

MINUTES OF THE House COMMITTEE ON Insurance

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

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

All members were present except: Representatives DeBaun and Neufeld, who were excused.

Committee staff present:

Gordon Self, Revisor of Statutes Office  
Melinda Hansen, Research Department  
Emalene Correll, Research Department  
Margaret Gentry, Secretary

Conferees appearing before the committee:

Dick Brock, Insurance Commissioner's Office  
Elizabeth Taylor, Taylor and Associates

The Chairman introduced Dick Brock, who told the Committee that the Department had nine proposals to present; that there had been ten, which included suggestions concerning the Guaranty Fund Acts, but that recent discussion which had taken place had postponed recommendations in that regard.

Mr. Brock presented a memorandum setting forth the nine proposals, which appears as Attachment I. The subjects are as follows:

1. The Insurance Department has worked with the Department of Ageing and Blue Cross/Blue Shield concerning age classification rating as it deals with medicare supplements.
2. Model Immunity Act provides immunity for the Department and employees in passing on information concerning possible insurance fraud.
3. Preferred Provider Organizations. Interim Committee on Public Health and Welfare studied the matter. Proposal would give such providers their own identity without restrictive regulations.
4. Addresses availability of insurance but not affordability. Provides reasonably comprehensive health insurance in a manner similar to automobile and workers' compensation insurance.
5. Expands mail order statute to include other categories of insurance (dental, optometric, hospital and medical service corporations).
6. Proposes to subject third party administrators to Unfair Trade Practices Act.
7. Establishes new conditions for reinsurance transactions, which restrictions are badly needed.
8. Amends the Medical Malpractice Act, imposing a penalty on surcharges not received within 60 days of the effective date of the policy.
10. Amends statute concerning unearned premium reserves. When liability decreases as loans are paid off, there is no necessity to establish reserves. Deletes "capital stock" companies.

Mr. Brock told the Committee that the Department is trying to put together a proposal to address solvency problems, although it may not be possible to do so this session.

It was moved by Rep. King and seconded by Rep. Littlejohn that all of the proposals be introduced as Committee bills and be referred back to Committee for study. Motion carried.

Elizabeth Taylor distributed a proposed bill which would require group policies to provide reimbursement for the cost of treatment for drug and alcohol abuse. A member of the committee inquired if there had been a cost study, and Ms. Taylor said that the matter had received interim study but she did not know if cost was discussed.

It was moved by Rep. Cribbs and seconded by Rep. Turnquist that the bill be introduced and referred back to Committee for study. Motion carried by a majority.

The minutes for January 22 and 29, 1985, were approved.

The meeting was adjourned.

Rex B. Hay

HOUSE INSURANCE COMM.

1-30-85

NAME

ORGANIZATION

ADDRESS

NAME	ORGANIZATION	ADDRESS
Becky Pottor	Ks Alcoholism & Drug Abuse Couns. Assn.	Topeka
Suellen Weber	Kansas Department on Aging	Topeka
Jerry Banaka	Kansas Farm Life Ins. Co.	Manhattan
ROGER VIOLA	SECURITY BENEFIT LIFE	TOPEKA
Ray Mettner	Mental Health Assoc. of Ks.	Topeka
Alexander Somers	American Investors of Ks.	Topeka
ARNO KENN	Ks ASSN ESTROPATHIC MED	TOPEKA
Lee WRIGHT	FARMERS INS. GROUP	MISSION
Elizabeth E. Taylor	Ks Assn of Alcohol/Drug Program Dir.	Topeka
George Richard	"	Lawrence
Michael Flyzik	SKS/ADAS	Topeka
Paul M. Huls	ASSOC. of Mental Health Centers of Ks.	Topeka
JACK ROBERTS	BC-B-S	TOPEKA
<b>L M CORNISH</b>	<b>Ks domestic Ins. Assoc.</b>	"
Richard Harmon	Ks domestic Ins. Assoc.	Topeka

EXPLANATORY MEMORANDUM FOR  
LEGISLATIVE PROPOSAL NO. 1

Many insurers currently write insurance contracts which complement the coverage available under medicare at rates which vary with the age of the insured. The two Blue Cross and Blue Shield organizations serving Kansas are the two significant exceptions; however, both have signaled their intent to implement age classifications if they are not statutorily prohibited from doing so. Legislative Proposal No. 1 would be such a prohibition and would apply to all companies writing medicare supplement coverage.

This bill has been developed in cooperation with the Secretary of the Department on Aging who recommended a similar bill to the 1984 session of the Kansas Legislature. As stated at that time, the purpose of the prohibition is to "level out" to the extent possible the premiums for medicare supplement insurance. In doing so, persons would pay more during their early years of medicare eligibility but they would pay less in the later years.

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

*attachment I*  
*1-30-85*

*Attachment I*

1 AN ACT concerning insurance; relating to medicare supplement policies;  
2 amending K.S.A. 40-2221 and repealing the existing section.

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

4 Section 1. K.S.A. 40-2221 is hereby amended to read as follows: 40-2221.

5 (a) In addition to any other statutory authority not inconsistent herewith, the  
6 commissioner shall adopt rules and regulations establishing specific standards  
7 for medicare supplement policies delivered or issued for delivery in this state.  
8 The standards so established shall equal, but not exceed, the minimum standards  
9 and requirements established by section 507, P.L. 96-265.

10 (b) Except as herein provided, no insurance company, nonprofit medical and  
11 hospital service corporation or health maintenance organization corporation  
12 shall charge premiums for medicare supplemental policies that are issued,  
13 renewed, delivered or upon which premiums become due after the effective date of  
14 this act which are based on the age of the covered persons. This provision shall  
15 not apply to any medicare supplemental policy in force on the effective date of  
16 this act which contains a contractual provision that guarantees renewal of the  
17 policy at a premium based on the age of the covered persons at the time the  
18 policy was first issued.

