

MINUTES OF THE HOUSE \_\_\_\_\_ COMMITTEE ON INSURANCE

The meeting was called to order by REPRESENTATIVE TURNQUIST at \_\_\_\_\_  
Chairperson

3:30 ~~xxx~~ p.m. on Thursday, February 7, 1991 in room 531-N of the Capitol.

All members were present except:

Theo Cribbs - Excused  
Darlene Cornfield - Excused  
Committee staff present:

Bill Edds - Revisor  
Chris Courtwright - Research  
Nikki Feuerborn - Committee Secretary

Conferees appearing before the committee:

Representative Jess Harder  
Mr. Jim Yonally  
Mr. John Grace  
Mr. Dick Brock  
Mr. Larry McGill

Others - See Attached List

Representative Sprague moved that the minutes for the February 5 and 6, 1991, meeting be approved. Motion seconded by Representative Welshimer. Motion carried.

Representative Jess Harder proposed legislature relating to coverage of certain accident and sickness policies, contracts or certificates issued, renewed or delivered within or outside the state.

According to current law, insurance contracts that are written in Kansas for Kansas citizens require specified mental health coverage. Many large employers have insurance contracts that are written out-of-state and cover Kansas employees. Our current mental mandates do not apply to those people. This creates an unfair advantage for out-of-state coverage and deprives in-state people of needed mental health benefits. See Attachment 1.

Representative Ensminger moved for the introduction of this legislation. Representative Cozine seconded the motion. Motion carried.

Mr. Jim Yonally, Director of the Kansas Chapter of the National Federation of Independent Business, requested the introduction of legislation regarding workers compensation insurance. His proposal would allow a set deductible to be paid by the employer in workers compensation cases. Some states have applied this principle and have required companies to offer this type of policy. See Attachment 2.

Representative Welshimer asked if such legislation would be a deterrent by keeping employees from seeking claims due to it being a direct cost to the employer. The question of whether there would be a set number of deductibles per year was discussed.

Representative Ensminger moved for the introduction of this legislation. Representative Neufeld seconded the motion. Motion carried.

Mr. John Grace, President and CEO of the Kansas Association of Homes for the Aging, proposed legislation which would permit activities of daily living (ADLs) to act as a trigger for benefit eligibility in long-term care based insurance policies. At this point, Kansas is virtually the only state prohibiting ADL-based insurance policies. ADL-based insurance products use functional and cognitive criteria to

CONTINUATION SHEET

MINUTES OF THE HOUSE \_\_\_\_\_ COMMITTEE ON \_\_\_\_\_ INSURANCE \_\_\_\_\_

room 531-N, Statehouse, at 3:30 ~~xxx~~ p.m. on Thursday, February 7, 1991

determine eligibility for insurance benefits. ADLs provide an objective and consistent assessment tool to determine benefit eligibility. Benefits are based on the level of disability, not the need for medical services. Mr. Grace requested that the Long-Term Care Insurance Act be amended to specifically provide that activities of daily living (functional and cognitive assessments) be permitted as a trigger for eligibility for long-term care insurance benefits. See Attachment 3.

Representative Welshimer moved for the introduction of this legislation. Representative Cozine seconded the motion. Motion carried.

Mr. Dick Brock of the Insurance Commissioner's Office, proposed the introduction of legislation regarding amendment of Secondary Mortgage Market Enhancement Act of 1984; annulment of federal preemption. This bill is designed to opt out of federal exemption of state mortgage investment laws. See Attachment 4.

Representative Neufeld moved for the introduction of this legislation. Representative Sprague seconded the motion. Motion carried.

Mr. Larry McGill requested the introduction of legislation regarding group-funded liability pools. Clarifying language was indicated on Attachments 5 and 6 which are enclosed.

Representative Neufeld moved for the introduction of this legislation. Representative Campbell seconded the motion. Motion carried.

The meeting adjourned at 4:06 p.m.



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

By Representative Harder

AN ACT concerning insurance; relating to coverage of certain accident and sickness policies, contracts or certificates issued, renewed or delivered within or outside this state; amending K.S.A. 1990 Supp. 40-2,103 and repealing the existing section.

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


Section 1. K.S.A. 1990 Supp. 40-2,103 is hereby amended to read as follows: 40-2,103. The requirements of K.S.A. 40-2,100, 40-2,101, 40-2,102, 40-2,104, 40-2,105, 40-2,114 and K.S.A. 1990 Supp. 40-2250 and amendments thereto shall apply to all insurance policies, subscriber contracts or certificates of insurance delivered, renewed or issued for delivery within or outside of this state or used within this state by or for an individual who resides or is employed in this state.

Sec. 2. K.S.A. 1990 Supp. 40-2,103 is hereby repealed.

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

According to current law insurance contracts that are written in Kansas for Kansas citizens require specified mental health coverage. Many large employers have insurance contracts that are written out-of-state and cover Kansas employees. Our current mental health mandates do not apply to those people. This creates an unfair advantage for out-of-state coverage and deprives in-state people of needed mental health benefits.

It is for these reasons that this bill request is made.

  
Rep. Jess Harder  
District 103

*House Insurance*  
*Feb. 7, 1991*  
*Attachment 1*

# NFIB Kansas

National Federation of  
Independent Business

## BILL REQUEST

House Committee on Insurance  
February 7, 1991

Mister Chairman, and members of the committee, my name is Jim Yonally. I am Director of the Kansas Chapter of the National Federation of Independent Business. I am pleased for the opportunity to request a bill to be introduced as a committee bill.

