Approved 1/23/90
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by SENATOR RICHARD L. BOND at
Chairperson

9:00 a.m./~~p.m.~~ on WEDNESDAY, JANUARY 17, 1990, 19__ in room 529-S of the Capitol.

All members were present ~~except~~:

Committee staff present:

Bill Edds, Revisors Office
Bill Wolff, Research Department
Louise Bobo, Committee Secretary

Conferees appearing before the committee:

James Gregory, Beech Aircraft Corporation
Jim Maag, Kansas Bankers Association
Ron Todd, Assistant Commissioner of Insurance

Chairman Bond called the meeting to order at 9:10 a.m.

Bill Edds, Revisors Office, requested the committee to permit the introduction of four separate bills in order to clean up legislation amended during the 1988 and 1989 legislative sessions. (Attachment 1) Senator Salisbury made a motion that the introduction of these bills be allowed. Senator Strick seconded the motion. The motion passed.

James Gregory, Beech Aircraft Corporation, appeared before the committee to request the introduction of an amendment to the Kansas captive insurance statutes in the form of a committee bill. Attachment 2) Senator Yost made a motion that the introduction of this bill be allowed. Senator Kerr seconded the motion. The motion passed.

Jim Maag, Kansas Bankers Association, requested the introduction of a bill which would amend K.S.A. 1989 Supp. 9-519 regarding Interstate Banking. (Attachment 3) The motion was made by Senator Strick to allow introduction of this bill. Senator Yost seconded the motion. The motion passed.

Ron Todd, Assistant Commissioner of Insurance, requested the committee to introduce a bill which would be patterned after a model act recently adopted by the National Association of Insurance Commissioners concerning the problems between some insurors and managing general agents. (Attachment 4) Senator Reilly made the motion to allow introduction of this bill. Senator Karr seconded the motion. The motion passed.

Mr. Todd requested introduction of a bill which would address a problem of making liability insurance available to tank owners and operators so that they can comply with the Environmental Protection Act in the event of leakage problems from underground storage tanks. (Attachment 5) Senator Reilly made a motion to introduce this bill. It was seconded by Senator Salisbury. The motion passed.

Mr. Todd continued by requesting the committee to allow introduction of a bill which would correct two unintended results of 1989 SB 107. (Attachment 6) Senator Yost made the motion to introduce this bill. Senator Strick seconded the motion. The motion passed.

Mr. Todd requested introduction of a bill that is designed to correct the problem of the state carrying unauthorized insurance. (Attachment 7) The motion was made by Senator Strick to allow the introduction of this bill. Senator Yost seconded the motion. The motion passed.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,

room 529-S, Statehouse, at 9:00 a.m./p.m. on WEDNESDAY, JANUARY 17, 1990.

Chairman Bond asked if there were further requests for introduction of bills. There were none. He then announced that the meeting scheduled for Thursday, January 18, 1990, to be cancelled.

Minutes of Wednesday, January 10, 1990, were approved as written on a motion by Senator Salisbury with Senator Yost seconding the motion. The motion passed.

Chairman Bond adjourned the meeting at 9:30 a.m.

GUEST LIST

COMMITTEE: FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE DATE: Wed. Jan 17, 1990

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Chuck Stones	Topeka	KBA
Kathy Taylor	"	"
Roland E. Smith	Wichita	WIBA
Joel Wright	Topeka	KCUL
Jeff Sonnich	Topeka	KNLSI
Bill Curtis	Topeka	Ks. Assoc. of School Bds.
[illegible]	"	KBA
Ron Todd	"	Ins. Dept.
McHawver	"	Cap-Journal
Jerry Benaka	Manhattan	Kansas Farm Bureau Life
Alan Steppat	Topeka	Pete McGill & Associates
Bob Corkins	Topeka	KCCI

Edds

M E M O

To: Members of the Senate Financial Institutions and Insurance Committee

From: Revisor of Statutes Office

Re: Clean Up Legislation

During the 1988 and 1989 Sessions several insurance-related statutes were amended twice creating conflicts that were never resolved. When this happens the Revisor has to print multiple versions of the same statutes in the Kansas Statutes Annotated. The multiple printings create confusion for the books' users, and it is the responsibility of the Revisor's office to resolve the conflicts. Therefore, the committee is requested to sponsor 4 bills for introduction and to request referral back to the committee for consideration and action.

The bills would resolve conflicts between the following statutes:

SB 475 (1) 40-929 and 40-929a; 40-1113 and 40-1113b — rate filings Prop & Casual

SB 473 (2) 40-19c09 and 40-19c09a — non profit Hosp Corp

SB 476 (3) 40-2404 and 40-2404b — unfair & deceptive prac —

SB 477 (4) 40-3209 and 40-3209a — HMO's

Ref. to Jud.

Attachment 1
FI & I
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h Aircraft Corporation
ox 85
ita KS 67201-0085 USA

316 6 111
Telex 203603

STATEMENT BY JIM GREGORY

DIRECTOR - CORPORATE AFFAIRS

BEECH AIRCRAFT CORPORATION

JANUARY 17, 1990

BEFORE THE KANSAS SENATE COMMITTEE ON

FINANCIAL INSTITUTIONS AND INSURANCE

THANK YOU MR. CHAIRMAN, MEMBERS OF THE COMMITTEE. MY NAME IS JIM GREGORY REPRESENTING BEECH AIRCRAFT CORPORATION WITH FACILITIES IN WICHITA, SALINA AND ANDOVER. BEECH AIRCRAFT IS THE STATE'S SECOND LARGEST PRIVATE SECTOR EMPLOYER WITH APPROXIMATELY 6,500 EMPLOYEES IN THE STATE.