19 Sec. 2. K.S.A. 40-2221 is hereby repealed.

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

EXPLANATORY MEMORANDUM FOR  
LEGISLATIVE PROPOSAL NO. 2

This proposal is the National Association of Insurance Commissioners' Model Immunity Act. As the title implies, the purpose of this act is to remove inhibitions persons might have to report possible instances of insurance fraud because of a fear of civil liability. In addition, the proposal extends immunity to the Commissioner and Insurance Department employees with respect to the publication of reports and/or bulletins regarding activities of the Insurance Department.

In administering the Workers' Compensation Fund Law and enforcing the statutes concerning disciplinary actions against insurance companies and agents, occasions arise where an element of fraud seems to be quite probable. In such instances, the Department completes its administrative actions and then turns the file over to the appropriate authority for any further action such authority deems appropriate. Also, the Department's administrative actions are disseminated to other states through the National Association of Insurance Commissioners and are published in the Department's quarterly bulletin. Finally, the Department receives and compiles a significant amount of sensitive financial information regarding individual insurance entities during the course of our normal activities. Much of this information is available to the public pursuant to the Open Records Act and some of it becomes public during the natural course of business.

In all of the situations described above, there is an exposure to possible civil liability which should not exist unless malice or bad faith is involved.

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

AN ACT relating to insurance; fraudulent insurance acts; information; reporting; immunity.

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

Section 1. Definitions. For purposes of this act a fraudulent insurance act shall mean an act committed by any person who, knowingly and with intent to defraud presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer, broker, or any agent thereof, any written statement as part of, or in support of, an application for the issuance of, or the rating of an insurance policy for personal or commercial insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which he or she knows to contain materially false information concerning any fact material thereto; or conceal, for the purpose of misleading, information concerning any fact material thereto.

Section 2. Immunity from liability. In the absence of fraud or bad faith, no person, shall be subject to civil liability for libel, slander or any other relevant tort cause of action by virtue of filing reports, without malice, or furnishing other information, without malice, required by this article or required by the commissioner under the authority granted in this article, and no civil cause of action of any nature shall arise against such person (1) for any information relating to suspected fraudulent insurance acts furnished to or received from law enforcement officials, their agents and employees; or (2) for any information relating to suspected fraudulent insurance acts furnished to or received from other persons subject to the provisions of chapter 40, Kansas statutes annotated; or (3) for any such information furnished in reports to the insurance department, national association of insurance commissioners or any organization established to detect and prevent fraudulent insurance acts, their agents, employees or designees, nor shall the commissioner or any employee of the insurance department in the absence of malice, fraud or bad faith, be subject to civil liability for libel, slander or any other relevant tort and no civil cause of action of any nature shall arise against such person by virtue of the publication of any report or bulletin related to the official activities of the insurance department. Nothing herein is intended to abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person.

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

EXPLANATORY MEMORANDUM FOR  
LEGISLATIVE PROPOSAL NO. 3

This proposal is intended to provide statutory guidelines and parameters to the formation and operation of preferred provider organizations in Kansas. Currently, such organizations are not subject to specific statutory provisions. However, nonprofit hospital and/or medical service corporations and health maintenance organizations are required to comply with numerous regulatory requirements. Because all three entities are based on the idea of having a "special" arrangement with a health care provider or providers, we have discovered that a number of "would be" preferred provider organizations actually fall under the provisions of statutes governing prepaid service organizations or HMO's.

This proposal will give preferred provider organizations their own statutory identity. At the same time, the proposal avoids restrictive regulation that would discourage or prevent experimentation and evolution of the PPO concept.

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



AN ACT relating to insurance; preferred provider agreements; registration; preferred provider organizations; regulation.

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

1 Section 1. Definitions. As used in this act: (a) "Alternative rates of  
2 payment" means the rate at which or sum for which the provider agrees to perform  
3 specified services. (b) "Insurance company" shall include those entities  
4 authorized to conduct business in Kansas under articles 11, 18, 19, 19(a),  
5 19(b), 19(c) and 32, chapter 40, K.S.A. (c) "Plan beneficiary" means any person  
6 eligible to receive provider services under a plan entered into by a purchaser.  
7 (d) "Preferred provider agreement" means a contractual agreement to provide for  
8 alternative rates of payment in which the provider agrees to accept these  
9 alternative rates of payment and accept reasonable quality, professional and  
10 efficiency standards in return for tangible benefits to the provider. (e)  
11 "Preferred provider organization" means a separate entity established for the  
12 purpose of marketing and administering a preferred provider agreement. (f)  
13 "Provider" means one or more entities which offer health care services. (g)  
14 "Purchaser" means one or more persons, organizations or entities which contract  
15 with providers for the purpose of entering into a preferred provider agreement.  
16 (h) "Tangible benefits" means any reasonable expectation of monetary or  
17 administrative advantage including, but not limited to, an increase in the  
18 number of patients, prompt payment for services or assistance in resource  
19 monitoring procedures.

