

MINUTES OF THE House COMMITTEE ON InsuranceThe meeting was called to order by Rep. Dale M. Sprague at \_\_\_\_\_  
Chairperson3:30 a.m./p.m. on January 20, 1987 in room 521-S of the Capitol.

All members were present except:

Rep. King  
Committee staff present:Chris Courtwright, Research Department  
Bill Edds, Revisor's Office  
Deanna Willard, Committee Secretary

Conferees appearing before the committee:

Jim Sullins, Ks. Motor Car Dealers Assoc.  
Bud Cornish, Ks. Life Assoc.  
Mark Heitz, American Investors Life  
Ron Smith, Ks. Bar Assoc.  
Ed Hund, Ks. Trial Lawyers Assoc.  
Bill Pitsenberger, Blue Cross Blue Shield  
Terry Burton, Ks. Group Life Insurance Co.  
Dick Brock, Ks. Insurance Dept.

The meeting was called to order by the Chairman.

Rep. Harper was introduced as a new member of the committee. Rep. Vancrum has been moved to another committee.

Mr. Jim Sullins, Kansas Motor Car Dealers Association, requested a bill which relates to HB 3059 (1986). Car dealers loan vehicles to school districts as driver education cars, but the title remains with the dealer so that the car is not classified as a used car. Dealer tags are used on these vehicles; however, this makes the dealer primarily responsible for the liability insurance. Requested bill would cause the school district to be responsible for the insurance. Mr. Sullins stated that he had the support of several school districts in requesting this bill; Mr. Onan Burnett, USD #501, expressed agreement. Rep. Littlejohn made a motion that such a bill be introduced; Rep. Turnquist seconded the motion. The motion carried.

Mr. Bud Cornish, Legal Counsel for Kansas Life Association, requested that three bills be introduced by the committee. The first bill would add life insurance companies to the list of financial institutions that could use an affidavit rather than letters testamentary or letters of administration to make payment to a surviving spouse for estates of less than \$10,000. (See Att. 1.)

The second bill would allow domestic life companies to make the deposit requirement into Kansas banks rather than to deposit it with the Insurance Commissioner. The percentage to be deposited would be determined by the Commissioner. (See Att. 2.)

The third bill requested would amend the limit of group credit life insurance in K.S.A. 40-433 from \$25,000 to \$50,000. Mr. Cornish stated that five states have a limit of \$25,000 or less,

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the rest have larger limits or no limit at all. (See Att. 3.)

Rep. Littlejohn made a motion to introduce the three bills requested by the Kansas Life Association; Rep. Harper seconded the motion. The motion carried.

Mr. Mark Heitz, American Investors Life, presented a packet of materials to acquaint committee members with the company. He introduced Mr. Bill Sneed, Legal Counsel for American Investors Life. He stated that they are working with the Kansas Insurance Department on specific language to request changes in the Kansas investment code for life insurance companies. It will be directed at providing safeguards in the code in regards to investments in high yield bonds and to recognize the investment protection needs under the code for policyholders. The committee will take action on receiving such a bill at the time the specific language is determined. (See Att. 4.)

Mr. Ron Smith, Kansas Bar Association, stated that he would like a bill introduced that would prevent the cost of defense within the coverages of a property/casualty policy; he said this practice raises conflict of interest questions. This would be new statutory language in the code. Rep. Turnquist made a motion that such a bill be introduced; Rep. Cribbs seconded the motion. The motion carried.

Mr. Ed Hund, Kansas Trial Lawyers Association, stated that he doesn't believe the standards by which rates can be declared excessive are spelled out in SB 24 as specifically as they should be. This bill would be an aid to disclosure; rates must be prefiled before they are considered legal filings. He was asked to bring the specific language before the committee takes action to introduce such a bill.

Mr. Jack Roberts, Blue Cross Blue Shield, introduced Mr. Bill Pitsenberger, Legal Counsel for Blue Cross Blue Shield. Mr. Pitsenberger requested a bill dealing with "medical necessity" reviews. The bill would provide for a limitation on damages on managed care programs. (See Att. 5.)

The second bill requested by Mr. Pitsenberger relates to rights to continue coverage under group hospital, medical and surgical contracts and to obtain a conversion policy. State and federal laws are conflicting in some cases; the bill would provide that state regulations not apply if the employer is subject to federal obligations. State law would relate to employers employing fewer than 20 people. (See Att. 6.)

The third bill that Mr. Pitsenberger requested deals with fraud in the obtaining of health care benefits. It was requested by the corporate audit division; a similar bill was passed in Washington state. It prescribes the statute under which fraudulent cases are prosecuted. (Attachment 7)

Rep. Neufeld made a motion that the bills requested by Blue Cross Blue Shield be introduced; Rep. Turnquist seconded the motion. The motion carried.

Mr. Terry Burton, Kansas Group Life Insurance Company, requested a

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bill that would adopt group health language for group life insurance contracts to make them uniform. (See Att. 8.) Rep. Bryant made a motion that such a bill be introduced; Rep. Littlejohn seconded the motion. The motion carried.

Mr. Dick Brock, Kansas Insurance Department, presented a packet of proposals, four of which they are asking this committee to introduce. Proposal #1 raises the personal injury protection (Attachment 9) benefits required by the no-fault law to bring them in line with inflation. Mr. Brock stated that they will likely come in with updated figures based on CPI figures on November, 1986.

Proposal #6 would allow the Insurance Commissioner the authority to regulate risk retention and risk purchasing groups to the fullest extent permissible under the 1986 federal law.

Proposal #7 makes the unfair trade practices act applicable to HMO's and notes that the combined mutual nonprofit hospital and nonprofit medical services corporations are also subject to the act.

Proposal #8 deals with the evaluation of quality of care of HMO's. It provides for a self-certification procedure as the Insurance Department is not in a position to evaluate health care given by any provider.

Mr. Brock briefed the committee on the bills he will be asking the Senate Financial Institutions and Insurance Committee to introduce.

Proposal #2 seeks to establish standards relating to long-term care insurance.

Proposal #3 deals with inconsistencies in the payment of death proceeds contained in K.S.A. 40-447. One section provides that interest on proceeds be computed from the date proof of death is received, while another section provides that interest be payable from the date of death.

Proposal #4 would make it a defined unfair trade practice for an insurer to discriminate due to blindness.

Proposal #5 addresses the sunset provision of the residual market mechanism for the Health Care Provider Insurance Act. It would provide eliminating the provision or extending it past July 1, 1987.

Another proposal which will go to the Senate committee deals with a rider unique to Kansas regarding E & O coverage for brokers and excess lines agents.

Rep. Littlejohn made a motion that the Insurance Department proposals be introduced; Rep. Schauf seconded the motion. The motion carried.

Mr. Wayne Morris, Security Benefit Life, informed the committee that Mr. Richard Harmon, Kansas Life Association, would meet the members at the information desk at 3:30 Thursday to escort them to SRL for the committee tour.

The meeting was adjourned at 4:20 p.m.



HOUSE BILL NO. \_\_\_\_\_

AN ACT concerning the probate code; amending K.S.A. 59-1507b and repealing the existing section.

Be It Enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 59-1507b is hereby amended to read as follows:

(a) When a resident of the state dies, testate or intestate, if the total assets of the estate of the decedent do not exceed the sum of ten thousand dollars in value, the surviving spouse of the decedent, if entitled by will or by intestate succession to moneys on deposit in the account of the decedent in any bank, trust company, savings and loan association or credit union located in this state, shall be paid, without having been granted letters testamentary or letters of administration, the moneys on deposit, not in excess of one thousand dollars, upon furnishing the bank, trust company, savings and loan association or credit union with an affidavit showing the entitlement of the spouse to receive the moneys. Payment of the moneys to the spouse shall be deemed to be a payment to the legal representative of the decedent and the receipt of the spouse shall constitute a full discharge and release from any further claim for such payment to the same extent as if the payment had been made to an executor or administrator of the decedent's estate. The affidavit required to be furnished under the provisions of this section subsection shall be in form and contents substantially as follows:

State of Kansas )  
 ) ss.  
County of \_\_\_\_\_ )

\_\_\_\_\_, being duly sworn, says:

(1) On \_\_\_\_\_, 19\_\_\_\_, \_\_\_\_\_

(decedent) died \_\_\_\_\_ (testate or intestate) at \_\_\_\_\_ (location), leaving an estate not exceeding \$10,000 in value.

(2) The undersigned is the surviving spouse of \_\_\_\_\_ (decedent) and is entitled by \_\_\_\_\_ (decedent's will or by succession) to any money of \_\_\_\_\_ (decedent) deposited in \_\_\_\_\_ (specify bank, trust company, savings and loan association or credit union).

(3) There is on deposit with \_\_\_\_\_ (specify bank, trust company, savings and loan association or credit union and, if applicable, specify branch) the sum of \$ \_\_\_\_\_ in Account No. \_\_\_\_\_ in the name of \_\_\_\_\_ (decedent).

The undersigned requests that \_\_\_\_\_ (such sum or specify amount not exceeding \$1,000) be paid to the undersigned, without procurement of letters \_\_\_\_\_ (testamentary or of administration).

(4) The undersigned has not, nor has anyone on behalf of the undersigned, withdrawn or received any funds on deposit in this account, except the sum of \$ \_\_\_\_\_ (if applicable).

(Jurat)

(Signature)

(b) When a resident of the state dies, testate or intestate, if the total assets of the estate of the decedent do not exceed the sum of ten thousand dollars in value, the successor(s) of the decedent, if entitled by will or by intestate succession to moneys payable to the decedent's estate by any insurance company, shall be paid, without having been granted letters testamentary or letters of administration, the moneys payable, not in excess of five thousand dollars, upon furnishing the insurance company with an affidavit showing the entitlement of

the successor(s) to receive the moneys. Payment of the moneys to the successor(s) shall be deemed to be a payment to the legal representative of the decedent and the receipt of the successor(s) shall constitute a full discharge and release from any further claim for such payment to the same extent as if the payment had been made to an executor or administrator of the decedent's estate. The affidavit required to be furnished under the provisions of this subsection shall be in form and contents substantially as follows:

State of Kansas )  
 ) ss.  
County of )

(name of affiant(s)) being duly sworn  
state:

(1) On \_\_\_\_\_, 19\_\_\_\_, \_\_\_\_\_ (decedent)  
died \_\_\_\_\_ (testate or intestate) at \_\_\_\_\_  
(location), leaving an estate not exceeding \$10,000.00 in  
value, and I have attached a certified copy of the death  
certificate hereto.

(2) That no petition for the appointment of an executor or administrator of the decedent's estate is pending or has been granted;

(3) That all unpaid debts, claims or demands against the decedent or the decedent's estate and all estate and inheritance taxes due, if any, on the property transfers involved, have been or will be paid;

(4) That the following are the names, ages, relationships and addresses of the surviving relatives and heirs of the decedent:

Name

Age

Relationship

Address

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(5) That the decedent's estate consists of the following property: (include the proceeds from policy no. \_\_\_\_\_):

<u>Property</u>	<u>\$ Value</u>

(6) That affiant(s) has(have) the sole and exclusive right to succeed to the property of the decedent and that affiant(s) is(are) over 18 years of age and is(are) legally competent in all respects to make this affidavit and to receive the above mentioned property.

Wherefore, affiant(s) hereby request(s) that the proceeds from the above mentioned insurance policy be transferred to the affiant(s).

(Jurat)

\_\_\_\_\_  
Signature(s)



HOUSE BILL NO. \_\_\_\_\_

AN ACT concerning insurance; relating to deposit of assets constituting reserves of life insurance companies; amending K.S.A. 1986 Supp. 40-404 and repealing the existing section.

Be it Enacted by the Legislature of the State of Kansas

Section 1. K.S.A. 1986 Supp. 40-404 is hereby amended to as follows: [at this point reprint entirety of 40-404, as amended in 1986; then add the following material, all of which would be underlined:]

(e) (1) Life insurance companies organized under the laws of this state are authorized to satisfy the deposit requirements of this section by depositing assets with a custodian bank having its principal place of business in Kansas, pursuant to a written agreement with such custodian bank. Such deposit shall have the same force and effect as the deposit of such assets directly with the commissioner under subsection (a) and K.S.A. 40-230, but the requirements of K.S.A. 40-230 that the treasurer and the commissioner give receipts for such assets and that such assets be delivered only on the joint order of the treasurer and commissioner shall not apply to assets deposited pursuant to this subsection, and the requirement of subsection (b) that deposits be withdrawn only on the order of the commissioner shall not apply to assets deposited pursuant to this subsection.

(2) Assets deposited pursuant to this subsection shall be held by the custodian bank on behalf of the commissioner as in trust for the use and benefit of the

company. Such assets shall remain the specific property of the company and shall not be subject to the claim of any third party against the custodian.

(3) The custodian bank is authorized to redeposit such assets with a clearing corporation as defined in K.S.A. 84-8-102 and as permitted by K.S.A. 40-2b20. The custodian bank is authorized to hold such assets through the Federal Reserve Bank book-entry system.

(4) The commissioner shall by regulation establish such requirements relating to deposits under this subsection as may be appropriate to assure the security and safety of such deposits, including but not limited to the following:

- (a) Capital and surplus of the custodian bank;
- (b) Title in which deposited assets are held;
- (c) Records to be kept by the custodian and the commissioner's access thereto;
- (d) Periodic reports by the custodian to the commissioner
- (e) Responsibility of the custodian to indemnify the company for loss of deposited assets;
- (f) Withdrawal or exchange of deposited assets;
- (g) Authority of the commissioner to terminate the deposit if the condition of the custodian bank

should threaten the security of the deposited assets.

Section 2. Nothing in this act shall be construed to hold the state of Kansas, the Commissioner of Insurance or his authorized representatives liable either personally or officially for any default of such custodian bank.

Section 3. K.S.A. Supp. 1986 40-404 is hereby repealed.

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

AN ACT concerning insurance; amending K.S.A. 40-433 and repealing the existing section.

Be It Enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 40-433 is hereby amended to read as follows: No policy of group life insurance shall be delivered in this state unless it conforms to one of the following descriptions:

(1) A policy issued by an insurance company organized under the laws of the state of Kansas on its employees and agents, which agents for the purpose of this act only shall be deemed employees, the beneficiaries under such policies to be persons designed by each insured, or a policy issued to an employer, or to the trustees of a fund established by an employer, which employer or trustees shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer, both subject to the following requirements: (a) The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors or partnerships if the business of the employer and of such affiliated corporation, proprietors or partnerships is under common control through stock ownership, contract or otherwise. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include

retired employees. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless he or she is actively engaged in and devotes a substantial part of his or her time to the conduct of the business of the proprietor or partnership. (b) The premium for the policy shall be paid by the policyholder, either wholly from the employer's funds or funds contributed by him or her, or partly from such funds and partly from funds contributed by the insured employees. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least seventy-five percent (75%) of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contribution. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer. (c) The policy must cover at least ten (10) employees at date of issue. (d) The amounts of insurance under the policy must be based upon some plan, precluding individual selection either by the employees or by the employer or trustees.