As you are aware, many types of insurance are offered with a "deductible" provision. That is, the insured agrees to pay the first "X" amount of any claim, with the insurance company obligated to pay specified amounts above that. Premiums for this type of coverage are less than for "first dollar" coverage. Some states have applied this principle to workers compensation insurance, and have required insurance companies to offer this type of policy. I have made some preliminary inquiries with interested parties, and there appears to be sufficient support to consider legislation along these lines.

My specific request is committee approval to have a bill drafted, and allow me to work with the chairman, or other committee designees, to prepare some language that could then be the subject of hearings and discussion with all those who might have an interest.

On behalf of our members, I appreciate your consideration of this request.

State Office  
10039 Mastin Dr.  
Shawnee Mission, KS 66212  
(913) 888-2235



The Guardian of  
Small Business

*House Insurance*  
*Feb. 7, 1991*  
*Attachment 2*



Kansas Association  
of Homes for the Aging

Enhancing the quality of life  
of those we serve since 1953.

MEMORANDUM

1990 KAHA  
Board and Officers

Chairperson  
Lou Esplund  
Minneola Nursing Home  
Minneola

Chairperson Elect  
Bob Bethell  
Ray E. Dillon Living Center  
Hutchinson

Treasurer  
Marcia Schuler  
Kansas City  
Presbyterian Manor  
Kansas City

Secretary  
Roger Closson  
Meadowlark Hills  
Manhattan

Directors

Gretchen Barclay  
Mount Joseph, Inc.  
Concordia

Pet Elliott  
Mount Hope Nursing Center  
Mount Hope

Paul Florquist  
Western Prairie Care Home  
Ulysses

Robin Lowery  
Valley Vista  
Good Samaritan Center  
Wamego

Leo Schmidt  
Schowalter Villa  
Hesston

Jennifer Younie  
Eastridge  
Centralia

AAHA Delegates

Don Curl  
St. John's of Victoria  
Victoria

Luella Janzen  
Parkside Homes  
Hillsboro

John Lehman  
Apostolic Christian Home  
Sabetha

LeRoy Weddle  
The Cedars  
McPherson

John Wells  
Larkfield Place  
Wichita

KAHA Staff

John R. Grace  
President/CEO

Kevin McFarland  
Chief Operating Officer

TO: House Insurance Committee  
Hon. Larry Turnquist, Chairman

FROM: John R. Grace, President/CEO  
Kansas Association of Homes for the Aging

RE: Long-Term Care Insurance Legislation

DATE: February 7, 1991

The Kansas Association of Homes for the Aging represents some 130 not-for-profit nursing and retirement homes in rural and urban areas across the state. On behalf of KAHA, I wish to request that the House Insurance Committee introduce legislation permitting the use of "Activities of Daily Living" (ADLs) as a trigger for benefits in Long-Term Care (LTC) insurance policies.

K.A.R. 40-4-37(g) provides: "A long term care policy may require a recommendation by a physician that the services are necessary due to illness, injury, or infirmity, but shall not condition such benefits on medical necessity." The Kansas Department of Insurance has interpreted this regulation to exclude all LTC insurance products that trigger coverage on functional or cognitive criteria. Because we believe that the Department of Insurance's restrictions unduly limit the LTC insurance market in Kansas, we would request that the committee introduce legislation permitting ADLs as a trigger for benefit eligibility.

ADL - based insurance products use functional and cognitive criteria to determine eligibility for insurance benefits. ADLs provide an objective and consistent assessment tool to determine benefit eligibility. Benefits are based on the level of disability, not the need for medical services.

Kansas is virtually the only state prohibiting ADL - based LTC insurance policies. More than 45 states and the District of Columbia have approved the use of ADL - based policies. Because of Kansas' prohibition of these products, the long-term care insurance market is severely limited, and Kansas consumers do not have the best available options for LTC insurance.

-over-

*House Insurance*  
*Feb. 7, 1991*

*Attachment 3*

It would therefore be the request of KAHA that K.S.A. 40-2228 of the Long-Term Care Insurance Act be amended to specifically provide that activities of daily living (functional and cognitive assessments) be permitted as a trigger for eligibility for long-term care insurance benefits. We would suggest the following language:

Notwithstanding any other provision of this Act, long-term care insurance policies may condition benefit eligibility on functional and cognitive assessments such as activities of daily living. The commissioner may adopt such reasonable rules and regulations as are necessary to implement the provisions of this Act.

K.S.A. 40-2228(b)(1) recognizes the "unique, developing and experimental nature of long-term care insurance." We believe that our proposed amendment is in keeping with the spirit of the law. In light of the escalating expenses facing the state under Medicaid, this legislation may ultimately save the taxpayers of the state millions of dollars by encouraging the purchase of long-term care insurance.

LEGISLATIVE PROPOSAL NO. 13

AN ACT relating to insurance; P.L. 98-440, Sec. 106(c); Secondary Mortgage Market Enhancement Act of 1984; annulment of federal preemption.

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

Section 1. Notwithstanding the provisions of the Secondary Mortgage Market Enhancement Act of 1984, Sec. 106, P.L. 98-440; K.S.A. 40-2a01 et seq. and 40-2b01 et seq. relating to the qualifications, limitations and kinds of investments insurance companies domiciled in Kansas may purchase and hold shall continue to apply.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

*House Insurance*  
*Feb 7, 1991*  
*Attachment 4*  
*Page 1 of 4*



From: NV504

Subject: Federal Preemption of State mortgage Investment Laws

On October 3, 1984, the President of the United States signed into law the Secondary Mortgage Market Enhancement Act (hereinafter "SMMEA"). SMMEA was intended to preempt, to a limited extent, state laws with regard to investment, including investments by domestic insurers. It requires that certain categories of mortgage investments be treated, for state investment law purposes, as obligations issued or guaranteed by the United States or an agency or instrumentality thereof, even though they are not. In addition, SMMEA, by its own terms, granted any state which so chose the option to effectively "opt out" if it, "...enacts a statute that specifically refers to this section and either prohibits or provides for a more limited authority to purchase, hold, or invest in such securities by any person, trust, corporation, partnership, association, business trust, or business entity or class...". The option was to be exercised within seven years time or not at all. It thus expires on October 3, 1991.