WE APPEAR BEFORE YOU TODAY TO REQUEST INTRODUCTION OF AN AMENDMENT TO THE KANSAS CAPTIVE INSURANCE STATUTES IN THE FORM OF A COMMITTEE BILL. A COPY OF THE PROPOSED AMENDMENT IS SUBMITTED FOR YOUR REVIEW WITH THE WRITTEN VERSION OF THIS TESTIMONY.

AS MANY OF YOU ARE AWARE, ONE OF THE LARGEST PROBLEMS FACING AIRCRAFT MANUFACTURERS IS BURGEONING PRODUCT LIABILITY COSTS. EFFORTS TO OBTAIN FEDERAL-LEVEL RELIEF HAVE NOT YET BEEN FRUITFUL. THEREFORE WE ARE REQUESTING THIS KANSAS LEGISLATION.

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THE CHANGES PROPOSED WOULD ASSIST BEECH AIRCRAFT CORPORATION IN CONTROLLING PRODUCT LIABILITY COSTS, THROUGH TRAVEL AIR INSURANCE COMPANY LTD., WHICH IS BEECH'S CAPTIVE INSURANCE COMPANY. BY WAY OF BACKGROUND, TRAVEL AIR INSURANCE COMPANY LTD. WAS ORGANIZED IN THE EARLY 1970s AS A BERMUDA OFFSHORE CAPTIVE INSURANCE COMPANY TO UNDERWRITE THE PRIMARY PRODUCT LIABILITY EXPOSURE OF BEECH FOR THE SOLE PURPOSE OF ENABLING THE COMPANY TO GAIN CONTROL OF CLAIMS.

THE WORLD INSURANCE MARKET ALLOWS THE PRIMARY INSURER, NOT THE INSURED, TO CONTROL CLAIMS AND COORDINATE CLAIMS MANAGEMENT WITH EXCESS INSURERS -- FOR EXAMPLE LLOYDS OF LONDON IN OUR CASE. TRAVEL AIR INSURANCE COMPANY LTD AND BEECH WERE SUCCESSFUL IN NEGOTIATIONS WITH LLOYDS UNDERWRITERS TO OBTAIN RECOGNITION THAT TRAVEL AIR INSURANCE COMPANY WAS A VIABLE PRIMARY INSURER WITH ACCEPTABLE CLAIMS CONTROL AUTHORITY.

FOR 15 YEARS TRAVEL AIR INSURANCE HAS HAD IN PLACE WITH LLOYDS' UNDERWRITERS A MEMORANDUM ON CLAIMS CONTROL, A SOUND WORKING RELATIONSHIP, AND A SUCCESSFUL RESERVING PROCESS ACCEPTABLE TO AVIATION UNDERWRITERS WORLDWIDE.

BEECH AIRCRAFT IS THE ONLY AVIATION MANUFACTURER WHICH EXERCISES CLAIMS CONTROL THROUGH ITS OWN CAPTIVE INSURANCE COMPANY. WE WOULD LIKE TO CONTINUE TO MANAGE OUR CLAIMS IN ORDER TO CONTROL PRODUCT LIABILITY EXPENSE, AN EXPENSE THAT IS SUBSTANTIALLY LOWER THAN MANY OF OUR COMPETITORS, INCLUDING OUT OF STATE COMPETITORS.

THE 1986 FEDERAL TAX ACT, AND SUBSEQUENT INTERPRETATIONS, IMPOSE UNFORTUNATE CONSEQUENCES ON TRAVEL AIR INSURANCE COMPANY LTD. WE HAVE ANALYZED THE SITUATION AND BELIEVE POTENTIAL LIABILITY CAN BE ELIMINATED BY BRINGING TRAVEL AIR LTD. ON SHORE AS A DOMESTIC CAPTIVE FORMED IN ONE OF THE STATES HAVING CAPTIVE INSURANCE LAWS. OBVIOUSLY KANSAS IS THE PREFERRED STATE, WITH A COUPLE OF MINOR CHANGES IN THE LAW.

OUR PROPOSED AMENDMENTS PROTECT THE TRAVEL AIR INSURANCE COMPANY NAME WITHOUT ADDING CAPTIVE TO THE NAME. THIS PROTECTS THE REPUTATION THE COMPANY HAS FIRMLY ESTABLISHED OVER THE YEARS WITH LLOYDS OF LONDON.

CURRENTLY TRAVEL AIR INSURANCE COMPANY OF KANSAS WRITES THE PRIMARY POLICY AND RE-INSURES 99% OF THE RISKS WITH TRAVEL AIR LTD. HOWEVER CURRENT KANSAS LAW ALLOWS ONLY A CAPTIVE TO REINSURE RISKS OF ANOTHER CAPTIVE. OUR PROPOSED AMENDMENT WOULD ALLOW TRAVEL AIR LTD. AS A KANSAS DOMESTIC CAPTIVE TO REINSURE RISKS OF TRAVEL AIR INSURANCE OF KANSAS A NORMAL REGULATED INSURANCE COMPANY. THESE RISKS WOULD BE LIMITED TO BEECH AND ITS PRODUCTS THROUGH THE LANGUAGE THAT HAS BEEN PROPOSED.