(2) A policy issued to a creditor, who shall be deemed the policyholder, to insure debtors of the creditor, subject to the following requirements: (a) The debtors eligible for insurance under the policy shall be all of the

debtors of the creditor whose indebtedness is repayable in installments, or all of any class or classes thereof determined by conditions pertaining to the indebtedness. (b) The premium for the policy shall be paid by the policyholder, either from the creditor's funds or from charges collected from the insured debtors, or from both. A policy on which part or all of the premium is to be derived from the collection from the insured debtors of identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless at least seventy-five percent (75%) of the then eligible debtors elect to pay the required charges. A policy on which no part of the premium is to be derived from the collection of such identifiable charges must insure all eligible debtors, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer. (c) The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least one hundred (100) persons yearly, or may reasonably be expected to receive at least one hundred (100) new entrants during the first policy year, and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than seventy-five percent (75%) of the entrants become insured. (d) The amount of insurance on the life of any debtor shall at no time, under one (1) or more policies, exceed the amount owed by him or her which is repayable in installments to the creditor, ~~twenty-five thousand dollars - (\$25,000)~~, fifty thousand dollars (\$50,000), whichever is less. (e) The insurance shall be payable to the policyholder. Such payment shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of such payment.

(3) A policy issued to a labor union, which shall be deemed the policyholder, to insure members of such union for the benefit of persons other than the union or any of its officials, representatives or agents, subject to the following requirements: (a) The members eligible for insurance under the policy shall be all of the members of the union, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the union, or both.

(b) The premium for the policy shall be paid by the policyholder, either wholly from the union's funds, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least seventy-five percent (75%) of the then eligible members excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(c) The policy must cover at least twenty-five (25) members at date of issue.

(d) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the union.

(4) A policy issued to the trustees of a fund established in this state by two (2) or more employers if a

majority of the employees to be insured of each employer are located within the state, or to the trustees of a fund established by one or more labor unions, or by one or more employers and one or more labor unions, which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the union, subject to the following requirements: (a) The persons eligible for insurance shall be all of the employees of the employers or all of the members of the unions, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the unions, or to both. The policy may provide that the term "employees" shall include retired employees and the individual proprietor or partners if any employer is an individual proprietor or a partnership. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless he or she is actively engaged in and devotes a substantial part of his or her time to the conduct of the business of the proprietor or partnership. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship. (b) The premium for the policy shall be paid by the trustees either wholly from funds contributed by the employer or employers of the insured persons, or by the union or unions, or by both, or partly from such funds and partly from funds contributed by the insured employees. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured persons. The policy must



insure all eligible persons, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer. (c) The policy must cover at date of issue at least one hundred (100) persons per employer average of five (5) persons per employer unit; and if the fund is established by the members of an association of employers the policy may be issued only if (i) either (a) the participating employers constitute at date of issue at least sixty percent (60%) of those employer members whose employees are not already covered by group life insurance or (b) the total number of persons covered at date of issue exceeds six hundred (600); and (ii) the policy shall not require that, if a participating employer discontinues membership in the association, the insurance of his or her employees shall cease solely by reason of such discontinuance. (d) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder, employers, or union.

(5) A policy issued to an association which has been organized and is maintained for purposes other than that of obtaining insurance, insuring at least twenty-five (25) members, employees, or employees of members of the association for the benefit of persons other than the association or its officers. At the date of issue the policy must cover (a) at least sixty percent (60%) of the association membership or employees of members who are not already covered for group insurance or (b) the total number of persons covered at the date of issue exceeds six hundred (600). The term "employees" as used herein shall be deemed to include retired employees. The premiums for the policies shall be paid by the policyholder, either wholly from association funds, or funds contributed by the members of such association or by employees

of such members or any combination thereof. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured person or by the association or by the member.

(6) Any policy issued pursuant to this section may be extended to insure the employees against loss due to the death of their spouses or the employees' children under twenty-one (21) years of age, or employees' children twenty-one (21) years or older who are attending an educational institution and relying upon the insured employees for financial support, or any class or classes thereof, subject to the following requirements:

(a) The premium for the insurance shall be paid by the policyholder, either from the employer's funds or from funds contributed by the insured employees, or from both. If any part of the premium is to be derived from funds contributed by the insured employees, the insurance with respect to spouses and children may be placed in force only if at least seventy-five percent (75%) of the then eligible employees, excluding any as to whose family members evidence of insurability is not satisfactory to the insurer, elect to make the required contribution. If no part of the premium is to be derived from funds contributed by the employees, all eligible employees, excluding any as to whose family members evidence of insurability is not satisfactory to the insurer, must be insured with respect to their spouses and children.

(b) The amounts of insurance must be based upon some plan precluding individual selection either by the employees or by the policyholder, or employer and shall not exceed with respect to any spouse or child, fifty percent (50%) of the insurance on the life of such insured employee or four thousand dollars (\$4,000) whichever is less. In the case of a dependent

whose age at death is under six (6) months; the amount shall not be in excess of two hundred and fifty dollars (\$250).

(c) Upon termination of the insurance with respect to the spouse of an employee by reason of the employee's termination of employment or death, the spouse insured pursuant to this section shall have the same conversion rights as to the insurance on his or her life as is provided for the employee under K.S.A. 40-434.

(d) Notwithstanding the provisions of K.S.A. 40-434 only one certificate need be issued for delivery to an insured person if a statement concerning any dependent's coverage is included in such certificate.

(7) A policy may be issued to any other group which the commissioner of insurance finds is the proper subject of a group life insurance policy or contract. Any such group shall be subject to any appropriate conditions or provisions relating thereto which the commissioner may establish or require, consistent with the provisions of this act, and such conditions and provisions shall be included in the policy or contract.

Section 2. K.S.A. 40-433 is hereby repealed.

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

Kansas House of Representatives  
Insurance Committee  
The Honorable Dale M. Sprague, Chairman  
January 20, 1987  
Statement of  
Mark V. Heitz, President  
AMERICAN INVESTORS LIFE INSURANCE COMPANY

American Investors Life Insurance Company was established in 1965 as a publicly held Kansas corporation to provide; (i) life insurance and annuity products for the citizens of Kansas seeking the protection and savings incentive afforded by our Company's products and (ii) a solid investment for our stockholders.

Twenty-two years later, American Investors has grown to become the largest publicly owned Kansas based life insurance company, with more than 6,000 stockholders, transacting business in 41 states and the District of Columbia. AmVestors Financial Corporation, our parent Company, is the only publicly owned life insurance holding company domiciled in Kansas. The Kansas Public Employees Retirement System (KPERS) is our largest single stockholder. Their investment as a stockholder in American Investors has enhanced the economic development aspects of our growth and the KPERS investment has already substantially increased in value, with the upside potention considered to be significant.

T. M. Murrell, Chairman and Chief Executive Officer of American Investors and AmVestors Financial Corporation, is one of our Company's founders and is well known in Kansas, throughout the insurance industry and certainly in the Kansas Legislature, having served as Majority Floor Leader of the Kansas House of Representatives. Mr. Murrell has appeared many times before this Committee on behalf of American Investors and as Chairman of the Legislative Committee of the Kansas Life Association.

American Investors has always experienced steady growth, but in the past three years has accelerated as reflected by the following figures from our Statutory Annual Statements:

<u>Year End</u>	<u>Revenue</u>	<u>Assets</u>	<u>Capital &amp; Surplus</u>
12/31/86 (est.)	\$228,000,000	\$352,000,000	\$45,500,000
12/31/85	90,514,485	128,528,844	9,840,278
12/31/84	34,731,839	54,820,632	8,745,555
12/31/83	19,644,736	31,455,847	6,436,758

The Company's decision to enter the Single Premium Product market in 1984 has been a key factor in our growth. Under the Tax Reform Act of 1986 our Single Premium Whole Life (SPWL) and Single Premium Deferred Annuity (SPDA) products have become increasingly popular. We expect continuing growth and prosperity for American Investors which should further enhance our role as a participant in the economic development program for the State of Kansas. Topeka, Kansas is our home office, has always been our home office, and we plan to remain a Kansas corporation located in Topeka, Kansas.

American Investors Life is considered a middle market single premium insurer. The average size SPDA product sold being about \$15,000 and the average size SPWL product sold being \$22,000. All of our products are back-end loaded.

All investment funds are managed by three outside investment advisors two of whom specialize in the high yield bond area. Because of this, the company is able to offer highly competitive products and still make a profit. All reserves for single premium policies are held in segregated custodial accounts with a member bank of the Federal Reserve System, which gives great comfort to Insurance Commissioners and policyholders who remember the bankruptcies of two prominent single premium deferred annuity companies.

The Company's accounting integrity is bolstered both by the fact that we recognize zero profits up-front when the policy is issued and by asset liability matching studies done periodically by American Investors well known independent actuarial consultants. The Company is rated "A" Excellent by the A. M. Best Co., which is a very high rating for a life company of our size.

All of these factors: competitive products, increased financial strength, sound investment strategy and excellent service are for the primary purpose of protecting our policyholders.

Smith Barney, Harris Upham & Co., Inc., AmVestor's national market maker and investment banker has researched and analyzed American Investors for several years and believe our position as an experienced "pure-player" in Single Premium Products will greatly benefit our policyholders and out stockholders.

During the 1987 Legislative Session we are sure there will be many issues affecting American Investors. Besides Mr. Murrell and I, Mr. Bill Sneed, a partner in Gehrt and Roberts, Chartered, former Chief Attorney for the Kansas Insurance Department and a noted insurance law authority will be representing American Investors in the legislative process. We will also work with the Kansas Life Association and cooperate with the Kansas Insurance Department on legislative matters.

We respectfully request the Committee to support several amendments to the Kansas investment code for life insurance companies (K.S.A. 40-2b01 etseq). Those changes will be directed at providing safeguards in the code in regards to investments in high yield bonds and to recognize the investment protection needs under the code for policyholders.

Specifically, we are anticipating changes to K.S.A. 40-2b05, 40-2b24 and 40-405. We are currently working with the Kansas Insurance Department to finalize these amendments and copies will be provided to you and your staff.

Thank you for allowing us to appear before the Insurance Committee. We look forward to a productive Session in 1987 and American Investors will be glad to assist you when possible. The attached information should supplement my remarks in presenting American Investors Life Insurance Company.

AN ACT relating to insurance companies; prohibiting the award of extra-contractual damages in certain circumstances.

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

SECTION 1. No insurance company which insures or administers benefits for medical, hospital, surgical, or dental services shall be subject to the award to any plaintiff of extra-contractual damages in any civil action where such action arises out of: (a) a denial of benefits by the insurance company on the grounds that such services were experimental, investigational, obsolete, or not medically necessary; (b) a reduction or elimination of benefits when other than a contracting provider provides such services under a program which differentiates benefits based upon use or non-use of a contracting provider; or (c) use of a contracting provider under a program which differentiates benefits based upon use or non-use of a contracting provider.

SECTION 2. As used herein: (a) "insurance company" shall mean any insurance company as defined in K.S.A. 40-201, any nonprofit medical and hospital service corporation organized under K.S.A. 40-19c01 et seq., or any health maintenance organization subject to the provisions of K.S.A. 40-3201 et seq.; (b) "services" shall mean services, supplies, equipment, procedures, drugs and medicines, or the use of institutional facilities; (c) "extra-contractual damages" shall mean damages other than the cost of services under the benefit program itself and plus attorney fees if otherwise available under K.S.A. 40-246; (d) "medically necessary" shall mean a service which is (i) required to diagnose or treat an illness (including pregnancy) or injury, (ii) consistent with the diagnosis or treatment of such illness (including pregnancy) or injury, ~~(iii) in accordance with~~ standards of good medical practice, and (iv) not for the convenience of the patient or the provider.

SECTION 3. This act shall take effect and be in force from and after its publication in the Kansas Register.

LEGISLATIVE PROPOSAL NO. \_\_\_\_\_

AN ACT relating to rights to continue coverage under group hospital, medical and surgical contracts and to obtain a conversion policy.

BE IT ENACTED, by the Legislature of the State of Kansas:

Section 1. The provisions of K.S.A. 40-19c06(5) and of K.S.A. 40-2209(D) shall not apply to any group policy of insurance issued to an employer subject to the continuation and conversion obligations set forth at Title I, Subtitle B, Part 6 of the Employee Retirement Income Security Act of 1974 or at Title XXII of the Public Health Service Act.

Section 2. This act shall take effect and be in force from and after its publication in the Kansas register.



LEGISLATIVE PROPOSAL \_\_\_\_\_

AN ACT Relating to fraud in the obtaining of health care benefits and prescribing penalties therefore.

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

SECTION 1. Unless the context clearly requires otherwise, the definitions in this section apply throughout this act.

(1) "Claim" means any attempt to cause a health care payer to make a health care payment.

(2) "Deceptive" means presenting a claim to a health care payer that contains a statement of fact or fails to reveal a material fact, leading the health care payer to believe that the represented or suggested state of affairs is other than it actually is. For the purposes of this act, the determination of what constitutes a material fact is a question of law to be resolved by the court.

(3) "False" means wholly or partially untrue or deceptive.

(4) "Health care payment" means a payment for health care services or the right under a contract, certificate, or policy of insurance to have a payment made by a health care payer for a specified health care service.

(5) "Health care payer" means any insurance company authorized to provide health insurance in this state, any health maintenance organization authorized under K.S.A. 40-3201 et seq., any legal entity which is self-

insured and providing health care benefits to its employees, or any person responsible for paying for health care services.

(6) "Person" means an individual, corporation, partnership, association, or other legal entity.

(7) "Provider" means any person lawfully licensed or authorized to render any health service.

SECTION 2.

(1) A person shall not make or present or cause to be made or presented to a health care payer a claim for a health care payment knowing the claim to be false.

(2) No person shall knowingly present to a health care payer a claim for a health care payment that falsely represents that the goods or services were medically necessary in accordance with professionally accepted standards. Each claim that violates this subsection shall constitute a separate offense.

(3) No person shall knowingly make a false statement or false representation of a material fact to a health care payer for use in determining rights to a health care payment. Each claim that violates this subsection shall constitute a separate violation.

(4) No person shall conceal the occurrence of any event affecting his or her initial or continued right under a contract, certificate, or policy of insurance to have a payment made by a health care payer for a specified health care service. A person shall not conceal or fail to disclose any information with intent to obtain a health care payment to which the person or any other person is not entitled, or to obtain a health care payment in an amount greater than that which the person or any other person is entitled.

(5) A person who violates this section is guilty of a class C felony.

SECTION 3.

In a prosecution under this act, circumstantial evidence may be presented to demonstrate that a false statement or claim was knowingly made. Such evidence may include but shall not be limited to the following circumstances;

(1) Where a claim for a health care payment is submitted with the person's actual, facsimile, stamped, typewritten, or similar signature on the form required for the making of a claim for health care payment; and

(2) Where a claim for a health care payment is submitted by means of computer billing tapes or other electronic means if the person has advised the health care payer in writing that claims for health care payment will be submitted by use of computer billing tapes or other electronic means.

SECTION 4. This act shall not be construed to prohibit or limit a prosecution of or civil action against a person for the violation of any other law of this state.

SECTION 5. Upon the conviction under this act of any provider of health care services, the prosecutor shall provide written notification to the appropriate regulatory or disciplinary agency of such conviction.

