

Approved 2/13/91
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

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

9:00 a.m./p.m. on TUESDAY, FEBRUARY 12, 1991 in room 529-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~:

Senators Anderson, Francisco, Kerr, Moran, Parrish, Reilly, Salisbury, Strick and Yost.

Committee staff present:

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

Conferees appearing before the committee:

Ted Fay, Kansas Insurance Department

The meeting was called to order at 9:04 by Chairman Bond.

SB 111 - An Act relating to insurance: supervision, liquidation and rehabilitation.

Ted Fay, Chief Attorney, Kansas Insurance Department, addressed the committee in support of the abovementioned bill. He explained that this bill represented the joint efforts of regulators throughout the United States and that the purpose of the bill was to bring certainty and uniformity to proceedings involving troubled insurance companies. He further explained that the bill only seemed complex because it was long and addressed almost every conceivable problem that might arise. Mr. Fay further explained that SB 111 was patterned after two National Association of Insurance Commissioners' (NAIC) Model Acts and that the NAIC recommended adoption of certain uniform insurance legislation. Mr. Fay continued by stating that states would be accredited in the future by the NAIC and that, in order to be accredited, the recommended legislation has to be in place. Mr. Fay said there had been no need for Kansas to have a Model Act in the past as most insolvencies in Kansas have been generally limited to insolvent companies domiciled in other states. Under present law, according to Mr. Fay, insolvencies have been under the control of the court who, without statutory guidance, have had to turn to common law or their own best judgment. (Attachment 1)

Discussion occurred throughout Mr. Fay's testimony with a committee member inquiring how a Kansas insured would have any claim on a California company which was in bankruptcy court. Mr. Fay answered that insurance companies do not go through bankruptcy court but enter insolvency proceedings. He also informed the committee that, without this Act, insurance clients are at the mercy of attorneys handling the insolvency cases. Another committee member wondered why wait until July 1, 1991 for enactment--Mr. Fay explained that it would take time to get used to the new regulations and, also, that any existing actions at that time will be transferred under this Act. Staff observed that this law would really be a "road map" for the Judge in insolvency proceedings.

Mr. Fay explained the proposed amendments to the bill to the committee members. On page 1, line 21, the word "liability" would be deleted; page 2, line 19 would insert the word "this" after the word "of" and delete the figure "32". The intent of the last amendment, page 2, new section 7, concerning the obligation of the insurance agent to pay premiums, earned or unearned, to the insurer, was unclear to the committee members and deleted from the bill. Mr. Fay offered to clarify the language in the last amendment to be certain it does what it is supposed to do. A committee member suggested it could be offered as a floor amendment if deemed advisable. (Attachment 2)

Senator Reilly made a motion to accept the amendments to SB 111, with the exception of the amendment on page 2, new section 7. Senator Parrish seconded the motion. The motion carried.

Senator Reilly made a motion to pass the bill out favorably, as amended. Senator Strick seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE,

room 529-s, Statehouse, at 9:00 a.m. ~~xxx~~ on TUESDAY, FEBRUARY 12, 1991.

SB 49 - An Act containing garnishments.

Discussion was reopened on the abovementioned bill. A committee member made the observation that the cost of garnishment is going to be borne by somebody and questioned if we want to get into wage garnishment. Another committee member feared that we might make Kansas a haven for debtors. It was also suggested that if we do this for the banks then we should do the same for small business. Chairman Bond clarified the discussion by suggesting that the committee seemed to feel, (1) that the \$50 fee is too high, (2) that public bodies dealing with child support should be removed and (3) we need to clarify the person who is ethically responsible. Concern was voiced over whether we were really addressing the "fishing expedition" problem or merely providing a fee for the banks. The Chairman stated that the committee would request Bud Grant, KCCI, to present his observations concerning the relationship of Small Business to SB 49 to the committee before a decision is made on this bill.

Minutes of Monday, February 11, 1991 were approved on a motion by Senator Reilly with Senator Strick seconding the motion. The motion carried.

The Chairman declared the meeting adjourned at 10:02 a.m.

TESTIMONY REGARDING SENATE BILL NO. 111

TED F. FAY

CHIEF ATTORNEY

ON BEHALF OF

RON TODD

COMMISSIONER OF INSURANCE

BEFORE THE SENATE COMMITTEE

ON FINANCIAL INSTITUTIONS AND INSURANCE

FEBRUARY 12, 1991

*Attachment 1
F I & I
2/12/91*

I AM TED FAY, THE CHIEF ATTORNEY FOR THE KANSAS INSURANCE DEPARTMENT. I AM HERE TODAY, ON BEHALF OF RON TODD, COMMISSIONER OF INSURANCE, TO TESTIFY REGARDING SENATE BILL NO. 111.

SUMMARY

SENATE BILL NO. 111 REPRESENTS THE JOINT AND COOPERATIVE EFFORTS OF NUMEROUS REGULATORS THROUGHOUT THE UNITED STATES TO BRING CERTAINTY AND UNIFORMITY TO PROCEEDINGS INVOLVING TROUBLED INSURANCE COMPANIES. THE BILL IS LONG AND COMPLEX, BUT INSURANCE COMPANY INSOLVENCIES AND FINANCIAL DIFFICULTIES PRESENT NUMEROUS AND COMPLEX SITUATIONS. HOWEVER, THE BILL DOES AN EXCELLENT JOB ADDRESSING ALMOST EVERY FORESEEABLE PROBLEM THAT MIGHT ARISE IN THIS AREA.

ADDITIONALLY, WITH THE INTEREST IN SOLVENCY PROBLEMS AT THE NATIONAL LEVEL TODAY, THIS BILL REPRESENTS A STEP IN THE DIRECTION OF CLOSER COOPERATION AND UNIFORMITY BETWEEN STATE REGULATORS. THE BILL WILL

NOT SOLVE ALL PROBLEMS AND IT CERTAINLY WILL NOT MAKE INSOLVENCIES OR
INSOLVENCY PROBLEMS DISAPPEAR, BUT IT IS A NECESSARY AND DESIRABLE
LEGISLATIVE MEASURE THAT WILL PROVIDE CONSISTENCY AND FACILITATE
INTERSTATE COOPERATION.

THE MODEL ACT, UPON WHICH SENATE BILL NO. 111 IS PATTERNED, IS
DIVIDED INTO FOUR SECTIONS AND THESE SAME DIVISIONS CAN BE USED FOR
DIVISION OF SENATE BILL NO. 111. GENERAL PROVISIONS COVERS
SECTIONS 1 THROUGH 8 OF THE BILL. THESE ARE THE PROVISIONS HAVING
GENERAL APPLICABILITY, SUCH AS DEFINITIONS INCLUDED IN SECTION 3.
SUMMARY ACTIONS IS CONTAINED IN SECTIONS 9, 10, AND 11 OF THE
BILL. SECTION 9 PROVIDES FOR SUMMARY ACTION BY THE COMMISSIONER
WITHOUT COURT INTERVENTION, WHILE SECTIONS 10 AND 11 DEAL WITH ACTION
THROUGH THE COURTS BY THE REGULATOR TO INITIATE SHORT TERM CORRECTIVE
MEASURES. FORMAL PROCEEDINGS IS INCLUDED IN SECTIONS 12 THROUGH
43. FORMAL PROCEEDINGS INCLUDE REHABILITATION AND LIQUIDATION
ACTIONS BY THE DOMICILIARY REGULATOR. INTERSTATE RELATIONS IS
INCLUDED IN SECTIONS 44 THROUGH 54. THESE SECTIONS PROVIDE THE RULES

FOR COORDINATION AND UNIFORM ACTION AMONG STATES.

ADDITIONAL DISCUSSION

SENATE BILL NO. 111 IS PATTERNED AFTER TWO NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS' MODEL ACTS. THE FIRST IS THE INSURERS REHABILITATION AND LIQUIDATION MODEL ACT, THE SECOND IS THE ADMINISTRATIVE SUPERVISION MODEL ACT. THE SECTIONS IN SENATE BILL NO. 111, EXCEPT FOR SECTION 9 WHICH IS MODELED AFTER THE ADMINISTRATIVE SUPERVISION MODEL ACT ARE PATTERNED AFTER THE REHABILITATION AND LIQUIDATION MODEL ACT. AS OF JULY OF 1990, TWENTY STATES HAD ADOPTED THE REHABILITATORS AND LIQUIDATION MODEL ACT. AS OF JULY OF 1990, THREE STATES HAVE ADOPTED SOME FORM OF THE ADMINISTRATIVE SUPERVISION MODEL ACT.

ORIGINALLY, BOTH OF THE ABOVE MODEL ACTS WERE INCLUDED IN THE SAME DRAFT; HOWEVER, SOME OF THE LARGE INSURANCE DEPARTMENTS HAVE ONE DIVISION TO HANDLE ADMINISTRATIVE OR SUMMARY ACTION BY THE

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COMMISSIONER OR DIRECTOR OF INSURANCE, WHILE AN ENTIRELY SEPARATE DIVISION HANDLES TROUBLED COMPANIES IN REHABILITATION OR INSOLVENCY. FOR THIS REASON, THE ADMINISTRATIVE PROVISIONS WERE REMOVED FROM THE NAIC INSURERS SUPERVISION, REHABILITATION AND LIQUIDATION MODEL ACT (WHICH WAS RENAMED THE INSURERS REHABILITATION AND LIQUIDATION ACT) AND PLACED IN THE NEW SEPARATE ADMINISTRATIVE SUPERVISION MODEL ACT. IN KANSAS, WE DO NOT HAVE THIS DIVISION OF RESPONSIBILITY IN THE INSURANCE DEPARTMENT, AND THEREFORE, THERE IS NO REASON TO DIVIDE THESE TWO MODEL ACTS INTO SEPARATE BILLS. ACCORDINGLY, BOTH MODEL ACTS ARE INCORPORATED IN SENATE BILL NO. 111 AND THIS BILL RETAINS THE ORIGINAL NAME OF THE MODEL ACT.

THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS HAS HAD SOME FORM OF RECOMMENDED LEGISLATION FOR REHABILITATION AND INSOLVENCY ACTIONS SINCE 1936. NEW RECOMMENDATIONS OR AMENDMENTS TO EXISTING LEGISLATION OCCURRED IN 1969, 1978, 1986, 1989, AND 1990. EFFORTS AT MODEL LEGISLATION, HOWEVER, DID NOT BEGIN EARNESTLY UNTIL THE 1970'S WHEN A NUMBER OF DIFFICULT INSOLVENCIES OCCURRED IN THE

UNITED STATES AND AT THE SAME TIME DISSATISFACTION GREW WITH THE LACK OF UNIFORMITY AMONG STATES IN THE WAY INSOLVENCIES WERE HANDLED. DICK BROCK HAS ALREADY PROVIDED YOU WITH A COPY OF THE NAIC POLICY STATEMENT OF FINANCIAL REGULATORY STANDARDS DATED JULY 30, 1989, AND THE STATEMENT ON INSURANCE COMPANY INSOLVENCIES OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES. BOTH RECOMMEND THAT STATES ADOPT CERTAIN UNIFORM INSURANCE LEGISLATION. THE INSURERS REHABILITATION AND LIQUIDATION MODEL ACT IS ONE OF THE ACTS MANDATED FOR STATES.

