

Approved _____

Date

2/4/91

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. ~~pm~~ on WEDNESDAY, JANUARY 30, 1991 in room 529-S of the Capitol.

All members were present ~~except~~:

Committee staff present:

Fred Carman, Revisors Office
Bill Wolff, Legislative Research
Louise Bobo, Secretary

Conferees appearing before the committee:

Stan Lind, Kansas Association of Financial Services
Laird Bowman, Attorney, KU Endowment Association
Dick Brock, Administrative Assistant, Insurance Department

Chairman Bond called the meeting to order at 9:12 a.m.

Stan Lind, Kansas Association of Financial Services, requested the committee to allow introduction of two bills. The first bill, relating to balloon payments under the Uniform Consumer Credit Code, would repeal Kansas Statute 16a-3-308. (Attachment 1)

The second bill would amend 5 sections of the Uniform Consumer Credit Code relating to prepayment penalty for a loan secured by a real estate mortgage. (Attachment 2)

Strick Strick made the motion to allow these bills to be introduced. Senator Francisco seconded the motion. The motion carried.

Laird Bowman, Attorney for the KU Endowment Association, appeared before the committee to request introduction of a bill relating to insurance contracts. This bill would (1) permit an individual to name whom he chooses as a beneficiary, (2) permit a person to assign the ownership of a policy to a charitable institution, (3) prohibit the person paying the consideration from having an insurable interest in the life of the insured if a charitable institution has been designated as the beneficiary. (Attachment 3)

Following a brief discussion, the Chairman advised Mr. Bowman to stress that the bill is a clarification of the present law when he testifies before the committee on this proposal.

Senator Kerr made a motion to allow the introduction of this bill. Senator Salisbury seconded the motion. The motion carried.

SB 50 -- relating to insurance; fees for examinations.

Dick Brock, Kansas Insurance Department, explained to the committee that insurance examiners cannot be reimbursed for any expenses not specifically identified in the law. The law was amended several years ago to allow the Commissioner to create a funding mechanism whereby examiners could receive paid vacation and this current proposal would extend this same procedure to sick leave. (Attachment 4)

Discussion followed with members inquiring why insurance examiners are treated differently than other state employees. Mr. Brock explained that they were not paid out of the general fund but out of a special revolving fund provided for by charges to insurance companies being examined. In answer to other questions, Mr. Brock advised that Kansas insurance examiners were paid \$160 per day plus expenses and that the examiners have a background in accounting, have a degree, are all ages, and out of eight examiners employed at the present time, one is a woman. He further added that the Department would be most agreeable if the Legislature decided to treat all insurance examiners like all other state employees.

Individuals appearing before the committee 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. ~~AM~~ on WEDNESDAY, JANUARY 30, 1991.

Senator Salisbury moved the passage of this bill with Senator Reilly seconding the motion. The motion carried.

SB 53 - relating to examinations of insurance companies.

Dick Brock, Insurance Department, informed the committee that this bill was an attempt by individual insurance departments, through the National Association of Insurance Commissioners (NAIC), to strengthen insurance solvency regulation in all jurisdictions. Specifically, the bill deals with the examination of insurance companies and other entities regulated by the Department such as risk pools, health maintenance organizations, prepaid service plans, etc. (Attachment 5)

During a brief discussion, a committee member asked Mr. Brock what protection a policyholder would have in case the company failed. He replied that specific requirements are made of the company and if it does become insolvent, insurance guaranty funds are available for the protection of the consumer. Another committee member inquired about the cost of accreditation. Mr. Brock replied that their dues to NAIC took care of the cost without any additional assessment.

Chairman Bond informed the committee that hearings on SB 53 would be continued tomorrow (Thursday, January 31, 1991).

Dr. Wolff passed out materials relating to SB 38 and the phaseout of the Health Care Stabilization Fund as a result of the passage of SB 18 two years ago.

The meeting adjourned at 10:02 a.m.

AN ACT relating to balloon payments under the uniform consumer credit code by repealing K.S.A. 16a-3-308.

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

Section 1. K.S.A. 16a-3-308 is hereby repealed.

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

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1/30/91
Attachment 1

16a-2-501. (UCCC) Additional charges.

(1) In addition to the finance charge permitted by the parts of this article on maximum finance charges for consumer credit sales and consumer loans (parts 2 and 4), a creditor may contract for and receive the following additional charges in connection with a consumer credit transaction:

- (a) Official fees and taxes;
- (b) charges for insurance as described in subsection (2);
- (c) annual fees payable in advance or monthly fees, delinquency charges, insufficient check charges as provided in paragraph (e) of this subsection, over-limit fees and cash advance fees, for the privilege of using a lender credit card which entitles the user to purchase goods or services from at least 100 persons not related to the issuer of the lender credit card, under an arrangement pursuant to which the debts resulting from the purchases are payable to the issuer;
- (d) charges for other benefits, including insurance, conferred on the consumer, if the benefits are of value to the consumer and if the charges are reasonable in relation to the benefits, are of a type which is not for credit,

and are excluded as permissible additional charges from the finance charge by rules and regulations adopted by the administrator;

(e) charges for an insufficient check as defined and authorized by this subsection:

- (i) For the purposes of this subsection, "insufficient check" means any check, order or draft drawn on any bank, credit union, savings and loan association, or other financial institution for the payment of money and delivered in payment, in whole or in part, of preexisting indebtedness of the drawer or maker, which is refused payment by the drawee because the drawer or maker does not have sufficient funds in or credits with the drawee to pay the amount of the check, order or draft upon presentation, provided that any check, order or draft which is postdated or delivered to a payee who has knowledge at the time of delivery that the drawer or maker did not have sufficient funds in or credits with the drawee to pay the amount of the check, draft or order upon presentation shall not be deemed an insufficient check.

A bill in balloon form to provide for a prepayment penalty for prepayment of a loan made under the UCCC, secured by a real estate mortgage, based upon the provisions of K.S.A. 16-207(c) which is applicable to real estate loans other than those under the UCCC.

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1/30/91
Attachment 2

(ii) "Written notice" shall be presumed to have been given a drawer or maker of an insufficient check when notice is deposited in the United States mail, addressed to the person to be given notice of such person's address as it appears on the insufficient check.

(iii) When an insufficient check has been given to a payee, the payee may charge and collect a \$10 insufficient check fee from the drawer or maker if the payee has given the drawer or maker oral or written notice of demand that the amount of the insufficient check plus the \$10 insufficient check fee be paid to the payee within seven days from the giving of notice.

(iv) If the drawer or maker of an insufficient check does not pay the amount of the insufficient check plus the insufficient check fee provided for in subsection (iii) to the payee within seven days from the giving of notice as provided in subsection (iii), the payee may add the \$10 insufficient check fee to the outstanding balance of the preexisting indebtedness of the drawer or maker to draw interest at the contract rate applicable to the preexisting indebtedness.

(2) An additional charge may be made for insurance written in connection with the transaction, including vendor's single interest insurance with respect to which the insurer has no right of subrogation against the consumer but excluding other insurance protecting the creditor against the consumer's default or other credit loss:

(a) With respect to insurance against loss of or damage to property, or against liability, if the creditor furnishes a clear and specific statement in writing to the consumer setting forth the cost of the insurance if obtained from or through the creditor and stating that the consumer may choose the person through whom the insurance is to be obtained; and

(b) with respect to consumer credit insurance providing life, accident and health, or loss of employment coverage, if the insurance coverage is not a factor in the approval by the creditor of the extension of credit, and this fact is clearly disclosed in writing to the consumer, and if, in order to obtain the insurance in connection with the extension of credit, the consumer gives specific affirmative written indication of the consumer's desire to do so after written disclosure to the consumer of the cost thereof.