SECTION 6. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

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

AN ACT relating to group life insurance and the requirements governing a group contract; amending and repealing K.S.A. 40-433;

BE IT ENACTED by the Legislature of the State of Kansas:

Section 1. K.S.A. 40-433 is hereby amended to read as follows:

40-433. No policy of group life insurance shall be delivered in this state unless it conforms to one of the following descriptions:

- (1) A policy issued by an insurance company organized under the laws of the state of Kansas on its employees and agents, which agents for the purpose of this act only shall be deemed employees, the beneficiaries under such policies to be persons designated by each insured, or a policy issued to an employer, or to the trustees of a fund established by an employer, which employer or trustees shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer, both subject to the following requirements: (a) The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors or partnerships if

the business of the employer and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract or otherwise. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless he or she is actively engaged in and devotes a substantial part of his or her time to the conduct of the business of the proprietor or partnership. A policy issued to insure the employees of a public body may provide that the term "employee" shall include elected or appointed officials. (b) The premium for the policy shall be paid by the policyholder, either wholly from the employer's funds or funds contributed by him or her, or partly from such funds and partly from funds contributed by the insured employees. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least seventy-five (75%) of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory

to the insurer, elect to make the required contribution. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer. (c) The policy must cover at least ~~ten (10)~~ five (5) employees at date of issue. (d) The amounts of insurance under the policy must be based upon some plan, precluding individual selection either by the employees or by the employer or trustees.

- (2) A policy issued to a creditor, who shall be deemed the policyholder, to insure debtors of the creditor, subject to the following requirements: (a) The debtors eligible for insurance under the policy shall be all of the debtors of the creditor whose indebtedness is repayable in installments, or all of any class or classes thereof determined by conditions pertaining to the indebtedness or to the purchase giving rise to the indebtedness. (b) The premium for the policy shall be paid by the policyholder, either from the creditor's funds or from charges collected from the insured debtors, or from both. A policy on which part or all of the premium is to be derived from the collection from the insured debtors of identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless at least seventy-five percent (75%) of the then

eligible debtors elect to pay the required charges. A policy on which no part of the premium is to be derived from the collection of such identifiable charges must insure all eligible debtors, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer. (c) The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least one hundred (100) persons yearly, or may reasonably be expected to receive at least one hundred (100) new entrants during the first policy year and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than seventy-five percent (75%) of the new entrants become insured. (d) The amount of insurance on the life of any debtor shall at no time, under one (1) or more policies, exceed the amount owed by him or her which is repayable in installments to the creditor, or twenty-five thousand dollars (\$25,000), whichever is less. (e) The insurance shall be payable to the policyholder. Such payment shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of such payment.

- (3) A policy issued to a labor union, which shall be deemed the policyholder, to insure members of such union for the benefit of persons other than the union or any of its officials, representatives or agents, subject to the following requirements: (a) The members eligible for insurance under the policy shall be all of the members of the union, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the union, or both.



(b) The premium for the policy shall be paid by the policyholder, either wholly from the union's funds, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least seventy-five percent (75%) of the then eligible members excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(c) The policy must cover at least twenty-five (25) members at date of issue.

(d) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the union.

(4) A policy issued to the trustees of a fund established in this state by two (2) or more employers if a majority of the employees to be insured of each employer are located within the state, or to the trustees of a fund established by one or more labor unions, or by

one or more employers . . . one or more labor unions, which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the unions, subject to the following requirements: (a) The persons eligible for insurance shall be all of the employees of the employers or all of the members of the unions, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the unions, or to both. The policy may provide that the term "employees" shall include retired employees and the individual proprietor or partners if any employer is an individual proprietor or a partnership. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless he or she is actively engaged in and devotes a substantial part of his or her time to the conduct of the business of the proprietor or partnership. The policy may provide that the term "employees" shall include the trustees of their employees, or both, if their duties are principally connected with such trusteeship. (b) The premium for the policy shall be paid by the trustees either wholly from funds contributed by the employer or employers of the insured persons, or by the union or unions, or by both, or partly from such funds and partly from funds contributed by the

insured employees. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured persons. The policy must insure all eligible persons, or all except any as to whom evidence or individual insurability is not satisfactory to the insurer. (c) The policy must cover at date of issue at least one hundred (100) persons and not less than an average of five (5) persons per employer unit. ~~and if the fund is established by the members of an association of employers the policy may be issued only if (i) either (a) the participating employers constitute at date of issue at least sixty percent (60%) of those employer members who employees are not already covered by group life insurance or (b) the total number of persons covered at date of issue exceeds six hundred (600), and (ii) the policy shall not require that, if a participating employer discontinues membership in the association, the insurance of his or her employees shall cease solely by reason of such discontinuance.~~ (d) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder, employers, or union.

- (5) A policy issued to an association which has been organized and is maintained for purposes other than that of obtaining insurance, insuring at least twenty-five (25) members, employees, or employees of members of the association for the benefit of persons other than the association or its officers. ~~At the date issue the policy must cover (a) at~~

~~least sixty percent (60) of the association membership or employees of members who are not already covered for group insurance or (b) the total number of persons covered at the date of issue exceeds six hundred (600)~~ The term "employees" as used herein shall be deemed to include retired employees. The premiums for the policies shall be paid by the policyholder, either wholly from association funds, or funds contributed by the members of such association or by employees of such members or any combination thereof. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured person or by the association or by the member.

- (6) Any policy issued pursuant to this section may be extended to insure the employees against loss due to the death of their spouses or the employees' children under twenty-one (21) years of age, or employees' children twenty-one (21) years or older who are attending an educational institution and relying upon the insured employees for financial support, or any class or classes thereof, subject to the following requirements:

(a) The premium for the insurance shall be paid by the policyholder, either from the employer's funds or from funds contributed by the insured employees, or from both. If any part of the premium is to be derived from funds contributed by the insured employees,

the insurance with respect to spouses and children may be placed in force only if at least seventy-five (75%) of the then eligible employees, excluding any as to whose family members evidence of insurability is not satisfactory to the insurer, elect to make the required contribution. If no part of the premium is to be derived from funds contributed by employees, all eligible employees, excluding any as to whose family members evidence of insurability is not satisfactory to the insurer, must be insured with respect to their spouses and children.

(b) The amounts of insurance must be based upon some plan precluding individual selection either by the employees or by the policyholder, or employer and shall not exceed with respect to any spouse or child, fifty percent (50%) of the insurance on the life of such insured employee or four thousand dollars (\$4,000) whichever is less. In the case of a dependent whose age at death is under six (6) months, the amount shall not be in excess of two hundred and fifty dollars (\$250).

(c) Upon termination of the insurance with respect to the spouse of an employee by reason of the employee's termination of employment or death, the spouse insured pursuant to this section shall have the same conversion rights as to the insurance on his or her life as is provided for the employee under K.S.A. 40-434.

(d) Notwithstanding the provisions of K.S.A. 40-434 only one certificate need be issued for delivery to an insured person if a statement concerning any dependent's coverage is included in such certificate.

(7) A policy may be issued to any other group which the commissioner of insurance finds is the proper subject of a group life insurance policy or contract. Any such group shall be subject to any appropriate conditions or provisions relating thereto which the commissioner may establish or require, consistent with the provisions of this act, and such conditions and provisions shall be included in the policy or contract.

Section 2. K.S.A. 40-433 is hereby repealed.

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. 1

The primary purpose of Legislative Proposal No. 1 is to raise the personal injury protection benefits required by the no-fault law so that they keep pace with inflation. The no-fault law was enacted fourteen years ago by the 1973 legislature. Since that time, inflation has eroded the minimum benefits required by the law. As such, the benefits are no longer adequate to serve the purpose for which they were originally enacted.

To correct this problem, Legislative Proposal No. 1 increases the individual benefits within the personal injury protection package by the approximate corresponding increase in the Consumer Price Index since 1973. This will be of great advantage to many Kansans injured in automobile accidents because they will have more benefits available to compensate them more adequately for their injuries.

To maintain the same relationship between the personal injury protection benefits and access to general damages as was contemplated by the original law, it has also been necessary to adjust the threshold. This has been done by incorporating the general damages benefit and threshold provisions developed by the 1984 interim legislative committee. These are the same provisions that were incorporated in House Bill No. 2422 which is the most recent no-fault bill passed by the legislature. With the introduction of "general benefits" - first party coverage for noneconomic loss - there is established a second threshold. This new threshold is reached when medical expenses or the value thereof equal \$1,250 and it is at this point that coverage for noneconomic loss (general benefits) is triggered. Thus, for those whose only interest is compensation for noneconomic loss, \$1,250 is the figure that should be compared to the current threshold of \$500. Further, this first party coverage, which begins when the value of medical expenses reaches \$1,250 continues until an additional \$1,250 in medical expenses have been incurred. At this point, \$3,000 in medical expenses have been incurred (\$1,250 + \$1,750) and the second threshold of \$3,000 has thereby been reached so that, without any gaps, an action may be brought seeking compensation for additional noneconomic losses.

Even with the increase in the dollar amount of the tort threshold, under House Bill No. 2833 Kansans will still be able to sue for all damages in the vast majority of cases. Kansans are still going to be able to sue in every case for all property damages without any restrictions. Also, Kansans will still be able to sue in every case for all economic losses (whether past, present or future) without any restrictions. And, Kansans will still be able to sue in every case for the intangible pain and suffering damages where they have sustained permanent disfigurement, a loss of a body member, a permanent type of injury, a permanent loss of a bodily function, death, and when their injury is of a kind that requires more than \$3,000 in medical treatment. So, in all of these cases, Kansans will still have an unlimited right to sue for damages and these cases represent the vast majority of those that arise in Kansas. In addition, without the need to sue, they will receive compensation for non-economic loss when their medical expenses equal or exceed \$1,250.

Legislative Proposal No.1 is a recommendation which greatly benefits the insuring public of the state of Kansas.

LEGISLATIVE PROPOSAL NO. 1

1 AN ACT relating to insurance; relating to the Kansas automobile injury  
2 reparations act; concerning personal injury protection benefits and tort  
3 threshold; amending K.S.A. 40-3103, 40-3104, 40-3105, 40-3109, 40-3113a, 40-  
4 3116 and 40-3117 and repealing the existing sections.

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

5 Section 1. K.S.A. 40-3103 is hereby amended to read as follows: 40-  
6 3103. As used in this act, the following words and phrases shall have the  
7 meanings respectively ascribed to them herein:

8 (a) "Commissioner" means the state commissioner of insurance.

9 (b) "Disability benefits" means allowances for loss of monthly earnings  
10 due to an injured person's inability to engage in available and appropriate  
11 gainful activity, subject to the following conditions and limitations: (1)  
12 The injury sustained is the proximate cause of the injured person's  
13 inability to engage in available and appropriate gainful activity; (2)  
14 subject to the maximum benefits stated herein, allowances shall equal ~~one~~  
15 ~~hundred-percent--(100%)~~ 100% of any such loss per individual, unless such  
16 allowances are deemed not includable in gross income for federal income tax  
17 purposes, in which event such allowances shall be limited to ~~eighty-five~~  
18 ~~percent--(85%)~~ 85%; and (3) allowances shall be made up to a maximum of not  
19 less than ~~six-hundred-fifty-dollars--(\$650)~~ \$1,200 per month for not to  
20 exceed one ~~(1)~~ year after the date the injured person becomes unable to  
21 engage in available and appropriate gainful activity.

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

23 (d) "Funeral benefits" means allowances for funeral, burial or  
24 cremation expenses in an amount not to exceed ~~one-thousand-dollars--(\$1,000)~~  
25 \$2,500 per individual.

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



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

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

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

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

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

43 (k) "Medical benefits" ~~shall-mean~~ means and ~~include~~ includes allowances  
44 for all reasonable expenses, up to a limit of not less than ~~two-thousand~~  
45 ~~dollars-(\$2,000)~~ \$5,000, for necessary health care rendered by practitioners  
46 licensed by the board of healing arts, surgical, x-ray and dental services,  
47 including prosthetic devices and necessary ambulance, hospital and nursing  
48 services; and such term also ~~shall-include~~ includes allowances for services  
49 recognized and permitted under the laws of this state for an injured person  
50 who relies upon spiritual means through prayer alone for healing in  
51 accordance with ~~his-or-her~~ such person's religious beliefs.

52 (l) "Monthly earnings" means: (1) In the case of a regularly employed  
53 person or a person regularly self-employed, ~~one-twelfth-(1/12)~~ 1/12 of the  
54 annual earnings at the time of injury; or (2) in the case of a person not  
55 regularly employed or self-employed, or of an unemployed person, ~~one-twelfth~~  
56 ~~(1/12)~~ 1/12 of the anticipated annual earnings from the time such person  
57 would reasonably have been expected to be regularly employed. In  
58 calculating the anticipated annual earnings of an unemployed person who has  
59 previously been employed, the insurer shall average the annual compensation  
60 of such person for not to exceed five ~~(5)~~ years preceding the year of injury  
61 or death, during which such person was employed.

62 (m) "Motor vehicle" means every self-propelled vehicle of a kind  
63 required to be registered in this state, including any trailer, semitrailer

64 or pole trailer designed for use with such vehicle, but such term ~~shall~~ does  
65 not include a motorized bicycle.

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

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

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

76 (q) "Personal injury protection benefits" means the disability  
77 benefits, funeral benefits, medical benefits, rehabilitation benefits,  
78 substitution benefits, general benefits and survivors' benefits required to  
79 be provided in motor vehicle liability insurance policies pursuant to this  
80 act.

81 (r) "Rehabilitation benefits" means allowances for all reasonable  
82 expenses, up to a limit of not less than ~~two thousand dollars (\$2,000)~~  
83 \$5,000, for necessary psychiatric services, occupational therapy and such  
84 occupational training and retraining as may be reasonably necessary to  
85 enable the injured person to obtain suitable employment.

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

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

94 (u) "Self-insurer" means any person effecting self-insurance pursuant  
95 to subsection ~~(d)~~ (f) of K.S.A. 40-3104 and amendments thereto or any  
96 nonresident self-insurer that has filed the form prescribed in subsection  
97 (b) of K.S.A. 40-3106 and amendments thereto.

98 (v) "Special mobile equipment" means every vehicle not designed or used  
99 primarily for the transportation of persons or property and only

100 incidentally operated or moved over a highway, including but not limited  
101 to: Ditch-digging apparatus, well-boring apparatus and road construction  
102 and maintenance machinery such as asphalt spreaders, bituminous mixers,  
103 bucket loaders, tractors other than truck tractors, ditchers, leveling  
104 graders, finishing machines, motor graders, road rollers, scarifiers, earth  
105 moving carryalls and scrapers, power shovels and drag lines, and self-  
106 propelled cranes and earth moving equipment. The term does not include  
107 house trailers, dump trucks, truck mounted transit mixers, cranes or  
108 shovels, or other vehicles designed for the transportation of persons or  
109 property to which machinery has been attached.