STATES WILL BE EXAMINED AND ACCREDITED IN THE FUTURE BY THE NAIC. IN ORDER TO BE ACCREDITED, STATES MUST HAVE THE RECOMMENDED LEGISLATION IN PLACE. THERE ARE PRESENTLY FEW ACTUAL SANCTIONS AGAINST STATES THAT FAIL TO BE ACCREDITED, ALTHOUGH, IN ADDITION TO THE BAD PUBLICITY THAT MIGHT RESULT, WE EXPECT FURTHER SANCTIONS TO BE RECOMMENDED IN THE FUTURE IN MODEL NAIC LEGISLATION. FOR EXAMPLE, THE NEW MODEL EXAM LAW INCORPORATED INTO SENATE BILL NO. 53, PROVIDES THAT IN 1994, KANSAS WILL NOT BE ABLE TO ACCEPT EXAMINATION REPORTS

FROM OTHER STATES IF THOSE STATES ARE UNCERTIFIED, THIS IS AN EXAMPLE OF THE TYPE OF PROPOSED LEGISLATION THAT WILL PROBABLY BECOME MORE COMMON IN THE FUTURE.

AN ADVANTAGE IN ADOPTING THE MODEL ACT IS THAT THE ACT PERMITS RESIDENTS OF RECIPROCAL STATES TO ELECT TO FILE AND PROVE THEIR CLAIMS, EITHER IN THE DOMICILIARY STATE OR IN THE RECIPROCAL STATE. A STATE THAT HAS NOT ENACTED IN SUBSTANCE AND EFFECT SECTIONS ^{18a}~~17A~~, 46, 47, AND 49 THROUGH 51 OF THIS BILL CANNOT BE A RECIPROCAL STATE AS DEFINED IN THE DEFINITION SECTION OF THE BILL AND CLAIMANTS ARE LIMITED IN A NON-RECIPROCAL STATE TO FILING AND PROVING THEIR CLAIMS IN THE DOMICILIARY STATE.

KANSAS HAS NOT ADOPTED ANY OF THE NAIC REHABILITATION AND LIQUIDATION MODEL ACTS IN THE PAST. IN PART, THIS IS BECAUSE KANSAS HAS NOT HAD MANY INSOLVENCIES. KANSAS HISTORY WITH INSOLVENCIES HAS BEEN GENERALLY LIMITED TO INSOLVENT COMPANIES DOMICILED IN OTHER STATES.

OUR EXISTING LAWS DEALING WITH TROUBLED COMPANIES ARE FOUND AT K.S.A. 40-222. THE FIRST PART OF THIS SECTION GIVES THE COMMISSIONER POWERS TO DEAL ADMINISTRATIVELY WITH INSURANCE COMPANY FINANCIAL DIFFICULTIES. THIS PART OF THE STATUTE WILL BE RETAINED EVEN THOUGH IT WILL OVERLAP SOMEWHAT WITH THE PROVISIONS IN SECTION 9 OF SENATE BILL NO. 111. THE ADMINISTRATIVE PROVISIONS OF K.S.A. 40-222 ARE RETAINED BECAUSE THEY HAVE BEEN USED IN KANSAS FOR MANY YEARS TO HANDLE TROUBLED COMPANIES AND THESE PROVISIONS PROVIDE SOME CERTAINTY FOR THE COMMISSIONER. SECTION 1(B) STATES THAT NOTHING IN SENATE BILL NO. 111 WILL LIMIT THE POWERS GRANTED THE COMMISSIONER BY OTHER PROVISIONS OF LAW.

SEPARATE LEGISLATION -- SENATE BILL NO. 53 -- WILL AMEND THE LAST SENTENCE OF K.S.A. 40-222. THAT SENTENCE WHICH PRESENTLY PROVIDES, "UPON REVOKING ANY SUCH CERTIFICATE THE COMMISSIONER MAY 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 COMPANY OF TO ENJOIN THE SAME FROM DOING OR TRANSACTING BUSINESS IN THIS

STATE.", WILL READ IN THE FUTURE, "UPON REVOKING ANY SUCH CERTIFICATE THE COMMISSIONER SHALL COMMENCE AN ACTION TO DISSOLVE SUCH COMPANY OR TO ENJOIN THE SAME FROM DOING OR TRANSACTING BUSINESS IN THIS STATE."

AS AN AID TO UNDERSTANDING THIS VERY LONG AND COMPLICATED BILL, I HAVE PREPARED A QUICK INDEX WHICH IS ATTACHED AS ATTACHMENT A. THIS INDEX PROVIDES THE TITLES FOR EACH SECTION USED IN THE NAIC MODEL ACT. THESE TITLES WERE NOT INCLUDED IN SENATE BILL NO. 111, BUT ARE VERY HELPFUL IN GRASPING THE GENERAL IMPORT OF EACH OF THE PROVISIONS IN A FAST OVERVIEW OF THE ENTIRE BILL. THE QUICK INDEX ALSO CONTAINS THE FOUR GENERAL HEADINGS FOUND IN THE MODEL ACT. FINALLY, THE QUICK INDEX PROVIDES A CROSS REFERENCE TO THE APPLICABLE MODEL ACT SECTION. THE QUICK INDEX WILL BE HELPFUL AT LEAST IF YOU DO NOT CHANGE THE SECTION NUMBERS OF SENATE BILL NO. 111.

AS ALREADY STATED, THE KANSAS STATUTE DEALING WITH INSOLVENCIES HAS PROVIDED NO GUIDANCE CONCERNING THE PROCEDURES TO BE USED IN KANSAS

FOR INSOLVENCY ACTIONS. K.S.A. 40-222 SIMPLY PLACES THESE ACTIONS UNDER THE EXCLUSIVE CONTROL OF THE COURTS. THE COURTS, WITHOUT STATUTORY GUIDANCE, MUST TURN TO COMMON LAW, OR THEIR OWN BEST JUDGMENT IN SOLVING DAY TO DAY PROBLEMS ENCOUNTERED IN INSOLVENCY PROCEEDINGS.

AS SHOWN IN THE QUICK INDEX, THE MODEL ACT IS DIVIDED INTO FOUR SECTIONS AND THESE SAME DIVISIONS CAN BE USED FOR DIVISION OF SENATE BILL NO. 111. GENERAL PROVISIONS COVERS SECTIONS 1 THROUGH 8 OF THE BILL. SUMMARY ACTIONS IS CONTAINED IN SECTIONS 9, 10, AND 11 OF THE BILL. SECTION 9 PROVIDES FOR SUMMARY ACTION BY THE COMMISSIONER WITHOUT COURT INTERVENTION, WHILE SECTIONS 10 AND 11 DEAL WITH ACTION THROUGH THE COURTS BY THE REGULATOR TO INITIATE SHORT TERM CORRECTIVE MEASURES. FORMAL PROCEEDINGS IS INCLUDED IN SECTIONS 12 THROUGH 43. FORMAL PROCEEDINGS INCLUDE REHABILITATION AND LIQUIDATION ACTIONS BY THE DOMICILIARY REGULATOR. INTERSTATE RELATIONS IS INCLUDED IN SECTIONS 44 THROUGH 54. THESE SECTIONS PROVIDE THE RULES FOR COORDINATION AND UNIFORM ACTION AMONG STATES.

IN ATTACHMENT B I HAVE INCLUDED BY SECTION ANALYSIS OF SENATE BILL NO. 111. THERE IS SOME DANGER IN ANY ATTEMPT TO ABBREVIATE THE DISCUSSION OF A BILL SUCH AS SENATE BILL NO. 111.

IN GENERAL, THE ACT RECOGNIZES MANY DIFFERENT MEANS IN THE UNITED STATES TO DEAL WITH TROUBLED COMPANIES. THE FIRST STEP FOR THE REGULATOR MAY BE -- BUT DOES NOT NECESSARILY HAVE TO BE -- HIS OR HER OWN ADMINISTRATIVE ORDER REQUIRING A COMPANY TO CORRECT THEIR PROBLEMS AND TO PROTECT THE COMPANY'S ASSETS. (SECTION 9, OR K.S.A. 40-222). THE NEXT STEP MIGHT BE FOR THE REGULATOR TO HAVE THE COURTS ORDER THE TROUBLED INSURER TO TAKE CORRECTIVE ACTION. (SECTIONS 10 AND 11). THESE ACTIONS ARE SUMMARY IN NATURE. [CARE MUST BE TAKEN IN READING THESE SECTIONS SINCE THEY REFER TO FORMAL DELINQUENCY PROCEEDINGS WHICH MUST BE DISTINGUISHED FROM FROM ACTIONS DESCRIBED BELOW, WHICH GENERALLY REFER TO REHABILITATION AND LIQUIDATION PROCEEDINGS]. IF SUMMARY ACTION FAILS, OR IF THE COMMISSIONER ELECTS NOT TO USE SUMMARY ACTION, THE REGULATOR MAY PROCEED DIRECTLY TO FORMAL REHABILITATION OR INSOLVENCY PROCEEDINGS. THESE ARE CALLED

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FORMAL PROCEEDINGS AND ARE DISCUSSED IN THE SECTIONS FROM SECTIONS 13 THROUGH 44.

REHABILITATION PROCEEDINGS, WHICH INCLUDE FORMAL PROCEEDINGS TO KEEP A COMPANY OPERATING, ARE DISCUSSED IN SECTIONS 13 THROUGH 17.

LIQUIDATION PROCEEDINGS, WHICH ARE INTENDED TO TERMINATE A COMPANY, ARE COVERED GENERALLY IN SECTIONS 18 THROUGH 44, ALTHOUGH A FEW OF THESE SECTIONS ALSO AFFECT REHABILITATION PROCEEDINGS. NEEDLESS TO SAY, THE TERMINATION OF A TROUBLED COMPANY CREATE SUBSTANTIAL PROBLEMS SUCH AS CLAIMS HANDLING PROCEDURES (SECTIONS 32 THROUGH 36), PRIORITY OF CLAIMS (SECTION 37), FRAUDULENT TRANSFERS (SECTION 25), VOIDABLE PREFERENCES (SECTION 27), AND SET-OFFS (SECTION 29) TO NAME JUST A FEW. FINALLY, SINCE INSOLVENCIES GENERALLY INVOLVE COORDINATION BETWEEN A NUMBER OF SEPARATE STATES, THE LAST SECTIONS OF THE ACT (SECTIONS 44 THROUGH 53) DEAL WITH INTERSTATE RELATIONS. AS PART OF INTERSTATE RELATIONS, PROVISION IS MADE FOR ANCILLARY RECEIVERS IN STATES OTHER THAN THE INSURERS STATE OF DOMICILE.

QUICK INDEX

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- SECTION 2 PERSONS COVERED (SECTION 2, MODEL).
- SECTION 3 DEFINITIONS (SECTION 3, MODEL).
- SECTION 4 JURISDICTION AND VENUE (SECTION 4, MODEL).
- SECTION 5 INJUNCTIONS AND ORDERS (SECTION 5, MODEL).
- SECTION 6 COOPERATION OF OFFICERS, OWNERS, AND EMPLOYEES (SECTION 6,
MODEL).
- SECTION 7 CONTINUATION OF DELINQUENCY PROCEEDINGS (SECTION 7, MODEL).
- SECTION 8 CONDITION ON RELEASE FROM DELINQUENCY PROCEEDINGS (SECTION 8,
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- SECTION 9 COMMISSIONER'S SUPERVISION (NEW).
- SECTION 10 COURT'S SEIZURE ORDER (SECTION 9, MODEL).
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FORMAL PROCEEDINGS

- SECTION 12 GROUNDS FOR REHABILITATION (SECTION 11, MODEL).
- SECTION 13 REHABILITATION ORDERS (SECTION 12, MODEL).
- SECTION 14 POWERS AND DUTIES OF THE REHABILITATOR (SECTION 13, MODEL).
- SECTION 15 ACTIONS BY AND AGAINST REHABILITATOR (SECTION 14, MODEL).
- SECTION 16 TERMINATION OF REHABILITATOR (SECTION 15, MODEL).
- SECTION 17 GROUNDS FOR LIQUIDATION (SECTION 16, MODEL).
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- SECTION 19 CONTINUANCE OF COVERAGE (SECTION 18, MODEL).

