which would be afforded would be so slight so as not to justify such an increase.

Enactment of H.B. 2011 would carry out these recommendations. A copy of the bill is attached to this memorandum.

C84-115/melinda

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Article 31.—KANSAS AUTOMOBILE INJURY REPARATIONS ACT

40-3101. Citation of act. This act may be cited and shall be known as the "Kansas automobile injury reparations act."

History: L. 1974, ch. 193, § 1; Feb. 22.

Source or prior law:
L. 1973, ch. 198, § 1.

40-3102. Purpose. The purpose of this act is to provide a means of compensating persons promptly for accidental bodily injury arising out of the ownership, operation, maintenance or use of motor vehicles in lieu of liability for damages to the extent provided herein.

History: L. 1974, ch. 193, § 2; Feb. 22.

Source or prior law:
L. 1973, ch. 198, § 2.

40-3103. Definitions. As used in this act, the following words and phrases shall have the meanings respectively ascribed to them herein: (a) "Commissioner" means the state commissioner of insurance.

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

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

(d) "Funeral benefits" means allowances for funeral, burial or cremation expenses in an amount not to exceed one thousand dollars ($1,000) per individual.

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

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

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

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

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

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

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

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

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

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

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

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

(q) "Personal injury protection benefits" means the disability benefits, funeral ben-

Attachment V

efits, medical benefit ehabilitation benefits, substitution benefits and survivors' benefits required to be provided in motor vehicle liability insurance policies pursuant to this act.

(r) "Rehabilitation benefits" means allowances for all reasonable expenses, up to a limit of not less than two thousand dollars ($2,000), for necessary psychiatric services, occupational therapy and such occupational training and retraining as may be reasonably necessary to enable the injured person to obtain suitable employment.

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

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

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

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

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

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

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

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

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

History: L. 1974, ch. 193, § 3; L. 1977, ch. 28, § 5; July 1.

(1982 H.B. 2614, § 2.)

Sec. 2. K.S. 1983 Supp. 40-3104 is hereby amended to read as follows: 40-3104. (a) Every owner shall provide motor vehicle liability insurance coverage in accordance with the provisions of this act for every motor vehicle owned by such person, unless such motor vehicle is included under an approved self-insurance plan as provided in subsection ~~(d)~~ *(f)* or is expressly exempted from the provisions of this act.

(b) An owner of an uninsured motor vehicle shall not permit the operation thereof upon a highway or upon property open to use by the public, unless such motor vehicle is expressly exempted from the provisions of this act.

(c) No person shall knowingly drive an uninsured motor vehicle upon a highway or upon property open to use by the public, unless such motor vehicle is expressly exempted from the provisions of this act.

(d) Any person operating a motor vehicle upon a highway or upon property open to use by the public shall display, upon demand, evidence of financial security to a law enforcement officer.

(e) No person charged with violating subsections (b), (c) or (d) shall be convicted if such person produces in court or in the office of the arresting officer, within 20 days of the date of arrest, evidence of financial security for the motor vehicle operated, which was valid at the time of arrest. For the purpose of this subsection, evidence of financial security shall be provided by a policy of motor vehicle liability insurance, an identification card or certificate of insurance issued to the policyholder by the insurer which provides the name of the insurer and the policy number, a certificate of self-insurance signed by the commissioner of insurance or the completion of a form prescribed by the secretary of revenue signed by the insurer or an agent of the insurer certifying that at the time of arrest the motor vehicle was covered by motor vehicle liability insurance.

When the evidence of financial security provided by the owner is an insurance policy, an identification card or certificate of insurance or a certificate of self-insurance, the information will be recorded by the office of the arresting officer or the court on the form prescribed by the secretary of revenue as authorized by this subsection and forwarded immediately to the department of revenue. When evidence of insurance is provided by the owner on the form prescribed by this subsection such form will also be forwarded immediately to the department.

Upon receipt of such form, the department will mail the form to the named insurance company for verification that such insurance was in force on the date stated. It shall be the duty of insurance companies to notify the department within 30 calendar days of the receipt of such forms of any insurance that was not in force on the date stated.