(3) An additional charge of 1% of the unpaid balance may be made for the prepayment of any loan evidenced by a note secured by a real estate mortgage where such prepayment is made within six months of the date of the execution of the loan contract.

16a-2-509. (UCCC) Right to prepay.
Subject to the provisions on rebate upon pre-
payment (section 16a-2-510), the consumer
may prepay in full the unpaid balance of a
consumer credit transaction at any time ~~with-~~
~~out penalty.~~

and additional charges
(16a-2-501)

16a-2-510. (UCCC) Prepayment; rebate; minimum charges; delinquency charges; judgments. (1) Except as provided in subsection (2), upon prepayment in full of the unpaid balance of a precomputed consumer credit transaction, an amount not less than the unearned portion of the finance charge calculated according to this section shall be rebated to the consumer. If the rebate otherwise required is less than \$1, no rebate need be made.

(2) Upon prepayment in full, but not upon a refinancing (section 16a-2-504), of a consumer credit transaction, whether or not precomputed, other than one pursuant to open end credit, the creditor may collect or retain a minimum charge of \$5 in a transaction which had an amount financed of \$75 or less, or \$7.50 in a transaction which had an amount financed of more than \$75, if the minimum charge was contracted for and the finance charge earned at the time of prepayment is less than the minimum charge contracted for. In those instances where the amounts financed are under or over \$75 and the finance charge is less than the minimum provided therefor, then the finance charge so contracted may be retained as the minimum finance charge.

(3) The unearned portion of the finance charge shall be calculated according to the actuarial method on all consumer credit transactions made on and after July 1, 1988.

(4) For transactions in which payments are not scheduled to be made in substantially equal installments at equal periodic intervals, the administrator shall adopt rules and regulations consistent with this section providing for the calculation of the unearned portion of the finance charge.

(5) If a deferral (section 16a-2-503) has been agreed to, the unearned portion of the finance charge shall be computed without regard to the deferral. The amount of deferral charge earned at the date of prepayment shall also be calculated. If the deferral charge earned is less than the deferral charge paid, the difference shall be added to the unearned portion of the finance charge. If any part of a deferral charge has been earned but has not been paid, that part shall be subtracted from the unearned portion of the finance charge or shall be added to the unpaid balance.

(6) This section does not preclude the collection or retention of delinquency charges (section 16a-2-502).

(7) If the maturity is accelerated for any reason and judgment is obtained, the judgment shall be taken in accordance with the provisions of K.S.A. 16-205, and amendments thereto.

(8) Upon prepayment in full of a consumer credit transaction by proceeds of consumer credit insurance (section 16a-4-103), the consumer or the consumer's estate is entitled to the same rebate as though the consumer had prepaid the agreement on the date the proceeds of the insurance are paid to the creditor, but no later than 10 business days after satisfactory proof of loss is furnished to the creditor.

16a-3-202. (UCCC) Notice to consumer.

A written agreement which requires or provides for the signature of the consumer and which evidences a consumer credit transaction other than one pursuant to open end credit shall contain a clear, conspicuous, and printed notice to the consumer that he should not sign the agreement before reading it, and that he is entitled to a copy of the agreement and to prepay the unpaid balance at any time ~~without penalty~~. The following notice if clearly and conspicuously printed complies with this section:

NOTICE TO CONSUMER: 1. Do not sign this agreement before you read it. 2. You are entitled to a copy of this agreement. 3. You may prepay the unpaid balance at any time ~~without penalty~~.

2.5

*KU Endowment
Laid down*

Insurable Interest and Beneficiaries, Personal Insurance

(1) An individual of competent legal capacity may insure his own life and, either at the time the contract of insurance is entered into or thereafter, name any person as the beneficiary thereof irrespective of whether the person named has an insurable interest in the life of the insured. However, except as in this section provided, no person shall procure or cause to be procured any insurance policy upon the life of another unless the benefits under such policy are payable to the personal representative of the person insured, or to a person having, at the time such contract of insurance was entered into, an insurable interest in the person insured.

(2) Charitable, benevolent, educational, and religious institutions qualified under Section 501(c) of the Internal Revenue Code and the agencies thereof shall be deemed to have an insurable interest in the life of an individual insured who has executed a written consent to the assignment of the insurance contract to such institution provided that such institutional assignee is named as irrevocable beneficiary thereof.

(3) If the beneficiary, assignee, or other payee under any contract made in violation of this section receives from the insurer any benefits thereunder accruing upon the death of the individual insured, the personal representative of the insured may maintain an action to recover such benefits from the person so receiving them.

(4) Life insurance contracts may be entered into in which the person paying the consideration has no insurable interest in the life of the person insured if a charitable, benevolent, educational or religious institution qualified under Section 501(c) of the Internal Revenue Code, or an agency thereof, is irrevocably designated as the beneficiary. In making such contracts the person paying the premium shall make and sign the application therefor as owner. The application must also be signed by the person whose life is to be insured. Such a contract shall be valid and binding among the parties thereto notwithstanding the absence otherwise of an insurable interest in the life of the person insured.

(5) The provisions of this section shall apply to all insurance contracts in force on and after the effective date of this act and to the procurement, assignment and designation of beneficiaries thereof whenever made.

*7I + I
1/30/91
Attachment 3*

Testimony By
Dick Brock, Kansas Insurance Department
Before the Senate Financial Institutions & Insurance Committee
on Senate Bill No. 50
January 30, 1991

K.S.A. 40-223 pertains to the compensation, expenses and other costs associated with the conduct of insurance company examinations performed by the Insurance Department and establishes the procedure which requires the insurance company being examined to reimburse Kansas for such costs.

Because of the reimbursement process, the Department's examiners, except for limited, specific activities addressed in other statutes, are paid only for the time they are actually engaged in performing an examination. Therefore, examiners cannot receive and the state will not be reimbursed for any expenses not specifically identified in the law. However, in Kansas, examiners are full-time employees. When they complete an examination on one company, another company is due for an examination so there is no break or time off for examiners which occurs during a normal course of events when moving from one examination to another. For this reason, the law was amended several years ago to authorize the Commissioner to charge an additional amount when billing companies for reimbursement in order to develop a funding mechanism that can be used to provide examiners paid vacation time on the same basis as state employees in the classified service.

Senate Bill No. 50 would extend this same principle and procedure to sick leave. The additional amount currently being imposed to fund vacation leave ranges from \$5.10 to \$17.43 per day depending on the salary of the examiner involved and his or her length of service. Because sick leave allowance does not vary with length of service and because for examiners, sick leave would not be accumulated for vacation days or sick leave, the range of additional charges pertinent to Senate Bill No. 50 would be \$5.76 to \$10.49 per examination day or an annual total of \$14,020.01 at current examiner compensation levels.

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1/30/91
Attachment 4

TESTIMONY BY

DICK BROCK
KANSAS INSURANCE DEPARTMENT

BEFORE THE

SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE
ON SENATE BILL NO. 53

JANUARY 30, 1991

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1/30/91
attachment 5*

As the members of this committee have no doubt observed through media coverage, congressional activity and general concerns or discussions about the economy, the financial health and solvency of various kinds of financial institutions is increasingly being called into question. The savings and loan crisis, the alarming number of bank failure and an unacceptable increase in the number of insurance company insolvencies have all contributed to this uncomfortable business environment.

From an insurance regulatory perspective, many of the dire predictions are completely groundless and others are an exaggeration of the real situation. Nevertheless, individual insurance departments, through the National Association of Insurance Commissioners (NAIC), have embarked on an intensive and unprecedented effort to strengthen insurance solvency regulation in all jurisdictions.

Specifically, the NAIC has adopted a program which consists of a set of standards that identify the essential statutes, regulations and resources necessary for adequate solvency regulation. In addition to adoption of the standards, this NAIC initiative is supplemented by an independent accreditation program whereby each state will ultimately be evaluated to determine if the laws, regulations and resources meet the standards established.