THAT IS SIMPLY A BRIEF EXPLANATION OF WHAT THE BILL DOES. IF THE COMMITTEE HOLDS HEARINGS THE PRESIDENT OF TRAVEL AIR INSURANCE COMPANY LTD. COULD TESTIFY AND RESPOND TO YOUR QUESTIONS. HE IS CURRENTLY IN LONDON. AT THIS POINT IN TIME WE ARE SIMPLY ASKING

THAT THE BILL BE INTRODUCED AS A COMMITTEE BILL AND RECEIVE CONSIDERATION BY THE COMMITTEE.

THANK YOU VERY MUCH.

Gregory

9 RS 1755

SENATE BILL NO. ____

By ___

AN ACT relating to captive insurance companies; concerning pure captive insurance companies insuring risks of certain aircraft manufacturers and affiliated companies; amending K.S.A. 1989 Supp. 40-4301, 40-4303 and 40-4311 and repealing the existing sections.

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

Section 1. K.S.A. 1989 Supp. 40-4301 is hereby amended to read as follows: 40-4301. As used in this act, unless the context requires otherwise:

(a) "Affiliated company" means any company in the same corporate system as a parent, an industrial insured, or a member organization by virtue of common ownership, control, operation or management.

(b) "Aircraft captive insurance company" means any pure captive insurance company which is formed under the provisions of this act by a corporation or an affiliated company of a corporation engaged in the manufacture of aircraft and having its principal place of business within the state of Kansas and which insures only risks relating to products manufactured or services performed by such corporation engaged in the manufacture of aircraft or its affiliated companies.

~~(b)~~ (c) "Captive insurance company" means any pure captive insurance company or industrial insured captive insurance company formed under the provisions of this act.

~~(c)~~ (d) "Commissioner" means the commissioner of insurance.

~~(d)~~ (e) "Industrial insured" means an insured:

(1) Who procures the insurance of any risk or risks by use of the services of a full-time employee acting as an insurance manager or buyer;

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(2) whose aggregate annual premiums for the kinds of insurance total at least $50,000;

(3) who has at least 25 full-time employees;

(4) whose principal activity consists of the manufacture of a product or products; and

(5) who contributes not less than $10,000 to the capital or surplus of the industrial insured captive insurance company that insures its risks. Such contribution shall be in the form of cash which may be returned at such time as the risks of the industrial insured cease to be insured by the captive insurance company.

~~(e)~~ (f) "Industrial insured captive insurance company" means any company that insures risks of the industrial insureds that comprise the industrial insured group, and their affiliated companies.

~~(f)~~ (g) "Industrial insured group" means any group of not more than 10 industrial insureds in the same or similar line of business that:

(1) Collectively owns, controls or holds with power to vote all of the outstanding voting securities of an industrial insured captive insurance company incorporated as a stock insurer; or

(2) collectively has complete voting control over an industrial insured captive insurance company incorporated as a mutual insurer; or

(3) is created under the product liability risk retention act of 1981 (U.S. Public Law 97-45), as amended by the risk retention act of 1986, as a corporation or other limited liability association taxable as a stock insurance company or a mutual insurer under the laws of the state of Kansas:

(A) Whose primary activity consists of assuming and spreading all, or any portion, of the product liability or completed operations liability risk exposure of its group members;

(B) which is organized for the primary purpose of conducting the activity described in subdivision ~~(f)(3)(A)~~ (g)(3)(A) of this

section;

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

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

~~(g)~~ (h) "Parent" means a corporation, partnership or individual that directly or indirectly owns, controls or holds with power to vote more than 50% of the outstanding voting securities of a pure captive insurance company.

~~(h)~~ (i) "Pure captive insurance company" means any company that insures risks of its parent and affiliated companies.

Sec. 2. K.S.A. 1989 Supp. 40-4303 is hereby amended to read as follows: 40-4303. The word "captive" shall be incorporated into the name of every captive insurance company organized under the laws of this state, except that an aircraft captive insurance company incorporating the word "air" or "aircraft" into its name shall not be required to incorporate the word "captive" into its name. No captive insurance company shall adopt a name that is the same, deceptively similar or likely to be confused with or mistaken for any other existing business name registered in the state of Kansas.

Sec. 3. K.S.A. 1989 Supp. 40-4311 is hereby amended to read as follows: 40-4311. (a) Any captive insurance company may provide reinsurance, comprised in articles 9 and 11 of chapter 40 of the Kansas Statutes Annotated as limited by subsection (a)(3) of K.S.A. ~~1988~~ 1989 Supp. 40-4302, and amendments thereto on risks ceded by any other captive insurance company.

(b) Any risks or portions of risks of any captive insurance company that is reinsured shall be ceded to an insurance company that is authorized to transact business in this state or that has been approved by the commissioner. A captive insurance company may take credit for reserves on risks or portions of risks ceded.

The commissioner may require any other documents, financial information or other evidence that such a reinsurer will be able to provide adequate security for its financial obligations. The commissioner may deny authorization or impose any limitations on the activities of a reinsurer that, in such commissioner's judgment, are necessary and proper to provide adequate security for the ceding captive insurance company and for the protection and consequent benefit of the public at large.

(c) Any aircraft captive insurance company may provide reinsurance, comprised in articles 9 and 11 of chapter 40 of the Kansas Statutes Annotated as limited by subsection (a) (3) of K.S.A. 1989 Supp. 40-4302, and amendments thereto, on risks ceded by an insurance company which is an affiliated company and is authorized to transact business in the state of Kansas, if the requirements of either paragraph (1) or (2) of subsection (b) of K.S.A. 40-221a, and amendments thereto, are met by the ceding insurer with respect to the reinsurance provided by the aircraft captive.