20 Section 2. Preferred provider agreements, contents. No provider shall act  
21 as a preferred provider without a written preferred provider agreement between  
22 the provider and the purchaser and when applicable between the provider,  
23 purchaser and the preferred provider organization, or other entity authorized to  
24 conduct business under chapter 40, K.S.A. A direct agreement between a provider  
25 and a purchaser will not be required when, (a) an insurance company authorized  
26 to conduct accident and health insurance business in Kansas has obtained a  
27 preferred provider agreement with providers and permits their accident and  
28 health insurance customers to use such services; (b) a preferred provider  
29 organization has entered into a preferred provider agreement, with providers and  
30 offers or permits an insurance company authorized to conduct accident and health  
31 insurance business in Kansas, to offer these preferred provider services to  
32 purchasers covered, or to be covered, by an insurance policy issued by such  
33 insurance company, and pursuant to a written contract between the preferred  
34 provider organization and the insurance company. All written agreements shall be  
35 retained as part of the official records of the provider, the purchaser and when  
36 applicable the preferred provider organization, or other entity authorized to  
37 conduct business under chapter 40, K.S.A. for the duration of the agreement and  
38 five years thereafter. Such written agreements shall contain provisions which  
39 include the requirements of this act insofar as applicable.

40 Sec. 3. Preferred provider agreements, limitations. Preferred provider  
41 agreements may be entered into for the purpose of reducing health care costs and  
42 improving provider efficiency, subject to the following limitations: (a) No  
43 preferred provider agreement shall deny reimbursement to a plan beneficiary  
44 because the plan beneficiary elects to use his own health care provider. (b) No  
45 preferred provider agreement shall preclude any party from entering into other  
46 preferred provider agreements. (c) No preferred provider agreement shall permit  
47 the plan beneficiary to be billed for covered health care costs except amounts  
48 for which the subscriber is contractually responsible. Providers shall hold  
49 purchasers harmless for costs, expenses and liability arising by reason of a  
50 preferred provider organization's unlawful or negligent failure to pay provider  
51 costs on behalf of purchasers when due and payable.

52 Sec. 4. Insurance companies. Subject to the provisions of this act,  
53 insurance companies and other entities authorized to conduct accident and health  
54 insurance business in Kansas under chapter 40, K.S.A. may negotiate and enter  
55 into preferred provider agreements with provider(s) or preferred provider  
56 organizations on behalf of a purchaser(s) insured or to be insured by such  
57 insurance company.

58 Section 5. Preferred provider agreements; permissible provisions. Preferred  
59 provider agreements may provide for (a) Alternative rates of payments for  
60 providers. (b) Resource monitoring to assure quality control for both patient  
61 care and cost effectiveness. (c) Administrative procedures for submitting claims  
62 and paying benefits. (d) Accelerated payment of medical charges. (e) Utilization

63 review procedures, or (f) other provisions that reduce health care costs or  
64 increase medical efficiency for Kansas consumers.

65 Sec. 6. Preferred provider organization. Preferred provider organizations  
66 may be established by providers, purchasers, independent persons or entities, or  
67 organizations operating under the insurance laws, chapter 40, of the state of  
68 Kansas. Preferred provider organizations shall not assume the risk for  
69 indemnifying purchasers or employees of purchasers for covered health care  
70 services or of contracting to provide such services.

71 Sec. 7. Preferred provider organizations; deletion or addition of  
72 providers. A preferred provider agreement shall provide for written notice to  
73 the purchaser upon the addition or deletion of providers to the agreement.

74 Section 8. Books and records of preferred provider organizations; access  
75 for commissioner of insurance. Every preferred provider organization shall  
76 maintain at its principle administrative office for the duration of the written  
77 agreement referred to in section 2 of this act and five years thereafter  
78 adequate books and records of all transactions between it, providers and  
79 purchasers. Such books and records shall be maintained in accordance with  
80 prudent standards of insurance record keeping. The commissioner of insurance  
81 shall have access to such books and records for the purpose of examination,  
82 audit and inspection. Any trade secrets contained therein shall be confidential,  
83 except the commissioner may use such information for proceedings instituted  
84 against the preferred provider organization.

85 Section 9. Disposition of funds held by a preferred provider organization;  
86 records, withdrawals of funds. All monies collected by a preferred provider  
87 organization shall be held by the preferred provider organization in a fiduciary  
88 capacity. Such funds shall be immediately remitted to the person or persons  
89 entitled thereto, or shall be deposited promptly in a bank account established  
90 and maintained by the preferred provider organization. If monies so deposited  
91 have been collected on behalf of or for more than one purchaser, the preferred  
92 provider organization shall maintain records clearly recording the deposits in  
93 and withdrawals from such account on behalf of or for each purchaser. The  
94 preferred provider organization shall keep copies of all such records and, upon  
95 request of a purchaser shall furnish such purchaser with copies of such records  
96 pertaining to deposits and withdrawals on behalf of such purchaser. The  
97 preferred provider organization shall not pay any claim by withdrawal from such  
97 account. Withdrawals from the funds deposited in such account shall be made, as  
99 provided in the written agreement between the preferred provider organization  
100 and the purchaser, for (1) remittance to the provider entitled thereto, (2)  
101 deposit in an account maintained in the name of such purchaser, (3) transfer to  
102 and deposit in a claims paying account, with claims to be paid as provided in  
103 the preferred provider agreement or remittance to the provider entitled thereto.  
104 (4) payment to the preferred provider organization of its commission, fees or  
105 charges, or (5) remittance of returned premiums to the person or persons  
106 entitled thereto.

107 Sec. 10. Certification of a preferred provider organization; procedure,  
108 fees, duties of commissioner of insurance. No person shall act as or hold  
109 himself or herself out to be a preferred provider organization in this state,  
110 unless he or she shall hold a certificate of registration as a preferred  
111 provider organization issued by the commissioner of insurance. Application for  
112 such certificate shall be made to the commissioner on a form prescribed by such  
113 commissioner and shall be accompanied by a filing fee of \$100. Such certificate  
114 may be continued for successive annual periods by notifying the commissioner of  
115 such intent and payment of a \$50 continuation fee. Such certificate shall be  
116 issued or continued by the commissioner to a preferred provider organization  
117 unless the commissioner after due notice and hearing shall have determined that  
118 the preferred provider organization is not competent, trustworthy, financially  
119 responsible or of good personal and business reputation.