This is a new program. Just last month the first two states were accredited -- New York and Florida -- but the other states, including Kansas, are working toward that goal. As a result, legislative proposals dealing with solvency regulation are a primary focus of the department's 1991 legislative recommendations. Of our 12 proposals, 3 of them are a result of this program. These are Senate Bills 53, 67, and Legislative Proposal No. 1.

With the enactment of these bills and the adoption of an administrative regulation relating to reinsurance agreements entered into by life

insurance companies, Kansas will be in a position to request accreditation.

With that preface and, so you don't have to listen to this part again when you have hearings on Senate Bill No. 67 and the bill corresponding to Legislative Proposal No. 1, a reminder that this introduction applies to all three of the bills referenced, I will address the significant amendments proposed by Senate Bill No. 53 and the reason therefor.

Specifically, Senate Bill No. 53 deals with the examination of insurance companies and other entities regulated by the Department such as risk pools, health maintenance organizations, prepaid service plans etc. These are the on-site audits conducted by our field examiners with respect to financial condition examinations and by members of our Topeka based staff with respect to performance audits of market behavior.

The primary amendments proposed by Senate Bill No. 53 relate to financial condition examinations and we have so specified when appropriate. For example, the reference to the examiners' handbook adopted by the National Association of Insurance Commissioners in Section 2(b) of the bill relates to a handbook and procedures specifically directed toward financial condition examinations. This handbook would not be appropriate and, in fact, it would probably not be possible to attempt to relate the criteria Section 2(b) relates to market conduct examinations. These amendments are a result of a year-long study of the financial condition examination system employed by the insurance departments of the several states. This study involved five public hearings held in Salt Lake City, Phoenix, Orlando, Chicago, Boston and Kansas City conducted by a special committee of the National Association of Insurance Commissioners. At these hearings, conferees included insurance commissioners, insurance department examiners, representatives of insurance companies, various

trade associations, and CPA firms all of whom were encouraged to present candid observations and constructive suggestions with regard to changes in the examination process that would make it more effective and more efficient. From this input, 17 specific recommendations emerged including a new model law on examinations. Our current law already effectively contains many of the provisions of the new model so rather than propose enactment of the complete new model in, Senate Bill No. 53 simply adds the provisions or makes the changes necessary for our law to coincide.

By incorporating these changes we will not dramatically change the way Kansas administers or conducts examinations. This is particularly true with respect to the time lines imposed for preparing and processing the examination report. Under current law, even without these time lines, our examination reports are almost always prepared, processed and released within the periods imposed by this proposal. However, this is not true of all states and we, as does every other state, to a great extent depend on the examination reports from other states with respect to insurers not domiciled in our state. Consequently, these time frames are included in the model and the model is included in the NAIC's financial regulation standards for the purpose of accelerating the availability of examination findings to all states, which obviously includes many states that already produce examination findings quickly. However, if Kansas supports a recommendation which will hopefully require a state that does not now produce examination reports in a timely fashion, we should, must be, and are willing to impose the same requirements upon ourselves.

With that background, a section by section presentation on the proposed amendments follows:

New Section 1. -- This is the definitions section none of which have a particularly unique meaning but all of which are necessary to add clarity to the subsequent provisions.

Section 2. -- (a) The amendment in this subsection re-inserts a periodic examination requirement. While examination laws should permit the Commissioner to direct examination resources to areas of greatest need as opposed to a purely calendar type of scheduling, some periodic review is necessary to avoid situations when financial condition could deteriorate over a period of time because of a lack of regulatory oversight.

(b) This is a new provision which will produce more efficient use of examination resources by application of criteria that will match examination needs and processes with the general financial condition of the company to be examined.

(c) This is current law and no amendments are involved.

(d) This subsection makes it clear that the authority to examine an insurance company is not limited to the company itself if some other entity such as a managing general agent exercises significant operational control or is in possession of pertinent accounting or other records of the company.

(e) The new language in this subsection restricts the Commissioner's acceptance of examination reports on foreign or alien companies to those conducted by or under the supervision of an accredited insurance department. This is a quality control mechanism that will become operational on and after January 1, 1994.

(f) In order that financial condition examinations will be performed in a consistent manner and therefore produce a consistent result from state to state, the significant part of this amendment is the new provision which requires the Commissioner to follow the procedures set forth in the NAIC examiner's handbook. This provision does, however, permit the Commissioner to utilize other procedures that might be more thorough in given situations.

(g) This is a new subsection which authorizes the Commissioner to revoke or suspend an insurer's certificate of authority if its officers, directors, employees or agents do not submit to examination and cooperate with examiners.

(h) This subsection permits the Commissioner to employ any necessary special expertise and include the cost of such expertise in the costs of examination to be paid by the company.

(i) This new provision makes it clear that the Commissioner is not required to complete an examination and prepare a formal report of examination prior to pursuing any regulatory action otherwise applicable under Kansas law.

(j) This subsection will specifically permit the Commissioner to use a report of examination as soon as and to the extent necessary to pursue any legal or regulatory responsibility.

(k) This subsection, including subparagraphs (1) through (7), establishes various time periods within which the various stages of processing an examination report are to be completed. In addition, this subsection contains the permits and limitations relating to release of the examination report, disclosure of its content and disposition of work

papers, documents, affidavits and other pertinent background information accumulated during the course of the examination.

The next to last amendments to the existing law are necessary to avoid a duplication or conflict of statutory provisions because of the new, more specific provisions relating to the examination report.

The final amendment is in recognition of the proposed senate bill corresponding to Legislative Proposal No. 1 which consists of a new Liquidation and Rehabilitation law. If such law is enacted, this amendment will prevent a duplication or conflict. If it is not enacted, this amendment will still be harmless because the only way the Department can begin action to dissolve a company is through the Attorney General.

Section 3. -- This is the repealer section.

Section 4. -- This is the effective date section and proposes an effective date of January 1, 1992 because amendments to the NAIC Examiners Handbook that will complement the appropriate provisions of this act are not scheduled for adoption until September of this year and our examiners need some time to familiarize themselves with the new procedures.

NAIC POLICY STATEMENT ON FINANCIAL REGULATION STANDARDS

Introduction

The safety and soundness of insurance companies operating in the United States is a prime objective of state insurance regulators. In many respects non-domiciliary states rely and depend to a great extent on domiciliary insurance departments to effectively monitor and regulate their domestic companies. To ensure that these concerns and objectives are met, an effective financial surveillance and regulation structure and system is needed. While everyone can agree that this is critical, to date no one has yet defined what constitutes an effective structure and system for financial surveillance and regulation. While the NAIC has done a great deal to foster uniformity and sound regulation through various model laws and regulations and standardized financial reporting formats and instructions as well as the development of a variety of manuals and other tools to assist state insurance departments, a comprehensive pronouncement on all functions and procedures relating to financial regulation has not been done. The objective of the NAIC Committee on Financial Regulation Standards is to establish standards for the NAIC and state insurance departments in this important area.

It is believed that establishing standards for financial regulation will have the following positive results:

- (1) Strengthen state insurance departments through self-evaluation and improvement to meet the prescribed standards.
- (2) Demonstrate to, and obtain from, state administrations and legislative bodies the support and resources needed to maintain an effective system of financial surveillance and regulation.
- (3) Create a national standard for financial regulation which will improve and strengthen the state regulatory system of insurance and the safety and soundness of insurance companies.
- (4) A standard established by the NAIC will, if attained, ensure that each jurisdiction is monitoring and regulating domestic companies operating in other jurisdictions on an admitted or non-admitted basis or as a risk retention group.
- (5) Improve the efficiency of state regulation by eliminating duplicative procedures and activities and unnecessary state-by-state variations.