Federal Preemption of State mortgage Investment Laws

*Don*

*Page 2 of 4*

AN ACT

Relating to certain investments of  
insurance companies

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Be it enacted by the General Assembly of the State of Missouri, as follows:

375.328.1. The provisions of Section 77r-1 of the Secondary Mortgage Market Enhancement Act of 1984, P.L. 98-440, 98 Stat. 1691, Title 15, shall not apply to the purchase, holding or investment by insurance companies subject to Section 376.300, Section 376.307 and Section 379.080.

2. The limitations and qualifications contained in Section 376.300, Section 376.307 and Section 379.080 shall continue to apply to the investments of the capital, reserve and surplus by insurance companies.

Cite to:

Secondary Mortgage Market Enhancement Act of 1984,  
P.L. 98-440, § 106 (c). (codified at 15 U.S.C.  
§ 77r-1 (b)).

purchase, or within such shorter period as the Commission may prescribe by rule or regulation".

#### INVESTMENT BY DEPOSITORY INSTITUTIONS

SEC. 105. (a) Section 5(c)(1) of the Home Owner's Loan Act of 1933 (12 U.S.C. 1464(c)(1)) is amended by adding at the end thereof the following:

"(S) MORTGAGE BACKED SECURITIES.—Investments in securities that—

"(i) are offered and sold pursuant to section 4(5) of the Securities Act of 1933 (15 U.S.C. 77d(5)); or

"(ii) are mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41))), subject to such regulations as the Board may prescribe, including regulations prescribing minimum size of the issue (at the time of initial distribution) or minimum aggregate sales prices, or both."

*Ante, p. 1689.*

(b) Section 107 of the Federal Credit Union Act (12 U.S.C. 1757) is amended—

(1) by redesignating paragraph (15) as paragraph (16); and  
(2) by inserting after paragraph (14) the following:

"(15) to invest in securities that—

"(A) are offered and sold pursuant to section 4(5) of the Securities Act of 1933 (15 U.S.C. 77d(5)); or

"(B) are mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41))), subject to such regulations as the Board may prescribe, including regulations prescribing minimum size of the issue (at the time of initial distribution) or minimum aggregate sales prices, or both;"

(c) Section 5136 of the Revised Statutes (12 U.S.C. 24) is amended by adding at the end of paragraph Seventh the following: "The limitations and restrictions contained in this paragraph as to an association purchasing for its own account investment securities shall not apply to securities that (A) are offered and sold pursuant to section 4(5) of the Securities Act of 1933 (15 U.S.C. 77d(5)); or (B) are mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41))), subject to such regulations as the Comptroller of the Currency may prescribe, including regulations prescribing minimum size of the issue (at the time of initial distribution) or minimum aggregate sales prices, or both."

#### PREEMPTION OF STATE LAW

SEC. 106. (a)(1) Any person, trust, corporation, partnership, association, business trust, or business entity created pursuant to or existing under the laws of the United States or any State shall be authorized to purchase, hold, and invest in securities that are—

15 USC 77r-1.

(A) offered and sold pursuant to section 4(5) of the Securities Act of 1933,

(B) mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41))), or

(C) securities issued or guaranteed by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, to the same extent that such person, trust, corporation, partnership, association, business trust, or business entity is authorized under any applicable law to purchase, hold or invest in obligations issued by or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof.

(2) Where State law limits the purchase, holding, or investment in obligations issued by the United States by such a person, trust, corporation, partnership, association, business trust, or business entity, such securities that are—

(A) offered and sold pursuant to section 4(5) of the Securities Act of 1933,

(B) mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41))), or

(C) securities issued or guaranteed by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association,

shall be considered to be obligations issued by the United States for purposes of the limitation.

(b) The provisions of subsection (a) shall not apply with respect to a particular person, trust, corporation, partnership, association, business trust, or business entity or class thereof in any State that, prior to the expiration of seven years after the date of the enactment of this Act, enacts a statute that specifically refers to this section and either prohibits or provides for a more limited authority to purchase, hold, or invest in such securities by any person, trust, corporation, partnership, association, business trust, or business entity or class thereof than is provided in subsection (a). The enactment by any State of any statute of the type described in the preceding sentence shall not affect the validity of any contractual commitment to purchase, hold, or invest that was made prior thereto and shall not require the sale or other disposition of any securities acquired prior thereto.

(c) Any securities that are offered and sold pursuant to section 4(5) of the Securities Act of 1933 or that are mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41))) shall be exempt from any law of any State with respect to or requiring registration or qualification of securities or real estate to the same extent as any obligation issued by or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof. Any State may, prior to the expiration of seven years after the date of the enactment of this Act, enact a statute that specifically refers to this section and requires registration or qualification of any such security on terms that differ from those applicable to any obligation issued by the United States.

TITLE II—SECONDARY MORTGAGE MARKET PROGRAMS

LIMITATIONS ON PARTICIPATION AGREEMENTS

SEC. 201. (a) The sixth sentence of section 302(b)(2) of the Federal National Mortgage Association Charter Act is amended to read as follows: "The corporation shall establish limitations governing the maximum original principal obligation of conventional mortgages

that are purchased by purchases a participatio shall be calculated wi obligation of the mort interest purchased by th

(b) The fifth sentenc Loan Mortgage Corpora Corporation shall esta original principal oblig purchased by it; in any participation interest i calculated with respect i the mortgage and not n by the Corporation."