Sec. 4. K.S.A. 1989 Supp. 40-4301, 40-4303 and 40-4311 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the Kansas register.

Maag

Section 1. K.S.A. 1989 Supp. 9-519 is hereby amended to read as follows: 9-519. For the purposes of K.S.A. ~~1985 Supp.~~ 9-520 through 9-524, and amendments thereto and new sections 5 and 6 of this act, unless otherwise required by the context:

(a)(1) "Bank holding company" means any company:

(A) Which directly or indirectly owns, controls, or has power to vote 25% or more of any class of the voting shares of a bank ~~and more than 5% of any class of the voting shares of one or more additional banks,~~ or 25% or more of any class of the voting shares of a company which is or becomes a bank holding company by virtue of this act;

(B) which controls in any manner the election of a majority of the directors of ~~each of two or more banks~~ a bank or of a company which is or becomes a bank holding company by virtue of this act;

(C) for the benefit of whose shareholders or members 25% or more of any class of the voting shares of a bank ~~and more than 5% of any class of the voting shares of one or more additional banks,~~ or 25% or more of any class of the voting shares of a company which is or becomes a bank holding company by virtue of this act, is held by trustees; or

(D) which, by virtue of acquisition of ownership or control of, or the power to vote the voting shares of, a bank or another company, becomes a bank holding company under this act.

(2) Notwithstanding paragraph (1), no company:

(A) Shall be deemed to be a bank holding company by virtue of its ownership or control of shares acquired by it in connection with its

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underwriting of securities if such shares are held only for such period of time as will permit the sale thereof on a reasonable basis;

(B) formed for the sole purpose of participating in a proxy solicitation shall be deemed to be a bank holding company by virtue of its control of voting rights of shares acquired in the course of such solicitation;

(C) shall be deemed to be a bank holding company by virtue of its ownership or control of shares acquired in securing or collecting a debt previously contracted in good faith, provided such shares are disposed of within a period of two years from the date on which such shares could have been disposed of by such company;

(D) owning or controlling voting shares of a bank shall be deemed to be a bank holding company by virtue of its ownership or control of shares held in a fiduciary capacity except where such shares are held for the benefit of such company or its shareholders.

(b) "Company" means any corporation, trust, limited partnership, association or similar organization including a bank but shall not include any corporation the majority of the shares of which are owned by the United States or by any state, or include any individual or partnership.

(c) "Bank" means ~~any~~ an insured bank ~~the deposits of which are insured by the federal deposit insurance corporation, or its successor~~ as defined in section 3(h) of the federal deposit insurance act (12 U.S.C. 1813(h).

(d) "Subsidiary" with respect to a specified bank holding company means:

(1) Any company more than 5% of the voting shares of which, excluding shares owned by the United States or by any company wholly

owned by the United States, is directly or indirectly owned or controlled by such bank holding company or is held by it with power to vote;

(2) any company the election of a majority of the directors of which is controlled in any manner by such bank holding company; or

(3) any company more than 5% of the voting shares of which is held by trustees for the benefit of such bank holding company or its shareholders.

Sec. 2. K.S.A. 1989 Supp. 9-520 is hereby amended to read as follows: 9-520. (a) Excluding shares held under the circumstances set out in paragraph (2) of subsection (a) of K.S.A. ~~1985 Supp.~~ 9-519 and amendments thereto, no bank holding company or any subsidiary thereof shall directly or indirectly acquire ownership or control of, or power to vote, any of the voting shares of any bank domiciled in this state if, after such acquisition, all banks domiciled in this state, in which the bank holding company or any subsidiary thereof has ownership or control of, or power to vote, any voting shares, would have, in the aggregate, more than ~~9%~~ 12% of the total deposits of all banks domiciled in this state plus the total deposits, savings deposits, shares and other accounts in savings and loan associations, federal savings banks and building and loan associations domiciled in this state as determined by the state bank commissioner on the basis of the most recent reports to supervisory authorities which are available at the time of the acquisition.

(b) This section shall not prohibit a bank holding company or any subsidiary thereof from acquiring ownership or control of, or power to vote, any of the voting shares of any bank domiciled in this state if the state bank commissioner, in the case of a bank organized under the laws of this state, or the comptroller of the currency, in the case of a national

banking association, determines that an emergency exists and that the acquisition is appropriate in order to protect the public interest against the failure or probable failure of the bank.

Sec. 3. K.S.A. 1989 Supp. 9-521 is hereby amended to read as follows: 9-521. (a) On or after July 1, 1992, no bank holding company located in a state or jurisdiction other than this state or any subsidiary thereof shall directly or indirectly acquire ownership or control of, or power to vote, more than 5% of any class of the voting shares of any bank domiciled in this state unless such bank, if chartered after January 1, ~~1985~~ 1990, has been in existence and actively engaged in business for five or more years.

(b) This section shall not prohibit a bank holding company located in a state or jurisdiction other than this state or any subsidiary thereof from acquiring ownership or control of, or power to vote, more than 5% of the voting shares of any bank organized solely for the puprose of facilitating a merger of such bank with or into a bank domiciled in this state which has been in existence and actively engaged in business for five or more years, or a consolidation of such bank and one or more banks domiciled in this state which have been in existence and actively engaged in business for five or more years.

(c) This section shall not prohibit a bank holding company located in a state or jurisdiction other than this state or any subsidiary thereof from acquiring ownership or control of, or power to vote, more than 5% of any class of the voting shares of any bank domiciled in this state if the state bank commissioner, in the case of a bank organized under the laws of this state, or the comptroller of the currency, in the case of a national banking association, determines that an emergency exists and that the

acquisition is appropriate in order to protect the public interest against the failure or probable failure of the bank.