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- SECTION 20 DISSOLUTION OF INSURER (SECTION 19, MODEL).
- SECTION 21 POWERS OF LIQUIDATOR (SECTION 20, MODEL).
- SECTION 22 NOTICE TO CREDITORS AND OTHERS (SECTION 21, MODEL).
- SECTION 23 ACTIONS BY AND AGAINST LIQUIDATOR (SECTION 23, MODEL).
- SECTION 24 COLLECTION AND LIST OF ASSETS (SECTION 24, MODEL).
- SECTION 25 FRAUDULENT TRANSFERS PRIOR TO PETITION (SECTION 25, MODEL).
- SECTION 26 FRAUDULENT TRANSFERS AFTER PETITION (SECTION 26, MODEL).
- SECTION 27 VOIDABLE PREFERENCES AND LIENS (SECTION 27, MODEL).
- SECTION 28 CLAIMS OF HOLDERS OF VOID OR VOIDABLE RIGHTS (SECTION 28, MODEL).
- SECTION 29 SETOFFS (SECTION 29, MODEL).
- SECTION 30 REINSURERS LIABILITY (SECTION 31, MODEL).
- SECTION-31 DOMICILIARY LIQUIDATOR'S PROPOSAL TO DISTRIBUTE ASSETS
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- SECTION 32 FILING OF CLAIMS (SECTION 34, MODEL).

- SECTION 33 PROOF OF CLAIM (SECTION 35, MODEL).
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- SECTION 37 PRIORITY OF DISTRIBUTION (SECTION 41, MODEL).
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- SECTION 39 UNCLAIMED AND WITHHELD FUNDS (SECTION 44, MODEL).
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- SECTION 44 CONSERVATION OF PROPERTY OF FOREIGN OR ALIEN INSURERS FOUND IN THIS STATE (SECTION 49, MODEL).

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- SECTION 46 DOMICILIARY LIQUIDATORS IN OTHER STATES (SECTION 51, MODEL).
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- SECTION 52 INTERSTATE PRIORITIES (SECTION 57, MODEL).
- SECTION 53 SUBORDINATION OR CLAIMS FOR NON-COOPERATION (SECTION 58, MODEL).
- SECTION 54 SEVERABILITY (SECTION 59, MODEL).
- SECTION 55 REPEALS K.S.A. 40-3601
- SECTION 56 EFFECTIVE DATE OF ACT.

ATTACHMENT A

SECTION BY SECTION ANALYSIS OF ACT

GENERAL PROVISIONS

SECTION 1. NAME OF ACT (NEW). THE ACT SHALL BE NAMED "INSURERS SUPERVISION, REHABILITATION AND LIQUIDATION ACT." [INCLUDING "SUPERVISION" IN THE ACT REFLECTS THE COMBINATION OF TWO NAIC MODEL ACTS IN THIS BILL]. NOTHING IN THIS ACT LIMITS THE POWERS OF THE COMMISSIONER UNDER OTHER PROVISIONS OF LAW, AND THE ACT IS TO BE LIBERALLY CONSTRUED.

SECTION 2. PERSONS COVERED (SECTION 2, MODEL). HMO'S ARE NOT INCLUDED SINCE BY LAW SUBSCRIBERS HAVE NO PERSONAL LIABILITY SHOULD AN HMO FAIL. MUNICIPAL POOLS ARE OMITTED SINCE THE TAX POWERS OF MUNICIPALITIES CAN BE USED TO PROTECT EMPLOYEES COVERED BY THEIR PLANS.

SECTION 3. DEFINITIONS (SECTION 3, MODEL):

* SUBSECTION (g) DEFINES "FAIR CONSIDERATION," BUT THERE IS NO DEFINITION OF "GOOD FAITH PURCHASER" IN THE DEFINITION PORTION OF THE ACT, ALTHOUGH THE TERM IS EXPLAINED AT TIMES WITHIN THE ACT ITSELF. IT IS UNCLEAR IF THE COURTS WILL GO OUTSIDE THE ACT TO USE THE DEFINITIONS OF GOOD FAITH PURCHASER FOUND IN THE BANKRUPTCY AND CREDITOR RIGHTS LAWS.

* IN SUBSECTION (k), "INSOLVENCY" AND "INSOLVENT" ARE DEFINED AS AN INSURER THAT IS UNABLE TO PAY ITS OBLIGATIONS WHEN DUE, OR WHEN ITS ADMITTED ASSETS DO NOT EXCEED ITS LIABILITIES PLUS CAPITAL AND SURPLUS REQUIRED BY LAW, PLUS TOTAL OF PAR OR STATED VALUE OF ISSUE CAPITAL STOCK. A SEPARATE DEFINITION OF INSOLVENCY

ATTACHMENT B

EXISTS FOR ASSESSABLE FIRE INSURANCE POLICIES. ' KANSAS DOES NOT HAVE ANY ASSESSABLE FIRE INSURANCE POLICIES AT THE PRESENT TIME.

* 'PERSON' IS NOT INCLUDED IN THE DEFINITION SECTION OF THE MODEL ACT, BUT HAS BEEN INCLUDED AS SUBSECTION (m) OF SENATE BILL NO. 111.

* SUBSECTION (p) MAKES NO REQUIREMENT THAT TO BE A "RECIPROCAL STATE," THE STATE MUST HAVE THE EXACT SAME ACT AS KANSAS. IT IS SUFFICIENT IF A STATE HAS THE SUBSTANCE AND EFFECT OF SECTION 18(a) (PERMITTING THE COMMISSIONER TO BE APPOINTED AS LIQUIDATOR AND TO RECEIVE TITLE TO ALL PROPERTY AND ALL BOOKS AND RECORDS OF A COMPANY IN LIQUIDATION); SECTION 46 (SECTION 46(a) VESTS TITLE TO PROPERTY AND BOOKS AND RECORDS LOCATED IN THIS STATE, EXCEPT FOR SPECIAL DEPOSITS AND SECURITY FOR SECURED CLAIMS, IN A DOMICILIARY LIQUIDATOR FOR AN INSURED DOMICILED IN A RECIPROCAL STATE; SECTION 46(b) VESTS TITLE TO PROPERTY AND BOOKS AND RECORDS LOCATED IN THIS STATE IN THE COMMISSIONER WHEN THE DOMICILIARY LIQUIDATOR IS APPOINTED FOR AN INSURED NOT DOMICILED IN A RECIPROCAL STATE; SECTION 46(c) PERMITS CLAIMANTS RESIDING IN KANSAS TO FILE EITHER WITH THE LIQUIDATOR OR ANCILLARY RECEIVER; SECTION 46(d) GRANTS POWERS TO ANCILLARY RECEIVERS IN OTHER STATES WHEN KANSAS IS THE DOMICILIARY STATE); AND, SECTIONS 49 THROUGH 51 (SECTION 49 ESTABLISHES CLAIM HANDLING PROCEDURES; SECTION 50 SPECIFIES THE LOCATION WHERE CLAIMS CAN BE FILED AND PROVED; AND, SECTION 51 PROHIBITS GARNISHMENT AND EXECUTION DURING LIQUIDATION PROCEEDINGS).

SECTION 4. JURISDICTION AND VENUE (SECTION 4, MODEL):

* SUBSECTION (a) PROHIBITS KANSAS COURTS FROM ENTERTAINING ANY DELINQUENCY PROCEEDING UNLESS FILED BY THE COMMISSIONER OF THIS STATE.

* SUBSECTION (b) PROHIBITS KANSAS COURTS FROM ENTERTAINING ANY COMPLAINT ASKING FOR DISSOLUTION, LIQUIDATION, REHABILITATION, SEQUESTRATION, CONSERVATION, OR RECEIVERSHIP OF ANY INSURED, OR FOR AN INJUNCTION OR RESTRAINING ORDER OR ANY OTHER RELIEF IN CONJUNCTION WITH SUCH PROCEEDINGS.

* SUBSECTION (c) GRANTS BROAD PERSONAL JURISDICTION TO A COURT WITH JURISDICTION OVER THE SUBJECT MATTER.

* SUBSECTION (d) GIVES KANSAS COURTS RIGHT TO STAY KANSAS PROCEEDINGS WHEN SUBSTANTIAL JUSTICE DEMANDS IT BE TRIED OUTSIDE THE STATE.

* SUBSECTION (e) REQUIRES ALL ACTIONS TO BE BROUGHT IN THE SHAWNEE COUNTY DISTRICT COURT.

SECTION 5. INJUNCTIONS AND ORDERS (SECTION 5, MODEL). PERMITS APPOINTED RECEIVED TO OBTAIN ORDERS FROM ANY COURT OF GENERAL JURISDICTION TO ENFORCE HIS JURISDICTION.

SECTION 6. COOPERATION OF OFFICERS, OWNERS, AND EMPLOYEES (SECTION 6, MODEL):

* SUBSECTION (a) IMPOSES REQUIREMENTS UPON OFFICER, MANAGERS, DIRECTORS, ETC., TO COOPERATE WITH THE COMMISSIONER IN ANY PROCEEDING UNDER THIS ACT.

* SUBSECTION (b) PROHIBITS OBSTRUCTING OR INTERFERENCE WITH THE COMMISSIONER IN CARRYING OUT THE ACT.

* SUBSECTION (c) PERTAINS TO OTHER 'EXISTING LEGAL RIGHTS, SUCH AS THE RIGHT TO RESIST A PETITION IN LIQUIDATION OR OTHER DELINQUENCY PROCEEDINGS, NOT PROHIBITED BY SECTION 6.

* SUBSECTION (d) PERTAINS TO CRIMINAL PENALTIES FOR VIOLATION OF SECTION 6, INCLUDING A \$10,000 FINE AND IMPRISONMENT FOR A TERM OF NOT MORE THAN ONE YEAR. CIVIL PENALTIES INCLUDE \$10,000 FINE A REVOCATION OR SUSPENSION OF ANY INSURANCE LICENSES ISSUED BY THE COMMISSIONER.

SECTION 7. CONTINUATION OF DELINQUENCY PROCEEDINGS (SECTION 7, MODEL). ALL EXISTING PROCEEDINGS ARE, IN GENERAL, PLACED UNDER THIS ACT.