120 Section 11. Penalty for violation of act, revocation and suspension of  
121 certificate. (a) Failure to hold the certificate required by section 10 of this  
122 act or to comply with any other provision of this code, shall subject the  
123 preferred provider organization to a fine of not more than \$500 unless such  
124 preferred provider knew or reasonably should have known that such failure was a  
125 violation of this act in which the penalty shall be not more than \$5,000. (b)  
126 After reasonable notice and hearing, the commissioner may impose a penalty as  
127 provided in subsection (a) or revoke or suspend such certificate, upon finding  
128 that either the preferred provider organization violated any of the requirements

Legislative Proposal No. 3  
(Continued)

129 of this act or the preferred provider organization is not competent,  
130 trustworthy, financially responsible or of good personal and business  
131 reputation.

132 Sec. 12. Construction and relationship to other laws. Nothing in this act  
133 shall relieve any person, organization or insurance company of regulation under  
134 any other insurance law.

135 Sec. 13. This act shall not apply to organizations exempt under K.S.A.  
136 40-202.

137 Sec. 14. This act shall take effect and be in force from and after its  
138 publication in the Kansas Register.

EXPLANATORY MEMORANDUM FOR  
LEGISLATIVE PROPOSAL NO. 4

This proposal would permit the Commissioner of Insurance to establish a residual market mechanism which would have the responsibility of assuring the availability of reasonably comprehensive health insurance to Kansas residents. While there might be some limitations on the maximum rates that could be charged as well as requirements to offer deductibles of various amounts in the plans developed pursuant to this proposal, it actually addresses only the availability of accident and sickness insurance coverage. It does not directly attack problems of affordability.

Enactment of this legislation would parallel that in effect with respect to automobile and workers' compensation insurance. It can therefore be assumed that the availability plan developed for accident and sickness coverage would perform in a manner similar to the existing automobile and workers' compensation mechanisms.

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

AN ACT relating to insurance; apportionment or assignment of risk; accident and sickness insurance policies; requirements; amending K.S.A. 40-2111 and K.S.A. 1984 Supp. 40-19c09 and repealing the existing sections.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS

1 Section 1. K.S.A. 40-2111 is hereby amended to read as follows: 40-2111.  
 2 Every insurer authorized to issue a policy of accident and sickness insurance as  
 3 defined in K.S.A. 40-2201 or undertaking to transact in the state of Kansas the  
 4 kinds of insurance specified in subsection (a), (b) or (c) of K.S.A. 40-901 or  
 5 subsection (b) or (c) of K.S.A. 40-1102, and every rating organization which  
 6 makes rates for such insurance, shall at the discretion of the commissioner of  
 7 insurance, cooperate in the preparation of and submission to the commissioner  
 8 and participate in a plan or plans for the equitable apportionment among  
 9 insurers of applicants for insurance who are, in good faith, entitled to such  
 10 kinds of insurance, or subdivisions or combinations thereof, but who are unable  
 11 to procure the same through ordinary methods+. ~~Provided, That~~ This section shall  
 12 not apply to the kinds of insurance specified in K.S.A. 40-2102 and 40-2108.

13 Such plan or plans shall provide:

14 (a) Reasonable rules governing the equitable distribution of risks, by  
 15 direct insurance, reinsurance or otherwise, and their assignment to insurers;

16 (b) rates and rate modifications applicable to such risks which shall be  
 17 reasonable, adequate and not unfairly discriminatory;

18 (c) the extent of liability which each insurer shall be required to assume;

19 (d) a method whereby applicants for insurance, insureds, agents and  
 20 insurers may have a hearing on grievances and the right of appeal of the  
 21 commissioner.

22 For every such plan or plans, there shall be a governing board, to be  
 23 appointed by the commissioner of insurance, which shall meet at least annually  
 24 to review and prescribe operating rules, and which shall consist of the  
 25 following members:

26 (1) Seven (7) members who shall be appointed as follows: Three (3) of such  
 27 members shall be representatives of foreign insurance companies, two (2) members  
 28 shall be representatives of domestic insurance companies and two (2) members  
 29 shall be licensed independent insurance agents. Said members shall be appointed  
 30 for a term of three (3) years, except that the initial appointment shall include  
 31 two (2) members appointed for a two (2) year term and two (2) members appointed  
 32 for a one (1) year term, as designated by the commissioner; and

33 (2) Two (2) members representative of the general public interest, with  
 34 said members to be appointed for a term of two (2) years.

35 Sec. 2. K.S.A. 1984 Supp. 40-19c09 is hereby amended to read as follows:  
 36 40-19c09. Corporations organized under the nonprofit medical and hospital  
 37 service corporation act shall be subject to the provisions of the Kansas general  
 38 corporation code, articles 60 to 74, inclusive, of chapter 17 of the Kansas  
 39 Statutes Annotated, applicable to nonprofit corporations, to the provisions of  
 40 K.S.A. 1984 Supp. 40-2,116 and 40-2,117 and to the provisions of K.S.A. 40-214,  
 41 40-215, 40-216, 40-218, 40-219, 40-222, 40-223, 40-224, 40-225, 40-226, 40-229,  
 42 40-230, 40-231, 40-235, 40-236, 40-237, 40-247, 40-248, 40-249, 40-250, 40-251,  
 43 40-252, 40-254, 40-2,100, 40-2,101, 40-2,102, 40-2,103, 40-2,104, 40-2,105,  
 44 40-2a01 to 40-2a19, inclusive, 40-2111 to 40-2116, inclusive, 40-2216 to  
 45 40-2220, inclusive, 40-2401 to 40-2421, inclusive, and 40-3301 to 40-3313,  
 46 inclusive, and amendments thereto, except as the context otherwise requires, and  
 47 shall not be subject to any other provisions of the insurance code except as  
 48 expressly provided in this act.