Sec. 4. K.S.A. 1989 Supp. 9-523 is hereby amended to read as follows: 9-523. Except for banks whose voting shares are acquired by a bank holding company pursuant to subsection (b) of K.S.A. ~~1985 Supp.~~ 9-520 and amendments thereto or subsection (c) of K.S.A. ~~1985 Supp.~~ 9-521 and amendments thereto, a majority of the board of directors of each bank domiciled in this state which is a subsidiary of a bank holding company shall be residents of the local community of the bank as specified in its community reinvestment act statement required under the federal community reinvestment act of 1977, 12 U.S.C. 2901, et seq.

New Section 5. (a) On and after July 1, 1992, a bank holding company located in a state contiguous to this state or in the state of Arkansas or Iowa, with approval of the state banking board, may acquire, directly or indirectly, ownership or control of, or power to vote, any of the voting shares of, an interest in, or all or substantially all of the assets of a bank organized under the laws of this state or a national banking association having its principal place of business located in this state.

(b) For purposes of K.S.A. 9-519 through 9-524 and amendments thereto and new sections 5 and 6 of this act, a bank holding company is located in that state or jurisdiction in which the total deposits of its banking subsidiaries are largest as of the time the application referred to in subsection (c) is filed with the state banking board.

(c) A bank holding company located in a state or jurisdiction other than this state proposing to acquire, directly or indirectly, ownership or control of, or power to vote, the voting shares of a bank organized under

the laws of this state or of a national banking association having its principal place of business located in this state shall file an application with the state banking board in a form and containing the information prescribed by regulation of the state bank commissioner, approved by the state banking board and filed as provided by article 4 of chapter 77 of the Kansas Statutes Annotated. The state banking board shall approve the application if it determines that (1) the acquisition is authorized by this act; and (2) the laws of such other state or jurisdiction in effect as of the time the application is filed permit a bank holding company located in this state to acquire, directly or indirectly, the voting shares of, an interest in, or all or substantially all of the assets of a bank organized under the laws of such other state or jurisdiction or a national banking association having its principal place of business located in such other state or other jurisdiction, on terms that are substantially no more restrictive than those established under this act.

New Sec. 6. This act shall be considered as a part of and supplemental to the act designated as K.S.A. 9-519 through 9-524, and amendments thereto.

New Sec. 7. On July 1, 1992, subparagraph (a) of K.S.A. 1989 Supp. 9-524 shall be repealed.

Sec. 8. K.S.A. 1989 Supp. 9-519, 9-520, 9-521 and 9-523 are hereby repealed.

Sec. 9. This act shall take effect and be in force from and after its publication in the statute book.

Explanatory Memorandum For

Legislative Proposal No. 3

This is a model act recently adopted by the National Association of Insurance Commissioners. It is designed to address solvency problems and regulatory concerns that have become increasingly troublesome as a result of arrangements some insurers have entered into with independent entities known as managing general agents. In some of these arrangements, significant managerial decisions have been made without the exercise of any or insufficient oversight by the insurer itself. As a result, some insurers have been forced into liquidation because of a lack of knowledge and/or a lack of control with respect to the risks it had assumed, the reinsurance it had or had not secured, the inadequate reserves it had established and undisclosed liabilities for which it was responsible.

This proposal is intended to assure that management deficiencies of this kind are eliminated or significantly reduced by requiring all such arrangements between an insurer and a managing general agent to be governed by a written contract meeting certain minimum standards; by imposing certain prohibitions on the activities of managing general agents; by requiring insurers to exercise certain management responsibilities and obtain periodic reports of essential information; subject the managing general agent to the same Insurance Department examinations as apply to the insurer; and, authorizing the assessment of specific penalties for violations.

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LEGISLATIVE PROPOSAL NO. 3

AN ACT relating to insurance; managing general agents; definitions, licensure; requirements.

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

Section 1. This act may be cited as the managing general agents act.

Sec. 2. As used in this act:

(a) "Actuary" means a person who is a member in good standing of the American academy of actuaries.

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

(c) "Insurer" means any person, firm, association or corporation duly licensed in this state as an insurance company.

(d) "Managing general agent" (MGA) means any person, firm, association or corporation who manages all or part of the insurance business of an insurer (including the management of a separate division, department or underwriting office) and acts as an agent for such insurer whether known as a managing general agent, manager or other similar term, who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross written premium equal to or more than 5% of the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year together with one or more of the following: (1) adjusts or pays claims in excess of an amount determined by the commissioner, or (2) negotiates reinsurance on behalf of the insurer.

(e) Notwithstanding the above, the following persons shall not be considered as MGAs for the purposes of this act:

(1) An employee of the insurer;

(2) a U.S. manager of the United States branch of an alien insurer; and

(3) an underwriting manager which, pursuant to contract, manages all the insurance operations of the insurer, is under common control with the insurer, subject to the holding company regulatory act, and whose compensation is not based on the volume of premiums written.

(f) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

Sec. 3. (a) No person, firm, association or corporation shall act in the capacity of an MGA with respect to risks located in this state for an insurer licensed in this state unless such person is a licensed agent or broker in this state.

(b) No person, firm, association, or corporation shall act in the capacity of an MGA representing an insurer domiciled in this state with respect to risks located outside this state unless such person is licensed as an agent or broker in this state pursuant to the provisions of this act.