SECTION 8. CONDITION ON RELEASE FROM DELINQUENCY PROCEEDINGS (SECTION 8, MODEL). UNTIL ALL GUARANTY ASSOCIATIONS ARE REPAID (INCLUDING EXPENSES AND INTEREST), OR UNTIL A PLAN HAS BEEN APPROVED BY THE GUARANTY ASSOCIATION, A DELINQUENT INSURER CANNOT BE RELEASED UNLESS PROCEEDINGS HAVE BEEN CONVERTED INTO REHABILITATION OR LIQUIDATION; CANNOT SOLICIT OR ACCEPT NEW BUSINESS, OR TO REQUEST OR ACCEPT RESTORATION OF ANY SUSPENDED OR REVOKED LICENSE OR CERTIFICATE OF AUTHORITY; BE RETURNED TO CONTROL OF ITS SHAREHOLDERS OR MANAGEMENT; OR HAVE ANY ASSETS RETURNED TO SHAREHOLDERS OR MANAGERS.

SUMMARY PROCEEDINGS

SECTION 9. COMMISSIONER'S SUPERVISION (NEW). INCORPORATES THE ADMINISTRATIVE SUPERVISION MODEL ACT, WHICH PERMITS THE COMMISSIONER TO TAKE SUMMARY ADMINISTRATIVE ACTION AGAINST TROUBLED COMPANIES WITHOUT THE INTERVENTION

OF A COURT. THIS SECTION'S POWERS ARE IN' ADDITION TO THOSE GRANTED TO THE COMMISSIONER UNDER K.S.A. 40-222 AND 40-222(b). (SEE SECTION 1).

SECTION 10. COURT'S SEIZURE ORDER (SECTION 9, MODEL):

* SUBSECTION (a) PERMITS THE COMMISSIONER TO PETITION THE SHAWNEE COUNTY DISTRICT COURT FOR FORMAL DELINQUENCY PROCEEDINGS. PETITION MUST STATE THAT GROUNDS EXIST, THE PUBLIC, POLICYHOLDERS, OR CREDITORS WILL BE ENDANGERED BY DELAY, AND THE COURT ORDER REQUESTED.

* SUBSECTION (b) PERMITS THE COURT TO GRANT A SEIZURE ORDER EX PARTE AND WITHOUT A HEARING FOR THE COMMISSIONER TO TAKE CONTROL OF PROPERTY AND ENJOINING INSURER AND ITS OFFICERS, ETC., FROM DISPOSING OF PROPERTY WITHOUT CONSENT OF THE COMMISSIONER.

* SUBSECTION (c) PROVIDES THAT THE COURT MUST SET TIME FOR AN ORDER TO TERMINATE BASED UPON THE TIME NEEDED TO ASCERTAIN CONDITION OF THE INSURER. TIME CAN BE CHANGED BY MOTION OF EITHER PARTY OR UPON THE COURT'S OWN MOTION.

* SUBSECTION (d) PREVENTS CREDITORS FROM ALLEGING AN ANTICIPATORY BREACH SIMPLY BECAUSE AN ORDER IS ISSUED.

* SUBSECTION (e) PROVIDES FOR A HEARING AND REVIEW OF ORDERS UNDER THIS SECTION. [NOTE THAT SECTION 11 PROVIDES FOR CONFIDENTIALITY OF PROCEEDINGS UNDER SECTION 9 AND 10].

* SUBSECTION (f) PROVIDES FOR NOTICE AFTER AN ORDER HAS BEEN GRANTED.

SECTION 11. CONFIDENTIALITY OF HEARING (SECTION 10, MODEL). PROCEEDINGS ARE TO REMAIN CONFIDENTIAL UNLESS OPENED BY THE DISTRICT JUDGE.

FORMAL PROCEEDINGS

SECTION 12. GROUNDS FOR REHABILITATION (SECTION 11, MODEL). SUBSECTIONS (a) THROUGH (i) PROVIDE THE GROUNDS FOR REHABILITATION.

SECTION 13. REHABILITATION ORDERS (SECTION 12, MODEL):

* SUBSECTION (a) PROVIDES THE FOR COMMISSIONER OR HIS SUCCESSOR TO BE APPOINTED REHABILITATOR. FILING AN ORDER WITH THE SHAWNEE COUNTY DISTRICT COURT OR FILING WITH THE REGISTER OF DEEDS WHERE PRINCIPAL BUSINESS OF COMPANY IS CONDUCTED, PROVIDES NOTICE TO THIRD PARTIES.

* SUBSECTION (b) PROVIDES FOR ACCOUNTINGS AT INTERVALS SET IN AN ORDER.

* SUBSECTION (c) PROVIDES THAT AN ORDER WILL NOT CONSTITUTE ANTICIPATORY BREACH.

SECTION 14. POWERS AND DUTIES OF THE REHABILITATOR (SECTION 13, MODEL):

* SUBSECTION (a) PROVIDES THAT THE COMMISSIONER MAY APPOINT SPECIAL DEPUTY OR DEPUTIES, EMPLOY COUNSEL, AND ASSISTANTS, WITH COMPENSATION FIXED BY THE COURT.

* SUBSECTION (b) PERMITS THE COMMISSIONER, AS REHABILITATOR TO APPOINT AN ADVISORY COMMITTEE OF POLICYHOLDERS, CREDITORS, OR GUARANTY ASSOCIATIONS.

* SUBSECTION (c) PROVIDES THE REHABILITATOR WITH BROAD POWERS, INCLUDING THE POWERS OF FORMER DIRECTORS, OFFICERS, ETC. CAN HIRE AND FIRE SUBJECT TO CONTRACT RIGHTS AND DEAL WITH PROPERTY.

* SUBSECTION (d) PROVIDES THAT THE REHABILITATOR MAY PURSUE APPROPRIATE LEGAL ACTION FOR INSURER FOR TORTIOUS OR CRIMINAL CONDUCT, OR BREACH OF ANY CONTRACTUAL OR FIDUCIARY OBLIGATION.

* SUBSECTION (e) CALLS FOR A REHABILITATOR'S PLAN TO BE APPROVED BY THE COURT.

* SUBSECTION (f) PROVIDES THE REHABILITATOR WITH POWER TO AVOID FRAUDULENT TRANSFERS UNDER SECTIONS 25 AND 26.

SECTION 15. ACTIONS BY AND AGAINST REHABILITATOR (SECTION 14, MODEL):

* SUBSECTION (a) PROVIDES THAT LITIGATION AGAINST THE INSURER AT THE TIME OF REHABILITATION ORDER MUST BE CONTINUED 90 DAYS BY KANSAS COURTS. THE REHABILITATOR IS REQUIRED TO REVIEW ALL ACTIONS OUTSIDE KANSAS AND TAKE NECESSARY ACTION, INCLUDING REQUESTS FOR STAYS.

* SUBSECTION (b) PROVIDES THAT NO STATUTE OF LIMITATIONS OR LATCHES MAY RUN BETWEEN FILING PETITION FOR REHABILITATION AND ORDER UPON THE PETITION, EVEN IF THE PETITION IS DENIED. CLAIMANTS HAVE 60 DAYS AFTER AN ORDER OF REHABILITATION TO

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FILE AN ACTION (IF ACTION COULD HAVE BEEN BROUGHT AT THE TIME THE PETITION FOR REHABILITATION IS FILED).

* SUBSECTION (c) PROVIDES THAT GUARANTY ASSOCIATIONS MAY APPEAR IN REHABILITATION PROCEEDINGS FOR LIFE AND HEALTH OR ANNUITY COMPANIES.

SECTION 16. TERMINATION OF REHABILITATION (SECTION 15, MODEL):

* SUBSECTION (a) PROVIDES THAT REHABILITATION TERMINATES IF LIQUIDATION IS REQUESTED BY PETITION OF THE COMMISSONER TO THE SHAWNEE COUNTY DISTRICT COURT.

* SUBSECTION (b) PROVIDES THAT REHABILITATION CAN TERMINATE BY PETITION OF THE REHABILITATOR, DIRECTORS, OR BY THE COURT'S OWN MOTION. THE COURT NEED ONLY FIND THE REHABILITATION HAS BEEN ACCOMPLISHED AND THAT GROUNDS FOR REHABILITATION NO LONGER EXIST.

SECTION 17. GROUNDS FOR LIQUIDATION (SECTION 16, MODEL):

* SUBSECTION (a) PROVIDES THE SAME GROUNDS AS FOR REHABILITATION ABOVE, WHETHER REHABILITATION WAS REQUESTED OR NOT.

* SUBSECTION (b) PROVIDES THAT THE INSURER IS INSOLVENT (AS DEFINED IN SECTION -3.

* SUBSECTION (c) PROVIDES THAT THE FURTHER TRANSACTION OF BUSINESS WOULD BE HAZARDOUS.

SECTION 18. LIQUIDATION ORDERS (SECTION 17; MODEL):

* SUBSECTION (a) PROVIDES THAT THE COMMISSIONER OR SUCCESSOR WILL BE APPOINTED AS LIQUIDATOR. THE LIQUIDATOR IS ORDERED TO TAKE POSSESSION OF ALL ASSETS AND TO ADMINISTER THEM UNDER SUPERVISION OF THE COURT. THE LIQUIDATOR IS VESTED BY LAW WITH TITLE AT THE TIME OF THE FINAL ORDER OF LIQUIDATION. FILING WITH THE SHAWNEE COUNTY DISTRICT COURT OF REGISTER OF DEEDS IN THE COUNTY WHERE THE PRINCIPAL OFFICE OR PLACE OF BUSINESS IS LOCATED, OR WHERE REAL ESTATE IS LOCATED, GIVES NOTICE TO THIRD PARTIES.

* SUBSECTION (b) PROVIDES THAT RIGHTS AND LIABILITIES ARE FIXED AS TO THE DATE OF THE ORDER OF LIQUIDATION, EXCEPT AS PROVIDED IN SECTION 19 [POLICIES] AND SECTION 34 [SPECIAL CLAIMS].

* SUBSECTION (c) PROVIDES THAT THE COMMISSIONER CAN PETITION AT ANY TIME FOR AN ORDER OF LIQUIDATION, WHICH THE COURT CAN GRANT AFTER NOTICE AND HEARING.

* SUBSECTION (d) PROVIDES THAT ACCOUNTINGS ARE REQUIRED IN ORDER AT SET INTERVALS.

* SUBSECTION (e) PROVIDES FOR APPEAL PENDENCY PLANS.

SECTION 19. CONTINUANCE OF COVERAGE (SECTION 18, MODEL):

* SUBSECTION (a) PROVIDES THAT EXCEPT FOR LIFE, HEALTH, OR ANNUITIES, POLICIES SHALL REMAIN IN FORCE THE LESSER OF 30 DAYS FROM THE DATE OF ENTRY OF THE LIQUIDATION ORDERS, THE EXPIRATION OF THE POLICY COVERAGE, THE DATE THE INSURER HAS

REPLACED THE COVERAGE WITH ANOTHER INSURER OR OTHERWISE TERMINATED THE POLICY, OR THE LIQUIDATOR HAS TRANSFERRED THE OBLIGATION PURSUANT TO SECTION 21(a)(9). [POWERS OF LIQUIDATOR -- TRANSFER TO A SOLVENT INSURER].

* SUBSECTION (b) INDICATES THAT (a) APPLIES TO TERMINATE COVERAGES DESPITE OTHER STATUTES [SUCH AS CANCELLATION AND NON-RENEWAL STATUTES].

* SUBSECTION (c) PROVIDES THAT LIFE, HEALTH, AND ANNUITIES CONTINUE UNDER THE TERMS OF ANY GUARANTY ASSOCIATION.

* SUBSECTION (d) PROVIDES THAT IF LIFE, HEALTH, AND ANNUITIES ARE NOT COVERED BY GUARANTY ASSOCIATION PROVISION, THEY TERMINATE AS SET OUT ABOVE.