The standards recognize the realities of the diverse circumstances of state insurance departments. Standards for financial regulation have been divided into three major categories - (1) laws and regulations; (2) regulatory practices and procedures; and (3) organizational and personnel practices.

A. Laws and Regulations

1. Examination Authority

The department should have authority to examine companies whenever it is deemed necessary. Such authority should include complete access to the company's books and records and, if necessary, the records of any affiliated company, agent, and/or managing general agent. Such authority should extend not only to inspect books and records but also to examine officers, employees and agents of the company under oath when deemed necessary with respect to transactions directly or indirectly related to the company under examination.

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2. Capital and Surplus Requirement

The department should have the ability to require that insurers have and maintain a minimum level of capital and surplus to transact business. The department should have the authority to require additional capital and surplus based upon the type, volume and nature of insurance business transacted.

3. NAIC Accounting Practices and Procedures

The department should require that all companies reporting to the department file the appropriate NAIC annual statement blank which should be prepared in accordance with the NAIC's instructions handbook and follow those accounting procedures and practices prescribed by the NAIC's Accounting Practices and Procedures Manual.

4. Corrective Action

State law should contain the NAIC's Model Regulation to Define Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition or a substantially similar provision which authorizes the department to order a company to take necessary corrective action or cease and desist certain practices which, if not corrected, could place the company in a hazardous financial condition.

5. Valuation of Investments

The department should require that securities owned by insurance companies be valued in accordance with those standards promulgated by the NAIC's Valuation of Securities Office. Other invested assets should be required to be valued in accordance with the procedures promulgated by the NAIC's Financial Condition (EX4) Subcommittee.

6. Holding Company Systems

State law should contain the NAIC Model Insurance Holding Company System Regulatory Act or an Act substantially similar and the department should have adopted the NAIC's model regulation relating to this law.

7. Risk Limitation

State law should prescribe the maximum net amount of risk to be retained by a property and liability company for an individual risk based upon the company's capital and surplus which should be no larger than 10% of the company's capital and surplus.

8. Investment Regulations

State statute should require a diversified investment portfolio for all domestic insurers both as to type and issue and include a requirement for liquidity. Foreign companies should be required to substantially comply with these provisions.

9. Admitted Assets

State statute should describe those assets which may be admitted, authorized or allowed as assets in the statutory financial statement of insurers.

10. Liabilities and Reserves

State statute should prescribe minimum standards for the establishment of liabilities and reserves resulting from insurance contracts issued by an insurer; including life reserves, active life reserves and unearned premium reserves, and liabilities for claims and losses unpaid and incurred but not reported claims.

11. Reinsurance Ceded

State law should contain the NAIC Model Law on Credit for Reinsurance and the Model Regulation for Life Reinsurance Agreements or substantially similar laws.

12. CPA Audits

State statute or regulation should contain a requirement for annual audits of domestic insurance companies by independent certified public accountants, such as contained in the NAIC's Model Rule Requiring Annual Audited Financial Reports.

13. Actuarial Opinion

State statute or regulation should contain a requirement for an opinion on life and health policy and claim reserves and loss and loss adjustment expense reserves by a qualified actuary or specialist on an annual basis for all domestic insurance companies.

14. Receivership

State law should set forth a receivership scheme for the administration, by the insurance commissioner, of insurance companies found to be insolvent as set forth in the NAIC's Insurers Supervision, Rehabilitation and Liquidation Model Act.

15. Guaranty Funds

State law should provide for a statutory mechanism, such as that contained in the NAIC's model acts on the subject, to ensure the payment of policyholders obligations subject to appropriate restrictions and limitations when a company is deemed insolvent.

16. Other

- (a) State statute should contain a provision similar to the NAIC model act requiring domestic insurance companies to participate in the NAIC Insurance Regulatory Information System (IRIS).
- (b) State law should contain a provision similar to the NAIC's Model Risk Retention Act for the regulation of risk retention groups and purchasing groups.
- (c) State statute should contain the NAIC's model law for Business Transacted with Producer Controlled Property/Casualty Insurer Act or a similar provision.

B. Regulatory Practices and Procedures

1. Financial Analysis

- (a) The department should have a sufficient staff of financial analysts with the capacity to effectively review the financial statements as well as other information and data to discern potential and actual financial problems of domestic insurance companies.

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- (b) The department should have an intra-department communication and reporting system that assures that all relevant information and data received by the department which may assist in the financial analysis process is directed to the financial analysis staff.
- (c) The internal financial analysis process should provide for levels of review and reporting.
- (d) The financial analysis procedure should be priority-based to ensure that potential problem companies are reviewed promptly. Such a prioritization scheme should utilize the NAIC's Insurance Regulatory Information System and/or a state's own system.

2. Financial Examinations

- (a) The department should have the resources to examine all domestic companies on a periodic basis which is commensurate with the financial strengths and position of the insurer.
- (b) The department's examination staff should consist of a variety of specialists with training and/or experience in the following areas or otherwise have available qualified specialists which will permit the department to effectively examine any insurer: computer audit specialist, reinsurance specialist, life and health company examiners, property and liability company examiners, life and health actuarial examiners, property and liability actuarial examiners and property and liability claims examiners.
- (c) The department's procedures for examinations shall provide for supervisory review within the department of examination work papers and reports to ensure that the examination procedures and findings are appropriate and complete and that the examination was conducted in an efficient and timely manner.
- (d) The department's policy and procedures for examinations should follow those that are set forth in the NAIC's Examiners Handbook.
- (e) In scheduling financial examinations the department should follow those procedures set forth in the NAIC's Examiners Handbook and this schedule system should provide for the periodic examination of all domestic companies on a timely basis. This system should accord priority to companies which are having adverse financial trends or otherwise demonstrate a need for examination such as determinations of the NAIC IRIS Examiner Team.
- (f) The department's procedures require that all examination reports which contain material adverse findings be promptly presented to the commissioner or his designee for a determination and implementation of appropriate regulatory action.
- (g) The department's reports of examination should be prepared in accordance with the format adopted by the NAIC and should be sent to other states in which the company transacts business in a timely fashion.

3. Other

When a domestic company is identified as troubled this should be communicated to other insurance departments in jurisdictions in which the carrier transacts business. When a foreign company is identified as troubled this should be communicated to the domiciliary insurance department of the carrier.

Note: A troubled company is defined as an insurance company that has not maintained a financial position, or whose operations are moving toward a financial result that would indicate that its policyholders and claimants are subject to potential risk or that the specified statutory minimum capital and surplus requirements may not be maintained.

Drafting Note: When the NAIC's Troubled Insurance Company Manual is completed and adopted, a statement should be incorporated into this Policy Statement requiring states to generally follow and observe the procedures set forth in the manual.

C. Organizational and Personnel Practices

1. The department should have a policy which requires the professional development of staff through job-related college courses, professional programs and/or other training programs which are funded by the department.
2. All financial regulation and surveillance activities are the responsibility of an individual who shall report to the commissioner or his designee.
3. The department's staff and contractual staff involved in financial regulation and surveillance should all be periodically evaluated by the department to ensure that job duties and responsibilities are being discharged in a satisfactory manner.
4. The department should establish minimum educational and experience requirements for all professional employees and contractual staff positions in the financial surveillance and regulation area which are commensurate with the duties and responsibilities of the position.
5. The department's pay structure for those positions involved with financial surveillance and regulation should be competitively based to attract and retain qualified personnel.
6. The department's funding should be sufficient to allow for the financial surveillance and regulation staff's participation as appropriate in the meetings and training sessions of the NAIC and meetings relating to the review, coordination and the development and implementation of action for troubled insurers.

Legislative History (all references are to the Proceedings of the NAIC).