~~(d)~~ *(f)* Any person in whose name more than 25 motor vehicles are registered may qualify as a self-insurer by obtaining a certificate of self-insurance from the commissioner of insurance. Upon application of any such person, the commissioner of insurance may issue a certificate of self-insurance, if the commissioner is satisfied that such person is possessed and will continue to be possessed of ability to pay any judgment obtained against such person arising out of the ownership, operation, maintenance or use of any motor vehicle registered in such person's name.

Upon not less than five days' notice and a hearing pursuant to such notice, the commissioner of insurance may cancel a certificate of self-insurance upon reasonable grounds. Failure to pay any judgment against a self-insurer, arising out of the ownership, operation, maintenance or use of a motor vehicle registered in such self-insurer's name, within 30 days after such judgment shall have become final, shall constitute reasonable grounds for the cancellation of a certificate of self-insurance.

~~(e)~~ *(g)* Any person violating any provision of this section shall be ty of a class B misdemeanor, except that any person convicted of violating any provision of this section within three years of any such prior conviction shall be guilty of a class A misdemeanor.

~~(f)~~ *(h)* In addition to any other penalties provided by this act for failure to have or maintain financial security in effect, the director, upon receipt of the accident report required by K.S.A. 8-1607, *and amendments thereto, or a denial of such insurance by the insurance company listed on the form prescribed by the secretary of revenue pursuant to subsection (e) of this section and K.S.A. 8-1604 and amendments thereto* shall, upon notice and hearing as provided by K.S.A. 40-3118, and amendments thereto, suspend:

(1) The license of each driver in any manner involved in the accident;

(2) the license of the owner of each motor vehicle involved in such accident, unless the vehicle was stolen at the time of the accident, *proof of which must be established by the owner of the motor vehicle. Theft by a member of the vehicle owner's immediate family under the age of 18 years shall not constitute a stolen vehicle for the purposes of this section*;

(3) the registrations of all vehicles owned by the owner of each motor vehicle involved in such accident;

(4) if the driver is a nonresident, the privilege of operating a motor vehicle within this state;

(5) if such owner is a nonresident, the privilege of such owner to operate or permit the operation within this state of any motor vehicle owned by such owner.

~~(g)~~ *(i)* The suspension requirements in subsection ~~(f)~~ *(h)* shall not apply:

(1) To the driver or owner if the owner had in effect at the time of the accident an automobile liability policy as required by K.S.A. 40-3107, and ~~any~~ amendments thereto, with respect to the vehicle involved in the accident;

(2) to the driver, if not the owner of the vehicle involved in the accident, if there was in effect at the time of the accident an automobile liability policy with respect to such driver's driving of vehicles not owned by such driver;

(3) to any person qualified as a self-insurer under subsection ~~(d)~~ *(f)* of this section;

(4) to any person who has been released from liability, has entered into an agreement for the payment of damages, or has been finally adjudicated not to be liable in respect to such accident. Evidence of any such fact may be filed with the director;

(5) to the driver or owner of any vehicle involved in the accident which was exempt from the provisions of this act pursuant to K.S.A. 40-3105, *and amendments thereto.*

~~(h)~~ *(j)* For the purposes of provisions (1) and (2) of subsection ~~(g)~~ *(i)* of this section, the director may require verification by an owner's or driver's insurance company or agent thereof, that there was in effect at the time of the accident an automobile liability policy as required in this act.

Any suspension affected hereunder shall remain in effect until satisfactory proof of financial security has been filed with the director *as required by subsection (d) of K.S.A. 40-3118 and amendments thereto* and such person has met the requirements under subsection ~~(g)~~ *(i)* and has paid the reinstatement fee herein prescribed. Such reinstatement fee shall be ~~in the amount of~~ $25 except that if the registration of a motor vehicle of any owner is suspended within one year following a prior suspension of the registration of a motor vehicle of such owner under the provisions of this act such fee shall be ~~in the amount of~~ $75.

(k) The provisions of this section shall not apply to motor carriers of property or passengers regulated by the corporation commission of the state of Kansas.

(l) the provisions of subsection (d) shall not apply to new vehicle dealers, as defined in K.S.A. 8-2401, and amendments thereto.