SECTION 20. DISSOLUTION OF INSURER (SECTION 19, MODEL). COMMISSIONER CAN REQUEST AN ORDER OF LIQUIDATION, OR DISSOLUTION WILL OCCUR BY OPERATION OF LAW UPON DISCHARGE OF LIQUIDATOR IF THE INSURER IS INSOLVENT.

SECTION 21. POWERS OF LIQUIDATOR (SECTION 20, MODEL). THE POWERS OF THE LIQUIDATOR ARE SPECIFIED IN 23 PARAGRAPHS IN SUBSECTION (a), WHILE SUBSECTION (b) SAYS (a) DOES NOT LIMIT POWERS. SUBSECTION (c) PROVIDES THAT THE LIQUIDATOR HAS NO OBLIGATION TO DEFEND CLAIMS OR TO CONTINUE TO DEFEND CLAIMS.

SECTION 22. NOTICE TO CREDITORS AND OTHERS (SECTION 2, MODEL). THIS SECTION DIRECTS HOW AND TO WHOM NOTICE OF LIQUIDATION PROCEEDINGS WILL BE GIVEN. NOTICE TO CLAIMANTS WILL REQUIRE THEM TO FILE PROOF OF CLAIMS IN ACCORDANCE WITH SECTION 32, EXCEPT THAT THE LIQUIDATOR DOES NOT HAVE TO REQUIRE PERSONS CLAIMING CASH SURRENDER VALUES OR OTHER INVESTMENT VALUES IN LIFE INSURANCE TO FILE A PROOF OF CLAIM.

SECTION 23. ACTIONS BY AND AGAINST LIQUIDATOR (SECTION 23, MODEL):

* SUBSECTION (a) PROVIDES THAT AFTER AN ORDER OF LIQUIDATION, ACTIONS AT LAW OR EQUITY OR IN ARBITRATION AGAINST THE INSURER ARE PROHIBITED, WHETHER IN KANSAS OR ELSEWHERE. EXISTING SECTIONS MAY NOT BE MAINTAINED AFTER AN ORDER OF LIQUIDATION. THE LIQUIDATOR MAY INTERVENE OUTSIDE THE STATE.

* SUBSECTION (b) PROVIDES THAT THE LIQUIDATOR HAS TWO YEARS FROM THE TIME AN ORDER IS FILED, OR LONGER IF PERMITTED BY APPLICABLE STATUTE, TO COMMENCE AN ACTION, IF THE STATUTE HAD NOT RUN AT THE TIME AN ORDER IS ENTERED. ALSO, THE LIQUIDATOR HAS 180 DAYS FOLLOWING AN ORDER OF LIQUIDATION TO TAKE ANY ACTION REQUIRED OR PERMITTED OF THE INSURER, OR SUCH ADDITIONAL TIME IF COURT IS SATISFIED THAT IT DOES NOT UNFAIRLY PREJUDICE THE OTHER PARTY.

* SUBSECTION (c) PROVIDES THAT NO STATUTE OF LIMITATIONS OR LATCHES MAY RUN AGAINST AN INSURER BETWEEN THE FILING OF A PETITION FOR LIQUIDATION AND THE DENIAL OF THE PETITION. ANY ACTION THAT MIGHT HAVE BEEN COMMENCED AGAINST THE INSURER WHEN THE PETITION WAS FILED MAY BE COMMENCED FOR AT LEAST 60 DAYS AFTER THE PETITION IS DENIED.

* SUBSECTION (d) PROVIDES THAT ANY GUARANTY OR FOREIGN GUARANTY ASSOCIATION MAY APPEAR IN ANY COURT PROCEEDING INVOLVING THE LIQUIDATION OF AN INSURER.

SECTION 24. COLLECTION AND LIST OF ASSETS (SECTION 24, MODEL):

* SUBSECTION (a) PROVIDES THAT AN INVENTORY OF ASSETS IS TO BE PREPARED NO LATER THAN 120 DAYS FOLLOWING A LIQUIDATION ORDER. ONE COPY IS TO BE FILED WITH THE SHAWNEE COUNTY DISTRICT COURT. ALL LATER AMENDMENTS ARE ALSO TO BE FILED.

* SUBSECTION (b) PROVIDES THAT A SUBMISSION TO THE COURT FOR DISBURSEMENT OF ASSETS UNDER SECTION 33 (PROOF OF CLAIM) FULFILLS THE REQUIREMENTS OF SUBSECTION (a).

SECTION 25. FRAUDULENT TRANSFERS PRIOR TO PETITION (SECTION 25, MODEL):

* SUBSECTION (a) PROVIDES THAT EVERY TRANSFER MADE OR OBLIGATION INCURRED WITHIN ONE YEAR PRIOR TO FILING A SUCCESSFUL PETITION FOR REHABILITATION OR LIQUIDATION IS FRAUDULENT UNLESS IT IS MADE TO A GOOD FAITH PURCHASER. THE COURT CAN, ON DUE NOTICE, ORDER ANY SUCH TRANSACTION PRESERVED FOR THE ESTATE.

* SUBSECTION (b)(1) PROVIDES THAT A TRANSFER OF REAL PROPERTY IS MADE WHEN SO PERFECTED THAT NO LIEN IS SUPERIOR TO THE TRANSFEREE; (b)(2) PROVIDES THAT A TRANSFER OF REAL PROPERTY IS MADE WHEN NO GOOD FAITH PURCHASER FROM THE INSURER WILL HAVE RIGHTS SUPERIOR TO THE TRANSFEREE; (b)(3) PROVIDES THAT THE CREATION OF AN EQUITABLE LIEN IS NOT PERFECTED WHEN A LEGAL LIEN CAN BE CREATED; (b)(4) PROVIDES THAT A TRANSFER NOT PERFECTED BEFORE THE PETITION FOR LIQUIDATION WILL BE TREATED AS IF MADE BEFORE FILING THE PETITION [PREVENTS TRANSFER BETWEEN PETITION AND ORDER]; (b)(5) PROVIDES THAT THE ABOVE RULES APPLY EVEN IF THERE WERE CREDITORS WHO COULD HAVE PERFECTED A LIEN IN TIME, BUT FAILED TO DO SO, OR PERSONS WHO MIGHT HAVE BECOME GOOD FAITH PURCHASERS, BUT DID NOT DO SO ON TIME.

* SUBSECTION (c) PROVIDES THAT TRANSACTIONS WITH A REINSURER CAN BE DEEMED FRAUDULENT IF (1) THE REINSURER IS RELEASED FROM PRIOR OBLIGATIONS WITHOUT PAYING THE PRESENT FAIR EQUIVALENT VALUE, AND (2) THE TRANSACTION TOOK PLACE WITHIN ONE YEAR PRIOR TO THE PETITION FOR LIQUIDATION.

* SUBSECTION (d) PROVIDES THAT PERSONS RECEIVING FRAUDULENT TRANSFERS ARE PERSONALLY LIABLE AND MUST ACCOUNT TO THE LIQUIDATOR. [NOTE THAT SOME OF THE PROVISIONS IN SECTION 25 ARE KEYED TO LIQUIDATION WHILE OTHERS ARE KEYED TO BOTH REHABILITATION AND LIQUIDATION].

SECTION 26. FRAUDULENT TRANSFERS AFTER PETITION (SECTION 26, MODEL):

* SUBSECTION (a) PROVIDES THAT THE TRANSFER AFTER THE PETITION FOR REHABILITATION OR LIQUIDATION IS GOOD ONLY TO GOOD FAITH PURCHASER FOR A PRESENT FAIR EQUIVALENT VALUE, OR THE EXTENT OF PRESENT CONSIDERATION ACTUALLY PAID. NOTICE OCCURS WHEN THE PETITION OR AN ORDER FOR LIQUIDATION IS FILED WITH THE REGISTER OF DEEDS IN THE COUNTY WHERE THE REAL ESTATE IS LOCATED.

* SUBSECTION (b) PROVIDES THAT AFTER A PETITION IS FILED, BUT BEFORE AN ORDER IS ISSUED, (1) TRANSFER OF PROPERTY OTHER THAN REAL ESTATE IS VALID IF MADE TO GOOD FAITH PURCHASER FOR THE PRESENT FAIR EQUIVALENT VALUE, OR TO THE EXTENT OF PRESENT CONSIDERATION ACTUALLY PAID, (2) A PERSON INDEBTED TO THE INSURER OR HOLDING PROPERTY OF THE INSURER MAY PAY OR DELIVER, IF ACTING IN GOOD FAITH, (3) A PERSON HAVING ACTUAL KNOWLEDGE OF THE PENDING REHABILITATION OR LIQUIDATION IS NOT IN GOOD FAITH, AND (4) THE PERSON ALLEGING THAT THE TRANSFER IS VALID HAS THE BURDEN OF PROOF, AND EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, NO ONE TRANSFER IS VALID AGAINST THE LIQUIDATOR.

* SUBSECTION (c) PROVIDES THAT PERSONS RECEIVING FRAUDULENT TRANSFERS ARE PERSONALLY LIABLE AND MUST ACCOUNT TO THE LIQUIDATOR.

* SUBSECTION (d) PROVIDES THAT NOTHING IN THE ACT IMPAIRS NEGOTIABILITY OF NEGOTIABLE INSTRUMENTS.

SECTION 27. VOIDABLE PREFERENCES AND LIENS (SECTION 27, MODEL):

* SUBSECTION (a)(1) PROVIDES THAT A PREFERENCE IS A TRANSFER OF PROPERTY MADE FOR OR ON ACCOUNT OF AN ANTECEDENT DEBT, WITHIN ONE YEAR BEFORE FILING A SUCCESSFUL PETITION FOR LIQUIDATION, THE EFFECT OF WHICH IS TO ENABLE THE CREDITOR TO GET A LARGER PERCENTAGE THAN OTHER CREDITORS. IF A LIQUIDATION ORDER IS ENTERED WHILE THE INSURER IS ALREADY UNDER A REHABILITATION ORDER, A PREFERENCE IS A TRANSFER EITHER ONE YEAR BEFORE FILING SUCCESSFUL PETITION FOR REHABILITATION OR TWO YEARS BEFORE SUCCESSFUL PETITION FOR LIQUIDATION; (a)(2) A PREFERENCE CAN BE AVOIDED IF (A) THE INSURER IS INSOLVENT AT THE TIME OF TRANSFER, (B) THE TRANSFER IS MADE WITHIN FOUR MONTHS BEFORE FILING THE PETITION, (C) THE CREDITOR HAD REASONABLE CAUSE TO BELIEVE THE INSURER WAS INSOLVENT OR ABOUT TO BECOME INSOLVENT, OR (D) THE DIRECTOR WAS AN OFFICER, EMPLOYEE, OR ATTORNEY, ETC.; (a)(3) WHERE PREFERENCE IS VOIDABLE, THE LIQUIDATOR MAY RECOVER THE PROPERTY, OR ITS VALUE. HOWEVER, IF SOME VALUE WAS PAID, THE CREDITOR HAS A LIEN FOR THAT AMOUNT. THE COURT, ON DUE NOTICE, MAY PRESERVE TITLE FOR THE ESTATE.