AUTHORITY OF FEDER PURCHASE I

SEC. 202. (a) Section Corporation Act is ame ing: "or a manufactur laws of the State in "

(b) Section 302(h) of th Act is amended by ad sentence: "The term 'r advance of credit securi tured home that is the regard to whether the s

(c) Section 302 of the Act is amended by ad subsection:

"(1) The term 'mortg of a residential mortg manufactured home le Housing Act."

PURCH

SEC. 203. (a) Section Association Charter Ac following new paragra

"(5XA) The corporat lend on the security o 1987, conventional mor against a one- to four dence of the mortgago mortgages that are sec comprising five or mo pursuant to paragraph iced, sold, or otherwis secured by the same such other mortgage a serviced, sold, or othe not exceed the applica (2).

"(B) The corporatio maximum original pri

15 USC 77d.

Ante, p. 1689.

Prohibitions.

\* Exemption.

Statute enactment period.

12 USC 1717.

Page 544

TITLE - COMMERCE AND TRADE

§ 77r-1

AMENDMENTS

1934—Act June 6, 1934, exempted from liability controlling persons having no knowledge or reasonable grounds for belief.

CROSS REFERENCES

Definition of term person, see section 77b of this title.

Liability of controlling persons under— Public Utility Holding Company Act of 1935, see section 79z-1 of this title. Securities Exchange Act of 1934, see section 78t of this title.

§ 77p. Additional remedies

The rights and remedies provided by this subchapter shall be in addition to any and all other rights and remedies that may exist at law or in equity.

(May 27, 1933, ch. 38, title I, § 16, 48 Stat. 84.)

CROSS REFERENCES

Securities Exchange Act of 1934 as providing additional remedies, see section 78bb of this title.

§ 77q. Fraudulent interstate transactions

(a) Use of interstate commerce for purpose of fraud or deceit

It shall be unlawful for any person in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly—

(1) to employ any device, scheme, or artifice to defraud, or

(2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

(b) Use of interstate commerce for purpose of offering for sale

It shall be unlawful for any person, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, to publish, give publicity to, or circulate any notice, circular, advertisement, newspaper, article, letter, investment service, or communication which, though not purporting to offer a security for sale, describes such security for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

(c) Exemptions of section 77c not applicable to this section

The exemptions provided in section 77c of this title shall not apply to the provisions of this section.

(May 27, 1933, ch. 38, title I, § 17, 48 Stat. 84; Aug. 10, 1954, ch. 667, title I, § 10, 68 Stat. 686.)

AMENDMENTS

1954—Subsec. (a). Act Aug. 10, 1954, inserted "offer or" before "sale" in introductory text.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

CROSS REFERENCES

Fraud and false statements, see section 1001 et seq. of Title 18, Crimes and Criminal Procedure. Information and documents to determine eligibility of indenture trustee and analysis of indenture, section as inapplicable to, see section 77eee of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 77eee, 3904 of this title; title 7 section 1932; title 42 section 9675.

§ 77r. State control of securities

Nothing in this subchapter shall affect the jurisdiction of the securities commission (or any agency or office performing like functions) of any State or Territory of the United States, or the District of Columbia, over any security or any person.

(May 27, 1933, ch. 38, title I, § 18, 48 Stat. 85.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Jurisdiction of other tribunals unaffected insofar as not in conflict with—

Investment Company Act of 1940, see section 80a-49 of this title.

Public Utility Holding Company Act of 1935, see section 79u of this title.

Securities Exchange Act of 1934, see section 78bb of this title.

Trust Indenture Act of 1939, see section 77zzz of this title.

§ 77r-1. Preemption of State law

(a) Authority to purchase, hold, and invest in securities; securities considered as obligations of United States

(1) Any person, trust, corporation, partnership, association, business trust, or business entity created pursuant to or existing under the laws of the United States or any State shall be authorized to purchase, hold, and invest in securities that are—

(A) offered and sold pursuant to section 77d(5) of this title,

(B) mortgage related securities (as that term is defined in section 78c(a)(41) of this title), or

(C) securities issued or guaranteed by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association,

to the same extent that such person, trust, corporation, partnership, association, business trust, or business entity is authorized under any applicable law to purchase, hold or invest in obligations issued by or guaranteed as to

Note

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principal and interest by the United States or any agency or instrumentality thereof.

(2) Where State law limits the purchase, holding, or investment in obligations issued by the United States by such a person, trust, corporation, partnership, association, business trust, or business entity, such securities that are—

(A) offered and sold pursuant to section 77d(5) of this title,

(B) mortgage related securities (as that term is defined in section 78c(a)(41) of this title), or

(C) securities issued or guaranteed by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association,

shall be considered to be obligations issued by the United States for purposes of the limitation.

(b) Exception; validity of contracts under prior law

The provisions of subsection (a) of this section shall not apply with respect to a particular person, trust, corporation, partnership, association, business trust, or business entity or class thereof in any State that, prior to the expiration of seven years after October 3, 1984, enacts a statute that specifically refers to this section and either prohibits or provides for a more limited authority to purchase, hold, or invest in such securities by any person, trust, corporation, partnership, association, business trust, or business entity or class thereof than is provided in subsection (a) of this section. The enactment by any State of any statute of the type described in the preceding sentence shall not affect the validity of any contractual commitment to purchase, hold, or invest that was made prior thereto and shall not require the sale or other disposition of any securities acquired prior thereto.