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

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

119 (y) "Survivors' benefits" means total allowances to all survivors for:  
120 (1) Loss of an injured person's monthly earnings after ~~his-or-her~~ such  
121 person's death, up to a maximum of not less than ~~six-hundred-fifty-dollars~~  
122 ~~(\$650)~~ \$1,200 per month; and (2) substitution benefits following the injured  
123 person's death. Expenses of the survivors which have been avoided by reason  
124 of the injured person's death shall be subtracted from the allowances to  
125 which survivors would otherwise be entitled, and survivors' benefits shall  
126 not be paid for more than one ~~(1)~~ year after the injured person's death,  
127 less the number of months the injured person received disability benefits  
128 prior to ~~his-or-her~~ such person's death. For purposes of this subsection,  
129 monthly earnings shall include, in the case of a person who was a social  
130 security recipient or a retirement or pension benefit recipient, or both, at  
131 the time of such injured person's death, 1/12 of the annual amount of the  
132 difference between the annual amount of the social security benefits or the  
133 retirement benefits, or both, that such injured person was receiving at the  
134 time of such injured person's death and the annual amount of the social

135 security benefits or the retirement benefits, or both, that the survivor is  
136 receiving after the time of such injured person's death.

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

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

145 (bb) "General benefits" means an allowance of \$500 in the event medical  
146 benefits, as defined in this section, exceed \$1,250 and an allowance equal  
147 to the medical benefits, as defined in this section, exceeding \$1,250,  
148 except the total general benefits shall not exceed \$2,250.

149 Sec. 2. K.S.A. 40-3104 is hereby amended to read as follows: 40-3104.

150 (a) Every owner shall provide motor vehicle liability insurance coverage in  
151 accordance with the provisions of this act for every motor vehicle owned by  
152 such person, unless such motor vehicle is:

153 (1) included under an approved self-insurance plan as provided in  
154 subsection (f) of this section or

155 (2) included under a qualified plan of self-insurance approved by an  
156 agency of the state in which such motor vehicle is registered and the form  
157 prescribed in subsection (b) of K.S.A. 40-3106 has been filed or

158 (3) is expressly exempted from the provisions of this act.

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

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

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

169 (e) No person charged with violating subsections (b), (c) or (d) shall  
170 be convicted if such person produces in court or in the office of the

171 arresting officer, within 20 days of the date of arrest, evidence of  
172 financial security for the motor vehicle operated, which was valid at the  
173 time of arrest. For the purpose of this subsection, evidence of financial  
174 security shall be provided by a policy of motor vehicle liability insurance,  
175 an identification card or certificate of insurance issued to the  
176 policyholder by the insurer which provides the name of the insurer and the  
177 policy number, a certificate of self-insurance signed by the commissioner of  
178 insurance or the completion of a form prescribed by the secretary of revenue  
179 signed by the insurer or an agent of the insurer certifying that at the time  
180 of arrest the motor vehicle was covered by motor vehicle liability insurance.

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

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

194 (f) Any person in whose name more than 25 motor vehicles are registered  
195 in Kansas may qualify as a self-insurer by obtaining a certificate of self-  
196 insurance from the commissioner of insurance. The certificate of self-  
197 insurance issued by the commissioner shall cover such owned vehicles and  
198 those vehicles, registered in Kansas, leased to such person if the lease  
199 agreement requires that motor vehicle liability insurance on the vehicles be  
200 provided by the lessee. Upon application of any such person, the  
201 commissioner of insurance may issue a certificate of self-insurance, if the  
202 commissioner is satisfied that such person is possessed and will continue to  
203 be possessed of ability to pay any judgment obtained against such person  
204 arising out of the ownership, operation, maintenance or use of any motor  
205 vehicle described in this subsection.

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

213 (g) Any person violating any provision of this section shall be guilty  
214 of a class B misdemeanor, except that any person convicted of violating any  
215 provision of this section within three years of any such prior conviction  
216 shall be guilty of a class A misdemeanor.

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

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

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

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

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

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

237 (i) The suspension requirements in subsection (h) shall not apply:

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

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

245 (3) to any ~~person-qualified-as-a~~ self-insurer ~~under-subsection-(f)-of~~  
246 ~~this-section~~ as defined by K.S.A. 40-3103(u) and amendments thereto;

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

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

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

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

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

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

271 Sec. 3. K.S.A. 40-3105 is hereby amended to read as follows: 40-3105.  
272 The following vehicles shall be exempt from the provisions of this act:

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

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

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

280 (d) a non-highway vehicle for which a non-highway certificate of title  
281 has been issued pursuant to K.S.A. ~~1976-Supp.~~ 8-198, and amendments thereto,  
282 except when such vehicle is being operated pursuant to subsection ~~(f)~~ (g) of  
283 K.S.A. ~~1976-Supp.~~ 8-198, and amendments thereto.

284 Sec. 4. K.S.A. 40-3109 is hereby amended to read as follows: 40-3109.

285 (a) A self-insurer or the insurer of the owner of a motor vehicle covered  
286 by a policy of motor vehicle liability insurance meeting the requirements of  
287 this act shall pay any personal injury protection benefits which are  
288 required to be provided by this act or in such owner's policy of motor  
289 vehicle liability insurance for any injury:

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

292 (A) Occupying a motor vehicle not excluded by subsection (a) of K.S.A.  
293 40-3108 and amendments thereto; or

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

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

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

307 (b) If two or more insurers or self-insurers are liable to pay personal  
308 injury protection benefits for the same injury to any one person, the  
309 maximum benefits payable from all applicable policies shall be the highest  
310 limit of any one policy providing such personal injury protection benefits.



311 The primary personal injury protection coverage shall be provided by the  
312 policy covering:

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

315 (2) the motor vehicle causing such physical contact.

316 Sec. 5. K.S.A. 40-3113a is hereby amended to read as follows: 40-

317 3113a. (a) When the injury for which personal injury protection benefits  
318 are payable under this act ~~are~~ is caused under circumstances creating a  
319 legal liability against a tortfeasor pursuant to K.S.A. 40-3117 or the law  
320 of the appropriate jurisdiction, the injured person, ~~his-or-her~~ such  
321 person's dependents or personal representatives shall have the right to  
322 pursue ~~his,-or-her-or-their~~ such person's remedy by proper action in a court  
323 of competent jurisdiction against such tortfeasor.

324 (b) In the event of recovery from such tortfeasor by the injured  
325 person, ~~his-or-her~~ such person's dependents or personal representatives by  
326 judgment, settlement or otherwise, the insurer or self-insurer shall be  
327 subrogated to the extent of duplicative personal injury protection benefits  
328 provided to date of such recovery and shall have a lien therefor against  
329 such recovery and the insurer or self-insurer may intervene in any action to  
330 protect and enforce such lien. Whenever any judgment in any such action,  
331 settlement or recovery otherwise shall be recovered by the injured person,  
332 ~~his-or-her~~ such person's dependents or personal representatives prior to the  
333 completion of personal injury protection benefits, the amount of such  
334 judgment, settlement or recovery otherwise actually paid and recovered which  
335 is in excess of the amount of personal injury protection benefits paid to  
336 the date of recovery of such judgment, settlement or recovery otherwise  
337 shall be credited against future payments of said personal injury protection  
338 benefits.

339 (c) In the event an injured person, ~~his-or-her~~ such person's dependents  
340 or personal representative fails to commence an action against such  
341 tortfeasor within eighteen (18) months after the date of the accident  
342 resulting in the injury, such failure shall operate as an assignment to the  
343 insurer or self-insurer of any cause of action in tort which the injured  
344 person, the dependents of such person or personal representatives of such  
345 person may have against such tortfeasor for the purpose and to the extent of  
346 recovery of damages which are duplicative of personal injury protection

347 benefits. Such insurer or self-insurer may enforce same in ~~his-or-her~~ such  
348 person's own name or in the name of the injured person, representative or  
349 dependents of the injured person for their benefit as their interest may  
350 appear by proper action in any court of competent jurisdiction.

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

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

358 Sec. 6. K.S.A. 40-3116 is hereby amended to read as follows: 40-  
359 3116. Insurers and self-insurers are hereby directed to organize and  
360 maintain an assigned claims plan to provide that any person, who suffers  
361 injury in this state may obtain personal injury protection benefits through  
362 said plan if:

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

369 (2) Motor vehicle liability insurance ~~of-(or)~~ self-insurance applicable  
370 to the injury cannot be identified;

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

381 (b) If a claim qualifies for assignment under this section, the  
382 assigned claims plan or any insurer or self-insurer to whom the claim is

383 assigned shall be subrogated to all of the rights of the claimant against  
384 any insurer or self-insurer, its successor in interest or substitute,  
385 legally obligated to provide personal injury protection benefits to the  
386 claimant, for any of such benefits provided by the assignment.

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

392 (d) The assigned claims plan shall be governed by such rules and  
393 regulations as are necessary for its operation and for the assessment of  
394 costs, which shall be approved by the commissioner. Any claim brought  
395 through said plan shall be assigned to an insurer or self-insurer, in  
396 accordance with the approved regulations of operation, and such insurer or  
397 self-insurer, after the assignment, shall have the same rights and  
398 obligations it would have if, prior to such assignment, it had issued a  
399 motor vehicle liability insurance policy providing personal injury  
400 protection benefits applicable to the loss or expenses incurred or was a  
401 self-insurer providing such benefits. Any party accepting benefits  
402 hereunder shall have such rights and obligations as he would have if a motor  
403 vehicle liability insurance policy providing personal injury protection  
404 benefits were issued to him.

405 (e) No insurer may write any motor vehicle liability insurance policy  
406 in this state unless the insurer participates in the assigned claims plan  
407 organized pursuant to this section, nor shall any person qualify as a self-  
408 insurer pursuant to subsection ~~(d)~~ (f) of K.S.A. 40-3104 and amendments  
409 thereto, unless he such person agrees to participate in such assigned claims  
410 plan. Any insurer or self-insurer required to participate in the assigned  
411 claims plan who violates this subsection shall be assessed a civil penalty  
412 of not more than ~~five-hundred-thousand-dollars-(\$5,000)~~ \$5,000 for each  
413 policy ~~he-issues~~ issued or self-insurance certificate obtained in violation  
414 thereof.

415 Sec. 7. K.S.A. 40-3117 is hereby amended to read as follows: 40-3117.  
416 In any action for tort brought against the owner, operator or occupant of a  
417 motor vehicle or against any person legally responsible for the acts or  
418 omissions of such owner, operator or occupant, a plaintiff may recover

419 damages in tort for pain, suffering, mental anguish, inconvenience and other  
420 nonpecuniary loss because of injury only in the event the injury requires  
421 medical treatment of a kind described in this act as medical benefits,  
422 having a reasonable value of ~~five-hundred-dollars-(\$500)~~ \$3,000 or more, or  
423 the injury consists in whole or in part of permanent disfigurement, a  
424 ~~fracture-to-a-weightbearing-bone,--a-compound,--comminuted,--displaced--or~~  
425 ~~compresed--fracture;~~ loss of a body member, permanent injury within  
426 reasonable medical probability, permanent loss of a bodily function or  
427 death. Any person who is entitled to receive free medical and surgical  
428 benefits shall be deemed in compliance with the requirements of this section  
429 upon a showing that the medical treatment received has an equivalent value  
430 of at least ~~five-hundred-dollars-(\$500)~~ \$3,000. Any person receiving  
431 ordinary and necessary services, normally performed by a nurse, from a  
432 relative or a member of ~~his~~ such person's household shall be entitled to  
433 include the reasonable value of such services in meeting the requirements of  
434 this section. For the purpose of this section, the charges actually made  
435 for medical treatment expenses shall not be conclusive as to their  
436 reasonable value. Evidence that the reasonable value thereof was an amount  
437 different ~~than~~ from the amount actually charged shall be admissible in all  
438 actions to which this subsection applies.

439 Sec. 8. K.S.A. 40-3103, 40-3104, 40-3105, 40-3109, 40-3113a, 40-3116  
440 and 40-3117 are hereby repealed.

441 Sec. 9. This act shall take effect and be in force from and after  
442 January 1, 1988, and its publication in the statute book.

Explanatory Memorandum For  
Legislative Proposal No. 2

Legislative Proposal No. 2 suggests the establishment of various requirements and standards relating to long-term care insurance.

The definition of long-term care insurance contained in this proposal is particularly important because it is intended to allow maximum flexibility in the design of long-term care benefits while assuring that the public's reasonable expectations for long-term care protection are met. Worthy of specific note is the fact that this definition is not intended to require that long-term care be medically necessary before coverage would be effective. To the contrary, it is becoming increasingly evident that residential or custodial type care is a very significant, perhaps the most significant, concern of senior citizens and the definition has been purposely drafted in a way that will permit long-term care insurance products to meet this need.

The proposal does not mandate any type of coverage. It does, however, authorize the commissioner to adopt regulations that will establish specific standards for customary contractual provisions. These would include terms of renewability, coverage of dependents, waiting periods, preexisting conditions, termination, exclusions, etc. In addition, the proposal itself contains specific minimum provisions relating to preexisting conditions.

Finally, the proposal would require the delivery of a written outline of coverage. Such outline would provide the insured a brief description of the benefits, a summary of exclusions, exceptions and limitations and various other information designed to enhance consumer understanding of the long-term care insurance product they have purchased.

It is to be emphasized that enactment of Legislative Proposal No. 2 will not resolve all the needs and desires of the public regarding long-term care. Enactment would, however, define the subject, authorize the commissioner to establish minimum standards applicable to the terms of various contractual provisions and require delivery of an outline of coverage to applicants for an individual long-term care insurance policy.

Enactment of this proposal will not solve all the problems relating to long-term care insurance. It will, however, establish a foundation which can serve as a guide to product development and, more important, it will establish minimum performance and disclosure requirements that will enable senior citizens to become better informed purchasers.

LEGISLATIVE PROPOSAL NO. 2

1 AN ACT relating to insurance; long-term care insurance; definitions;  
2 disclosure requirements.

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

3 Section 1. This act may be known and cited as the "Long-Term Care  
4 Insurance Act".

5 Sec. 2. The requirements of this act shall apply to policies delivered  
6 or issued for delivery in this state on or after the effective date of this  
7 act. This act is not intended to supersede the obligation of entities  
8 subject to this act to comply with the substance of other applicable  
9 insurance laws insofar as they do not conflict with this act, except that  
10 laws and regulations designed and intended to apply to medicare supplement  
11 insurance policies shall not be applied to long-term care insurance. A  
12 policy which is not primarily advertised, marketed or offered as long-term  
13 care insurance need not meet the requirements of this act.

14 Sec. 3. Unless the context requires otherwise, the definitions in this  
15 section apply throughout this act.

16 (a) "Long-Term Care Insurance" means any insurance policy primarily  
17 advertised, marketed, offered or designed to provide coverage for not less  
18 than 12 consecutive months for each covered person on an expense incurred,  
19 indemnity, prepaid, or other basis, for one or more necessary or diagnostic,  
20 preventive, therapeutic, rehabilitative, maintenance, custodial, residential  
21 or personal care services, provided in a setting other than an acute care  
22 unit of a hospital. Such term includes group and individual policies or  
23 riders whether issued by insurers, fraternal benefit societies, nonprofit  
24 health, hospital, and medical service corporations, prepaid health plans,  
25 health maintenance organizations, or any similar organization. Long-term  
26 care insurance shall not include any insurance policy which is offered  
27 primarily to provide basic medicare supplement coverage, basic hospital  
28 expense coverage, basic medical-surgical expense coverage, hospital  
29 confinement indemnity coverage, major medical expense coverage, disability  
30 income protection coverage, accident only coverage, specified disease or

31 specified accident coverage, or limited benefit health coverage but the  
32 inclusion or attachment of long-term care insurance coverage to one of the  
33 foregoing products shall not exempt it from the requirements of this act.