40-3105. Exempt vehicles. The following vehicles shall be exempt from the provisions of this act:

(a) Any motor vehicle owned by the government of the United States, any state or any political subdivision of any state;

(b) an implement of husbandry or special mobile equipment which is operated only incidentally on a highway or property open to use by the public;

(c) a vehicle operated on a highway only for the purpose of crossing such highway from one property to another; and

(d) a non-highway vehicle for which a non-highway certificate of title has been issued pursuant to K.S.A. 1976 Supp. 8-198, except when such vehicle is being operated pursuant to subsection (f) of K.S.A. 1976 Supp. 8-198.

History: L. 1974, ch. 193, § 5; L. 1976, ch. 45, § 4; L. 1976, ch. 41, § 3; July 1.

40-3106. Prohibited vehicle operation by certain nonresidents; report of violations; declaration of policy coverage by insurers. (a) A motor vehicle owned by a nonresident shall not be operated in this state upon a highway or upon property open to use by the public, unless a motor vehicle liability insurance policy meeting the requirements of K.S.A. 40-3107 is in effect for such vehicle, or such nonresident has qualified as a self-insurer pursuant to K.S.A. 40-3104(d). Whenever the privilege of a nonresident operating a motor vehicle in this state is suspended for failure of the owner thereof to maintain financial security, in effect, the director shall report such violation to the motor vehicle administrator in the state wherein the vehicle is registered. The director is hereby authorized to enter into such reciprocal agreements with the motor vehicle administrator or other appropriate official in other jurisdictions as may be necessary to effectuate the provisions of this act.

(b) Every insurance company authorized to transact the business of motor vehicle liability insurance in this state shall file with the commissioner as a condition of its continued transaction of such business within this state a form approved by the commissioner declaring that its motor vehicle liability policies, wherever issued, shall be deemed to provide the insurance required by K.S.A. 40-3107 when the vehicle is operated in this state. Any nonadmitted insurer may file such a form.

History: L. 1974, ch. 193, § 6; L. 1977, ch. 164, § 2; July 1.

K.S.A. 40-3107 is hereby ded to read as follows: 40-3107. Every policy of motor vehic. ibility 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 result of injury. The owner of a motorcycle, as defined by K.S.A. 8-1438 *and amendments thereto* or motor-driven cycle, defined by K.S.A. ~~1980 Supp.~~ 8-1439 *and amendments thereto*, who is the named insured, shall have the right to reject in writing insurance coverage 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) contain liability coverage for any bodily injury to any person injured while an occupant of the insured motor vehicle, other than the person operating the insured motor vehicle, except the named insured shall have the right to reject, in writing, such coverage 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;

~~(g)~~ *(h)* 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)~~ *(i)* 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, *employees* or partners of the named insured, spouse or resident relative; and

~~(i)~~ *(j)* 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)~~ *(1)* For any damages for which the United States government might be liable for the insured's use of the vehicle;

~~(3)~~ *(2)* for any damages to property owned by, rented to, or in charge of or transported by an insured, however, this exclusion shall not apply to coverage for a rented residence or rented private garage;

* K.S.A. 40-3107, as amended by se 2 of 1983 House Bill No. 2437, is hereby amended to re as follows: 40-3107. 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 to be granted;

(b) insure the person named 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 and the policy period;

(d) contain an agreement or be endorsed that insurance is provided 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 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 result of injury. The owner of a motorcycle, as defined by K.S.A. 8-1438 and amendments thereto or motor-driven cycle, defined by K.S.A. 8-1439 and amendments thereto, who is the named insured, shall have the right to reject in writing insurance coverage 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) ~~contain liability coverage for any bodily injury to any person injured while an occupant of the insured motor vehicle, other than the person operating the insured motor vehicle, except the named insured shall have the right to reject, in writing, such coverage 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;~~

~~(h)~~ 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;

~~(i)~~ *(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, employees or partners of the named insured, spouse or resident relative; and

~~(j)~~ *(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:

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

(2) for any damages to property owned by, rented to, or in charge of or transported by an insured, however, this exclusion shall not apply to coverage for a rented residence or rented private garage;

* Final action on section.