(c) The commissioner may require a bond in an amount acceptable to him for the protection of the insurer.

(d) The commissioner may require the MGA to maintain an errors and omissions policy.

Sec. 4. No person, firm, association, or corporation acting in the capacity of an MGA shall place business with an insurer unless there is in force a written contract between the parties which sets forth the responsibilities of each party and where both parties share responsibility for a particular function, specifies the division of such responsibilities and which contains the following minimum provisions:

(a) The insurer may terminate the contract for cause upon written notice to the MGA. The insurer may suspend the underwriting authority of the MGA during the pendency of any dispute regarding the cause for termination.

(b) The MGA will render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer on not less than a monthly basis.

(c) All funds collected for the account of an insurer will be held by the MGA in a fiduciary capacity in a bank which is a member of the federal reserve system. This account shall be used for all payments on behalf of the insurer. The MGA may retain no more than three months estimated claim payments and allocated loss adjustment expenses.

(d) Separate records of business written by the MGA will be maintained. The insurer shall have access and right to copy all accounts and records related to its business in a form usable by the insurer and the commissioner shall have access to all books, bank accounts and records of

the MGA in a form usable to the commissioner. Such records shall be retained until the insurer and business to which they pertain has been the subject of an examination pursuant to the provisions of K.S.A. 40-222.

(e) The contract may not be assigned in whole or part by the MGA.

(f) Appropriate underwriting guidelines including:

(1) The maximum annual premium volume;

(2) the basis of the rates to be charged;

(3) the types of risks which may be written;

(4) maximum limits of liability;

(5) applicable exclusions;

(6) territorial limitations;

(7) policy cancellation provisions; and

(8) the maximum policy period.

The insurer shall have the right to cancel or non-renew any policy of insurance subject to the applicable laws and regulations relating to the cancellation and non-renewal of insurance policies.

(g) If the contract permits the MGA to settle claims on behalf of the insurer:

(1) All claims must be reported to the company in a timely manner.

(2) A copy of the claim file will be sent to the insurer at its request or as soon as it becomes known that the claim:

(A) Has the potential to exceed an amount determined by the commissioner or exceeds the limit set by the company; whichever is less;

(B) involves a coverage dispute;

(C) may exceed the MGAs claims settlement authority;

(D) is open for more than six months; or

(E) is closed by payment of an amount set by the commissioner or an amount set by the company, whichever is less.

(3) All claim files will be the joint property of the insurer and MGA. However, upon an order of liquidation of the insurer such files shall become the sole property of the insurer or its estate, the MGA shall have reasonable access to and the right to copy the files on a timely basis.

(4) Any settlement authority granted to the MGA may be terminated for cause upon the insurer's written notice to the MGA or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination.

(h) Where electronic claims files are in existence, the contract must address the timely transmission of the data.

(i) If the contract provides for a sharing of interim profits by MGA and the MGA has the authority to determine the amount of the interim profits by establishing loss reserves or controlling claim payments or in any other manner, interim profits will not be paid to the MGA until one year after they are earned for property insurance business and five years after they are earned on casualty business and not until the profits have been verified pursuant to section 5 of this act.

(j) The MGA shall not:

(1) Bind reinsurance or retrocessions on behalf of the insurer, except that the MGA may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured and commission schedules;

(2) commit the insurer to participate in insurance or reinsurance syndicates;

(3) appoint any agent or broker without assuring that the agent or broker is lawfully licensed to transact the type of insurance for which he or she is appointed;

(4) without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which shall not exceed one percent of the insurer's policyholder's surplus as of December 31 of the last completed calendar year;

(5) collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer; without prior approval of the insurer. If prior approval is given, a report must be promptly forwarded to the insurer; or

(6) permit its subagent or broker to serve on its board of directors; or

(7) jointly employ an individual who is employed with the insurer;

(8) appoint a sub-MGA.

Sec. 5. Duties of insurers.

(a) No insurer may utilize or continue to utilize the services of an MGA on and after the effective date of this act unless such utilization is in compliance with this act.

(b) The insurer shall have on file an independent financial examination in a form acceptable to the commissioner of each MGA with which it has done business.

(c) If an MGA establishes loss reserves the insurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the MGA. This is in addition to any other required loss reserve certification.

(d) The insurer shall periodically, but not less frequently than semi-annually, conduct an on-site review of the underwriting and claims processing operations of the MGA.

(e) Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer, who shall not be affiliated with the MGA.

(f) Within 30 days of entering into or termination of a contract with an MGA, the insurer shall provide written notification of such appointment or termination to the commissioner. Notices of appointment of an MGA shall include a statement of duties which the applicant is expected to perform on behalf of the insurer, the lines of insurance for which the applicant is to be authorized to act, and any other information the commissioner may request.

(g) An insurer shall each quarter review its books and records to determine if any producer as defined by subsection 2d has become, by operation of subsection 2d, a MGA as defined in that subsection. If the insurer determines that a producer has become a MGA pursuant to the above, the insurer shall promptly notify the agent or broker and the commissioner of such determination and the insurer and agent or broker must fully comply with the provisions of this act within 30 days.

(h) An insurer shall not appoint to its board of directors an officer, director, employee or controlling shareholder of its MGAs. This subsection shall not apply to relationships governed by the applicable provisions of chapter 40, article 33, Kansas Statutes Annotated.

Sec. 6. The acts of the MGA are considered to be the acts of the insurer on whose behalf it is acting. An MGA may be examined pursuant to K.S.A. 40-222 and 40-223 as if it were the insurer.