34 (b) "Applicant" means:

35 (1) In the case of an individual long-term care insurance policy, the  
36 person who seeks to contract for such benefits, and

37 (2) in the case of a group long-term care insurance policy, the  
38 proposed certificateholder.

39 (c) "Certificate" means, for the purposes of this act, any certificate  
40 issued under a group long-term care insurance policy, which policy has been  
41 delivered or issued for delivery in this state.

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

43 (e) "Group long-term care insurance" means a long-term care insurance  
44 policy:

45 (1) Delivered or issued for delivery in this state and issued to a  
46 group as defined in K.S.A. 40-2209:

47 (2) No group long term care insurance coverage may be offered to a  
48 resident of this state under a group policy issued in another state to a  
49 group defined in (e)(1), unless this state or another state having statutory  
50 and regulatory long term care insurance requirements substantially similar  
51 to those adopted in this state has made a determination that such  
52 requirements have been met.

53 (f) "Policy" means, except as otherwise provided in subsection 3(e)(2)  
54 of this act, any individual or group policy, contract, subscriber agreement,  
55 rider or endorsement delivered or issued for delivery in this state by an  
56 insurer, fraternal benefit society, nonprofit health, hospital, or medical  
57 service corporation, prepaid health plan, health maintenance organization or  
58 any similar organization.

59 Sec. 4. Disclosure and performance standards for long-term care  
60 insurance. (a) The commissioner may issue reasonable regulations:

61 (1) To establish specific standards for policy provisions of long-term  
62 care insurance policies. Such standards shall be in addition to and in  
63 accordance with applicable laws of this state, and shall address terms of  
64 renewability, initial and subsequent conditions of eligibility,  
65 nonduplication of coverage provisions, coverage of dependents, preexisting  
66 conditions, termination of insurance, probationary periods, limitations,

67 exceptions, reductions, elimination periods, requirements for replacement,  
68 recurrent conditions and definitions of terms; or

69 (2) To specify prohibited policy provisions not otherwise specifically  
70 authorized by statute which, in the opinion of the commissioner, are unjust,  
71 unfair or unfairly discriminatory to any person insured under a long-term  
72 care insurance policy.

73 (b) Regulations issued by the commissioner shall:

74 (1) Recognize the unique, developing and experimental nature of long-  
75 term care insurance; and

76 (2) recognize the appropriate distinctions necessary between group and  
77 individual long-term care insurance policies.

78 (c) The commissioner may adopt regulations establishing loss ratio  
79 standards for long-term care insurance policies provided that a specific  
80 reference to long-term care insurance policies is contained in the  
81 regulation.

82 (d) No long-term care insurance policy may:

83 (1) Be cancelled, nonrenewed, or otherwise terminated solely on the  
84 grounds of the age or the deterioration of the mental or physical health of  
85 the insured individual or certificateholder; or,

86 (2) Contain a provision establishing any new waiting period in the  
87 event existing coverage is converted to or replaced by a new or other form  
88 within the same company, except with respect to an increase in benefits  
89 voluntarily selected by the insured individual or group policyholder.

90 (e) Preexisting condition:

91 (1) No long-term care insurance policy or certificate shall use a  
92 definition of "preexisting condition" which is more restrictive than the  
93 following: Preexisting condition means the existence of symptoms which  
94 would cause an ordinarily prudent person to seek diagnosis, care or  
95 treatment, or a condition for which medical advice or treatment was  
96 recommended by, or received from a provider of health care services, within  
97 the limitation periods specified in (A) and (B) below:

98 (A) Six months preceding the effective date of coverage of an insured  
99 person who is 65 years of age or older on the effective date of coverage; or

100 (B) twenty-four months preceding the effective date of coverage of an  
101 insured person who is under age 65 on the effective date of coverage.



102 (2) No long-term care insurance policy may exclude coverage for a loss  
103 or confinement which is the result of a preexisting condition unless such  
104 loss or confinement begins within the periods specified in (A) or (B) below:

105 (A) Six months following the effective date of coverage of an insured  
106 person who is 65 years of age or older on the effective date of coverage; or

107 (B) twenty-four months following the effective date of coverage of an  
108 insured person who is under age 65 on the effective date of coverage.

109 (3) The commissioner may extend the limitation periods set forth in  
110 subsections 4(e)(1) and 4(e)(2) above as to specific age group categories or  
111 specific policy forms upon finding that the extension is not contrary to the  
112 best interest of the public.

113 (4) The definition of "preexisting condition" does not prohibit an  
114 insurer from using an application form designed to elicit the complete  
115 health history of an applicant, and, on the basis of the answers on that  
116 application, from underwriting in accordance with that insurer's established  
117 underwriting standards.

118 (f) No long-term care insurance policy shall require prior  
119 institutionalization as a condition precedent to the payment of benefits.

120 (g) In order to provide for fair disclosure in the sale of long-term  
121 care insurance policies:

122 (1) An outline of coverage shall be delivered to an applicant for a  
123 long-term care insurance policy at the time of application. In the case of  
124 direct response solicitations, the insurer shall deliver the outline of  
125 coverage upon the applicant's request, but regardless of request shall make  
126 such delivery no later than at the time of policy delivery. Such outline of  
127 coverage shall include:

128 (A) A description of the principal benefits and coverage provided in  
129 the policy;

130 (B) a statement of the principal exclusions, reductions and limitations  
131 contained in the policy;

132 (C) a statement of the renewal provisions, including any reservation in  
133 the policy of a right to change premiums; and

134 (D) a statement that the outline of coverage is a summary of the policy  
135 issued or applied for, and that the policy should be consulted to determine  
136 governing contractual provisions.

137           (2) A certificate issued pursuant to a group long-term care insurance  
138 policy which policy is delivered or issued for delivery in this state shall  
139 include the information required by K.S.A. 40-2209(B)(4).

140           (h) No policy may be advertised, marketed or offered as long-term care  
141 insurance unless it complies with the provisions of this act.

142           Sec. 5. This act shall take effect and be in force on and after January  
143 1, 1988 and its publication in the statute book.

Explanatory Memorandum For  
Legislative Proposal No. 3

K.S.A. 40-447 was enacted by the 1977 Session of the Kansas Legislature. The purpose and intent of this legislation was quite clear in that it was designed to provide life insurers an incentive to pay death claims quickly and to require the payment of interest if they didn't. However, there is an inconsistency contained within this law which requires clarification. Specifically, subsection (a) of this bill provides that, if interest on death proceeds becomes payable, it shall be computed from the date due proof of death is received whereas subsection (c) requires the beneficiary to be notified that interest is payable from the date of death.

Since subsection (a) is the operative section that imposes the actual obligation on the insurer, since subsection (c) simply requires the beneficiary to be notified of the insurer's obligation; and since the legislative sponsor of the bill has confirmed it was his intent that interest be computed from the date of receipt of due proof of death; it has generally been assumed the language of subsection (a) controls the manner in which the interest is computed. Despite several previous efforts, the inconsistency between the two subsections has not been changed and Legislative Proposal No. 3 will address the problem.

LEGISLATIVE PROPOSAL NO. 3

1 AN ACT relating to insurance; interest on death proceeds; amending  
2 K.S.A. 40-447 and repealing the existing section.

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

3 Section 1. K.S.A. 40-447 is hereby amended to read as follows: 40-  
4 447. (a) Notwithstanding any other provision of law, each insurer admitted  
5 to transact life insurance in the state of Kansas which fails or refuses to  
6 pay the proceeds of, or payments under, any policy of life insurance issued  
7 by it within ten (10) days after the receipt of due proof of death in the  
8 manner and form requested by the policy, shall pay interest on any moneys  
9 payable and unpaid after the expiration of such ten (10) day period at a  
10 rate of not less than the current rate of interest on death proceeds left on  
11 deposit with the insurer computed from the date of said receipt. This  
12 section shall apply only to deaths of insureds which occur on or after July  
13 1, 1977.

14 (b) Nothing in this section shall be construed to allow any insurer  
15 admitted to transact life insurance in this state to withhold payment of  
16 money payable under a life insurance policy to any beneficiary for a period  
17 longer than reasonably necessary to transmit such payment.

18 (c) In any case in which interest on the proceeds of, or payments  
19 under, any policy of life insurance becomes payable pursuant to subsection  
20 (a), the insurer shall notify the named beneficiary or beneficiaries at  
21 their last known address that interest will be paid on the proceeds of, or  
22 payments under, such policy from ~~the date~~ receipt of due proof of death of  
23 the named insured. Such notice shall specify the rate of interest to be  
24 paid.

25 (d) This section shall not require the payment of interest in any case  
26 in which the beneficiary elects in writing delivered to the insurer to  
27 receive the proceeds of, or payments under, the policy by any means other  
28 than a lump sum payment thereof.

29 (e) The commissioner of insurance may adopt such rules and regulations  
30 necessary to provide for the enforcement and administration of this act.

31           Sec. 2. K.S.A. 40-447 is hereby repealed.

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

Explanatory Memorandum For  
Legislative Proposal No. 4

Legislative Proposal No. 4 amends the unfair trade practices act by inserting provisions that would make it a defined unfair trade practice for an insurer to refuse to insure or refuse to continue to insure or limit the amount, extent or kind of coverage available to an individual or charging an individual a different rate for the coverage solely because of blindness or partial blindness. This provision was promoted and supported by the National Federation of the Blind and, through an agreement with the National Association of Insurance Commissioners, most states are attempting to obtain passage of the legislation.

LEGISLATIVE PROPOSAL NO. 4

1 AN ACT relating to insurance; concerning unfair and deceptive acts;  
2 refusing to insure blind persons; amending K.S.A. 40-2404 and repealing the  
3 existing section.

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

4 Section 1. K.S.A. 40-2404 is hereby amended to read as follows: 40-  
5 2404. The following are hereby defined as unfair methods of competition and  
6 unfair or deceptive acts or practices in the business of insurance:

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

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

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

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

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

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

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

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

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

28 (2) False information and advertising generally. Making, publishing,  
29 disseminating, circulating or placing before the public, or causing,  
30 directly or indirectly, to be made, published, disseminated, circulated or

31 placed before the public, in a newspaper, magazine or other publication, or  
32 in the form of a notice, circular, pamphlet, letter or poster, or over any  
33 radio or television station, or in any other way, an advertisement,  
34 announcement or statement containing any assertion, misrepresentation or  
35 statement with respect to the business of insurance or with respect to any  
36 person in the conduct of such person's insurance business, which is untrue,  
37 deceptive or misleading.

38 (3) Defamation. Making, publishing, disseminating or circulating,  
39 directly or indirectly, or aiding, abetting or encouraging the making,  
40 publishing, disseminating or circulating of any oral or written statement or  
41 any pamphlet, circular, article or literature which is false, or maliciously  
42 critical of or derogatory to the financial condition of any person, and  
43 which is calculated to injure such person.

44 (4) Boycott, coercion and intimidation. Entering into any agreement to  
45 commit, or by any concerted action committing, any act of boycott, coercion  
46 or intimidation resulting in or tending to result in unreasonable restraint  
47 of the business of insurance, or by any act of boycott, coercion or  
48 intimidation monopolizing or attempting to monopolize any part of the  
49 business of insurance.

50 (5) False statements and entries. (a) Knowingly filing with any  
51 supervisory or other public official, or knowingly making, publishing,  
52 disseminating, circulating or delivering to any person, or placing before  
53 the public, or knowingly causing directly or indirectly, to be made,  
54 published, disseminated, circulated, delivered to any person, or placed  
55 before the public, any false material statement of fact as to the financial  
56 condition of a person.

57 (b) Knowingly making any false entry of a material fact in any book,  
58 report or statement of any person or knowingly omitting to make a true entry  
59 of any material fact pertaining to the business of such person in any book,  
60 report or statement of such person.

61 (6) Stock operations and advisory board contracts. Issuing or  
62 delivering or permitting agents, officers or employees to issue or deliver,  
63 agency company stock or other capital stock, or benefit certificates or  
64 shares in any common-law corporation, or securities or any special or  
65 advisory board contracts or other contracts of any kind promising returns



66 and profits as an inducement to insurance. Nothing herein shall prohibit  
67 the acts permitted by K.S.A. 40-232 and amendments thereto.

68 (7) Unfair discrimination. (a) Making or permitting any unfair  
69 discrimination between individuals of the same class and equal expectation  
70 of life in the rates charged for any contract of life insurance or life  
71 annuity or in the dividends or other benefits payable thereon, or in any  
72 other of the terms and conditions of such contract.

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

78 (c) Refusing to insure, or refusing to continue to insure, or limiting  
79 the amount, extent or kind of coverage available to an individual, or  
80 charging an individual a different rate for the same coverage solely because  
81 of blindness or partial blindness. With respect to all other conditions,  
82 including the underlying cause of the blindness or partial blindness,  
83 persons who are blind or partially blind shall be subject to the same  
84 standards of sound actuarial principles or actual or reasonably anticipated  
85 experience as are sighted persons. Refusal to insure includes denial by an  
86 insurer of disability insurance coverage on the grounds that the policy  
87 defines "disability" as being presumed in the event that the insured loses  
88 such person's eyesight. However, an insurer may exclude from coverage  
89 disabilities consisting solely of blindness or partial blindness when such  
90 condition existed at the time the policy was issued.

91 (8) Rebates. (a) Except as otherwise expressly provided by law,  
92 knowingly permitting or offering to make or making any contract of life  
93 insurance, life annuity or accident and health insurance, or agreement as to  
94 such contract other than as plainly expressed in the insurance contract  
95 issued thereon, or paying or allowing, or giving or offering to pay, allow  
96 or give, directly or indirectly, as inducement to such insurance, or  
97 annuity, any rebate of premiums payable on the contract, or any special  
98 favor or advantage in the dividends or other benefits thereon, or any  
99 valuable consideration or inducement whatever not specified in the contract;  
100 or giving, or selling, or purchasing or offering to give, sell or purchase  
101 as inducement to such insurance contract or annuity or in connection

102 therewith, any stocks, bonds or other securities of any insurance company or  
103 other corporation, association, or partnership, or any dividends or profits  
104 accrued thereon, or anything of value whatsoever not specified in the  
105 contract.

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

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

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

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

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

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

128 (b) failing to acknowledge and act reasonably promptly upon  
129 communications with respect to claims arising under insurance policies;

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

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

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

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

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

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

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

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

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

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

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

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

166 (10) Failure to maintain complaint handling procedures. Failure of any  
167 person, who is an insurer on an insurance policy, to maintain a complete  
168 record of all the complaints which it has received since the date of its  
169 last examination under K.S.A. 40-222 and amendments thereto; but no such  
170 records shall be required for complaints received prior to the effective  
171 date of this act. This record shall indicate the total number of

172 complaints, their classification by line of insurance, the nature of each  
173 complaint, the disposition of these complaints, the date each complaint was  
174 originally received by the insurer and the date of final disposition of each  
175 complaint. For purposes of this subsection, "complaint" shall mean any  
176 written communication primarily expressing a grievance related to the acts  
177 and practices set out in this section.

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

182 (12) Statutory violations. Any violation of any of the provisions of  
183 K.S.A. 40-276a or 40-1515 and amendments thereto.