1989 Proc. II (adopted).

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NATIONAL CONFERENCE OF STATE LEGISLATURES

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JOHN MARTIN
SPEAKER OF THE HOUSE
MAINE
PRESIDENT, NCSL

Statement on Insurance Company Insolvencies

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WILLIAM POUND
EXECUTIVE DIRECTOR

The safety and soundness of insurance companies operating in the United States is a prime objective of state insurance regulation. To ensure that this objective is met, an effective financial surveillance and regulation system is needed. This will require immediate state action to strengthen state insurance departments and to create standards for financial regulation that will strengthen the safety and soundness of insurance companies.

First of all, state insurance regulation must be strengthened in order to protect policyholders. The public depends on solvent insurance companies to provide retirement income, income protection in case of death or disability, protection from catastrophic loss, and safe investment opportunities.

Secondly, solvency regulation must be improved in order to protect state treasuries. When an insurance company fails, healthy companies are assessed to pay off policyholders. Many states allow such assessments, under state guaranty fund systems, to be offset against state premium taxes. In addition, some state pension funds and a few bond issuers have purchased guaranteed investment contracts that depend on the solvency of life insurance companies. Finally, if state guaranty fund systems were to collapse under the weight of too many insolvencies, some moral obligation on the state to protect policyholders might be alleged.

A third important reason for state action, as soon as possible, is to provide an alternative to federal intervention. Some consumer advocates and insurance executives already are calling for federal legislation that would preempt state authority. Additionally, there is a concern that such federal action could lead to federal preemption of the states' insurance premium tax base. We believe there are many advantages to state regulatory authority, including staff expertise that has developed over many years. The National Conference of State Legislatures (NCSL) believes that a heavy burden of proof must be met before federal intervention and preemption are justified. The NCSL recognizes that swift and effective action by state legislatures to reform state solvency regulation will serve to deter any unjustified federal preemption.

Improving state regulation of insurance for solvency will require attention (1) to laws and regulations, (2) to regulatory practices and procedures, and (3) to the possible need for additional resources, expertise and state legislative oversight to ensure their effective implementation. In order to achieve these goals, NCSL recommends adoption of the model laws and regulations developed by the National Association of Insurance Commissioners (NAIC), as summarized below in A and B.

A. LAWS AND REGULATIONS

- 1. Examination Authority: Each insurance department should have adequate authority to examine the finances of insurance companies whenever it is deemed

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2. Capital and Surplus Requirements: State law should require that insurers have and maintain a minimum level of capital and surplus to transact business. State law should require additional capital and surplus based upon the type, volume and nature of insurance business transacted.
3. Accounting Practices and Procedures: Each insurance department should require that all companies adopt appropriate accounting practices and procedures.
4. Corrective Action: State law should provide sufficient authority for the state insurance department to order a company to take necessary corrective action when it is deemed to be in hazardous financial condition or to cease and desist in certain practices which, if not corrected, could place the company in a hazardous financial condition.
5. Valuation of Investments: Each department should require that securities and other invested assets owned by insurance companies be valued in accordance with recognized standards.
6. Holding Company Systems: State statute should provide for the proper regulation of insurance holding companies.
7. Risk Limitation: State statute and regulation should prescribe the maximum net amount of risk to be retained by a property and liability company for an individual risk, based upon the company's capital and surplus.
8. Investment Regulations: State statute should require a diversified investment portfolio for all domestic insurers both as to type and issue and include a requirement for liquidity. Foreign companies should be required to substantially comply with these provisions.
9. Admitted Assets: State statute should describe those assets which may be admitted, authorized or allowed as assets in the statutory financial statement of insurers.
10. Liabilities and Reserves: State statute should prescribe minimum standards for the establishment of liabilities and reserves resulting from insurance contracts issued by an insurer.
11. Reinsurance Ceded: State statute should provide for regulation of credit for reinsurance and reinsurance agreements.
12. CPA Audits: State statute or regulation should contain a requirement for annual audits of domestic insurance companies by independent certified public accountants.
13. Actuarial Opinion: State statute or regulation should contain a requirement for an opinion on life and health policy claim reserves and loss, and loss adjustment expense reserves of property and casualty companies by a qualified actuary or specialist on an annual basis for all domestic insurance companies.
14. Receivership: State statute should set forth a receivership mechanism for the administration, by the insurance commissioner, of insurance companies found to be insolvent.

15. Guaranty Funds: State statute should ensure the payment of policyholder obligations subject to appropriate restrictions and limitations when a company is deemed insolvent.
16. Regulation of Managing General Agents: State statute should provide for regulation of managing general agents.
17. Regulation of Reinsurance Intermediaries: State statute should provide for regulation of reinsurance intermediaries.
18. Regulation Information: State statute should require domestic insurance companies to participate in the NAIC Insurance Regulatory Information System (IRIS).
19. Risk Retention Groups: State statute should provide appropriately for the regulation of risk retention groups and purchasing groups.
20. Producer Controlled Insurers: State statute should provide for regulation of business transacted with a producer controlled property/casualty insurer.

B. REGULATORY PRACTICES AND PROCEDURES

1. Financial Analysis: Each state insurance department should have a sufficient staff of financial analysts with the capacity to effectively review the financial statements as well as other information and data to discern potential and actual financial problems of domestic insurance companies.
2. Examinations: Each state insurance department should have the resources to regularly examine all domestic companies.
3. Professionalism: Each department's examination staff should consist of a variety of specialists with the training and/or experience that will allow for the effective examination of any insurer.
4. Priority Examinations: In scheduling financial examinations, each department should accord priority to companies that are experiencing adverse financial circumstances.
5. Interstate Communication: When a domestic company is identified as troubled, this should be communicated to other insurance departments in jurisdictions in which the carrier transacts business. When a foreign company is identified as troubled, this should be communicated to the domiciliary insurance department of the carrier.

The standards set forth in sections A and B are submitted as minimum requirements for the effective regulation by a state of the financial solvency of those insurance companies doing business within that state. Each state should consider whether the enactment of additional safeguards beyond these minimum requirements would be appropriate for that jurisdiction.

For most states, the enactment and implementation of the standards set forth herein will entail additional expense. To determine the precise needs in furthering the goals stated

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herein, state legislatures and regulators could embark on a thorough review of existing resources, management operations, and policy implementation procedures. State legislatures could exercise appropriate oversight of their insurance departments through their standing committees and budget process, and through performance, management and compliance audits. In order to obtain necessary funding without further burden to taxpayers, states could consider the imposition of a special assessment on insurance companies doing business within the state in order to defray the increased cost of regulation.

A. Laws and Regulations

OK 1. Examination Authority

The department should have authority to examine companies whenever it is deemed necessary. Such authority should include complete access to the company's books and records and, if necessary, the records of any affiliated company, agent, and/or managing general agent. Such authority should extend to not only to inspect books and records but also to examine officers, employees and agents of the company under oath when deemed necessary with respect to transactions directly or indirectly related to the company under examination.

Question

- | | <u>YES</u> | <u>NO</u> |
|--|------------|-----------|
| a) Does the state have a law or regulation which satisfies the standard on examination authority? | XXX | |
| b) Cite the law or regulation. <u>K.S.A 40-222</u> | | |
| c) Does the department's examination authority apply to all regulated entities (reinsurers, captives, and other special charter or special act companies, etc.)? | XXX | |
| d) If further explanation is required to amplify the above responses, please use the space below. | | |

Comments from Detailed Review

The Kansas code satisfies the standard on examination of authority

A new model examinations law was adopted by the NAIC in December 1990. At the same meeting, such model was added to the Financial Regulation Standards. As a result, our current examination authority no longer satisfies this standard. 1991 Senate Bill No. 53 will bring Kansas back into compliance.

2. Capital and Surplus Requirement

OK The department should have the ability to require that insurers have and maintain a minimum level of capital and surplus to transact business.