Sec. 7. (a) If the commissioner finds after a hearing conducted in accordance with the provisions of the Kansas administrative procedure act that any person has violated any provision of this act, the commissioner may order:

(1) For each separate violation, a penalty in an amount of $5,000;

(2) revocation or suspension of the producer's license; and

(3) the MGA to reimburse the insurer, the rehabilitator or liquidator of the insurer for any losses incurred by the insurer caused by a violation of this act committed by the MGA.

(b) Nothing contained in this act is intended to or shall in any manner limit or restrict the rights of policyholders, claimants and auditors.

Sec. 8. The commissioner may adopt reasonable rules and regulations for the implementation and administration of this act.

Sec. 9. This act shall take effect on and after January 1, 1991 and its publication in the statute book.

Explanatory Memorandum For

Legislative Proposal No. 5

The 1989 legislature enacted Senate Bill No. 398 which created a petroleum storage tank release fund to assist owners and operators in complying with the cleanup cost requirements of the Environmental Protection Agency (EPA) in the event of leakage or other necessary corrective action. However, the EPA requirements are actually twofold. First is the cleanup cost requirement previously mentioned. The other is a requirement that owners and operators of underground storage tanks be financially responsible for legal obligations they may incur as a result of leakage.

Senate Bill No. 398 did not address this second responsibility. Consequently, some, perhaps many, tank owners and operators in Kansas are still unable to comply with the EPA requirements because of an inability to secure necessary insurance coverage or take advantage of one of the other alternatives recognized by the EPA to comply with the minimum financial responsibility requirements.

Legislative Proposal No. 5 suggests a means of making the necessary liability insurance available to those who cannot obtain such coverage in the normal insurance market. It creates a residual market mechanism comprised of all insurers authorized to transact liability insurance in Kansas. This mechanism or pool would be obligated to provide coverage to needy tank owners and operators and presumably make it theoretically possible for all Kansas tank owners and operators to comply with the EPA requirements.

Attachment 5
FI & I
1/17/90

LEGISLATIVE PROPOSAL NO. 5

AN ACT relating to insurance; apportionment or assignment of risk of certain liability insurance; underground storage tanks; federal financial responsibility requirements.

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

Section 1. Every insurer undertaking to transact in the state of Kansas the kinds of insurance specified in subsections (b) or (c) of K.S.A. 40-1102 and every rating organization which files rates for such insurance shall cooperate in the preparation and submission to the commissioner of insurance of a plan or plans for the equitable apportionment among insurers of applicants for insurance who are in good faith, entitled to but who are unable to procure through ordinary methods, insurance necessary to achieve compliance with the financial responsibility requirements imposed by 40 CFR part 280, subpart H and part 281 adopted by the federal environmental protection agency. Such plan or plans shall provide:

(a) Reasonable rules governing the equitable distribution of risks by direct insurance, reinsurance or otherwise and their assignment to insurers, including provisions requiring, at the request of the applicant, an immediate assumption of the risk by an insurer or insurers upon completion of an application, payment of the specified premium and deposit the application and the premium in the United States mail, postage prepaid and addressed to the plan's office;

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

(c) the limits of liability which the insurer shall be required to assume;

(d) a method whereby applicants for insurance, insureds and insurers may have a hearing on grievances and the right of appeal to the commissioner;

(e) for every such plan or plans, there shall be a governing board to be appointed by the commissioner of insurance which shall meet at least annually to review and prescribe operating rules, and which shall consist of the following members:

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

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

The commissioner shall review the plan as soon as reasonably possible after filing in order to determine whether it meets the requirements set forth in (a), (b), (c) and (d) above. As soon as reasonably possible after the plan has been filed the commissioner shall in writing approve or disapprove the same. Any plan shall be deemed approved unless disapproved within forty-five (45) days. Subsequent to the waiting period the commissioner may disapprove any plan on the ground that it does not meet the requirements set forth in (a), (b), (c) and (d) above, but only after a hearing held upon not less than ten (10) days' written notice to every insurer and rating organization affected specifying the matter to be considered at such hearing, and only by an order specifying in what respect the commissioner finds that such plan fails to meet such requirements, and stating when within a reasonable period thereafter such plan shall be deemed no longer effective. Such order shall not affect any assignment made or policy issued or made prior to the expiration of the period set forth in said order. Amendments to such plan or plans shall be prepared, and filed and reviewed in the same manner as herein provided with respect to the original plan or plans.

If no plan meeting the standards set forth in (a), (b), (c) and (d) is submitted to the commissioner within the period stated in any order disapproving an existing plan the commissioner shall, if necessary to carry out the purpose of this section after hearing, prepare and promulgate a plan meeting such requirements. If, after a hearing the commissioner finds that any activity or practice of any insurer or rating organization in connection with the operation of such plan or plans is unfair or unreasonable or otherwise inconsistent with the provisions of this subsection the

commissioner may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this subsection and requiring discontinuance of such activity or practice.

Sec. 2. An insurer participating in the plan approved by the commissioner may pay a commission with respect to insurance assigned under the plan to an agent licensed for any other insurer participating in the plan or to any insurer participating in the plan.

Sec. 3. If any clause, paragraph, subsection or section of this act shall be held invalid or unconstitutional, it shall be conclusively presumed that the legislature would have enacted the remainder of this act without such invalid or unconstitutional clause, paragraph, subsection or section.