184 (13) Disclosure of information relating to adverse underwriting  
185 decisions. Failing to provide applicants, policyholders and individuals  
186 proposed for coverage with the information required under K.S.A. 40-2,112,  
187 and amendments thereto, within the time prescribed in such section.

188 (14) Rebates and other inducements in title insurance. (a) No title  
189 insurance company or title insurance agent, or any officer, employee,  
190 attorney, agent or solicitor thereof, may pay, allow or give, or offer to  
191 pay, allow or give, directly or indirectly, as an inducement to obtaining  
192 any title insurance business, any rebate, reduction or abatement of any rate  
193 or charge made incident to the issuance of such insurance, any special favor  
194 or advantage not generally available to others of the same classification,  
195 or any money, thing of value or other consideration or material inducement.  
196 The words "charge made incident to the issuance of such insurance" includes,  
197 without limitations, escrow, settlement and closing charges.

198 (b) No insured named in a title insurance policy or contract nor any  
199 other person directly or indirectly connected with the transaction involving  
200 the issuance of the policy or contract, including, but not limited to,  
201 mortgage lender, real estate broker, builder, attorney or any officer,  
202 employee, agent representative or solicitor thereof, or any other person may  
203 knowingly receive or accept, directly or indirectly, any rebate, reduction  
204 or abatement of any charge, or any special favor or advantage or any  
205 monetary consideration or inducement referred to in paragraph (a) of this  
206 section.

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

208 (i) The payment of reasonable fees for services actually rendered to a  
209 title insurance agent in connection with a title insurance transaction;

210 (ii) the payment of an earned commission to a duly appointed title  
211 insurance agent for services actually performed in the issuance of the  
212 policy of title insurance; or

213 (iii) the payment of reasonable entertainment and advertising expenses.

214 (d) Nothing in this section prohibits the division of rates and charges  
215 between or among a title insurance company and its agent, or one or more  
216 title insurance companies and one or more title insurance agents, if such  
217 division of rates and charges does not constitute an unlawful rebate under  
218 the provisions of this section and is not in payment of a forwarding fee or  
219 a finder's fee.

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

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

Explanatory Memorandum For  
Legislative Proposal No. 5

The Health Care Provider Insurance Act provides for the establishment of a mechanism which enables health care providers to obtain required medical malpractice insurance if they are unable to do so from the voluntary insurance market. From the inception of the act in 1976, these particular provisions have been subject to a sunset provision whereby the requirements pertaining to the residual market mechanism or medical malpractice JUA as it is often called would expire as of a given date. Current law provides for an expiration date of July 1, 1987. This means if there is no amendment enacted into law by this session of the legislature, health care providers will still be subject to a compulsory insurance requirement but may not be able to obtain the required coverage.

Legislative Proposal No. 5 addresses this problem by suggesting that the sunset provision be totally removed from the law. An alternative would, of course, be to simply amend "1987" to some later year. However, as long as there is a compulsory insurance requirement, an availability mechanism will be necessary. Therefore, the proposal would simply eliminate the provisions relating to expiration of the plan and, by so doing eliminate periodically requiring the legislature to extend its life.

LEGISLATIVE PROPOSAL NO. 5

1 AN ACT relating to insurance; health care provider liability insurance;  
2 apportionment of risks; expiration of plan; amending K.S.A. 40-3413 and  
3 repealing the existing section.

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

4 Section 1. K.S.A. 40-3413 is hereby amended to read as follows: 40-  
5 3413. (a) Every insurer and every rating organization shall cooperate in  
6 the preparation of a plan or plans for the equitable apportionment among  
7 such insurers of applicants for professional liability insurance and such  
8 other liability insurance as may be included in or added to the plan, who  
9 are in good faith entitled to such insurance but are unable to procure the  
10 same through ordinary methods. Such plan or plans shall be prepared and  
11 filed with the commissioner within a reasonable time but not exceeding 60  
12 calendar days from the effective date of this act. Such plan or plans shall  
13 provide:

14 (1) Reasonable rules governing the equitable distribution of risks by  
15 direct insurance, reinsurance or otherwise including the authority to make  
16 assessments against the insurers participating in the plan or plans;

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

19 (3) a method whereby annually the plan shall compare the premiums  
20 earned to the losses and expenses sustained by the plan for the preceding  
21 fiscal year. If there is any surplus of premiums over losses and expenses  
22 received for that year such surplus shall be transferred to the fund. If  
23 there is any excess of losses and expenses over premiums earned such losses  
24 shall be transferred from the fund;

25 (4) the limits of liability which the plan shall be required to  
26 provide, but in no event shall such limits be less than those limits  
27 provided for in subsection (a) of K.S.A. 40-3402 and amendments thereto;

28 (5) a method whereby applicants for insurance, insureds and insurers  
29 may have a hearing on grievances and the right of appeal to the commissioner.

30 (b) The commissioner shall review the plan as soon as reasonably  
31 possible after filing in order to determine where it meets the requirements  
32 set forth in subsection (a) As soon as reasonably possible after the plan  
33 has been filed the commissioner shall in writing approve or disapprove the  
34 plan. Any plan shall be deemed approved unless disapproved within 30 days.  
35 Subsequent to the waiting period the commissioner may disapprove any plan on  
36 the ground that it does not meet the requirements set forth in subsection  
37 (a), but only after a hearing held upon not less than 10 days' written  
38 notice to every insurer and rating organization affected specifying in what  
39 respect the commissioner finds that such plan fails to meet such  
40 requirements, and stating when within a reasonable period thereafter such  
41 plan shall be deemed no longer effective. Such order shall not affect any  
42 assignment made or policy issued or made prior to the expiration of the  
43 period set forth in the order. Amendments to such plan or plans shall be  
44 prepared, and filed and reviewed in the same manner as herein provided with  
45 respect to the original plan or plans.

46 (c) If no plan meeting the standards set forth in subsection (a) is  
47 submitted to the commissioner within 60 calendar days from the effective  
48 date of this act or within the period stated in any order disapproving an  
49 existing plan, the commissioner shall after a hearing, if necessary to carry  
50 out the purpose of this act, prepare and promulgate a plan meeting such  
51 requirements.

52 (d) If, after a hearing, the commissioner finds that any activity or  
53 practice of any insurer or rating organization in connection with the  
54 operation of such plan or plans is unfair or unreasonable or otherwise  
55 inconsistent with the provisions of this act, the commissioner may issue a  
56 written order specifying in what respects such activity or practice is  
57 unfair or unreasonable or otherwise inconsistent with the provisions of this  
58 act and requiring discontinuance of such activity or practice.

59 (e) For every such plan or plans, there shall be a governing board  
60 which shall meet at least annually to review and prescribe operating rules.  
61 Such board shall consist of nine members to be appointed by the commissioner  
62 as follows: Three members shall be representatives of foreign insurers, two  
63 members shall be representatives of domestic insurers, two members shall be  
64 representatives of the general public, one member shall be a licensed  
65 insurance agent actively engaged in the solicitation of casualty insurance



66 and one member shall be a health care provider. The members shall be  
67 appointed for a term of two years.

68 (f) An insurer participating in the plan approved by the commissioner  
69 may pay a commission with respect to insurance written under the plan to an  
70 insurance agent licensed for any other insurer participating in the plan or  
71 to any insurer participating in the plan. Such commission shall be  
72 reasonably equivalent to the usual customary commission paid on similar  
73 types of policies issued in the voluntary market.

74 ~~(g) The provisions of this section shall expire on July 1, 1987, but~~  
75 ~~any plan created hereunder shall continue to exist for the purpose of~~  
76 ~~allowing policies then in effect to expire, transferring surplus to the~~  
77 ~~fund, completing the payment of claims and receiving reimbursement therefor.~~

78 Sec. 2. K.S.A. 40-3413 is hereby repealed.

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

Explanatory Memorandum For  
Legislative Proposal No. 6

The Federal Product Liability Risk Retention Act of 1981 was amended by the 99th Congress as a part of federal efforts to improve insurance capacity through utilization of group self-insurance and group purchasing arrangements. The resulting Liability Risk Retention Act of 1986, like its predecessor, preempts application of state laws except those state laws specifically referenced in the law. These include a continuation of a state's right to assess taxes on business written by a risk retention group; application of the unfair claims settlement practices law; participation in a mechanism to apportion losses among participants; designation of the commissioner for service of process; the right to conduct an examination, etc. In addition, a risk retention group is subject to virtually all of the laws of the state in which it is chartered. Thus, even though the federal law contains a significant preemption of state law, it, at the same time, leaves significant responsibilities in the hands of state insurance regulators. Legislative Proposal No. 6 is essentially a model act developed and adopted by the National Association of Insurance Commissioners to establish the permissible state regulatory structure appropriate for risk retention groups and purchasing groups under the revised federal act.

The federal law and this proposal relate to two types of operations. The first is a risk retention group and the second is a purchasing group.

A risk retention group is any corporation or other limited liability association whose primary activity consists of assuming and spreading all, or any portion of the liability exposure of its group members. A risk retention group must be chartered and licensed as a liability insurance company in one of the 50 states.

A risk purchasing group is any group which has as one of its purposes the purchase of liability insurance on a group basis. A risk purchasing group acquires a master insurance policy and then issues certificates of insurance off the master policy to its group members. A risk purchasing group may only be composed of members whose businesses or activities are similar or related with respect to their liability exposure. A risk purchasing group may only acquire insurance to cover its members similar or related liability exposure.

The 1986 federal act provides a state with more control over risk retention and risk purchasing groups than the original 1981 act. The original federal act specified the control a state had over risk retention and purchasing groups. If the act did not specifically grant the state authority in an area, the group was exempt from state control. The 1986 act reverses the above by specifying the areas in which a state cannot control a risk retention or risk purchasing group. Under the new act, if an area is not specifically exempt from state control, state law will govern.

This proposal will allow the Kansas Insurance Commissioner the authority to regulate risk retention and risk purchasing groups to the fullest extent permissible under the 1986 federal law.

Section by Section Summary of Proposal No. 6

- Section 1. Amends previous law and defines the terms contained in this proposal. The two fundamental definitions as to what constitutes a risk retention and risk purchasing group are also contained in this section.
- Section 2. Sets forth the requirements for risk retention groups seeking to be chartered in Kansas.
- Section 3. Enumerates the requirements for risk retention groups chartered in a state other than Kansas, but seeking to do business as a risk retention group in this state.
- Section 4. Prohibits risk retention groups from participating in any insurance insolvency guaranty fund, or similar mechanism.
- Section 5. Self-explanatory.

Legislative Proposal No. 6  
(Continued)

- Section 6. Lists the specific exemptions from state law that a risk purchasing group and its insurer may claim. If it is not specifically exempt under this section, Kansas law will apply.
- Section 7. Describes the required notice a purchasing group, intending to do business in Kansas, must provide the commissioner.
- Section 8. Restricts where a purchasing group may obtain insurance. A purchasing group may obtain insurance from a risk retention group chartered in one of the 50 states. It may also obtain insurance from an insurance company admitted in the state where the purchasing group is located (located meaning any state in which the purchasing group has a liability exposure), or from an insurance company acting pursuant to Kansas excess lines law.
- Section 9. Authorizes the commissioner to utilize state laws not specifically exempt by the Liability Risk Retention Act of 1986.
- Section 10. Self-explanatory.
- Section 11. Requires a license for agents and brokers working for either a risk retention or risk purchasing group in Kansas.
- Section 12. Allows Kansas state courts to enforce U.S. District Court findings that a risk retention group is in hazardous financial condition.
- Section 13. Self-explanatory.
- Section 14. Self-explanatory.

LEGISLATIVE PROPOSAL NO. 6

1 AN ACT relating to insurance; risk retention groups; purchasing groups,  
2 formation; operation; requirements; amending L. 1986, Ch. 166 and repealing  
3 the existing section.

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

4 Section 1. L. 1986, Ch. 166 is hereby amended to read as follows: L.  
5 1986, Ch. 166. As used in this act:

6 (a) "Commissioner" means the ~~state~~ insurance commissioner of this state  
7 or the commissioner, director or superintendent of insurance in any other  
8 state.

9 (b) "Completed operations liability" means liability arising ~~from~~ out  
10 of the installation, maintenance or repair of any product at a site which is  
11 not owned or controlled by any person who: (1) Performs that work; or (2)  
12 hires an independent contractor to perform that work; ; but shall include  
13 liability for activities which are completed or abandoned before the date of  
14 the occurrence giving rise to the liability.

15 (c) "Domicile", for purposes of determining the state in which a  
16 purchasing group is domiciled, means: (1) For a corporation, the state in  
17 which the purchasing group is incorporated; and (2) for an unincorporated  
18 entity, the state of its principal place of business.

19 (d) "Hazardous financial condition" means that, based on its present or  
20 reasonably anticipated financial condition, a risk retention group, although  
21 not yet financially impaired or insolvent, is unlikely to be able to: (1)  
22 Meet obligations to policyholders with respect to known claims and  
23 reasonably anticipated claims; or (2) pay other obligations in the normal  
24 course of business.

25 ~~(e)~~ (e) "Insurance" means primary insurance, excess insurance,  
26 reinsurance, surplus lines insurance, and any other arrangement for shifting  
27 and distributing risk which is determined to be insurance under the laws of  
28 this state.

29 (f) "Liability" means legal liability for damages (including costs of  
30 defense, legal costs and fees, and other claims expenses) because of

31 injuries to other persons, damage to their property, or other damage or loss  
32 to such other persons resulting from or arising out of: (1) Any business  
33 (whether profit or nonprofit), trade, product, services (including  
34 professional services), premises or operations; or (2) any activity of any  
35 state or local government, or any agency or political subdivision thereof;  
36 and (3) does not include personal risk liability and an employer's liability  
37 with respect to its employees other than legal liability under the federal  
38 employers' liability act.

39 (g) "Personal risk liability" means liability for damages because of  
40 injury to any person, damage to property, or other loss or damage resulting  
41 from any personal, familial, or household responsibilities or activities,  
42 rather than from responsibilities or activities referred to in subparagraph  
43 (f).

44 (h) "Plan of operation or a feasibility study" means an analysis which  
45 presents the expected activities and results of a risk retention group  
46 including, at a minimum, (1) The coverages, deductibles, coverage limits,  
47 rates and rating classification systems for each lines of insurance the  
48 group intends to offer;

49 (2) historical and expected loss experience of the proposed members and  
50 national experience of similar exposures;

51 (3) pro forma financial statements and projections;

52 (4) appropriate opinions by a qualified, independent casualty actuary,  
53 including a determination of minimum premium or participation levels  
54 required to commence operations and to prevent a hazardous financial  
55 condition;

56 (5) identification of management, underwriting procedures, managerial  
57 oversight methods, investment policies; and

58 (6) such other matters as may be prescribed by the commissioner for  
59 liability insurance companies authorized by the insurance laws of the state.

60 ~~(d)~~ (i) "Product liability" means the liability for damages because of  
61 any personal injury, and death, emotional harm, consequential economic  
62 damage, or property damages damage (including damages resulting from the  
63 loss of use of property) arising from out of the manufacture, design,  
64 importation, distribution, packaging, labeling, lease or sale of a product,  
65 ~~as defined and construed by the laws of this state.~~ but does not include the  
66 liability of any person for those damages if the product involved was in the

67 possession of such a person when the incident giving rise to the claim  
68 occurred.