49 Sec. 3. K.S.A. 40-2111 and K.S.A. 1984 Supp. 40-19c09 are hereby repealed.

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

EXPLANATORY MEMORANDUM FOR  
LEGISLATIVE PROPOSAL NO. 5

This proposal simply adds nonprofit dental, nonprofit optometric, nonprofit hospital and medical service corporations; health maintenance organizations and third party administrators to the list of entities that are subject to the unauthorized insurers (commonly called the "mail-order statute"). Accordingly, organizations of this kind domiciled outside of Kansas but doing business in Kansas through the mail would be subject to these Kansas laws.

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

AN ACT relating to insurance; unauthorized insurers; health maintenance organizations; administrators; nonprofit dental service corporations; nonprofit optometric service corporations; amending K.S.A. 40-2702 and repealing the existing section.

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

1 Section 1. K.S.A. 40-2702 is hereby amended to read as follows: 40-2702.  
 2 (a) As used in this act, unless the context otherwise requires, the term  
 3 "insurer" shall mean and include all corporations, companies, associations,  
 4 societies, fraternal benefit societies, mutual nonprofit hospital service and  
 5 nonprofit medical service companies, partnerships and persons engaged as  
 6 principals in the business of insurance of the kinds enumerated in articles 4,  
 7 5, 6, 7, 11, 18, 19, 19a, 19b, 19c, and, 22, 32 and 38 of chapter 40 of the  
 8 Kansas Statutes Annotated, and any amendments thereto, insofar as the business  
 9 of insurance of the kinds enumerated in said articles relate to life and  
 10 accident or sickness. Whenever in this section there is reference to an act  
 11 effected or committed by mail, the venue of such act shall be at the point where  
 12 the matter transmitted by mail is delivered and takes effect.

13  
 14 It shall be unlawful for any insurer to transact insurance business in this  
 15 state, as set forth in subsection (b) of this section, without a certificate of  
 16 authority from the commissioner of insurance: Provided, That this section shall  
 17 not apply to:

18 (1) The lawful transaction of insurance procured by agents under the  
 19 authority of K.S.A. 40-246b, 40-246c and 40-246d, relating to accident and  
 20 sickness insurance;

21 (2) Contracts of reinsurance issued by an insurer not organized under the  
 22 laws of this state;

23 (3) Transactions in this state involving a policy lawfully solicited,  
 24 written and delivered outside of this state, covering only subjects of insurance  
 25 not resident in this state at the time of issuance, and which transactions are  
 26 subsequent to the issuance of such policy;

27 (4) Attorneys acting in the ordinary relation of attorney and client in the  
 28 adjustment of claims or losses;

29 (5) Transactions in this state involving group life and group sickness and  
 30 accident or blanket sickness and accident insurance or group annuities, where  
 31 the master policy of such groups was lawfully issued and delivered in and  
 32 pursuant to the laws of a state in which the insurer was authorized to do an  
 33 insurance business to a group organized for purposes other than the procurement  
 34 of insurance, and where the policyholder is domiciled or otherwise has a bona  
 35 fide residence;

36 (6) Transactions in this state involving any policy of life or accident and  
 37 health insurance or annuity contract issued prior to the effective date of this  
 38 act;

39 (7) Contracts of insurance written by certain lodges, societies, persons  
 40 and associations specified in K.S.A. 40-202; and

41 (8) Any life insurance company organized and operated, without profit to  
 42 any private shareholder or individual, exclusively for the purpose of aiding and  
 43 strengthening educational institutions, organized and operated without profit to  
 44 any private shareholder or individual, by issuing insurance and annuity  
 45 contracts directly from the home office of the company, without insurance agents  
 46 or insurance representatives in this state, only to or for the benefit of such  
 47 institutions and individuals engaged in the services of such institutions; but  
 48 this exemption shall be conditioned upon any such company complying with the  
 49 following requirements:

50 (i) Payment of an annual registration fee of five hundred dollars (\$500);

51 (ii) Filing a copy of the form of any policy or contract issued to Kansas  
 52 residents with the commissioner of insurance;

53 (iii) Filing a copy of its annual statement prepared pursuant to the laws

54 of its state of domicile, as well as such other financial materials as may be  
55 requested, with the commissioner of insurance; and

56 (iv) Providing, in such form as may be prescribed by the commissioner of  
57 insurance, for the appointment of the commissioner of insurance as its true and  
58 lawful attorney upon whom may be served all lawful process in any action or  
59 proceeding against such company arising out of any policy or contract it has  
60 issued to, or which is currently held by, a Kansas citizen, and process so  
61 served against such company shall have the same force and validity as if served  
62 upon the company.