SECTION 28. CLAIMS OF HOLDERS OF VOID OR VOIDABLE RIGHTS (SECTION 28, MODEL):

* SUBSECTION (a) PROVIDES THAT NO CREDITOR WHO HAS A PREFERENCE THAT IS VOIDABLE CAN RECOVER HIS CLAIM UNLESS HE SURRENDERS THE PREFERENCE, ETC. IF THE

LIQUIDATOR EFFECTS AVOIDANCE THROUGH A JUDGMENT, THE CLAIM IS NOT ALLOWED UNLESS THE MONEY IS PAID OR THE PROPERTY IS DELIVERED IN 30 DAYS, UNLESS THE COURT ALLOWS FOR FURTHER TIME FOR APPEAL OR OTHER CONTINUATION OF THE PROCEEDING.

* SUBSECTION (b) PROVIDES THAT A CLAIM ALLOWABLE UNDER SUBSECTION (a) AS AVOIDANCE MAY BE FILED AS AN EXCUSED FILING UNDER SECTION 37, IF FILED WITHIN 30 DAYS, OR THE COURT ALLOWS FOR FURTHER TIME.

SECTION 29. SETOFFS (SECTION 29, MODEL):

* SUBSECTION (a) PROVIDES THAT MUTUAL DEBTS ARE TO BE SETOFF AND THE BALANCE ONLY ALLOWED OR PAID, EXCEPT AS PROVIDED IN SUBSECTIONS (b), (c) AND (d).

* SUBSECTION (b) FOR LISTS WHEN SETOFFS AND COUNTERCLAIMS ARE NOT ALLOWED.

* SUBSECTION (c) REQUIRES THE LIQUIDATOR TO PROVIDE A LIST OF DEBTS TO PERSONS WHO ASSUMED BUSINESS. SUCH PERSONS CAN ONLY OFFSET MUTUAL CREDITS DUE AND OWING FOR THE PERIOD COVERED BY THE LIQUIDATOR'S ACCOUNTING.

* SUBSECTION (d) PROVIDES THAT A PERSON THAT CEDED BUSINESS TO THE INSURER MAY SETOFF DEBTS DUE TO THE INSURER AGAINST ONLY THOSE MUTUAL CREDITS WHICH THE PERSON HAD PAID OR WHICH HAVE BEEN ALLOWED IN THE INSURER'S DELINQUENCY PROCEEDING.

* SUBSECTION (e) GIVES CASES WHERE, NOTWITHSTANDING THE ABOVE, A SETOFF IN THE NATURE OF THOSE SPECIFIED IN SUBSECTION (b) SHALL BE ALLOWED WHERE THE WRITTEN APPROVAL OF THE COMMISSIONER OF DOMICILE OF THE INSOLVENT INSURER HAS BEEN OBTAINED, WHEN IN THE JUDGMENT OF SUCH COMMISSIONER IT WAS NECESSARY TO PROVIDE

REINSURANCE IN ORDER TO PREVENT OR MITIGATE A THREATENED IMPAIRMENT OR INSOLVENCY OF A DOMICILIARY INSURER IN CONNECTION WITH THE EXERCISE OF THE COMMISSIONER'S REGULATORY RESPONSIBILITIES.

* SUBSECTION (f) PROVIDES THAT PROVISIONS OF SECTION 29 BECOME EFFECTIVE SIX MONTHS FOLLOWING ENACTMENT OF THE ACT.

SECTION 30. REINSURERS LIABILITY (SECTION 31, MODEL). THE AMOUNT RECOVERABLE FROM REINSURERS IS NOT TO BE REDUCED BECAUSE OF DELINQUENCY PROCEEDINGS, REGARDLESS OF PROVISIONS OF THE REINSURANCE CONTRACT. ALSO, PAYMENTS MADE DIRECTLY TO AN INSURED OR OTHER CREDITOR WILL NOT DIMINISH REINSURER'S OBLIGATION.

SECTION 31. DOMICILIARY LIQUIDATOR'S PROPOSAL TO DISTRIBUTE ASSETS (SECTION 33, MODEL):

* SUBSECTION (a) PROVIDES THAT WITHIN 120 DAYS AFTER FINAL DETERMINATION OF INSOLVENCY, THE LIQUIDATOR IS TO FILE A PROPOSAL TO DISTRIBUTE ASSETS FROM TIME TO TIME TO GUARANTY OR FOREIGN GUARANTY ASSOCIATIONS. IF THERE ARE INSUFFICIENT ASSETS TO DISBURSE, THE LIQUIDATOR MUST FILE SAYING SO.

* SUBSECTION (b) PROVIDES THAT THE PROPOSAL IN SUBSECTION (a) SHALL INCLUDE AT LEAST (1) RESERVING FOR EXPENSES AND PAYMENT OF CLAIMS OF SECURED CREDITORS, AND CLAIMS FALLING WITHIN CLASSES 1 AND 2 SECTION 37 [COSTS OF ADMINISTRATION AND EMPLOYEE CLAIMS], (2) DISBURSEMENT OF ASSETS MARSHALLED AND SUBSEQUENTLY AS AVAILABLE, (3) EQUITABLE ALLOCATION TO GUARANTY ASSOCIATIONS, (4) A STATEMENT FROM ASSOCIATIONS TO RETURN ASSET WITH INTEREST IF REQUIRED TO PAY CLAIMS

ATTACHMENT B

FALLING INTO PRIORITIES IN SECTION 37, AND (5) A FULL REPORT FROM EACH ASSOCIATION OF ASSETS DISTRIBUTED AND DISBURSEMENTS MADE, INTEREST EARNED, AND ANY OTHER INFORMATION REQUESTED BY THE COURT.

* SUBSECTION (c) PROVIDES THAT THE PROPOSAL SHALL PROVIDE FOR DISBURSEMENTS TO ASSOCIATIONS IN AMOUNTS ESTIMATED AT LEAST EQUAL TO THE CLAIM PAYMENTS MADE OR TO BE MADE BY THE ASSOCIATIONS, OR IN A LESSER AMOUNT IF THERE ARE INSUFFICIENT ASSETS TO PAY CLAIMS.

* SUBSECTION (d) PROVIDES A PROPOSAL FOR LIFE, HEALTH, OR ANNUITY TO PROVIDE FOR DISTRIBUTION TO ASSOCIATIONS.

* SUBSECTION (e) PROVIDES FOR A 15 DAY NOTICE OF PROPOSAL TO ALL ASSOCIATIONS AND COMMISSIONERS.

SECTION 32. FILING OF CLAIMS (SECTION 34, MODEL):

* SUBSECTION (a) PROVIDES THAT PROOF MUST BE FILED BEFORE THE LAST DATE FOR THE SAME SET BY THE COURT, EXCEPT CASH SURRENDER VALUES OR INVESTMENT VALUES OF LIFE INSURANCE NEED NOT BE MADE.

* SUBSECTION (b) PROVIDES THAT LATE PAYMENTS ARE PERMITTED WHEN (1) A CLAIM WAS NOT KNOWN TO CLAIMANT AND WAS FILED PROMPTLY UPON DISCOVERY, (2) A TRANSFER WAS AVOIDED UNDER SECTIONS 25 THROUGH 27, OR WAS VOLUNTARILY SURRENDERED UNDER SECTION 28, OR (3) VALUATION UNDER SECTION 36 SHOWS A DEFICIENCY WHICH IS FILED WITHIN 30 DAYS AFTER VALUATION.

* SUBSECTION (c) PROVIDES THAT LATE CLAIMS ARE PERMITTED IF THE CLAIM OF GUARANTY ASSOCIATIONS OR REIMBURSEMENT OF COVERED CLAIMS PAID OR EXPENSES INCURRED AFTER THE DATE FOR LAST FILING.

* SUBSECTION (d) PROVIDES THAT LATE CLAIMS ARE NOT COVERED BY SUBSECTION (b) ABOVE, AT THE SAME OR LOWER PRIORITY, IF NOT PREJUDICIAL TO ORDERLY ADMINISTRATION OF LIQUIDATION. CLAIMANT RECEIVES AT EACH DISTRIBUTION THE SAME PERCENTAGE AS IS BEING ALLOWED FOR CLAIMS OF ANY LOWER PRIORITY.

SECTION 33. PROOF OF CLAIM (SECTION 35, MODEL).

* SUBSECTION (a) PROVIDES THAT PROOF OF CLAIM MUST CONTAIN THE SEVEN ITEMS LISTED IN (1) THROUGH (7) OF THIS SUBSECTION.

* SUBSECTION (b) PROVIDES THAT THE LIQUIDATOR CAN PRESCRIBE THE FORM OF PROOF OF CLAIM, AND CAN ESTABLISH OTHER DOCUMENTS AND INFORMATION TO BE ATTACHED TO THE PROOF OF CLAIM. CAN TAKE TESTIMONY UNDER OATH, REQUIRE AFFIDAVITS OR DEPOSITIONS, OR OTHERWISE OBTAIN ADDITIONAL EVIDENCE.

* SUBSECTION (c) PROVIDES THAT PROOFS OF CLAIM BY GUARANTY ASSOCIATIONS MUST BE ON A FORM APPROVED BY BOTH THE LIQUIDATOR AND ASSOCIATION.

* SUBSECTION (d) PROVIDES THAT CLAIMS UNDER EMPLOYMENT CONTRACTS BY DIRECTORS, ETC., ARE LIMITED TO PAYMENT FOR SERVICES RENDERED PRIOR TO THE ISSUANCE OF ANY ORDER OF REHABILITATION OR LIQUIDATION.

SECTION 34. SPECIAL CLAIMS (SECTION 36, MODEL):

* SUBSECTION (a) PROVIDES THAT A CONTINGENCY FOR A JUDGMENT AGAINST AN INSURER SHALL BE TREATED AS IF THERE IS NO CONTINGENCY.

* SUBSECTION (b) PROVIDES THAT EVEN A CONTINGENT CLAIM MAY BE ALLOWED IF PROPERLY FILED UNDER SECTION 34, AND IF IT DOES NOT PREJUDICE ORDERLY ADMINISTRATION.

* SUBSECTION (c) PROVIDES THAT CLAIMS THAT ARE DUE EXCEPT FOR PASSAGE OF TIME ARE TREATED AS ABSOLUTE. THEY MAY, HOWEVER, BE DISCOUNTED.

* SUBSECTION (d) PROVIDES THAT CLAIMS UNDER EMPLOYMENT CONTRACTS BY DIRECTORS, ETC., ARE LIMITED TO PAYMENT FOR SERVICES RENDERED PRIOR TO THE ISSUANCE OF ANY ORDER OF REHABILITATION OR LIQUIDATION.

SECTION 35. DISPUTED CLAIMS (SECTION 38, MODEL):

* SUBSECTION (a) PROVIDES THAT NOTIFICATION OF DENIAL OF CLAIM IS TO BE GIVEN TO CLAIMANT OR HIS ATTORNEY BY FIRST CLASS MAIL. WITHIN 60 DAYS OF MAILING, THE CLAIMANT MAY FILE HIS OBJECTIONS. IF NO FILING IS MADE, NO FURTHER OBJECTION WILL BE PERMITTED.

* SUBSECTION (b) PROVIDES THAT IF AN OBJECTION IS FILED, BUT NO ACTION IS TAKEN BY THE LIQUIDATOR, THE LIQUIDATOR WILL ASK THE COURT FOR A HEARING. THE MATTER CAN BE HEARD BY THE COURT OR COURT APPOINTED REFEREE, WHO MUST SUBMIT FINDINGS OF FACT.