The department should have the authority to require additional capital and surplus based upon the type, volume and nature of insurance business transacted.

Question	YES	NO
a) Does the state have a law or regulation which satisfies the standard on capital and surplus requirements?	XXX	
b) Cite the law or regulation. KSA 40-901, 1102, 1103, 401, 402, 1204, 1210, 1001, 3503, 222b		
c) Does the law or regulation require capital and surplus at organization to be in the form of cash and/or marketable securities?	XXX	
d) Does the department's authority to require minimum levels of capital and surplus based upon the type, volume, and nature of insurance business transacted apply to all regulated entities (reinsurers, captives, and other special charter or special act companies, etc.)?		XXX
e) If further explanation is required to amplify the above responses, please use the space below HMO's are excluded from the minimum capitalization requirements		

Comments from Detailed Review

The Kansas code sections cited do not specifically give the department authority to require additional capital and surplus based on the type, volume and nature of insurance business transacted.

Department Response: True, however, KSA 40-222b(4) states "require a contribution to surplus which will increase the company's surplus an amount, and in such a manner, as the commissioner may deem necessary and essential."

Comments from Detailed Review

The code sections cited do not specifically say that the capital and surplus at organization be in the form of cash and/or marketable securities.

Department Response:

Kansas statutes provide that either **cash or securities of the kinds in which such a company is permitted to invest its funds.** Companies at organization are allowed to invest in securities in the form as allowed as if the company were already in existence. To allow fairness, all companies no matter the length of existence, are allowed to invest in funds as permitted by statute. Investments that are allowable by statute are considered marketable.

KSA 40-230a-Deposit of securities purchased from sale of stock during organization period states "That the proceeds from the sale of stock during the period of organization for any insurance company now being or hereafter to be organized under the laws of this state shall be immediately invested in such securities as are permitted by law"

KSA 40-401-Life Insurance—states "The amount of capital stock of a company organized on the stock plan shall be not less than \$600,000. Companies organized on the mutual plan shall be required to have applications from at least 200 persons for insurance upon their lives, aggregating not less than \$400,000, upon which one full annual premium in **cash** shall have been paid. No such company shall transact any business of insurance until, if a stock company, all the capital stock named in its charter has been paid in **cash** including all contributions to surplus to be made by the original purchasers of such stock. The surplus shall be at least \$600,000, and at least \$400,000, in securities authorized by this code shall have been deposited with the state treasurer and commissioner of insurance as joint custodians and if a mutual company a guaranty fund of at least \$1,200,000, and at least \$400,000 of which shall be in securities as authorized in this code"

KSA 40-902- Fire Insurance Companies—states "Every stock fire insurance company organized under the laws of this state, shall deliver to the commissioner of insurance **cash or securities of the kinds in which such a company is permitted to invest its funds** under the provisions of this code, in an amount equal to not less than the minimum capital stock required of such a company

KSA 40-1103-Casualty, Surety and Fidelity Companies—states "No insurance company hereafter organized under the laws of this state shall be authorized to commence the transaction of either of the numbered classes of business specified in KSA 40-1102, and amendments thereto, in this state unless it has a capital stock of at least \$450,000 and a surplus of at least \$300,000, both fully paid in **cash**, and shall have deposited with the state treasurer and commissioner of insurance as joint custodians securities authorized by KSA 40-2a01, et seq and amendments thereto, in an amount equal to not less than the minimum capital stock required of such company.

KSA 40-1204(c)-Mutual Insurance Companies Other Than Life—states "It shall have collected the full consideration according to its filed rate on each contract applied for. The total of such considerations shall be held in **cash or securities in which such insurance companies are authorized by law to invest**

The above statutes provide for capital and surplus at organization to be in the form of cash or securities of the kinds which such insurance companies are permitted or authorized by law to invest. The statutes provide investments such as Bonds, Stocks, Equipment Trust Obligations, Certificate's of Deposit, Real Estate, Mortgage Loans, Savings Deposits, Repurchase Agreements, Collateral Loans, and Data Processing Equipment. Undoubtedly some of these investments are more liquid than others, however, all of the above investments are marketable.

3. NAIC Accounting Practices and Procedures

The department should require that all companies reporting to the department file the appropriate NAIC annual statement blank which should be prepared in accordance with the NAIC's instructions handbook and follow those accounting procedures and practices prescribed by the NAIC's Accounting Practices and Procedures Manual.

Question	YES	NO
a) Does the state have a law or regulation which satisfies the standard on NAIC accounting practices and procedures?	XXX	
b) Cite the law or regulation <u>KSA 40-225</u>		
c) Does the department's requirement that companies file appropriate NAIC annual statement blanks prepared in accordance with the NAIC's Annual Statement Instructions and following the NAIC's Accounting Practices and Procedures Manual apply to all regulated entities (reinsurers, captives, and other special charter or special act companies, etc.)?	XXX	
d) If further explanation is required to amplify the above responses, please use the space below.		

Comments from Detailed Review

The Kansas code section cited makes reference to the NAIC convention blank form adopted, however, there is no indication in the code section that the annual statement should be prepared in accordance with the NAIC's Annual Statement Instructions Handbook and that the accounting practices and procedures prescribed by the NAIC's Accounting Practices and Procedures Manual should be followed

Department Response:

KSA 40-225-Company participation in surance regulatory information system-states " Every insurance company or fraternal benefit society doing business in this state shall, if the statement of condition required below is compatible, participate in the insurance regulatory information system administered by the national association of insurance commissioners ...Such statement shall be made upon the form prescribed and adopted from time to time by the national association of insurance commissioners ...true exhibit of their condition."

It must be assumed and is the Department's position that to properly complete the annual statement as prescribed by the national association of insurance commissioners that the NAIC's Annual Statement Instructions Handbook and the accounting practices and procedures prescribed by the MAIC's Accounting Practices and Procedures Manual should be adhered to.

4. Corrective Action

State Law should contain the NAIC's Model Regulation to Define Standards and Commissioner's Authority for Companies Deemed to be in a Hazardous financial Condition or a substantially similar provision which authorizes the department to order a company to take necessary corrective action or cease and desist certain practices which, if not corrected, could place the company in a hazardous financial condition.

Question	<u>YES</u>	<u>NO</u>
a) Does the state have a law or regulation which satisfies the standard on corrective action?	XXX	
b) Cite the law or regulation. KSA 40-222, 222b, 222c, 222d, 222e		
c) Does the department's authority to order a company to take necessary corrective action or cease and desist certain practices which, if not corrected, could place the company in a hazardous financial condition apply to all regulated entities (reinsurers, captives, and other special charter or special act companies, etc.)?	XXX	
d) If further explanation is required to amplify the above responses, please use the space below.		

Comments from Detailed Review

The Kansas code sections satisfy the requirement concerning standards on corrective action.

5. Valuation of Investments

The department should require that securities owned by insurance companies be valued in accordance with those standards promulgated by the NAIC's Valuation of Securities Office. Other invested assets should be required to be valued in accordance with the procedures promulgated by the NAIC's Financial Condition (EX4) Subcommittee.

- | Question | YES | NO |
|--|-----|----|
| a) Does the state have a law or regulation which satisfies the standard on valuation of investments: | XXX | |
| b) Cite the law or regulation <u>KSA 40-225</u> | | |
| c) Does the department's requirement that securities be valued in accordance with the standards promulgated by the NAIC's Valuation of Securities Office and that other invested assets be valued in accordance with the procedures promulgated by the NAIC's Financial Condition (EX4) Subcommittee apply to all regulated entities (reinsurers, captives, and other special charter or special act companies, etc.)? | XXX | |
| d) If further explanation is required to amplify the above responses, please use the space below. | | |

In addition, the Kansas Supreme Court Case of National Mutual Casualty Company vs Hobbs gives the Commissioner broad authority to value assets and establish liabilities of insurance companies

Comments from Detailed Review

The Kansas code section cited refers to the annual statement which is required to be filed by insurers. The code section and case law cited has no reference to any requirement that securities owned by an insurance company be valued in accordance with those standards promulgated by the NAIC's Valuation of Securities Office and that other invested assets be valued in accordance with the procedures promulgated by the NAIC's Financial Condition (EX4) Subcommittee.