(c) Registration and qualification requirements; exemption; subsequent enactment by State

Any securities that are offered and sold pursuant to section 77(d)(5) of this title or that are mortgage related securities (as that term is defined in section 78c(a)(41) of this title) shall be exempt from any law of any State with respect to or requiring registration or qualification of securities or real estate to the same extent as any obligation issued by or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof. Any State may, prior to the expiration of seven years after October 3, 1984, enact a statute that specifically refers to this section and requires registration or qualification of any such security on terms that differ from those applicable to any obligation issued by the United States.

(Pub. L. 98-440, title I, § 106, Oct. 3, 1984, 98 Stat. 1691.)

#### CODIFICATION

Section was enacted as part of the Secondary Mortgage Market Enhancement Act of 1984, and not as part of the Securities Act of 1933, which comprises this subchapter.

#### § 77s. Special powers of Commission

(a) The Commission shall have authority from time to time to make, amend, and rescind

such rules and regulations as may be necessary to carry out the provisions of this subchapter, including rules and regulations governing registration statements and prospectuses for various classes of securities and issuers, and defining accounting, technical, and trade terms used in this subchapter. Among other things, the Commission shall have authority, for the purposes of this subchapter, to prescribe the form or forms in which required information shall be set forth, the items or details to be shown in the balance sheet and earning statement, and the methods to be followed in the preparation of accounts, in the appraisal or valuation of assets and liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and nonrecurring income, in the differentiation of investment and operating income, and in the preparation, where the Commission deems it necessary or desirable, of consolidated balance sheets or income accounts of any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer. The rules and regulations of the Commission shall be effective upon publication in the manner which the Commission shall prescribe. No provision of this subchapter imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the Commission, notwithstanding that such rule or regulation may, after such act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(b) For the purpose of all investigations which, in the opinion of the Commission, are necessary and proper for the enforcement of this subchapter, any member of the Commission or any officer or officers designated by it are empowered to administer oaths and affirmations, subpoena witnesses, take evidence, and require the production of any books, papers, or other documents which the Commission deems relevant or material to the inquiry. Such attendance of witnesses and the production of such documentary evidence may be required from any place in the United States or any Territory at any designated place of hearing.

(c)(1) The Commission is authorized to cooperate with any association composed of duly constituted representatives of State governments whose primary assignment is the regulation of the securities business within those States, and which, in the judgment of the Commission, could assist in effectuating greater uniformity in Federal-State securities matters. The Commission shall, at its discretion, cooperate, coordinate, and share information with such an association for the purposes of carrying out the policies and projects set forth in paragraphs (2) and (3).

(2) It is the declared policy of this subsection that there should be greater Federal and State cooperation in securities matters, including—

(A) maximum effectiveness of regulation,

(B) maximum uniformity in Federal and State regulatory standards,

(C) minimum interference with the business of capital formation, and

(D) a subnetwork to develop investment capacity and to administration of involved.

(3) The purpose of cooperation with such associations and other duties in the following:

(A) the share of the registration issues applied

(B) the development of uniform securities

(C) the development from registration can be agreed between the Commission. The Commission's authority to adopt upon for Federal chapter shall be the exemption of State

(4) In order to carry out the purposes, the annual conferences are deemed necessary as are deemed representatives from securities self-regulatory and private organizations shall be

(5) For fiscal three succeeding years, the necessary and appropriate provisions, Any sums so appropriated are available until expended

(6) Notwithstanding any law, neither the person shall be required to produce not specifically laws, as that 78c(a)(47) of this in connection with or consultation with

(A) any association (1) or (3) or a

ferred to in particular, conference activities in furtherance of this subsection;

(B) any forum group referred to while such forum group is carrying out of the provision

As used in this subsection, "conference", "agency", "organization", "committee", "group", "entity",

(May 27, 1933, ch. 10, § 106, 47 Stat. 1691; June 6, 1934, ch. 4, § 106, 48 Stat. 1691; Feb. 5, 1976, Pub. Law 94-142, § 505, 90 Stat. 211; Oct. 2, 1984, Pub. Law 98-440, § 106, 98 Stat. 1691; 100-181, title II, §

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Article 26.—INSURANCE  
GROUP-FUNDED LIABILITY POOLS

**12-2616.** Name and citation of act. K.S.A. 1987 Supp. 12-2616 through 12-2629 shall be known and may be cited as the Kansas municipal group-funded pool act.

History: L. 1987, ch. 74, § 1; May 28.

**12-2617.** Authorization of municipalities to pool liabilities; certain insurance excluded from pools; pools not deemed insurance and not subject to regulation except as enumerated. Five or more municipalities as defined in K.S.A. 75-6102, and amendments thereto, may enter into agreements to pool their liabilities for Kansas fire, marine, inland marine and allied lines, as defined in K.S.A. 40-901, and amendments thereto, and casualty, surety and fidelity lines as defined in K.S.A. 40-1102, and amendments thereto, including workers' compensation and employers' liability. Such pools shall not include accident, health or life insurance. Such arrangements shall be known as group-funded pools, which shall not be deemed to be insurance or insurance companies and shall not be subject to the provisions of chapter 40 of the Kansas Statutes Annotated, except as otherwise provided herein.

History: L. 1987, ch. 74, § 2; May 28.

**12-2618.** Certificate of authority to operate pool; application; hearing upon denial of application. Application for a certificate of authority to operate a pool shall be made to the commissioner of insurance not less than 30 days prior to the proposed inception date of the pool. The application shall include the following:

(a) A copy of the bylaws of the proposed pool, a copy of the articles of incorporation, if any, and a copy of all agreements and rules of the proposed pool. If any of the bylaws, articles of incorporation, agreements or rules are changed, the pool shall notify the commissioner within 30 days after such change.

(b) Designation of the initial board of trustees and administrator. When there is a change in the membership of the board of trustees or change of administrator, the pool shall notify

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the commissioner within 30 days after such change.