* SUBSECTION (c) PROVIDES THAT A CLAIM OF A SURETY MAY BE MADE BY THE SURETY IN THE NAME OF THE CREDITOR. RULES FOR DISTRIBUTION ARE SET OUT.

SECTION 36. SECURED CREDITOR'S CLAIMS (SECTION 40, MODEL):

* SUBSECTION (a) PROVIDES THAT THE VALUE OF A SECURITY HELD BY A SECURED CREDITOR IS DETERMINED IN ONE OF THE FOLLOWING WAYS, AS DIRECTED BY THE COURT: (1) BY CONVERTING IT INTO MONEY ACCORDING TO THE TERMS OF THE AGREEMENT, OR (2) BY AGREEMENT, ARBITRATION, COMPROMISE, OR LITIGATION.

* SUBSECTION (b) PROVIDES THAT A DETERMINATION IS MADE BY THE COURT WITH DUE REGARD FOR RECOMMENDATION OF THE LIQUIDATOR. THE AMOUNT DETERMINED IS CREDITED AGAINST THE CLAIM AND ANY DEFICIENCY BECOMES AN UNSECURED CLAIM. BY TURNING THE SECURITY OVER TO THE LIQUIDATOR, THE ENTIRE CLAIM BECOMES UNSECURED.

SECTION 37. PRIORITY OF DISTRIBUTION (SECTION 41, MODEL):

CLASS 1 -- COSTS AND EXPENSES OF ADMINISTRATION.

CLASS 2 -- REASONABLE COMPENSATION TO EMPLOYEES, NOT TO EXCEED TWO MONTHS OF MONETARY COMPENSATION, EARNED WITHIN ONE YEAR BEFORE FILING OF THE PETITION FOR LIQUIDATION.

CLASS 3 -- ALL CLAIMS UNDER POLICIES. CLAIMS OF THE FEDERAL OR ANY STATE OR LOCAL GOVERNMENT FOR LOSSES INCURRED. ALL CLAIMS OF GUARANTY OR FOREIGN GUARANTY ASSOCIATIONS.

CLASS 4 -- CLAIMS UNDER NON-ASSESSIBLE POLICIES FOR UNEARNED PREMIUM OR OTHER PREMIUM REFUNDS AND CLAIMS OF GENERAL CREDITORS, INCLUDING CLAIMS OF CEDING AND ASSUMING COMPANIES IN THEIR CAPACITY AS SUCH.

CLASS 5 -- CLAIMS OF FEDERAL OR STATE OR LOCAL GOVERNMENT EXCEPT THOSE UNDER CLASS 3. CLAIMS, INCLUDING THOSE OF ANY GOVERNMENTAL BODY FOR A PENALTY OR FORFEITURE, ALLOWED ONLY TO THE EXTENT OF THE PECUNIARY LOSS SUSTAINED FROM THE ACT, TRANSACTION, ETC. REMAINDER POSTPONED TO BE EQUAL WITH CLAIMS OF CLASS 8.

CLASS 6 -- CLAIMS FILED LATE, EXCEPT FOR CLAIMS OF CLASS 7 OR CLASS 8.

CLASS 7 -- SURPLUS OR CONTRIBUTION NOTES, OR SIMILAR OBLIGATIONS, AND PREMIUM REFUNDS ON ASSESSABLE POLICIES.

CLASS 8 -- THE CLAIMS OF SHAREHOLDERS OR OTHER OWNERS IN THEIR CAPACITY AS SHAREHOLDERS.

SECTION 38. LIQUIDATOR'S RECOMMENDATION TO THE COURT (SECTION 42, MODEL):

* SUBSECTION (a) PROVIDES THAT THE LIQUIDATOR BE GIVEN WIDE DISCRETION TO SETTLE CLAIMS WITH DISPUTES HANDLED UNDER SECTION 35. THE LIQUIDATOR IS TO PROVIDE THE COURT WITH A LIST OF ALL CREDITORS WITH NAMES AND ADDRESSES AND AMOUNTS OF CLAIMS FINALLY RECOMMENDED.

SECTION 39. UNCLAIMED AND WITHHELD FUNDS (SECTION 44, MODEL). DISTRIBUTED TO TREASURER UNDER THE UNCLAIMED PROPERTY ACT.

SECTION 40. TERMINATION OF PROCEEDINGS (SECTION 45, MODEL). THE LIQUIDATOR MUST APPLY TO THE COURT FOR DISCHARGE.

SECTION 41. RE-OPENING LIQUIDATION (SECTION 46, MODEL). THE COMMISSIONER MAY PETITION THE SHAWNEE COUNTY DISTRICT COURT TO RE-OPEN THE PROCEEDINGS FOR GOOD CAUSE, INCLUDING THE DISCOVERY OF ADDITIONAL ASSETS.

SECTION 42. DISPOSITION OF RECORDS (SECTION 47, MODEL). DONE BY THE COURT UPON RECOMMENDATION OF THE COMMISSIONER.

SECTION 43. EXTERNAL AUDIT OF RECEIVER'S BOOK (SECTION 48, MODEL). MAY BE ORDERED BY THE COURT.

INTERSTATE RELATIONS

SECTION 44. CONSERVATION OF PROPERTY OF FOREIGN OR ALIEN INSURERS FOUND IN THIS STATE (SECTION 49, MODEL):

* SUBSECTION (a) PROVIDES THAT IF A DOMICILIARY LIQUIDATOR HAS NOT BEEN APPOINTED, THE COMMISSIONER MAY APPLY TO THE SHAWNEE COUNTY DISTRICT COURT BE VERIFIED PETITION FOR AN ORDER DIRECTING HIM TO ACT AS CONSERVATOR TO CONSERVE PROPERTY OF FOREIGN INSURER FOR ANY OF THE FOLLOWING GROUNDS [IT APPEARS THAT THIS PROCEDURE IS DIFFERENT THAN ANY OF THE EARLIER PROCEDURES AND THAT THE COMMISSIONER ACTS AS THE CONSERVATOR WITHOUT THE NEED TO APPOINT A THIRD PARTY]: (1) ANY GROUNDS IN SECTION 12; (2) THAT PROPERTY HAS BEEN SEQUESTERED BY OFFICIAL ACTION IN ITS DOMICILIARY STATE, OR IN ANY OTHER STATE; (3) THAT ENOUGH OF ITS PROPERTY HAS

BEEN SEQUESTERED IN A FOREIGN COUNTRY TO GIVE REASONABLE CAUSE TO FEAR THAT THE INSURER IS OR MAY BECOME INSOLVENT; (4) THAT ITS CERTIFICATE OF AUTHORITY TO DO BUSINESS IN KANSAS HAS BEEN REVOKED AND THERE ARE RESIDENTS OF KANSAS WITH OUTSTANDING POLICIES.

* SUBSECTION (b) PROVIDES THAT THE INSURER IS TO BE GIVEN NOTICE OF REQUEST UNDER SUBSECTION (a) WITH SUFFICIENT TIME TO RESPOND.

* SUBSECTION (c) PROVIDES THAT AN ORDER MAY BE ISSUED BY THE COURT IN WHATEVER TERMS IT DEEMS APPROPRIATE. FILING OR RECORDING WITH THE COURT OR REGISTERED OF DEEDS OF THE COUNTY IN WHICH THE PRINCIPAL BUSINESS OF THE COMPANY IS LOCATED GIVES THE SAME NOTICE AS A DEED.

* SUBSECTION (d) PROVIDES THAT THE CONSERVATOR MAY PETITION THE COURT TO TERMINATE CONSERVATION. ANY INTERESTED PARTY MAY ALSO MAKE MOTION, MUST PAY COSTS IF DENIED.

SECTION 45. LIQUIDATION OF PROPERTY OF FOREIGN OF ALIEN INSURERS FOUND IN THIS STATE (SECTION 50, MODEL):

* SUBSECTION (a) PROVIDES THAT IF NO DOMICILIARY RECEIVER HAS BEEN APPOINTED, THE COMMISSIONER MAY APPLY TO THE SHAWNEE COUNTY DISTRICT COURT FOR AN ORDER DIRECTING HIM TO LIQUIDATE THE ASSETS FOUND IN THIS STATE OF A FOREIGN INSURER AND/OR ALIEN INSURER NOT DOMICILED IN THIS STATE, FOR THE FOLLOWING GROUNDS: (1) ANY GROUND IN SECTIONS 12 OR 17; OR, (2) ANY GROUND IN SECTION 44(a)(2) THROUGH (a)(4).

* SUBSECTION (b) PROVIDES THAT THE INSURER BE GIVEN SUCH NOTICE AND TIME TO RESPOND AS IS REASONABLE UNDER THE CIRCUMSTANCES.

* SUBSECTION (c) PROVIDES THAT AN ORDER TO LIQUIDATE CAN BE IN ANY TERMS DEEMED APPROPRIATE. NOTICE IS GIVEN BY FILING WITH THE COURT OR THE REGISTER OF DEEDS.

* SUBSECTION (d) PROVIDES THAT IF A DOMICILIARY LIQUIDATOR IS APPOINTED WHILE A LIQUIDATION IS PROCEEDING IN KANSAS, THE LIQUIDATOR UNDER THIS SECTION ACTS AN ANCILLARY RECEIVER UNDER SECTION 47.

* SUBSECTION (e) PROVIDES THAT THE COMMISSIONER MAY PETITION THE FEDERAL COURT TO BE APPOINTED RECEIVER TO LIQUIDATE IF THE FEDERAL COURT WILL EXERCISE JURISDICTION OR ANY LESSER PART THE COMMISSIONER DEEMS DESIRABLE FOR THE PROTECTION OF POLICYHOLDERS AND CREDITORS IN KANSAS.

* SUBSECTION (f) PROVIDES THAT THE COURT MAY ORDER THE COMMISSIONER TO PAY CLAIMS TO RESIDENTS IN ACCORDANCE WITH THE RULES OF LIQUIDATION.

SECTION 46. DOMICILIARY LIQUIDATION IN OTHER STATES (SECTION 51, MODEL):

* SUBSECTION (a) PROVIDES THAT THE DOMICILIARY LIQUIDATOR IN A RECIPROCAL STATE IS VESTED WITH ALL PROPERTY (EXCEPT SPECIAL DEPOSITS AND SECURITY ON SECURED CLAIMS) AND ALL BOOKS, ETC. STATUTE SETS THE DATE OF VESTING.

* SUBSECTION (b) PROVIDES THAT IF THE DOMICILIARY LIQUIDATOR IS APPOINTED IN A NON-RECIPROCAL STATE, THE COMMISSIONER OF KANSAS IS VESTED BY

OPERATION OF LAW WITH THE TITLE TO ALL PROPERTY, ETC., AND ALL BOOKS, ETC. THE COMMISSIONER CAN (1) PETITION FOR A CONSERVATION OR LIQUIDATION ORDER UNDER SECTION 44 OR 45; (2) PETITION FOR ANCILLARY RECEIVERSHIP UNDER SECTION 47; OR (3) MAY TRANSFER TITLE TO THE DOMICILIARY LIQUIDATOR AFTER THE APPROVAL OF THE COURT.

* SUBSECTION (c) PROVIDES THAT CLAIMANTS IN KANSAS CAN FILE CLAIMS WITH THE LIQUIDATOR OR ANCILLARY RECEIVER, IF ANY, OR DOMICILIARY LIQUIDATOR, IF DOMICILIARY LAW PERMITS.