Department Response:

It must be assumed and is the Department's position that to properly complete the annual statement as prescribed by the national association of insurance commissioners that the NAIC's Annual Statement Instructions Handbook and the accounting practices and procedures prescribed by the NAIC's Accounting Practices and Procedures Manual should be adhered to.

The Annual Statement Instructions for both Life and Property & Casualty companies states that "The Valuation of Securities manual should be referred to for procedures to determine securities values".

6. Holding Company Systems

State law should contain the NAIC Model Holding Company Systems Act or an Act substantially similar and the department should have adopted the NAIC's model regulation relating to this law.

Question	YES	NO
a) Does the state have a law or regulation which satisfies the standard on holding company systems?	XXX	
b) Cite the law or regulation KSA 40-3301, KAR 40-1-28		
c) Does the department's authority regarding the regulation of holding company systems apply to all regulated entities (reinsurers, captives, and other special charter or special act companies, etc.)?	XXX	
d) If further explanation is required to amplify the above responses, please use the space below.		

HMO's are excluded from the provisions of the holding company act.

Comments from Detailed Review

The Kansas code does not contain Section 3.1 of the Model Act concerning acquisitions involving insurers not otherwise covered.

Department Response:

True

The Kansas law does not require that dividends and other distributions to shareholders and consolidated tax allocation agreements be included in the registration statement or any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.

Department Response:

Form B "Insurance Holding Company System Annual Registration Statement" Item 5. Transactions and Agreements Sections 7, 8, and 9 respond to dividends and other distributions to shareholders; consolidated tax allocation agreements; and any pledge of the Registrant's stock and/or of the stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.

The Kansas laws does not require the reporting of dividends to shareholders as required under Section 4(e) of the Model Act.

Department Response:

KSA 40-3305(d) states "Each registered insurer...each registered insurer shall report all dividends and other distributions to shareholders within two business days following the declaration thereof."

6. Holding Company Systems (Continued)

The standards for transactions within a holding company system are outlined in Section 5 of the Model Act. In addition to the terms being fair and reasonable, the Model Act also requires that the charges or fees for services performed be reasonable and that expenses incurred in payment received be allocated to the insurer in conformity with customary insurance accounting practices consistently applied. Kansas law has the requirement that the term be fair and reasonable but not the remainder of the provisions.

Department Response:

KSA 40-3306(a) states "Material transactions by registered insurers with their affiliates shall be subject to the following standards:

- (1) The terms shall be fair and reasonable;
- (2) the books, accounts and records of each party shall be so maintained as to clearly and accurately disclose the precise nature and details of the transactions; and
- (3) the insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs."

Section 5(a)(2) of the Model Act specifies several types of transactions within a holding company system which require prior written notification to the department at least 30 days prior to the transaction. There are no similar requirements in the Kansas code. The Kansas law does include the thirty (30) day notice for payment of extraordinary dividends.

Department Response:

True

The Model Act at Section 10 includes extensive sanctions. The Kansas law allows the commissioner to suspend, revoke or refuse to renew and insure certificate of authority and a fine of \$20,000 but not the remainder of the sanctions in the Model.

Department Response:

True

The Kansas code sections cited do not include the provisions of the following sections of the Model Act: Section 12 (Recovery), Section 14 (Judicial Review, Mandamus), Section 15 (Conflict with Other Laws).

Department Response:

True

1991 Senate Bill No. 67 will bring the Kansas Holding Company Act up to date and thereby satisfy this part of the NAIC standards.

7. Risk Limitation

State law should prescribe the maximum net amount of risk to be retained by a property and liability company for an individual risk based upon the company's capital and surplus which should be no larger than 10% of the company's capital and surplus.

Question	<u>YES</u>	<u>NO</u>
a) Does the state have a law or regulation which satisfies the standard on risk limitation?	XXX	
b) Cite the law or regulation KSA 40-1107, 1204		
c) Does the maximum net amount of risk to be retained by a property and liability company apply to all regulated entities (reinsurers, captives, and other special charter or special act companies, etc.)?		XXX
d) If further explanation is required to amplify the above responses, please use the space below.		

Captives do not have a risk retention requirement; title companies have a 50% retention requirement and domestic mutual medical malpractice companies have a 20% risk retention requirement. Life companies and HMO's do not have risk retention requirements.

Comments from Detailed Review

The Kansas laws requires risk limitation, with a few exceptions. Captives do not have the risk retention requirement; title companies have a 50% requirement and domestic mutual medical malpractice have a 20% requirement.

Department Response:

True

8. Investment Regulations

State statute should require a diversified investment portfolio for all domestic insurers both as to type and issue and include a requirement for liquidity. Foreign companies should be required to substantially comply with these provisions.

Question	<u>YES</u>	<u>NO</u>
a) Does the state have a law or regulation which satisfies the standard on investment regulations?	XXX	
b) Cite the law or regulation Articles 2a and 2b of Chapter 40 of the Kansas Statutes, National Mutual Casualty vs Hobbs, KSA 40-222, 222b, 222d		
c) Does the requirement for companies to maintain a diversified investment portfolio as to type and issue including a requirement for liquidity apply to all regulated entities (reinsurers, captives, and other special charter or special act companies, etc.)?	XXX	
d) If further explanation is required to amplify the above responses, please use the space below.		

HMO's are excluded.

Comments from Detailed Review

The Kansas code sections cited do not address diversification as to type of investment or liquidity requirements.

Department Response:

True, however Articles 2a and 2b, National Mutual Casualty Co vs Hobbs, and KSA 40-222, 222b, 222d, this Departments statute require a diversified investment portfolio for all insurers and includes a requirement for liquidity and duration matching based on the nature of the insurance underwritten.

9. Admitted Assets

State statute should describe those assets which may be admitted, authorized or allowed as assets in the statutory financial statement of insurers.

Question	<u>YES</u>	<u>NO</u>
a) Does the state have a law or regulation which satisfies the standard on admitted assets?	XXX	
b) Cite the law or regulation KSA 40-225 and National Mutual Casualty vs Hobbs		
c) Does the description of assets which may be admitted, authorized, or allowed as assets in the statutory financial statements of insurers apply to all regulated entities (reinsurers, captives, and other special charter or special act companies, etc.)?	XXX	
d) If further explanation is required to amplify the above responses, please use the space below.		

Comments from Detailed Review

The Kansas code section cited states which investments may be authorized or allowed as assets in the statutory financial statement of insurer, however, it does not address other types of assets in addition to investments.

Department Response:

True

However, this standard is met by adherence to the NAIC's Accounting Practices and Procedures Manual which Kansas requires by virtue of K.S.A. 40-225.

10. Liabilities and Reserves

State statute should prescribe minimum standards for the establishment of liabilities and reserves resulting from insurance contracts issued by an insurer; including, life reserves, active life reserves and unearned premium reserves and liabilities for claims and losses unpaid and incurred but not reported claims.

Question	<u>YES</u>	<u>NO</u>
a) Does the state have a law or regulation which satisfies the standard on liabilities and reserves?	XXX	
b) Cite the law or regulation KSA 40-225, 234, 409 and 428		
c) Does the minimum standards for the establishment of liabilities and reserves resulting from insurance contracts issued by an insurer apply to all regulated entities (reinsurers, captives, and other special charter or special act companies, etc.)?	XXX	
d) If further explanation is required to amplify the above responses, please use the space below.		