~~(4)~~ *(3)* for any obligation of an insured, or the insured's insurer under any type of workers' compensation or disability or similar law;

~~(5)~~ *(4)* for liability assumed by an insured under any contract or agreement; ~~and~~

~~(6)~~ *(5)* 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~~.~~*;*

(6) for any damages arising from an intentional act;

(7) for any damages to any person who would be covered for such damages under a nuclear energy liability policy;

(8) for any obligation of the insured to indemnify another for damages resulting from bodily injury to the insured's employee by accident arising out of and in the course of such employee's employment;

(9) for bodily injury to any fellow employee of the insured arising out of and in the course of such employee's employment;

(10) for bodily injury or property damage resulting from the handling of property:

(A) Before it is moved from the place where it is accepted by the insured for movement into or onto the covered auto; or

(B) after it is moved from the covered auto to the place where it is finally delivered by the insured;

(11) for bodily injury or property damage resulting from the movement of property by a mechanical device, other than a hand truck, not attached to the covered auto; and

(12) for bodily injury or property damage caused by the dumping, discharge or escape of irritants, pollutants or contaminants; however, this exclusion does not apply if the discharge is sudden and accidental.

(1984 H.B. 2437, §2)

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

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

(5) 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;

(6) for any damages arising from an intentional act;

(7) for any damages to any person who would be covered for such damages under a nuclear energy liability policy;

(8) for any obligation of the insured to indemnify another for damages resulting from bodily injury to the insured's employee by accident arising out of and in the course of such employee's employment;

(9) for bodily injury to any fellow employee of the insured arising out of and in the course of such employee's employment;

(10) for bodily injury or property damage resulting from the handling of property:

(A) Before it is moved from the place where it is accepted by the insured for movement into or onto the covered auto; or

(B) after it is moved from the covered auto to the place where it is finally delivered by the insured;

(11) for bodily injury or property damage resulting from the movement of property by a mechanical device, other than a hand truck, not attached to the covered auto; and

(12) for bodily injury or property damage caused by the dumping, discharge or escape of irritants, pollutants or contaminants; however, this exclusion does not apply if the discharge is sudden and accidental.

(1984 H.B. 3126, §1 -- final action on section.)

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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.

K.S.A. 40-3109 is hereby amended to read as follows: 40-3109. (a) A self-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;~~ *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 and amendments thereto; or

(B) not an occupant of a motor vehicle if the injury is caused by physical contact with a motor vehicle;

~~(3)~~ *(2)* 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;

~~(4)~~ *(3)* 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 *from all applicable policies* 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.~~ *highest limit of any one policy providing such personal injury protection benefits. The primary personal injury protection coverage shall be provided by the policy covering:*

(1) The motor vehicle occupied by the injured person at the time of the accident; or

(2) the motor vehicle causing such physical contact.

(1984 H.B. 2437, §3.)

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 it is not responsible for the payment, notwithstanding that written notice has been furnished. For the purpose of calculating the extent to which any personal injury protection benefits are overdue, payment shall be treated as being made on the date a draft or other valid instrument which is equivalent to payment was placed in the United States mail in a properly addressed, postpaid envelope, or, if not so posted, on the date of delivery. All overdue payments shall bear simple interest at the rate of eighteen percent (18%) per annum.

History: L. 1974, ch. 193, § 10; Feb. 22.

40-3111. Lawful charges for treatment or occupational training of injured person; action to recover overdue benefits; allowance of attorney's fee. (a) A physician, hospital, clinic or other person or institution lawfully rendering treatment to an injured person for an injury covered by personal injury protection benefits and a person or institution providing rehabilitative occupa-

tional training following the injury, may charge a reasonable amount for the products, services and accommodations rendered. The charge shall not exceed the amount the person or institution customarily charges for like products, services and accommodations in cases not involving insurance, and allowances for medical benefits under this act do not include that portion of the charge for a room in any hospital, clinic, convalescent or nursing home, extended care facility or any similar facility in excess of the reasonable and customary charge for semiprivate accommodations unless intensive care is medically required.

(b) An attorney is entitled to a reasonable fee for advising and representing a claimant in an action for personal injury protection benefits which are overdue. The attorney's fee shall be a charge against the insurer or self-insurer in addition to the benefits recovered, if the court finds that the insurer or self-insurer unreasonably refused to pay the claim or unreasonably delayed in making proper payment.