63 (b) Any of the following acts in this state effected by mail or otherwise  
64 by or on behalf of an unauthorized insurer is deemed to constitute the  
65 transaction of an insurance business in this state:

66 (1) The making of or proposing to make, as an insurer, an insurance  
67 contract;

68 (2) The taking or receiving of any application for insurance;

69 (3) The receiving or collection of any premium, commission, membership  
70 fees, assessment, dues or other consideration for any insurance or any part  
71 thereof;

72 (4) The issuance or delivery of contracts of insurance to residents of this  
73 state or to persons authorized to do business in this state;

74 (5) Directly or indirectly acting as an agent for or otherwise representing  
75 or aiding on behalf of another any person or insurer in the solicitation,  
76 negotiation, procurement or effectuation of insurance or renewals thereof, or in  
77 the dissemination of information as to coverage or rates, or forwarding of  
78 applications, or delivery of policies or contracts or investigation or  
79 adjustment of claims or losses, or in the transaction of matters subsequent to  
80 effectuation of the contract and arising out of it or in any other manner  
81 representing or assisting a person or insurer in the transaction of insurance  
82 with respect to subjects of insurance resident in this state: Provided, That  
83 nothing herein shall be construed to prohibit full-time salaried employees of a  
84 corporate insured from acting in the capacity of an insurance manager or buyer  
85 in placing insurance in behalf of such employer;

86 (6) The transaction of any kind of insurance business specifically  
87 recognized as transacting an insurance business within the meaning of the  
88 statutes relating to insurance; or

89 (7) The transacting of or proposing to transact any insurance business, in  
90 substance equivalent to any of the foregoing, in a manner designed to evade the  
91 provisions of this act.

92 (c)(1) The failure of an insurer transacting insurance business in this  
93 state to obtain a certificate of authority from the commissioner of insurance  
94 shall not impair the validity of any act or contract of such insurer, and shall  
95 not prevent such insurer from defending any action at law or suit in equity in  
96 any court of this state; but no insurer transacting insurance business in this  
97 state without a certificate of authority shall be permitted to maintain an  
98 action in any court of this state to enforce any right, claim or demand arising  
99 out of the transaction of such business until such insurer shall have obtained a  
100 certificate of authority.

101 (2) In the event of failure of any such unauthorized insurer to pay any  
102 claim or loss within the provisions of such insurance contract, any person who  
103 assisted or in any manner aided, directly or indirectly, in the procurement of  
104 such insurance contract shall be liable to the insured for the full amount of  
105 the claim or loss in the manner provided by the provisions of such insurance  
106 contract.

107 Sec. 2. K.S.A. 40-2702 is hereby repealed.

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



EXPLANATORY MEMORANDUM FOR  
LEGISLATIVE PROPOSAL NO. 6

This proposal would specifically provide that third party administrators can be subjected to the provisions of the Kansas Unfair Trade Practices Act at the discretion of the Commissioner.

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

1 AN ACT relating to insurance; administrators; application of K.S.A.  
2 40-2401, et seq.; amending 40-3811 and repealing the existing section.

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

4 Section 1. K.S.A. 40-3811 is hereby amended to read as follows: 40-3811.  
5 (a) Failure to hold the certificate required by K.S.A. 40-3810 or to comply with  
6 K.S.A. 40-3802 or any of the requirements of K.S.A. 40-3803, 40-3805 to 40-3809,  
7 inclusive, shall subject the administrator to a fine of not more than \$500  
8 unless such administrator knew or reasonably should have known that such failure  
9 was a violation of this act in which case the penalty shall be not more than  
10 \$5,000.

11 (b) After reasonable notice and hearing, the commissioner may impose a  
12 penalty as provided in subsection (a) or revoke or suspend such certificate,  
13 upon finding that either the administrator violated any of the requirements of  
14 this act or the administrator is not competent, trustworthy, financially  
15 responsible, or of good personal and business reputation.

16 (c) In lieu of the penalties prescribed above, the commissioner may subject  
17 persons acting as administrators to the provisions of K.S.A. 40-2401 et seq.

18 Sec. 2. K.S.A. 40-3811 is hereby repealed.

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

EXPLANATORY MEMORANDUM FOR  
LEGISLATIVE PROPOSAL NO. 7

Legislative Proposal No. 7 suggests three possible amendments to K.S.A. 40-221a which is the primary statute governing the accounting treatment of reinsurance transactions.

The first amendment contains several new conditions that must be present in any letter of credit that is used to allow a Kansas domestic insurer to take reserve credit for business ceded to a non-authorized insurer. These new provisions require the letter of credit to be initially issued for a term of at least one year and requires that the terms of the letter of credit provide that it be automatically renewed at each expiration date for at least an additional one year term unless not less than 30 days written notice of intention not to renew is given to the ceding company by the bank issuing the letter of credit or by the assuming insurer. This amendment is intended to prevent a company from obtaining a letter of credit simply for purposes of taking a reserve credit at year end and also to give the ceding company at least 30 days notice that the letter of credit is expiring.

The last two amendments simply make it clear that the insolvency clause and the cancellation provision currently required by statute must be expressly set forth in the reinsurance agreement. This provision will assure proper payment of the reinsurance proceeds in the event of an insurance company insolvency and will also assure the proper run-off of any reinsurance in force if cancellation of the reinsurance agreement can be effected with less than 90 days notice.

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

AN ACT relating to insurance; reinsurance; bulk insurance agreement; letter of credit; maximum credit; amending K.S.A. 40-221a and repealing the existing section.

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

1 Section 1. K.S.A. 40-221a is hereby amended to read as follows: 40-221a.  
2 (a) Any insurance company organized under the laws of this state may (1) with  
3 the consent of the commissioner of insurance, cede all of its risks to any other  
4 solvent insurance company authorized to transact business in this state or  
5 accept all of the risks of any other company,

6 (2) accept all or any part of an individual risk or all or any part of a  
7 particular class of risks which it is authorized to insure, and

8 (3) cede all or any part of an individual risk or all or any part of a  
9 particular class of risks to another solvent insurer or insurers having the  
10 power to accept such reinsurance.