Comments from Detailed Review

The Kansas statutes cited satisfy the standard on liabilities and reserves.

11. Reinsurance Ceded

State law should contain the NAIC Model Law on Credit for Reinsurance and the Model Regulation for Life Reinsurance Agreements or substantially similar laws.

Question	YES	NO
a) Does the state have a law or regulation which satisfies the standard on property and liability reinsurance ceded?	XXX	
b) Cite the law or regulation KSA 40-221a		
c) Does the state have a law or regulation which satisfies the standard on life and health reinsurance ceded?	XXX	
d) Cite the law or regulation KSA 40-221a		
e) Does the department's authority regarding the regulation of reinsurance ceded apply to all regulated entities (reinsurers, captives, and other special charter or special act companies, etc.)?	XXX	
d) If further explanation is required to amplify the above responses, please use the space below.		

There is no specific statutory authority similar to the Model Regulation for Life Reinsurance Agreements. However, Pursuant to the authority granted the Commissioner by National Mutual Casualty Company vs. Hobbs, the Department can disallow credit for reinsurance if we do not feel such credit is appropriate, i.e. no transfer of risk, etc.

Comments from Detailed Review

The Kansas statute is not based on the NAIC Model Law on Credit for Reinsurance and is not substantially similar to that Model. The Kansas Department states that there is no specific statutory authority similar to the Model Regulation for Life Reinsurance Agreements, however, it states that, pursuant to the authority granted the commissioner by caselaw, the department can disallow credit for reinsurance if the department does not feel such credit appropriate.

Department Response:

True

Model Regulation on Life Reinsurance will be proposed for adoption in the near future.

In December, 1990 a model law relating to regulation of reinsurance intermediaries was added to the NAIC standards. It is anticipated that this law will be presented to the 1992 legislature for consideration.

12. CPA Audits

State statute or regulation should contain a requirement for annual audits of domestic insurance companies by independent certified public accountants, such as contained in the NAIC's Model Requiring Annual Audited Financial Reports.

Question	<u>YES</u>	<u>NO</u>
a) Does the state have a law or regulation which satisfies the standard on CPA audits?	XXX	
b) Cite the law or regulation KSA 40-225, KAR 40-1-37		
c) Does the requirement for annual audits of domestic insurance companies apply to all regulated entities (reinsurers, captives, and other special charter or special act companies, etc.)?	XXX	
d) If further explanation is required to amplify the above responses, please use the space below.		

Comments from Detailed Review

The Kansas law and regulation requires CPA audits.

13. Actuarial Opinion

State statute or regulation should contain a requirement for an opinion on life and health policy and claim reserves and loss and loss adjustment expense reserves by a qualified actuary or specialist on an annual basis for all domestic insurance companies

Question	YES	NO
a) Does the state have a law or regulation which satisfies the standard on actuarial opinions?	XXX	
b) Cite the law or regulation KSA 40-225		
c) Does the requirement for annual actuarial opinions on the policy and claim reserves or loss and loss adjustment expense reserves of domestic companies apply to all regulated entities (reinsurers, captives, and other special charter or special act companies, etc.)?	XXX	
d) If further explanation is required to amplify the above responses, please use the space below.		

Comments from Detailed Review

The Kansas statutes does not specifically require an opinion on life and health policy and claim reserves and property and liability loss and loss adjustment expense reserves by qualified actuary or specialists on an annual basis for all domestic insurance companies.

Department Response:

It must be assumed and is the Department's position that to properly complete the annual statement as prescribed by the national association of insurance commissioners that the NAIC's Annual Statement Instructions Handbook and the accounting practices and procedures prescribed by the MAIC's Accounting Practices and Procedures Manual should be adhered to.

The Annual Statement Instructions for Life (Sect. 14 (1)) states that "There is to be included on or attached to Page 1 of the Annual Statement, the statement of a qualified actuary, entitled "Statement of Actuarial Opinion," setting forth his or her opinion relating to policy reserves and and other actuarial items"

The Annual Statement Instructions for Property and Casualty (Sect. 12 (1)) states that "There is to be included on or attached to Page 1 of the Annual Statement, the statement of a qualified actuary, entitled "Statement of Actuarial Opinion," setting forth his or her opinion relating to loss and loss adjustment expense reserves">

14. Receivership

State law should set forth a receivership scheme for the administration, by the insurance commissioner, of insurance companies found to be insolvent as set forth in the NAIC's Model Law on Supervision, Conservation, Rehabilitation and Liquidation.

Question	<u>YES</u>	<u>NO</u>
a) Does the state have a law or regulation which satisfies the standard on receivership?	XXX	
b) Cite the law or regulation KSA 40-3601 et seq.		
c) Does the department's authority for the administration of insolvent insurance companies apply to all regulated entities (reinsurers, captives, and other special charter or special act companies, etc.)?	XXX	
d) If further explanation is required to amplify the above responses, please use the space below.		

HMO's might be excluded

Comments from Detailed Review

The Kansas statutes cited pertain to the distribution of assets, order of claims, and agents offset of unearned premiums. The remainder of the NAIC Model is not addressed.

1991 Legislative Proposal No. 1 (This bill has not yet been printed.) addresses this deficiency.

15. Guaranty funds

State law should provide for a statutory mechanism, such as that contained in the NAIC's model acts on the subject, to ensure the payment of policyholders obligations subject to appropriate restrictions and limitations when a company is deemed insolvent.

Question YES NO

a) Does the state have a law or regulation which satisfies the standard on guaranty funds? **XXX**

b) Cite the law or regulation
KSA 40-2901, 3001

c) Does the statutory mechanism which ensures the payment of policyholders obligations subject to appropriate restrictions and limitations when a company is deemed insolvent prohibit the inclusion of certain regulated entities (reinsurers, captives, and other special charter or special act companies, etc.)? XXX ~~XXX~~

d) If further explanation is required to amplify the above responses, please use the space below.

HMO's, captives, and Blue Cross and Blue Shield organizations are excluded.

Comments from Detailed Review

Kansas has adopted guaranty associations for property/casualty and life/health guaranty funds.

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16. Other

- a) State statute should contain a provision similar to that NAIC Model Act requiring domestic insurance companies to participate in the NAIC Insurance Regulatory Information System (IRIS).

Question YES NO

- a) Does the state have a law or regulation which satisfies the standard on NAIC Insurance Regulatory Information System participation? XXX
- b) Cite the law or regulation
KSA 40-225
- c) Does the state have a law or regulation which satisfies the standard on risk retention groups and purchasing groups? XXX
- d) Cite the law or regulation
KSA 40-4101
- e) Does the state have a law or regulation which satisfies the standard on business transacted with a producer controlled property and liability insurer? XXX
- f) Cite the law or regulation
- g) If further explanation is required to amplify the above responses, please use the space below.

The Kansas Insurance Department plans to introduce legislation regulating business transacted with a producer controlled property and liability insurer in either the 1990 or 1991 sessions of the Kansas Legislature

Comments from Detailed Review

The Kansas statutes satisfy the standard on NAIC Insurance Regulatory Information System (IRIS) participation.

- b) State law should contain a provision similar to the NAIC's Model Risk Retention Act for the regulation of risk retention groups and purchasing groups.

Comments from Detailed Review

The Kansas Statutes satisfy the standard on risk retention groups and purchasing groups

- c) State statute should contain the NAIC's Model Law for Business Transacted with Producer Controlled Property/Casualty Insurer Act or a similar provision.

Comments from Detailed Review

The Kansas Insurance Department states that it plans to introduce legislation regulating business transacted with a producer or controlled property and liability insurer in either the 1990 or 1991 sessions of the Kansas Legislature. (See "Notes" on next page)

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