Within the discretion of the court, an insurer or self-insurer may be allowed an award of a reasonable sum as attorney's fee, based upon actual time expended, and all reasonable costs of suit for its defense against a person making claim against such insurer or self-insurer where such claim was fraudulent, excessive or frivolous, and such attorney's fee and all such reasonable costs of suit so awarded may be treated as an offset against any benefits due or to become due to such person.

History: L. 1974, ch. 193, § 11; Feb. 22.

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.

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 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.

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 with that or any other injury, shall furnish forthwith a written report of the history, condition, treatment and dates and costs of such treatment of the injured person, and produce forthwith and permit the inspection and copying of his or its records regarding such history, condition, treatment and dates and costs of treatment. The person requesting such records shall pay all reasonable costs connected therewith.

(b) In the event of any dispute regarding an insurer's or self-insurer's right to discovery of facts about an injured person's earnings or about his history, condition, treatment and dates and costs of such treatment, the insurer may petition the district court to enter an order permitting such discovery. The order may be made only on timely motion, for good cause shown and upon notice to all persons having an interest, and it shall specify the time, place, manner, conditions and scope of the discovery. In order to protect against annoyance, harassment, embarrassment or oppression, the court may enter an order refusing discovery, or specifying conditions of discovery, and may order payment of costs and expenses of the proceeding, including reasonable fees for the appearance of attorneys at the proceedings, as justice requires.

(c) The injured person shall be furnished upon demand a copy of all information obtained by the insurer or self-insurer under the provisions of this section, and shall pay a reasonable charge therefor, if so required.

History: L. 1974, ch. 193, § 14; Feb. 22.

40-3115. Mental or physical examination of injured person; written report of examination; availability of report to injured person; evidentiary effect. (a) Whenever the mental or physical condition of an injured person covered by personal injury protection benefits is material to any claim that has been or may be made for past or future personal injury protection benefits, such person, upon request of an insurer or self-insurer, shall submit to a mental or physical examination by a physician or physicians. The cost of any such examination requested by an insurer shall be borne entirely by the insurer or self-insurer. Any such examination shall be conducted within the city or county of residence of the insured, but if there is no qualified physician to conduct the examination within such city or county, then such examination shall be conducted in an area of the closest proximity to the insured's residence. Insurers are authorized to include reasonable provisions in motor vehicle liability insurance policies for mental and physical examination of those claiming personal injury protection benefits.

(b) If requested by the person examined, the insurer or self-insurer causing the examination to be made shall deliver to such person a copy of every written report concerning the examination rendered by the examining physician, at least one (1) of which shall set out his findings and conclusions in detail. After such request and delivery, the insurer or self-insurer causing the examination to be made shall be entitled upon request to receive from the person examined every written report available to him, or his representative, concerning any examination, previously or thereafter made, of the same mental or physical condition. By requesting and obtaining a report of the examination so ordered, or by taking the deposition of the examiner, the person examined shall be deemed to have waived any privilege he may have, with respect to the claim for personal injury protection benefits, regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same mental or physical condition.

History: L. 1974, ch. 193, § 15; Feb. 22.

40-3116. Assigned claims plan; availability of personal injury protection benefits under plan; subrogation; persons excluded; powers of commissioner; participation by insurers and self-insurers required; violations, 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 identifi

(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 for 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 approved 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.

40-3117. Tort actions; cond is precedent to recovery of damages for pain and suffering. 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 treatment of a kind described in this act as medical 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.

K.S.A. 1983 Supp. 40-3118 is hereby amended to read as follows: 40-3118. (a) ~~No motor vehicle~~ shall be registered or reregistered 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 that such insurance was in effect at the time the vehicle was registered and has been maintained continuously from that date. 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, to ~~verify the accuracy of any owner's certification~~ *notify the director* within 30 calendar days of the date of ~~mailing~~ *the receipt* of such request by the director *of any insurance that was not in effect on the date of registration and maintained continuously from that date.*

(b) Except as otherwise provided in K.S.A. 40-276, 40-276a and 40-277, and any amendments thereto, and except for termination of insurance resulting from nonpayment of premium or upon the request for cancellation by the insured, no motor vehicle liability insurance policy, or any renewal thereof, shall be terminated by cancellation or failure to renew by the insurer until at least 30 days after mailing a notice of termination, by certified or registered mail or United States post office certificate of mailing, to the named insured at the latest address filed with the insurer by or on behalf of the insured. Time of the effective