11 (b) Any insurance company organized under the laws of this state may take  
12 credit as an asset or as a deduction from loss and unearned premium reserves on  
13 such ceded risks to the extent reinsured by an insurer or insurers authorized to  
14 transact business in this state, but such credit on ceded risks reinsured by any  
15 insurer which is not authorized to transact business in this state may be taken  
16 in an amount not exceeding:

17 (1) The amount of deposits by, and funds withheld from, the assuming  
18 insurer pursuant to express provision therefor in the reinsurance contract, as  
19 security for the payment of the obligations thereunder, if such deposits or  
20 funds are held subject to withdrawal by, and under the control of, the ceding  
21 insurer or are placed in trust for such purposes in a bank which is a member of  
22 the federal reserve system, if withdrawals from such trust cannot be made  
23 without the consent of the ceding company; or

24 (2) The amount of a clean and irrevocable letter of credit issued by a bank  
25 which is a member of the federal reserve system ~~for a term of at least two (2)~~  
26 ~~years,~~ if such letter of credit is initially issued for a term of at least one  
27 year and by its terms is automatically renewed at each expiration date for at  
28 least an additional one year term unless and not less than 30 days prior written  
29 notice of intention not to renew is given to the ceding company by the issuing  
30 bank or the assuming company and provided that such letter of credit is issued  
31 under arrangements satisfactory to the commissioner of insurance as constituting  
32 security to the ceding insurer substantially equal to that of a deposit under  
33 paragraph (1) of this subsection.

34 The foregoing provisions of (1) and (2) of subsection (b) shall not apply  
35 to a domestic title insurance company subject to the provisions of K.S.A.  
36 40-1107a.

37 (c) Any reinsurance ceded by a company organized under the laws of this  
38 state or ceded by any company not organized under the laws of this state and  
39 transacting business in this state must, pursuant to express provisions  
40 contained in the reinsurance agreement, be payable by the assuming insurer on  
41 the basis of the liability of the ceding company under the contract or contracts  
42 reinsured without diminution because of the insolvency of the ceding company and  
43 any such reinsurance agreement which may be cancelled on less than ninety (90)  
44 days notice must provide in the reinsurance agreement for a run-off of the  
45 reinsurance in force at the date of cancellation.

46 Sec. 2. K.S.A. 40-221a is hereby repealed.

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

EXPLANATORY MEMORANDUM FOR  
LEGISLATIVE PROPOSAL NO. 8

The Health Care Provider Insurance Availability Act became law in 1976. At that time, the law was drafted so that insurance companies would not have to remit the money collected via the Health Care Stabilization Fund surcharge until they (the insurers) had, in fact, received the money. Unfortunately, the latitude permitted by the original act has not worked well. At the time the law was drafted, it was believed that, under a traditional agent/company relationship, the surcharge would be received approximately 45 days following a policy's effective date. However, some companies are not remitting the premium for about 75 days which we believe is not only an inordinately long period of time but also demonstrates the need for a more forceful statute because the loss of earnings is significant and the ability to monitor compliance is impeded.

Accordingly, this proposal would impose an 18% per annum penalty on surcharges that are not received by the Commissioner within 60 days of a policy's effective date. We believe this will be a disincentive to delay remittance of Health Care Stabilization Fund surcharges which, in turn, will benefit the Fund to the extent of capturing any investment earnings heretofore gained by the insurer and/or lost by the Fund.

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

AN ACT relating to insurance; health care provider insurance availability act; annual premium surcharge; penalty for failure of company to timely remit; amending K.S.A. 1984 Supp. 40-3404 and repealing the existing section.

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

1 Section 1. K.S.A. 1984 Supp. 40-3404 is hereby amended to read as follows:  
 2 40-3404. (a) Except for any health care provider whose participation in the fund  
 3 has been terminated pursuant to subsection (g) of K.S.A. 40-3403 and amendments  
 4 thereto, the commissioner shall levy an annual premium surcharge on each health  
 5 care provider who has obtained basic coverage and upon each self-insurer for  
 6 each fiscal year. Such premium surcharge shall be an amount equal to a  
 7 percentage of the annual premium paid by the health care provider for the basic  
 8 coverage required to be maintained as a condition to coverage by the fund by  
 9 subsection (a) of K.S.A. 40-3402 and amendments thereto. The annual premium  
 10 surcharge upon each self-insurer shall be an amount equal to a percentage of the  
 11 amount such self-insurer would pay for basic coverage as calculated in  
 12 accordance with rating procedures approved by the commissioner pursuant to  
 13 K.S.A. 40-3413 and amendments thereto.

14 (b) In the case of a resident health care provider who is not a  
 15 self-insurer, the premium surcharge shall be collected in addition to the annual  
 16 premium for the basic coverage by the insurer and shall not be subject to the  
 17 provisions of K.S.A. 40-252, 40-1113 and 40-2801 et seq., and amendments to  
 18 these sections. The amount of the premium surcharge shall be shown separately on  
 19 the policy or an endorsement thereto and shall be specifically identified as  
 20 such. Such premium surcharge shall be due and payable by the insurer to and  
 21 shall be received by the commissioner within 30 60 days after of the date the  
 22 annual premium for the basic coverage becomes effective. is received by the  
 23 insurer, but in the event basic coverage is in effect at the time this act  
 24 becomes effective, such surcharge shall be based upon the unearned premium until  
 25 policy expiration and annually thereafter. Within 15 days immediately following  
 26 the effective date of this act, the commissioner shall send to each insurer  
 27 information necessary for their compliance with this subsection. Overdue payment  
 28 shall bear simple interest at the rate of 18% per annum. Such interest shall not  
 29 be directly or indirectly charged to the policyholder and shall be deposited in  
 30 the health care stabilization fund. The certificate of authority of any insurer  
 31 who fails to comply with the provisions of this subsection shall be suspended  
 32 pursuant to K.S.A. 40-222 and amendments thereto until such insurer shall pay  
 33 the annual premium surcharge and interest due and payable to the commissioner.  
 34 In the case of a nonresident health care provider or a self-insurer, the premium  
 35 surcharge shall be collected in the manner prescribed in K.S.A. 40-3402 and  
 36 amendments thereto.