69 (j) "Purchasing group" means any group which:

70 (1) Has as one of its purposes the purchase of liability insurance on a  
71 group basis;

72 (2) purchases such insurance only for its group members and only to  
73 cover their similar or related liability exposure, as described in  
74 subparagraph (3);

75 (3) is composed of members whose businesses or activities are similar  
76 or related with respect to the liability to which members are exposed by  
77 virtue of any related, similar, or common business, trade, product,  
78 services, premises, or operations; and

79 (4) is domiciled in any state.

80 ~~(e)~~ (k) "Risk retention group" means any corporation or other limited  
81 liability association taxable as a corporation or as an insurance company  
82 formed pursuant to this act: under the laws of any state, Bermuda or the  
83 Cayman Islands:

84 ~~(1) Which is organized for the primary purpose of assuming and~~  
85 ~~spreading the product liability or completed operations liability risk~~  
86 ~~exposure of its members;~~

87 ~~(2)~~ (1) Whose primary activity consists of assuming and spreading all,  
88 or any portion, of the product liability or completed operations liability  
89 risk exposure of its group's members; and

90 ~~(3) which is composed of members each of whose principal activity~~  
91 ~~consists of the manufacture, design, importation, distribution, packaging,~~  
92 ~~labeling, lease or sale of a product or products.~~

93 (2) which is organized for the primary purpose of conducting the  
94 activity described in subparagraph (1);

95 (3) which is chartered and licensed as a liability insurance company  
96 and authorized to engage in the business of insurance under the laws of any  
97 state; or before January 1, 1985 was chartered or licensed and authorized to  
98 engage in the business of insurance under the laws of Bermuda or the Cayman  
99 Islands and, before such date, had certified to the insurance commissioner  
100 of at least one state that it satisfied the capitalization requirements of  
101 such state, except that any such group shall be considered to be a risk  
102 retention group only if it has been engaged in business continuously since

103 such date and only for the operations liability (as such terms were defined  
104 in the product liability risk retention act of 1981 before the date of the  
105 enactment of the risk retention act of 1986);

106 (4) which does not exclude any person from membership in the group  
107 solely to provide for members of such a group a competitive advantage over  
108 such a person;

109 (5) which has as its members only persons who have an ownership  
110 interest in the group and which has as its owners only persons who are  
111 members who are provided insurance by the risk retention group; or has as  
112 its sole member and sole owner an organization which is owned by persons who  
113 are provided insurance by the risk retention group;

114 (6) whose members are engaged in businesses or activities similar or  
115 related with respect to the liability of which such members are exposed by  
116 virtue of any related, similar, or common business trade, product, services,  
117 premises, or operations;

118 (7) whose activities do not include the provision of insurance other  
119 than liability insurance for assuming and spreading all or any portion of  
120 the liability of its group members; and reinsurance with respect to the  
121 liability of any other risk retention group (or any members of such other  
122 group) which is engaged in businesses or activities so that such group or  
123 member meets the requirement described in subparagraph (6) from membership  
124 in the risk retention group which provides such reinsurance; and

125 (8) the name of which includes the phrase "risk retention group";

126 ~~-(f) "Service providers" means any person providing insurance-related~~  
127 ~~services--or--management--services--to,--or--for,--a--risk--retention--group,~~  
128 ~~including,--but--not--limited--to,--agents,--brokers,--claim--appraisers--and~~  
129 ~~adjusters,--insurers,--actuaries--and--financial--management--consultants.~~

130 ~~-(g) (1) "State" means the state of Kansas,~~ any state in of the United  
131 States and District of Columbia.

132 Sec. 2. A risk retention group seeking to be chartered in this state  
133 must be chartered and licensed as an a liability insurance company  
134 authorized by the insurance laws of this state and, except as provided  
135 elsewhere in this act, must comply with all of the laws, rules, regulations,  
136 and requirements ~~and--rules--and--regulations~~ applicable to such insurers  
137 chartered and licensed in this state and with section 3 of this act to the  
138 extent such requirements are not a limitation on laws, rules, regulations or

139 requirements of this state. Before it may offer insurance in any state,  
140 each risk retention group shall also submit for approval to the insurance  
141 commissioner of this state a plan of operation or a feasibility study and  
142 revisions of such plan or study if the group intends to offer any additional  
143 lines of liability insurance. Immediately upon receipt of an application  
144 for charter this state shall provide summary information concerning the  
145 filing to the national association of insurance commissioners including the  
146 name of the risk retention group, the identity of the initial members of the  
147 group, the identity of those individuals who organized the group or who will  
149 provide administrative services or otherwise influence or control the  
150 activities of the group, the amount and nature of initial capitalization,  
151 the coverage to be afforded, and the states in which the group intends to  
152 operate. Providing notification to the national association of insurance  
153 commissioners is in addition to and shall not be sufficient to satisfy the  
154 requirements of the section 3 and all other sections of this act.

155 Sec. 3. ~~(a)~~ Risk retention groups chartered in states other than this  
156 state, ~~Bermuda or the Cayman Islands and~~ seeking to do business as a risk  
157 retention group in this state must observe and abide by the laws of this  
158 state as follows:

- 159 ~~(1) Register with the commissioner in this state;~~  
160 ~~----(2)--- designate the commissioner as its agent for service of process and~~  
161 ~~receipt of legal documents;~~  
162 ~~----(3)--- no later than March 1 of each year, file with the commissioner of~~  
163 ~~this state its annual statement as filed with the commissioner in the~~  
164 ~~chartering state or the public official having supervision of insurance in~~  
165 ~~the chartering jurisdiction;~~  
166 ~~----(4)--- file a copy of the last examination, if any, made of the risk~~  
167 ~~retention group, certified by the commissioner of the chartering state or~~  
168 ~~the public official having supervision of insurance in the chartering~~  
169 ~~jurisdiction; and~~  
170 ~~----(5)--- file with the commissioner no later than January 15 of each year,~~  
171 ~~or within 60 days thereafter, the product liability loss experience data~~  
172 ~~report required by K.S.A. 1985-Supp. 40-1132, and amendments thereto.~~  
173 ~~----(b)--- Risk retention groups chartered in Bermuda or the Cayman Islands,~~  
174 ~~in addition to the requirements of subsection (a), must:~~



175 ~~----(1)---Be chartered or licensed and authorized to do business under the~~  
176 ~~laws of Bermuda or the Cayman Islands before January 1, 1985;~~

177 ~~----(2)---file with the commissioner of this state a copy of the~~  
178 ~~certification filed with the commissioner of at least one state that~~  
179 ~~satisfies the capitalization requirements of that state, together with~~  
180 ~~evidence that such certification has been accepted by the commissioner of~~  
181 ~~that state as meeting the requirements of that state; and~~

182 ~~----(3)---file, with the commissioner of the state in which it certifies its~~  
183 ~~capitalization, a waiver of any secrecy laws of the jurisdiction in which it~~  
184 ~~is chartered.~~

185 (a) Notice of operations and designation of commissioner as agent.  
186 Before offering insurance in this state, a risk retention group shall submit  
187 to the commissioner:

188 (1) A statement identifying the state or states in which the risk  
189 retention group is chartered and licensed as a liability insurance company,  
190 date of chartering, its principal place of business, and such other  
191 information including information on its membership, as the commissioner of  
192 this state may require to verify that the risk retention group is qualified  
193 under section 1(k) of this act;

194 (2) A copy of its plan of operations or a feasibility study and  
195 revisions of such plan or study submitted to its state of domicile;  
196 provided, however that the provision relating to the submission of a plan of  
197 operation or a feasibility study shall not apply with respect to any line or  
198 classification of liability insurance which:

199 (A) was defined in the product liability risk retention act of 1981  
200 before October 27, 1986; and

201 (B) was offered before such date by any risk retention group which had  
202 been chartered and operating for not less than three years before such date;

203 (3) A statement of registration which designates the commissioner as  
204 its agent for the purpose of receiving service of legal documents or process.

205 (b) Financial condition. Any risk retention group doing business in  
206 this state shall submit to the commissioner:

207 (1) A copy of the group's financial statement submitted to its state of  
208 domicile, which shall be certified by an independent public accountant and  
209 contain a statement of opinion on loss and loss adjustment expense reserves  
210 made by a member of the American academy of actuaries or a qualified loss

211 reserve specialist (under criteria established by the national association  
212 of insurance commissioners);

213 (2) A copy of each examination of the risk retention group as certified  
214 by the commissioner or public official conducting the examination;

215 (3) Upon request by the commissioner, a copy of any audit performed  
216 with respect to the risk retention group; and

217 (4) Such information as may be required to verify its continuing  
218 qualification as a risk retention group under section 1(k).

219 (c) Taxation.

220 (1) All premiums paid for coverages within this state to risk retention  
221 groups shall be subject to taxation at the same rate and subject to the same  
222 interest, fines and penalties for nonpayment as that provided by K.S.A. 40-  
223 246c.

224 (2) To the extent agents or brokers are utilized, they shall report and  
225 pay the taxes for the premiums for risks which they have placed with or on  
226 behalf of a risk retention group not chartered in this state.

227 (3) To the extent agents or brokers are not utilized or fail to pay the  
228 tax, each risk retention group shall pay the tax for risks insured within  
229 the state. Further, each risk retention group shall report all premiums  
230 paid to it for risks insured within the state.

231 (d) Compliance with unfair claims settlement practices law. Any risk  
232 retention group, its agents and representatives, shall comply with K.S.A. 40-  
233 2404(9).

234 (e) Deceptive, false or fraudulent practices. Any risk retention group  
235 shall comply with the laws of this state regarding deceptive, false or  
236 fraudulent acts or practices. However, if the commissioner seeks an  
237 injunction regarding such conduct, the injunction must be obtained from a  
238 court of competent jurisdiction.

239 (f) Examination regarding financial condition. Any risk retention  
240 group must submit to an examination in accordance with K.S.A. 40-222 and 40-  
241 223 by the commissioner to determine its financial condition if the  
242 commissioner of the jurisdiction in which the group is chartered has not  
243 initiated an examination or does not initiate an examination within 60 days  
244 after a request by the commissioner of this state.

245 (g) Notice to purchasers. Any policy issued by a risk retention group  
246 shall contain in 10 point type on the front page and the declaration page,  
247 the following notice:

248 NOTICE

249 "This policy is issued by your risk retention group. Your risk  
250 retention group may not be subject to all of the insurance laws and  
251 regulations of your state. State insurance insolvency guaranty funds  
252 are not available for your risk retention group."

253 (h) Prohibited acts regarding solicitation or sale. The following acts  
254 by a risk retention group are hereby prohibited:

255 (1) The solicitation or sale of insurance by a risk retention group to  
256 any person who is not eligible for membership in such group; and

257 (2) the solicitation or sale of insurance by, or operation of, a risk  
258 retention group that is in a hazardous financial condition or is financially  
259 impaired.

260 (i) Prohibition on ownership by an insurance company. No risk  
261 retention group shall be allowed to do business in this state if an  
262 insurance company is directly or indirectly a retention group all of whose  
263 members are insurance companies.

264 (j) Prohibited coverage. No risk retention group may offer insurance  
265 policy coverage prohibited by the laws of this state or declared unlawful by  
266 the supreme court of the state of Kansas.

267 (k) Delinquency proceedings. A risk retention group not chartered in  
268 this state and doing business in this state must comply with a lawful order  
269 issued in a voluntary dissolution proceeding or in a delinquency proceeding  
270 commenced by a state insurance commissioner if there has been a finding of  
271 financial impairment after an examination under section 3(f) of this act.

272 ~~Sec. 4. (a)(1) Any person who is a resident of this state, acting or~~  
273 ~~offering to act as an agent or broker for a risk retention group, whose~~  
274 ~~activities include, but are not limited to, the solicitation, negotiation~~  
275 ~~and placement of insurance on behalf of a risk retention group operating in~~  
276 ~~this state, or any of its members in this state, must obtain a license as an~~  
277 ~~agent or broker in accordance with the applicable provisions of articles 2~~  
278 ~~and 37 of chapter 40 of the Kansas Statutes Annotated.~~

279 ~~----(2)---An agent or broker duly licensed by another state and residing~~  
280 ~~outside of this state may act as an agent or broker for a risk retention~~

281 ~~group operating in this state, or any of its members in this state, in the~~  
282 ~~same manner as a resident agent or broker upon obtaining a license in~~  
283 ~~accordance with K.S.A. 40-246, and amendments thereto.~~

284 ~~---(3)--- Any agent or broker licensed in accordance with subsections (a)(1)(~~  
285 ~~or (2) in addition must report to the commissioner the activities and scope~~  
286 ~~of services they are providing to the risk retention group.~~

287 ~~---(b)--- Before placing business with a risk retention group, each agent or~~  
288 ~~broker shall secure from the appropriate insurance regulatory authority a~~  
289 ~~certified copy of the certificate of authority verifying that such insurer~~  
290 ~~is authorized in its domiciliary jurisdiction to write the product liability~~  
291 ~~or completed operations insurance policy proposed to be procured from it by~~  
292 ~~such agent or broker.~~

293 ~~---(c)--- Every policy or contract of insurance placed by an agent or broker~~  
294 ~~with a risk retention group chartered or licensed in this state shall bear~~  
295 ~~across its face in not less than ten point bold red type the following~~  
296 ~~legend:---"The insurance hereby evidenced is written by a risk retention~~  
297 ~~group licensed by the state of Kansas, but in the event of insolvency of~~  
298 ~~this risk retention group, such insurance is not protected by the guaranty~~  
299 ~~fund of this state."~~

300 ~~---(d)--- Every policy or contract of insurance placed by an agent or broker~~  
301 ~~with a risk retention group not chartered or licensed in this state shall~~  
302 ~~bear across its face in not less than ten point bold red type the following~~  
303 ~~legend:---"The insurance hereby evidenced is written by a risk retention~~  
304 ~~group not licensed by the state of Kansas, not subject to its supervision~~  
305 ~~and not protected, in the event of the insolvency of this risk retention~~  
306 ~~group, by the guaranty fund of this state."~~

307 ~~---Sec. 5.---(a)--- Service providers who are not licensed agents or brokers~~  
308 ~~must:~~

309 ~~---(1)--- Register with the commissioner; and~~

310 ~~---(2)--- report the activities and scope of services which they are~~  
311 ~~providing to the risk retention group.~~

312 ~~---(b)--- This section shall not be interpreted to allow service providers~~  
313 ~~whose activities otherwise require licensing in this state to act on behalf~~  
314 ~~of risk retention groups without such a license.~~

315 ~~---Sec. 6.---(a)--- All risk retention groups shall be subject to taxation and~~  
316 ~~shall be deemed to be insurers for the purpose of assessing and collecting~~

317 ~~taxes in accordance with the provisions of K.S.A. 40-252, and amendments~~  
318 ~~thereto, and subject to the same interest, fines and penalties for~~  
319 ~~nonpayment.~~

320 ~~---(b) Agents and brokers shall report and pay the taxes upon the premiums~~  
321 ~~for risks which they have placed with or on behalf of a risk retention group~~  
322 ~~not chartered in this state.~~

323 ~~---Sec. 7. A risk retention group may not:~~

324 ~~---(a) Insure any risks other than those of its member companies;~~

325 ~~---(b) provide any insurance or insurance related service other than for~~  
326 ~~product liability or completed operations unless it obtains a license in~~  
327 ~~this state and becomes subject to all the laws and rules and regulations of~~  
328 ~~this state with respect to those additional lines of insurance and related~~  
329 ~~services; or~~

330 ~~---(c) exclude any person from membership in the group solely to provide~~  
331 ~~for members of such a group a competitive advantage over such a person.~~

332 Sec. 8. 4. No risk retention group, ~~with respect to its product~~  
333 ~~liability or completed operations insurance~~ shall be permitted to join or  
334 contribute financially to any insurance insolvency guaranty fund, or similar  
335 mechanism, in this state, nor shall any risk retention group, or its  
336 insured, receive any benefit from any such fund for claims arising out of  
337 the operations of such risk retention group ~~for product liability or~~  
338 ~~completed operations insurance.~~

339 Sec. 9. 5. A policy of insurance issued to a risk retention group or  
340 any member of that group shall not be required to be countersigned as  
341 otherwise provided ~~in~~ by K.S.A. 40-246, and amendments thereto.