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date and hour of termination stated e notice shall become the end of the policy period. Every such notice of termination sent to the insured for any cause whatsoever shall include on the face of the notice a statement that financial security for every motor vehicle covered by the policy is required to be maintained continuously throughout the registration period, that the operation of any such motor vehicle without maintaining continuous financial security therefor is a class B misdemeanor and that the registration for any such motor vehicle for which continuous financial security is not provided is subject to suspension and the driver's license of the owner thereof is subject to suspension.

(c) The director of vehicles shall ~~randomly select and~~ verify a sufficient number of insurance certifications each calendar year as the director deems necessary to insure compliance with the provisions of this act. The owner or owner's insurance company shall verify the accuracy of any owner's certification upon request, as provided in subsection (a) of this section.

(d) In addition to any other requirements of this act, the director shall require a person to acquire insurance and for such person's insurance company to maintain on file with the division evidence of such insurance for a period of three years from the date such person's driving privileges are otherwise eligible to be reinstated after such person has been convicted in this or another state of any of the following violations: (1) Vehicular homicide, as defined by K.S.A. 21-3405 and amendments thereto, or as prohibited by any ordinance of any city in this state or any law of another state which is in substantial conformity with that statute;

(2) driving while under the influence of alcohol or drugs, as prohibited by K.S.A. 8-1567 and amendments thereto, or as prohibited by an ordinance of any city in this state or by any law of another state, which ordinance or law declares to be unlawful the acts prohibited by that statute;

(3) driving while the privilege to operate a motor vehicle on the public highways of this state has been canceled, suspended or revoked, as prohibited by K.S.A. 8-262 and amendments thereto, or as prohibited by any ordinance of any city in this state or any law of another state which is in substantial conformity with that statute;

(4) any crime punishable as a felony, if a motor vehicle was used in the perpetration of the crime;

(5) failing to stop at the scene of an accident and perform the duties required by K.S.A. 8-1602 to 8-1604, inclusive, and amendments thereto, or required by any ordinance of any city in this state or a law of another state which is in substantial conformity with those statutes; and

(6) violating the provisions of K.S.A. 40-3104 and amendments thereto, relating to motor vehicle liability insurance coverage or an ordinance of any city in this state which is in substantial conformity with such statute.

The director shall also require any driver whose driving privileges have been suspended pursuant to this section or K.S.A. 40-3104 and amendments thereto, to maintain such evidence of insurance as required above.

The company of the insured shall immediately mail notice to the director whenever any policy required by this subsection to be on file with the division is terminated by the insured or the insurer for any reason. The receipt by the director of such termination shall be prima facie evidence that no financial security exists with regard to the person concerned.

For the purposes of this act, the term "conviction" includes pleading guilty or nolo contendere, being convicted or being found guilty of any violation enumerated in this subsection without regard to whether sentence was suspended or probation granted. A forfeiture of bail, bond or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction. Also entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of the offense described in paragraph (2) of subsection (d) shall constitute a conviction for the purpose of this act.

The requirements of this subsection shall apply whether or not such person owns a motor vehicle.

~~(d)~~ *(e)* Whenever the director shall receive prima facie evidence, as prescribed by this section, that continuous financial security covering any motor vehicle registered in this state is not in effect, the director shall notify the owner by registered or certified mail or United States post office certificate of mailing that, at the end of 30 days after the notice is mailed, the registration for such motor vehicle and the driving privileges of the owner of the vehicle shall be suspended, pursuant to such rules and regulations as the secretary of revenue shall adopt, unless: (1) Within the thirty-day period, such owner shall demonstrate proof of continuous financial security covering such vehicle to the satisfaction of the director; or (2) within the thirty-day period such owner shall request a hearing with the director. Upon receipt of a timely request for a hearing, the director shall afford such person an opportunity for hearing within ti. .me and in the manner provided in K.S.A. 8-255, and amendments thereto. If, within the thirty-day period or at the hearing, such owner is unable to demonstrate proof of continuous financial security covering the motor vehicle in question, the director shall suspend the registration of such motor vehicle and the driving privileges of the owner of the vehicle, unless the failure is due to a cause beyond the reasonable control of the owner upon proof deemed satisfactory by the director.