37 (c) The premium surcharge shall be an amount deemed sufficient by the  
 38 commissioner to fund anticipated claims based upon reasonably prudent actuarial  
 39 principles. In setting the amount of such surcharge, the commissioner: (1) May  
 40 require any health care provider who has paid a surcharge for less than 24  
 41 months to pay a higher surcharge than other health care providers; and (2) shall  
 42 amortize any anticipated deficiencies in the fund over a reasonable period of  
 43 time.

44 Sec. 2. K.S.A. 1984 Supp. 40-3404 is hereby repealed.

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

EXPLANATORY MEMORANDUM FOR  
LEGISLATIVE PROPOSAL NO. 10

K.S.A. 40-234 and 40-234a currently require unearned premium reserves to be computed according to the "straight-line" pro rata method. In some other states, the "rule of 78" is an acceptable method for maintaining an unearned premium reserve on credit accident and health business and auto physical damage declining balance coverage. Premiums are earned faster under the "rule of 78", which results in the maintenance of a smaller unearned premium reserve than is required according to the "straight-line" pro rata method.

Since the "rule of 78" is an acceptable reserving method on those policies where the exposure to risk is decreasing, this proposal would amend K.S.A. 40-234 and 40-234a to permit use of the "rule of 78" when computing the unearned premium reserves on policies where the exposure to risk is decreasing in equal amounts during the contract period.

In addition, K.S.A. 40-234 should no longer be restricted to capital stock companies. The statutes governing other kinds of insurers such as mutual or reciprocal organizations either contain specific unearned premium reserve requirements or refer back to K.S.A. 40-234. In either event, the restriction to "capital stock" companies is no longer necessary and would be deleted by enactment of this proposal.

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

AN ACT relating to insurance; unearned premium reserves; amounts; amending K.S.A. 40-234, 40-234a and repealing the existing sections.

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

1           Section 1. K.S.A. 40-234 is hereby amended to read as follows: 40-234.  
 2 Unless otherwise specifically provided in this code, the unearned premiums or  
 3 reserves of any insurance company ~~having a capital stock~~ shall consist of a sum  
 4 equal to a pro rata amount of the premiums received on all unexpired risks. The  
 5 "sum of the digits" or "rule of 78" unearned premium reserve method may be used  
 6 only on policies where the exposure to risk is decreasing in equal amounts  
 7 during the contract period and where premium refunds on such policies would be  
 8 computed using only the "sum of the digits" or "rule of 78" method if such  
 9 method places a sound value on its liabilities. Any domestic title insurance  
 10 company engaged exclusively in the business of insuring titles to real estate  
 11 shall establish and maintain, in addition to a special reserve in an adequate  
 12 amount to cover its liability as to losses incurred under policies issued by it,  
 13 a reserve for unearned premiums on its policies and guarantees in force and such  
 14 reserve shall, at all times and for all purposes, be considered a separate and  
 15 distinct trust fund and shall be deemed and shall constitute unearned portions  
 16 of the original premiums and shall be charged as a reserve liability of the  
 17 insurer in determining its financial condition. The unearned premium reserve  
 18 shall be retained and held by such domestic title insurance company for the  
 19 protection of the policyholders' interest in policies which have not expired.  
 20 Except upon liquidation, dissolution or insolvency, assets equal to the amount  
 21 of such reserve shall not be subject to distribution among depositors or other  
 22 creditors or stockholder of such title insurance company until all claims of  
 23 policyholders or holders of other title insurance contracts or agreements of  
 24 such domestic title insurance company have been paid in full and all liability  
 25 on the policies or other title insurance contracts or agreements, whether  
 26 contingent or actual, has been discharged or lawfully reinsured. Income from the  
 27 investment of the amount of such reserve shall be the unrestricted property of  
 28 such title insurance company. The amount of the unearned premium reserve of  
 29 every such domestic title insurance company shall be computed in accordance with  
 30 the provisions of this section. Any such company, other than companies engaged  
 31 exclusively in the business of insuring titles to real estate, issuing  
 32 noncancelable policies shall, in addition to the reserve required under this  
 33 section, accumulate an additional reserve of three percent (3%) per annum on all  
 34 premiums received on such policies, and such reserves herein required shall be  
 35 held and regarded as an absolute liability of the company.

36           Sec. 2. K.S.A. 40-234a is hereby amended to read as follows: 40-234a. For  
 37 all individual accident and health and group accident and health insurance  
 38 policies, the insurer shall maintain reserves which shall place a sound value on  
 39 its liabilities under such policies and which shall not be less than the  
 40 reserves according to the standards set forth in regulations issued by the  
 41 commissioner, and unless otherwise specifically provided herein, in no event,  
 42 shall not be less than the gross pro rata unearned premium reserve for such  
 43 policies. For all individual accident and health and group accident and health  
 44 insurance policies where the exposure to risk is decreasing in equal amounts  
 45 during the contract period and where premium refunds on such policies would be  
 46 computed using only the "sum of the digits" or "rule of 78" method, the insurer  
 47 shall maintain unearned premium reserves which shall not be less than the gross  
 48 unearned premium reserves computed using the "sum of the digits" or "rule of 78"  
 49 unearned premium reserve method.

50           Sec. 3. K.S.A. 40-234 and 40-234a is hereby repealed.

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