(c) The address where the books and records of the pool will be maintained at all times. If this address is changed, the pool shall notify the commissioner within 30 days after such change.

(d) Evidence that the annual Kansas gross premium of the pool will be not less than \$250,000 for each of the following categories:

(1) All property insurance under article 9 of chapter 40 of the Kansas Statutes Annotated except motor vehicle physical damage; (2) motor vehicle liability and physical damage insurance; (3) workers' compensation and employers' liability insurance; and (4) all casualty insurance under article 11 of chapter 40 of the Kansas Statutes Annotated except insurance under categories (2) and (3) above. The pool shall notify the commissioner within 30 days if the Kansas gross premium is less than \$250,000 for any of the above categories of insurance.

(e) An agreement binding the group and each member thereof to comply with the provisions of the workmen's compensation act. For all lines of coverage, all members of the pool shall be jointly liable for the payment of claims to the extent of the assets of the pool.

(f) A copy of the procedures adopted by the pool to provide services with respect to underwriting matters and safety engineering.

(g) A copy of the procedures adopted by the pool to provide claims adjusting and accumulation of income and expense and loss data.

(h) A confirmation of specific and aggregate excess insurance, as selected by the board of trustees of the pool, or adequate surplus funds as approved by the commissioner, in the pool. The pool shall notify the commissioner within 30 days of any change in the specific or aggregate excess insurance carried by the pool.

(i) After evaluating the application the commissioner shall notify the applicant if the plan submitted is inadequate, fully explaining to the applicant what additional requirements must be met. If the application is denied, the applicant shall have 10 days to make an application for hearing by the commissioner after the denial notice is received. A record shall be made of such hearing, and the cost thereof shall be assessed against the applicant requesting the hearing.

(j) Any other relevant factors the commissioner may deem necessary.

For the purpose of this act, "surplus funds" shall mean retained earnings of the pool after reserves have been established and approved by an independent actuary for all known and incurred but not reported losses of the pool and after all other liabilities of the pool have been deducted from total assets. The term "adequate surplus funds" shall mean the amount necessary for the pool to fund its self insured obligations based upon an independent actuary's evaluation.



the same public, grant such pool upon reasonable notice a hearing, and, if on such hearing the report be confirmed, the commissioner shall suspend the certificate of authority for such pool until its ability to pay current and future claims shall have been fully restored and the laws of the state fully complied with. The commissioner may, if there is an unreasonable delay in restoring the ability to pay claims of such pool and in complying with the law, revoke the certificate of authority of such pool to do business in this state. Upon revoking any such certificate the commissioner shall communicate the fact to the attorney general, whose duty it shall be to commence and prosecute an action in the proper court to dissolve such pool or to enjoin the same from doing or transacting business in this state. The commissioner of insurance may call a hearing under K.S.A. 40-222b, and amendments thereto, and the provisions thereof shall apply to group-funded pools.

History: L. 1987, ch. 74, § 5; May 28.

**12-2621.** Premium contributions, determination, deposit and use; refunds. (a) Premium contributions to the pool shall be based upon appropriate manual classification and rates, plus or minus applicable experience credits or debits, and minus any advance discount approved by the trustees, not to exceed 25% of manual premium. The pool shall use rules, classifications and rates as promulgated by the national council on compensation insurance for workers' compensation. Premium contributions to the pool for all other lines of insurance shall be based on rates filed by a licensed rating organization or on rates of certain companies filing rates with the commissioner and approved by the commissioner for the pool. In lieu of the foregoing, the board of trustees may determine such classification, rates and discounts as approved by the commissioner.

(b) An amount equal to at least 70% of the annual premium shall be maintained in a designated depository for the purpose of paying claims in a claims fund account. The remaining annual premium shall be placed into a designated depository for the payment of taxes, fees and administrative and other operational costs in an administrative fund account.

(c) Any ~~surplus~~ moneys for a fund year in excess of the amount necessary to fulfill all obligations of the pool for that fund year may be declared to be refundable by the trustees

sole

including any obligation to retain adequate surplus funds as defined in K.S.A. 12-2618(h) in lieu of specific and aggregate excess insurance.

History: L. 1987, ch. 74, § 3; May 28.

**12-2619.** Irrevocable consent for service of process on commissioner of insurance. Every group-funded pool applying for authority to operate a pool in this state, as a condition precedent to obtaining such authority, shall file in the insurance department a written irrevocable consent, that any action may be commenced against such pool in the proper court of any county in this state in which the cause of action shall arise or in which the plaintiff may reside by the service of process on the commissioner of insurance of this state, and stipulating and agreeing that such service shall be taken and held in all courts to be as valid and binding as if due service had been made upon the trustees or the administrator of such pool. The consent shall be executed by the board of trustees and shall be accompanied by a duly certified copy of the resolution passed by the trustees to execute such consent.

History: L. 1987, ch. 74, § 4; May 28.

**12-2620.** Certificate of authority granted on perpetual basis; examinations; submission of financial statement and reports; suspension of certificate, grounds, hearing; revocation; dissolution or injunction of pool. (a) All certificates granted hereunder shall be perpetual unless sooner suspended or revoked by the commissioner or the attorney general.