~~(e)~~ *(f)* Whenever the registration of a motor vehicle ~~and~~ *or* the driving privileges of the owner of the vehicle are suspended for failure of the owner to maintain continuous financial security, such suspension shall remain in effect until ~~such owner demonstrates to~~ *satisfactory proof of insurance has been filed with* the director ~~that such vehicle is currently insured~~ *as required by subsection (d)* and a reinstatement fee in the amount herein prescribed is paid to the division of vehicles. Such reinstatement fee shall be in the amount of $25 except that if the registration of a motor vehicle of any owner is suspended within one year following a prior suspension of the registration of a motor vehicle of such owner under the provisions of this act such fee shall be in the amount of $75. The division of vehicles shall, at least monthly, deposit such fees with the state treasurer, who shall credit such moneys to the state highway fund.

~~(f)~~ *(g)* In no case shall any motor vehicle, the registration of which has been suspended for failure to have continuous financial security, be reregistered in the name of the owner thereof, the owner's spouse, parent or child or any member of the same household, until the owner complies with subsection ~~(e)~~ *(f)*. In the event the registration plate has expired, no new plate shall be issued until the motor vehicle owner complies with the reinstatement requirements as required by this act.

~~(g)~~ *(h)* Evidence that an owner of a motor vehicle, registered or required to be registered in this state, has operated or permitted such motor vehicle to be operated in this state without having in force and effect the financial security required by this act for such vehicle, together with proof of records of the division of vehicles indicating that the owner did not have such financial security, shall be prima facie evidence that the owner did at the time and place alleged, operate or permit such motor vehicle to be operated without having in full force and effect financial security required by the provisions of this act.

~~(h)~~ *(i)* Any owner of a motor vehicle registered or required to be registered in this state who shall make a false certification concerning financial security for the operation of such motor vehicle as required by this act, shall be guilty of a class B misdemeanor. Any person, firm or corporation giving false information to the director concerning another's financial security for the operation of a motor vehicle registered or required to be registered in this state, knowing or having reason to believe that such information is false, shall be guilty of a class B misdemeanor.

~~(i)~~ *(j)* The director shall administer and enforce the provisions of this act relating to the registration of motor vehicles, and the secretary of revenue shall adopt such rules and regulations as may be necessary for its administration.

~~(j)~~ *(k)* Whenever any person has made application for insurance coverage and such applicant has submitted payment or partial payment with such application, the insurance company, if payment accompanied the application, shall upon declination of insurance coverage, refund the unearned portion of the payment to the applicant or agent with the notice of denial of coverage. If payment did not accompany the application to the insurance company but was made to the agent, the agent shall refund the unearned portion of the payment to the applicant upon receipt of the company's notice of denial.

~~(k)~~ *(l)* For the purpose of this act: "Declination of insurance coverage" means a final denial, in whole or in part, by an insurance company or agent of requested insurance coverage.

(1984 H.B. 2614, § 3.)

40-3119. Rules and regulations by commissioner. The commissioner of insurance is hereby authorized to adopt such rules and regulations as may be necessary to carry out the provisions of this act over which the commissioner has jurisdiction.

History: L. 1974, ch. 193, § 19; Feb. 22.

Source or prior law:

L. 1973, ch. 198, § 19.

40-3120. Reasonable competition and availability of excess coverage unaffected. Nothing in this act shall be construed as prohibiting or discouraging reasonable competition or the availability of motor vehicle liability insurance policies containing coverage exceeding that required to comply with K.S.A. 40-3118.

History: L. 1974, ch. 193, § 20; Feb. 22.

40-3121. Severability; 40-3117 declared nonseverable. If any provisions of this act, or the application thereof to any person or circumstance, is held unconstitutional, the remainder of this act and the application of such provision to other persons or circumstances shall not be affected thereby; and it shall be conclusively presumed that the legislature would have enacted the remainder of this act without such invalid or unconstitutional provision: *Provided,* That K.S.A. 40-3117 is expressly declared to be nonseverable.

History: L. 1974, ch. 193, § 21; Feb. 22.