342 Sec. 6. Any purchasing group meeting the criteria established under the  
343 provisions of the federal liability risk retention act of 1986 shall be  
344 exempt from any law of this state relating to the creation of groups for the  
345 purchase of insurance, prohibition of group purchasing or any law that would  
346 discriminate against a purchasing group or its members. In addition, an  
347 insurer shall be exempt from any law of this state which prohibits  
348 providing, or offering to provide, to a purchasing group or its members  
349 advantages based on their loss and expense experience not afforded to other  
350 persons with respect to rates, policy forms, coverage or other matters. A  
351 purchasing group shall be subject to all other applicable laws of this state.

352 Sec. 7. (a) A purchasing group which intends to do business in this  
353 state shall furnish notice to the commissioner which shall:

354 (1) Identify the state in which the group is domiciled;

355 (2) specify the lines and classifications of liability insurance which  
356 the purchasing group intends to purchase;

357 (3) identify the insurance company from which the group intends to  
358 purchase its insurance and the domicile of such company;

359 (4) identify the principal place of business of the group; and

360 (5) provide such other information as may be required by the  
361 commissioner to verify that the purchasing group is qualified under section  
362 1(j) of this act.

363 (b) The purchasing group shall file with the insurance department its  
364 written consent, irrevocable, that any action or garnishment proceeding may  
365 be commenced against such group in the proper court of any county in this  
366 state in which the cause of action shall arise or in which the plaintiff may  
367 reside by the service of process on the commissioner of insurance of this  
368 state and stipulating and agreeing that such service shall be taken and held  
369 in all courts to be as valid and binding as if due service had been made  
370 upon the president or chief officer of such corporation. Such consent shall  
371 be executed by the president of the company and shall be accompanied by a  
372 certified copy of the order or resolution of the board of directors,  
373 trustees or managers authorizing the president to execute the same. The  
374 summons, accompanied by a fee of three dollars shall be directed to the  
375 commissioner of insurance and shall require the defendant to answer not less  
376 than 40 days from its date. Such summons, and a certified copy of the  
377 petition shall be forthwith forwarded by the clerk of the court to the  
378 commissioner of insurance, who shall immediately forward a copy of the  
379 summons and the certified copy of the petition, to the president of the  
380 group sued and thereupon the commissioner of insurance shall make return of  
381 the summons to the court from whence it issued, showing the date of the  
382 receipt by him, the date of forwarding of such copies, and the name and  
383 address of the person to whom he forwarded the copy. Such return shall be  
384 made under his hand and seal of office, and shall have the same force and  
385 effect as a due and sufficient return made by the sheriff on process  
386 directed to him. The foregoing shall not apply in the case of a purchasing  
387 group:

388 (1) which

389 (A) was domiciled before April 2, 1986; and

390 (B) is domiciled on and after October 27, 1986 in any state of the  
391 United States;

392 (2) which

393 (A) before October 27, 1986 purchased insurance from an insurance  
394 carrier licensed in any state; and

395 (B) since October 27, 1986, purchased its insurance from an insurance  
396 carrier licensed in any state;

397 (3) which was a purchasing group under the requirements of the product  
398 liability retention act of 1981 before October 27, 1986; and

399 (4) which does not purchase insurance that was not authorized for  
400 purposes of an exemption under that act, as in effect before the October 27,  
401 1986.

402 Sec. 8. A purchasing group may not purchase insurance from a risk  
403 retention group that is not chartered in a state or from an insurer not  
404 admitted in the state in which any or all the exposures of the risk insured  
405 through the purchasing group are located, unless the purchase is effected  
406 through a licensed agent or broker acting pursuant to the surplus lines laws  
407 and regulations of such state.

408 Sec. 9. The commissioner is authorized to make use of any of the powers  
409 established under the insurance code of this state to enforce the laws of  
410 this state so long as those powers are not specifically preempted by the  
411 product liability risk retention act of 1981, as amended by the risk  
412 retention amendments of 1986. This includes, but is not limited to, the  
413 commissioner's administrative authority to investigate, issue subpoenas,  
414 conduct depositions and hearings, issue orders, and impose penalties. With  
415 regard to any investigation, administrative proceedings, or litigation, the  
416 commissioner can rely on the procedural law and regulations of the state.  
417 The injunctive authority of the commissioner in regard to risk retention  
418 groups is restricted by the requirement that any injunction be issued by a  
419 court of competent jurisdiction.

420 ~~Sec. 10. A risk retention group doing business in this state shall be~~  
421 ~~subject to all applicable unfair claims settlement practices laws and rules~~  
422 ~~and regulations provided in K.S.A. 40-2401 et seq., and amendments thereto.~~

423 ~~---Sec. 11. (a) A risk retention group chartered in this state must~~  
424 ~~submit to examinations to determine its financial condition as deemed~~  
425 ~~necessary by the commissioner.~~

426 ~~---(b) A risk retention group not chartered in this state and doing~~  
427 ~~business in this state must submit to an examination if:~~

428 ~~---(1) The commissioner has reason to believe the risk retention group is~~  
429 ~~in a financially impaired condition; and~~

430 ~~---(2) the commissioner of the state or the public official having~~  
431 ~~supervision over insurance in the jurisdiction in which the group is~~  
432 ~~chartered has not begun or has refused to initiate an examination of the~~  
433 ~~group.~~

434 ~~---(e) Such examination shall be conducted in accordance with the laws,~~  
435 ~~rules and regulations and procedures applicable to insurers licensed in this~~  
436 ~~state under K.S.A. 40-222, and amendments thereto.~~

437 ~~---Sec. 12. (a) A risk retention group chartered and licensed in this~~  
438 ~~state must comply with all lawful orders issued in a delinquency proceeding~~  
439 ~~commenced by the commissioner.~~

440 ~~---(b) A risk retention group not chartered in this state and doing~~  
441 ~~business in this state must comply with a lawful order issued in a~~  
442 ~~delinquency proceeding commenced by the commissioner if the commissioner of~~  
443 ~~the state or the public official having supervision over insurance in the~~  
444 ~~jurisdiction in which the group is chartered has failed to initiate such a~~  
445 ~~proceeding after notice of a finding of financial impairment under section~~  
446 ~~11.~~

447 ~~Sec. 13. 10. (a) A risk retention group which is chartered and~~  
448 ~~licensed under section 2 or 3 and which violates any provision of this act~~  
449 ~~will be subject to fines and penalties applicable to licensed insurers~~  
450 ~~generally, including revocation of license or the right to do business in~~  
451 ~~this state, or both.~~

452 ~~(b) A risk retention group doing business in this state, which is not~~  
453 ~~chartered or licensed in accordance with either section 2 or 3, will be~~  
454 ~~deemed an unauthorized insurer and subject to the fines and penalties of~~  
455 ~~chapter 40 of the Kansas Statutes Annotated.~~

456 Sec. 11. Any person acting, or offering to act, as an agent or broker  
457 for a risk retention group, which solicits members, sells insurance  
458 coverage, purchases coverage for its members located within the state or



459 otherwise does business in this state shall, before commencing any such  
460 activity, obtain a license from the commissioner.

461 Sec. 12. An order issued by any district court of the United States  
462 enjoining a risk retention group from soliciting or selling insurance, or  
463 operating, in any state (or in all states or in any territory or possession  
464 of the United States) upon a finding that such a group is in a hazardous  
465 financial condition shall be enforceable in the courts of the state.

466 ~~Sec. 12.~~ 13. K.S.A. 40-241i is hereby amended to read as follows: 40-  
467 241i. (a) Any company authorized to transact business in this state may,  
468 upon determining that the agent is of good business reputation and has had  
469 experience in insurance or will immediately receive a course of instruction  
470 in insurance and on the policies and policy forms of such company, certify  
471 such agent as the agent of the company under the license in effect for the  
472 agent. The certification shall be made to the commissioner on a form  
473 prescribed by the commissioner immediately upon appointment of the agent,  
474 shall be accompanied by the certification fees set forth in K.S.A. 40-252,  
475 and amendments thereto, and shall remain in effect until May 1, unless the  
476 commissioner is notified to the contrary or the license of the certified  
477 agent is terminated. The certification fee shall not be returned for any  
478 reason.

479 (b) With respect to insurance on growing crops, evidence satisfactory  
480 to the commissioner that the agent is qualified to transact insurance in  
481 accordance with standards or procedures established by any branch of the  
482 federal government shall be deemed to be the equivalent of certification by  
483 a company.

484 (c) Duly licensed insurance agents transacting business in accordance  
485 with the provisions of K.S.A. 40-4101 et seq shall be deemed to be certified  
486 by a company for the kinds of insurance permitted under the license in  
487 effect for the agent.

488 Sec. 14. The commissioner ~~may establish~~ is hereby authorized to adopt  
489 such rules and regulations relating to risk retention groups as ~~are~~ may be  
490 necessary to carry out the provisions of this act.

491 Sec. 15. This act shall take effect and be in force from and after its  
492 publication in the ~~statute-book~~ Kansas Register.

Explanatory Memorandum For  
Legislative Proposal No. 7

Legislative Proposal No. 7 simply makes the unfair trade practices act applicable to health maintenance organizations and clarifies the act by specifically noting that the combined mutual nonprofit hospital and nonprofit medical services corporations are also subject to the act.

LEGISLATIVE PROPOSAL NO. 7

1 AN ACT relating to insurance; relating to regulation of trade practices  
2 of nonprofit hospital and medical service corporations and health  
3 maintenance organizations; amending K.S.A. 40-2402 and repealing the  
4 existing section.

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

5 Section 1. K.S.A. 40-2402 is hereby amended to read as follows: 40-  
6 2402. When used in this act:

7 (a) "Person" means any individual, corporation, association,  
8 partnership, reciprocal exchange, inter-insurer, Lloyd's insurer, fraternal  
9 benefit society and any other legal entity engaged in the business of  
10 insurance, including agents, brokers and adjusters. Person also means  
11 mutual nonprofit hospital service organizations, nonprofit medical service  
12 corporations, nonprofit hospital and medical service corporations, as  
13 defined in articles 18 ~~and~~, 19 and 19c of chapter 40 of the Kansas Statutes  
14 Annotated, and amendments thereto; and administrators, as defined in  
15 article 38 of chapter 40 of the Kansas Statutes Annotated, and amendments  
16 thereto; and health maintenance organizations, as defined in article 32 of  
17 chapter 40 of the Kansas Statutes Annotated.

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

19 (c) "Insurance policy" or "insurance contract" means any contract of  
20 insurance, indemnity, medical or hospital service, suretyship or annuity  
21 issued, proposed for issuance or intended for issuance by any person.

22 Sec. 2. K.S.A. 40-2402 is hereby repealed.

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

Explanatory Memorandum For  
Legislative Proposal No. 8

Current statutes relating to health maintenance organizations require the Commissioner to at least once every three years make an examination concerning the quality of health care services provided by HMO's and providers with whom such organizations have contracts. The statute provides that the Commissioner may request assistance of the Secretary of Health and Environment to assist in carrying out this function because the Commissioner of Insurance obviously is not in a position to evaluate the quality of health care delivered by any institution or provider. In response to requests, however, the Secretary of Health and Environment has advised that they do not have the funds or personnel necessary to assist with this task. Therefore, because we do have indications that some quality of care evaluation is needed, Legislative Proposal No. 8 suggests that such evaluation be made a responsibility of the individual HMO's through a certification process and the services of an independent peer review organization acceptable to the Commissioner.

LEGISLATIVE PROPOSAL NO. 8

1 AN ACT relating to insurance; relating to health maintenance  
2 organizations; examination; financial condition; quality of care;  
3 certification amending K.S.A. 40-3211 and repealing the existing section.

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

4 Section 1. K.S.A. 40-3211 is hereby amended to read as follows: 40-  
5 3211. (a) The commissioner may make an examination of the affairs of any  
6 health maintenance organization and providers with whom such organization  
7 has contracts, agreements or other arrangements as often as the commissioner  
8 deems it necessary for the protection of the interests of the people of this  
9 state but not less frequently than once every three (3) years.

10 (b) ~~The commissioner may make an examination concerning the quality of~~  
11 ~~health care services of any health maintenance organization and providers~~  
12 ~~with whom such organization has contracts, agreements or other arrangements~~  
13 ~~as often as the commissioner deems it necessary but not less frequently than~~  
14 ~~once every three (3) years. Upon the request of the commissioner, the~~  
15 ~~secretary of health and environment or other state agency shall assist the~~  
16 ~~commissioner in carrying out the examination authorized by this subsection.~~  
17 At least once every three years and at such other times as the commissioner  
18 may require, a health maintenance organization shall obtain an on-site  
19 quality of care assessment by an independent quality review organization  
20 acceptable to the commissioner for the purpose of evaluating levels of  
21 health care delivery according to industry standards as prevailing from time  
22 to time. The findings of said independent quality organization review shall  
23 be expressed by it in a succinctly written opinion relating to the general  
24 quality of care provided by the health maintenance organization and its  
25 related contractors of health care services. Failure to obtain such quality  
26 of care assessment or the rendering of an unfavorable opinion by the  
27 independent quality review organization shall give the commissioner cause to  
28 institute action in accordance with K.S.A. 40-3205, 40-3206 or 40-3207, and  
29 amendments thereto.

30 (c) Every health maintenance organization and provider shall submit its  
31 books and records relating its operation to such examinations. Medical  
32 records of individuals and records of providers under a contract to the  
33 health maintenance organization shall be subject to such examination, but  
34 the identity of patients shall not be disclosed in any report to the  
35 commissioner or the commissioner's agents or representatives. For the  
36 purpose of examinations, the commissioner may administer oaths to, and  
37 examine the officers and agents of the health maintenance organization and  
38 the principals of such providers.

39 (d) The fees and expenses of examinations under this section shall be  
40 assessed against the organization being examined and remitted to the  
41 commissioner. The fees and expenses of the commissioner shall be in  
42 accordance with K.S.A. 40-223, ~~or any~~ and amendments thereto.

43 (e) In lieu of such examination, the commissioner may accept the report  
44 of an examination made by the appropriate examining agency or official of  
45 another state or agency of the federal government.

46 Sec. 2. K.S.A. 40-3211 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.