(b) Whenever the commissioner shall deem it necessary the commissioner may make, or direct to be made, an examination of the affairs and the financial condition of any pool, except that once every five years the commissioner shall conduct an examination of the affairs and the financial condition of each pool. Each pool shall submit a certified independent audited financial statement no later than 90 days after the end of the fiscal year. The financial statement shall include outstanding reserves for claims and for claims incurred but not reported. Each pool shall file reports as to income, expenses and loss data at such times and in such manner as the commissioner shall require. Whenever it appears to the commissioner from such examination or other satisfactory evidence that the ability to pay current and future claims of any such pool is impaired, or that it is doing business in violation of any of the laws of this state, or that its affairs are in an unsound condition so as to endanger its ability to pay or cause to be paid claims in the amount, manner and time due, the commissioner shall, before filing such report or making

not less than 12 months after the end of the fund year. Any such refund shall be paid only to those members who remained participants in the pool for an entire year. Payment of previously earned refunds shall not be contingent on continued membership in the pool.

History: L. 1987, ch. 74, § 6; May 28.

**12-2622.** Same; investments. The trustees shall not utilize any of the contributions collected as premiums for any purpose unrelated to the pool. Moneys not needed for current obligations may be invested by the trustees. Such investments shall be limited to bonds or other evidences of indebtedness issued, assumed or guaranteed by the United States of America, or by any agency or instrumentality thereof; in certificates of deposit in a federally insured bank located in Kansas; or in shares or savings deposits in a federally insured savings and loan association located in Kansas.

History: L. 1987, ch. 74, § 7; May 28.

**12-2623.** Group-funded pools fee fund; payment of operating expenditures; expenses of administration; assessments; deposit of remittances. The expense of state supervision of the group-funded pools shall be financed in the following manner:

(a) There is hereby created in the state treasury a fund to be called the group-funded pools fee fund. All amounts which are required to be paid from the group-funded pools fee fund for the operating expenditures incident to the supervision of the group-funded pools shall be paid from the group-funded pools fee fund. The commissioner of insurance shall be responsible for administering the group-funded pools fee fund and all payments from the fund shall be upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the commissioner of insurance or a person or persons designated by the commissioner.

(b) The commissioner of insurance shall estimate as soon as practical after January 1 of each year the expenses necessary for the supervision of the group-funded pools for the fiscal year beginning on July 1 thereafter. Not later than June 1 of each year, the commissioner of insurance shall notify all such group-funded pools of the amount of each assessment imposed under this subsection on such group-funded pools and the same shall be due and payable to the commissioner on the July 1 following.

(c) The commissioner of insurance shall remit all moneys received by or for such remittance to the state treasurer. Upon receipt of any such remittance the state treasurer shall deposit the entire amount thereof in the state treasury to the credit of the group-funded pools fee fund.

History: L. 1987, ch. 74, § 8; May 28.

**12-2624.** Gross premium tax, rate, payment; deductions for cancellations and dividends. In addition to the fees required to be paid in K.S.A. 1987 Supp. 12-2622, and as a condition precedent to the continuation of the certificate of authority provided in this act, all group-funded pools shall pay no later than 90 days after the end of each fiscal year a tax upon the annual Kansas gross premium collected by the pool at the rate of 1% per annum applied to the collective premium of the pool for the preceding fiscal year. In the computation of the tax, all pools shall be entitled to deduct any annual Kansas gross premiums returned on account of cancellation or dividends returned to members of such pools or expenditures used for the purchase of specific and aggregate excess insurance, as provided in subsection (h) of K.S.A. 1987 Supp. 12-2618.

History: L. 1987, ch. 74, § 9; May 28.

**12-2625.** Pools subject to additional assessments and certain provisions of chapter 40 of Kansas Statutes Annotated. (a) Each pool shall be assessed annually as provided by K.S.A. 44-566a and 74-713, and amendments thereto.

(b) Each pool shall be subject to the provisions of article 24 of chapter 40 of the Kansas Statutes Annotated.

(c) Each pool shall be subject to the provisions of 40-246b to 40-246e, inclusive, and amendments thereto.

History: L. 1987, ch. 74, § 10; May 28.

**12-2626.** Application for membership in pool; approval; termination or cancellation of participation. (a) After the inception date of the group-funded pool, prospective new members of the pool shall submit an application for membership to the board of trustees or its administrator. The trustees may approve the application for membership pursuant to the bylaws of the pool.

(b) Individual members may elect to terminate their participation in a pool or be subject to cancellation by the pool pursuant to the bylaws of the pool. On termination or cancel-

Proposed and authorized pool and each person representing such proposed or authorized pool

(d) Each pool shall be subject to assessments authorized by the Kansas Workers Compensation Plan established pursuant to K.S.A. 40-2109 based upon the pool's written premium compared to total written premium for workers compensation insurance in Kansas.

(e) Each pool shall be subject to assessments authorized under the Kansas Automobile Insurance Plan for commercial vehicles established pursuant to K.S.A. 40-2102.

lation of a workers' compensation member, the pool shall notify the division of workers' compensation within 10 days and shall maintain coverage of each cancelled or terminating member for 30 days after notice to such division or until such division gives notice that the cancelled or terminating member has procured workers' compensation and employers' liability insurance, whichever occurs first.

History: L. 1987, ch. 74, § 11; May 28.

**12-2627.** Board of trustees of pool, qualifications, duties; administrator, bond; audits; credit transactions; delegation of authority from board to administrator. To ensure the financial stability of the operations of each group-funded pool, the board of trustees of each pool is responsible for all operations of the pool. The board of trustees shall consist of not less than three persons selected according to the bylaws of the pool for stated terms of office to direct the administration of a pool, and whose duties include approving applications by new members of the pool. The majority of the trustees must be a member of the governing body or an officer or employee of members of the pool, but a trustee may not be an owner, officer or employee of any service agent or representative. All trustees shall be residents of this state. The board of trustees of each fund shall take all necessary precautions to safeguard the assets of the fund, including all of the following:

(a) Designate an administrator to administer the financial affairs of the pool who shall furnish a fidelity bond to the pool in an amount determined by the trustees to protect the pool against the misappropriation or misuse of any moneys or securities. The administrator shall file evidence of the bond with the commissioner. The bond shall be one of the conditions required for approval of the establishment and continued operation of a pool. Any administrator so designated shall be a resident of Kansas if an individual or shall be authorized to do business in Kansas if a corporation.