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

Explanatory Memorandum For

Legislative Proposal No. 8

Enactment of Legislative Proposal No. 8 would correct two unintended results of 1989 Senate Bill No. 107. As currently structured, the 1989 enactment could permit death benefits under a life insurance application to be denied if coverage was made effective when the application was taken; the insurer determined it would not issue the policy on the basis applied for but would issue a policy of some kind; and, the covered person or persons died before the company's counter-offer was accepted. The first amendment suggested in Section 1 of this proposal would preclude the occurrence of situations such as this by providing that coverage would remain in effect until the potential consumer had an opportunity, 10 days, to respond to the counter-offer.

The second amendment concerns erroneous information on the application. The applicant is or should be in a position to know whether or not the information on the application is accurate. Therefore, it is not appropriate or in keeping with the original intent of 1989 Senate Bill No. 107 to require the delay both the insurer and applicant would experience if, in such situations, the company was required to return the premium and the application to obtain corrections that were already evident to the insurer.

Attachment 6
FI + I
1/17/90

LEGISLATIVE PROPOSAL NO. 8

AN ACT relating to insurance; adverse underwriting decisions; amending K.S.A. 40-2,112 as amended by 1989 Senate Bill No. 107 and repealing the existing section.

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

Section 1. K.S.A. 40-2,112 as amended by 1989 Senate Bill No. 107 is hereby amended to read as follows: 40-2,112. (a) In the event of an adverse underwriting decision the insurance company or agent responsible for the decision shall either provide the applicant, policyholder or individual proposed for coverage with the specific reason or reasons for the adverse underwriting decision in writing or advise such persons that upon written request they may receive the specific reason or reasons in writing.

(b) Upon receipt of a written request within 60 business days from the date of the mailing of notice or other communication of an adverse underwriting decision to an applicant, policyholder or individual proposed for coverage, the insurance company or agent shall furnish to such person within 21 business days of the receipt of such written request;

(1) The specific reason or reasons for the adverse underwriting decision, in writing, if such information was not initially furnished in writing pursuant to subsection (a); or

(2) if specific items of medical-record information are supplied by a health care institution or health care provider it shall be disclosed either directly to the individual about whom the information relates or to a health care provider designated by the individual and licensed to provide health care with respect to the condition to which the information relates, whichever the insurance company or agent prefers; and

(3) the names and addresses of the institutional sources that supplied the specific items of information given pursuant to subsection (b)(2) if the identity of any health care provider o health care institution is disclosed either directly to the individual or to the designated health care provider, whichever the insurance company or agent prefers.

(c) The obligations imposed by this section upon an insurance company or agent may be satisfied by another insurance company or agent authorized to act on its behalf.

(d) The company or the agent, whichever is in possession of the money, shall refund to the applicant or individual proposed for coverage, the difference between the payment and the earned premium, if any, in the event of a declination of insurance coverage, termination of insurance coverage, or any other adverse underwriting decision.

(1) If coverage is in effect, such refund shall accompany the notice of the adverse underwriting decision, except in the case of life insurance where, along with the notice of the adverse underwriting decision, an insurer includes an offer of coverage to the insured under a different policy or at an increased premium. If such a counter-offer is made by the insurer, the insured or the insured's legal representative shall have ten business days in which to notify the company of acceptance of the counter-offer, during which time coverage will be deemed to be in effect. The insurer shall promptly refund the premium upon notice of the insured's refusal to accept the counter-offer.

(2) If coverage is not in effect and payment therefor is in the possession of the company or the agent, the underwriting decision shall be made within 20 business days from receipt of the application by the agent unless the underwriting decision is dependent upon substantive information available only from an independent source. In such cases, the underwriting decision shall be made within 10 business days from receipt of the external information by the party that makes the decision. The refund shall accompany the notice of an adverse underwriting decision.

(e) The obligation imposed by subsection (d)(1) shall not apply if material underwriting information requested by the application for coverage is clearly misstated or omitted.

Sec. 2. K.S.A. 40-2,112 as amended by 1989 Senate Bill No. 107 is hereby repealed.

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

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Explanatory Memorandum For

Legislative Proposal No. 9

This is a proposal recommended by the Committee on Surety Bonds and Insurance which, by statute, the Commissioner of Insurance chairs. Recently, the Committee encountered a situation where property insurance not expressly authorized to be purchased or carried by a state agency could be added to an insurance policy the state was purchasing without additional cost to the state. In one case, the successful bidder was simply willing to include certain property under the blanket policy without additional premium charge and in another case an endowment fund was willing to pay the premium. In these two situations, the Committee was able to develop a rational connection between the property to be insured and the authority cited in K.S.A. 74-4702. However, the prohibition against a state carrying insurance not so authorized raises a question we believe the legislature should address. The opportunity to do so is provided by Legislative Proposal No. 9.

Attachment 7
FI & I
1/17/90

LEGISLATIVE PROPOSAL NO. 9

AN ACT relating to state agencies; property insurance; purchasers; amending K.S.A. 1988 Supp. 74-4702 and repealing the existing section.

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

Section 1. K.S.A. 1988 Supp. 74-4702 is hereby amended to read as follows: 74-4702. No state agency shall purchase ~~or carry~~ insurance on any property owned by the state agency or the state except as expressly and specifically authorized by K.S.A. 74-4703, 74-4705 and 75-2728 and K.S.A. 1986 Supp. 72-4342, 76-391, 76-747, 76-748 and 76-749 and as required by K.S.A. 74-4707 and amendments to these sections.

Sec. 2. K.S.A. 1988 Supp. 74-4702 is hereby repealed.

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