(b) Retain control of all moneys collected or disbursed from the pool and segregate all moneys into a claims fund account and an administrative fund account. All administrative costs and other disbursements shall be made from the administrative fund account. The trustees may establish a revolving fund for use by the authorized service agent which is replenished from time to time from the claims fund account. The service agent and its em-

ployees shall be covered by a fidelity bond, with the pool as obligee, in an amount sufficient to protect all moneys placed in the revolving fund.

(c) Audit the accounts and records of the pool annually or at any time as required. The commissioner shall prescribe the type of audits and a uniform accounting system for use by pool and service agents to determine the ability of the pool to pay current and future claims.

(d) The trustees shall not extend credit to individual members for any purpose.

(e) The board of trustees shall not borrow any moneys from the pool or in the name of the pool without advising the commissioner of the nature and purpose of the loan.

(f) The board of trustees may delegate authority for specific functions to the administrator of the pool. The functions which the board may delegate include such matters as contracting with a service agent, determining the premium chargeable to and refunds payable to members, investing surplus moneys and approving applications for membership. The board of trustees shall specifically define all authority it delegates in the written minutes of the trustees' meetings. Any delegation of authority shall not be effective without a formal resolution passed by the trustees.

History: L. 1987, ch. 74, § 12; L. 1989, ch. 65, § 1; July 1.

**12-2628.** Licensing of persons soliciting insurance business for pool. Any person ~~soliciting the business of insurance~~ for a group-funded pool shall hold a current license authorizing such person to sell each line of insurance offered for sale. Any person licensed for the kinds of insurance offered by the pool shall be deemed to be certified by a company for the kinds of insurance permitted by the pool.

or agency

proposed or authorized

History: L. 1987, ch. 74, § 13; May 28.

**12-2629.** Commissioner of insurance to provide advice and counsel to local governments. The commissioner of insurance shall make such recommendations as deemed advisable to assist Kansas local governments in the effective, efficient and fiscally sound operation of any proposed group-funded pool. Within the time and resources available, the department of insurance shall provide advice and counsel to any group-funded pool.

History: L. 1987, ch. 74, § 14; May 28.

44-582. Same; certificate of authority; application. Application for a certificate of authority for a pool shall be made to the commissioner of insurance not less than 60 days prior to the proposed inception date of the pool. The application shall include the following:

(a) A copy of the bylaws of the proposed pool, a copy of the articles of incorporation, if any, and a copy of all agreements and rules of the proposed pool. If any of the bylaws, articles of incorporation, agreements or rules are changed, the pool shall notify the commissioner within 30 days after such change.

(b) A copy of the trust agreement securing the payment of workers' compensation benefits. If the trust agreement is changed, the pool shall notify the commissioner within 30 days after such change.

(c) Designation of the initial board of trustees and administrator. When there is a change in the membership of the board of trustees or change of administrator, the pool shall notify the commissioner within 30 days after such change.

(d) The address where the books and records of the pool will be maintained at all times. If this address is changed, the pool shall notify the commissioner within 30 days after such change.

(e) An individual application for each initial member of the pool. Each individual application shall include a current certified financial statement on a form approved by the commissioner.

(f) A current certified financial statement on a form approved by the commissioner showing that the combined net worth of all members applying for coverage on the inception date of the pool is in an amount not less than \$1,000,000.

(g) A current certified financial statement on a form approved by the commissioner showing the financial ability of the pool to meet its obligations under the workmen's compensation act.

(h) Evidence that the annual Kansas gross premium of the pool will be not less than \$250,000. The annual Kansas gross premium shall be based upon the autho-

rized rates as filed by the national council of compensation insurance.

(i) An indemnity agreement jointly and severally binding the group and each member thereof to comply with the provisions of the workmen's compensation act. The indemnity agreement shall be in a form acceptable to the commissioner.

(j) Proof of payment by each member of not less than 25% of the estimated annual premium into a designated depository.

(k) A copy of the procedures adopted by the pool to provide services with respect to underwriting matters and safety engineering.

(l) A copy of the procedures adopted by the pool to provide claims adjusting and reporting of loss data.

(m) A confirmation of specific and aggregate excess insurance.

(n) Any other relevant factors the commissioner may deem necessary.

History: L. 1983, ch. 166, § 2; July 1.

that

provided by an insurance company holding a Kansas certificate of authority is or will be in effect concurrent with the assumption of risk by the pool.

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**44-589.** Same; assessments; subject to article 24 of chapter 40 of Kansas Statutes Annotated. (a) Each licensed pool shall be assessed annually as provided by K.S.A. 74-713, K.S.A. 44-566a, and amendments thereto, and ~~K.S.A. 44-588.~~

(b) Each licensed pool shall be subject to the provisions of article 24 of chapter 40 of the Kansas Statutes Annotated.

[proposed and

History: L. 1983, ch. 166, § 9; July 1.

(c) Each pool shall be subject to assessments authorized by the Kansas Workers Compensation Plan established pursuant to K.S.A. 40-2109 based upon the pool's written premium for Workers Compensation insurance in Kansas.

**44-592.** Same; licensing of persons soliciting workers' compensation insurance.

Any person soliciting ~~the business of~~ ~~workers' compensation insurance~~ for a group-funded workers' compensation pool must be licensed as provided in K.S.A. 40-240 to 40-243, and amendments thereto.

[coverage

[proposed or licensed

History: L. 1983, ch. 166, § 12; July 1.