SECTION 47. ANCILLARY FORMAL PROCEEDINGS (SECTION 52, MODEL);

* SUBSECTION (a) PROVIDES THAT IF THE DOMICILIARY LIQUIDATOR HAS BEEN APPOINTED IN ANOTHER STATE, THE COMMISSIONER CAN ASK THE SHAWNEE COUNTY DISTRICT COURT TO BE APPOINTED ANCILLARY RECEIVER IN KANSAS: (1) IF HE FINDS SUFFICIENT ASSETS LOCATED IN KANSAS TO JUSTIFY; AND (2) IF PROTECTION TO CREDITORS OR POLICYHOLDERS IN KANSAS REQUIRES THE SAME.

* SUBSECTION (b) PROVIDES THAT AN ORDER CAN BE IN ANY FORM APPROPRIATE AND AS ABOVE, NOTICE CAN BE GIVEN BY FILING WITH THE COURT OR THE REGISTER OF DEEDS.

* SUBSECTION (c) PROVIDES THAT IF DOMICILIARY LIQUIDATOR IS IN A RECIPROCAL STATE, THE ANCILLARY RECEIVER MAY AID AND ASSIST TO RECOVER ASSETS IN THIS STATE.

* SUBSECTION (d) PROVIDES THAT WHEN KANSAS IS THE DOMCILIARY LIQUIDATOR, ANCILLARY RECEIVERS IN OTHER STATES WILL HAVE CORRESPONDING DUTIES AND RESPONSIBILITIES.

SECTION 48. ANCILLARY SUMMARY PROCEEDINGS (SECTION 53, MODEL). THE COMMISSIONER CAN INITIATE SUMMARY PROCEEDINGS UNDER SECTIONS 9 THROUGH 11 AT THE REQUEST OF THE COMMISSIONER OR OTHER APPROPRIATE INSURANCE OFFICIAL OF THE DOMICILIARY STATE. [THIS CAN BE DONE WHETHER THE STATE IS RECIPROCAL OR NOT].

SECTION 49. CLAIMS OF NON-RESIDENTS AGAINST INSURERS DOMICILED IN THIS STATE (SECTION 54, MODEL):

* SUBSECTION (a) PROVIDES THAT IF KANSAS IS THE DOMOCILIARY STATE AND PROCFEDINGS BEGAN HERE, CLAIMANTS RESIDING IN NON-RECIPROCAL STATES MUST FILE CLAIMS IN KANSAS. CLAIMANTS RESIDING IN RECIPROCAL STATES MAY FILE HERE OR IN THEIR RESPECTIVE STATES.

* SUBSECTION (b) PROVIDES THAT CLAIMS OF CLAIMANTS IN RECIPROCAL STATES CAN BE PROVEN EITHER BY THE DOMOCILIARY STATE OR IN KANSAS. IF NOTICE IS GIVEN BY DOMOCILIARY LIQUIDATOR, ANCILLARY STATE'S FINDING OF AMOUNT AND PRIORITY WILL BE CONCLUSIVE.

SECTION 50. CLAIMS OF RESIDENTS AGAINST INSURERS DOMICILED IN RECIPROCAL STATES (SECTION 55, MODEL):

* SUBSECTION (a) PROVIDES THAT CLAIMANTS WHO RESIDE IN KANSAS CAN FILE CLAIMS AGAINST AN FOREIGN INSURER IN A RECIPROCAL STATE BY EITHER FILING IN KANSAS OR IN THE DOMOCILIARY JURISDICTION.

* SUBSECTION (b) PROVIDES THAT RESIDENTS OF KANSAS CAN ELECT TO PROVE A CLAIM EITHER IN THE DOMOCILIARY STATE OR IN KANSAS. IF IN KANSAS, CLAIMS ARE TO

BE FILED AS PROVIDED IN SECTIONS 32 AND '33. THE ANCILLARY RECEIVER MAKES RECOMMENDATIONS TO THE COURT AS UNDER SECTION 38 AND ARRANGES A HEARING AS UNDER SECTION 35. FORTH DAYS PRIOR NOTICE IS TO BE GIVEN TO THE DOMICILIARY LIQUIDATOR. IF THE DOMICILIARY LIQUIDATOR GIVES NOTICE WITHIN 30 DAYS AFTER GIVING SUCH NOTICE THAT HE WILL CONTEST THE CLAIM, HE SHALL BE ENTITLED TO APPEAR.

* SUBSECTION (c) PROVIDES THAT FINAL ALLOWANCE OF A CLAIM BY THE COURTS OF THIS STATE ARE CONCLUSIVE AS TO THE AMOUNT AND PRIORITY.

SECTION 51. ATTACHMENT, GARNISHMENT, AND LEVY OF EXECUTION (SECTION 56, MODEL). PROHIBITS THESE REMEDIES DURING PENDENCY OF LIQUIDATION PROCEEDINGS IN KANSAS OR IN ANY OTHER STATE. [THIS DOES NOT SEEM TO DEPEND ON WHETHER THE OTHER STATE IS RECIPROCAL].

SECTION 52. INTERSTATE PRIORITIES (SECTION 57, MODEL):

* SUBSECTION (a) PROVIDES THAT IF LIQUIDATION PROCEEDINGS IN KANSAS INVOLVE ONE OR MORE RECIPROCAL STATES, THE ORDER OF DISTRIBUTION IS SET BY THE DOMOCILIARY STATE, WITH ALL CLAIMS OF RESIDENTS OR RECIPROCAL STATES GIVEN EQUAL PRIORITY OF PAYMENT, REGARDLESS OF WHERE SUCH ASSETS ARE LOCATED.

* SUBSECTION (b) PROVIDES THAT OWNERS OF SPECIAL DEPOSIT CLAIMS SHALL BE GIVEN PRIORITY AGAINST SPECIAL DEPOSITS, WITH REMAINING UNPAID OBLIGATIONS TO COME FROM GENERAL ASSETS, BUT NOT UNTIL OTHER CLAIMANTS AGAINST OTHER SPECIAL DEPOSITS WHO RECEIVED SMALLER PERCENTAGES RECEIVE EQUAL PERCENTAGES.

* SUBSECTION (c) PROVIDES THAT A PERSON WITH A SECURED CLAIM CAN SURRENDER HIS SECURITY AND FILE A CLAIM AS GENERAL CREDITOR OR THE CLAIM CAN BE DISCHARGED AS SECURED WITH ANY DEFICIENCY TREATED AS A CLAIM AGAINST GENERAL ASSETS.

SECTION 53. SUBORDINATION OF CLAIMS FOR NON-COOPERATION (SECTION 58, MODEL). IF THE ANCILLARY RECEIVER FAILS TO TRANSFER TO THE DOMICILIARY LIQUIDATOR IN THIS STATE ANY ASSET WITHIN HIS CONTROL OTHER THAN SPECIAL DEPOSITS, ALL CLAIMS FILED IN THE ANCILLARY PROCEEDINGS SHALL BE AT CLASS 8.

SECTION 54. SEVERABILITY (SECTION 59, MODEL).

SECTION 55. REPEALS K.S.A. 40-3601.

SECTION 56. EFFECTIVE DATE.

SENATE BILL No. 111

By Committee on Financial Institutions and Insurance

2-4

8 AN ACT relating to insurance; supervision, liquidation and rehabil-
9 itation; amending K.S.A. 1990 Supp. 40-222b and repealing the
10 existing section; also repealing K.S.A. 40-3601.

11
12 *Be it enacted by the Legislature of the State of Kansas:*

13 New Section 1. (a) This act may be cited as the insurers super-
14 vision, rehabilitation and liquidation act.

15 (b) This act shall not be interpreted to limit the powers granted
16 the commissioner by other provisions of law.

17 (c) This act shall be liberally construed.

18 New Sec. 2. This act shall apply to all insurance companies,
19 fraternal benefit societies, mutual nonprofit hospital and medical
20 service corporations, captive insurance companies, group funded
21 pools except municipal group funded ~~liability~~ pools governed by
22 K.S.A. 12-2616 through 12-2629 and amendments thereto, prepaid
23 service plans operating under articles 19a, 19b or 19d of chapter 40
24 of the Kansas Statutes Annotated, regardless of whether such entities
25 are authorized to do business in this state, and such entities which
26 are in the process of organization.

Delete

27 New Sec. 3. For the purposes of this act:

28 (a) "Ancillary state" means any state other than a domiciliary
29 state.

30 (b) "Commissioner" means the commissioner of insurance.

31 (c) "Creditor" means a person having any claim, whether matured
32 or unmatured, liquidated or unliquidated, secured or unsecured,
33 absolute, fixed or contingent.

34 (d) "Delinquency proceeding" means any proceeding instituted
35 against an insurer for the purpose of liquidating, rehabilitating, re-
36 organizing or conserving such insurer, and any summary proceeding
37 under sections 9 or 10.

38 (e) "Doing business" includes, but is not necessarily limited to,
39 any of the following acts, whether effected by mail or otherwise:

40 (1) The issuance or delivery of contracts of insurance to persons
41 resident in this state;

42 (2) the solicitation of applications for such contracts, or other
43 negotiations preliminary to the execution of such contracts;

Attachment 2
F I & I
2/12/91

2.2

1 itor surrenders the preference, lien, conveyance, transfer, assignment
 2 or encumbrance. If the avoidance is effected by a proceeding in
 3 which a final judgment has been entered, the claim shall not be
 4 allowed unless the money is paid or the property is delivered to the
 5 liquidator within 30 days from the date of the entering of final
 6 judgment, except that the court having jurisdiction over the liqui-
 7 dation may allow further time if there is an appeal or other contin-
 8 uation of the proceeding.

9 (b) A claim allowable under subsection (a) by reason of the avoid-
 10 ance, whether voluntary or involuntary, or a preference, lien, con-
 11 veyance, transfer, assignment or encumbrance, may be filed as an
 12 excused last filing under section 36 if filed within 30 days from the
 13 date of the avoidance, or within the further time allowed by the
 14 court under subsection (a).

15 New Sec. 29. (a) Mutual debts or mutual credits whether arising
 16 out of one or more contracts between the insurer and another person
 17 in connection with any action or proceeding under this act, shall be
 18 setoff and the balance only shall be allowed or paid, except as pro-
 19 vided in subsections (b), (c) and (d) of ~~section 32.~~ this

20 (b) No setoff shall be allowed in favor of any person where:

21 (1) The obligation of the insurer to the person would not at the
 22 date of the filing of a petition for liquidation entitle the person to
 23 share as a claimant in the assets of the insurer;

24 (2) the obligation of the insurer to the person was purchased by
 25 or transferred to the person with a view to its being used as a setoff;

26 (3) the obligation of the insurer is owed to an affiliate of such
 27 person, or any other entity or association other than the person;

28 (4) the obligation of the person is owed to an affiliate of the
 29 insurer, or any other entity or association other than the insurer;

30 (5) the obligations of the person is to pay an assessment levied
 31 against the members or subscribers of the insurer, or is to pay a
 32 balance upon a subscription to the capital stock of the insurer, or
 33 is in any other way in the nature of a capital contribution; or

34 (6) the obligations between the person and the insurer arise from
 35 business which is both ceded to and assumed from the insurer except
 36 that the rehabilitator may, with regard to such business, allowed
 37 certain setoffs in rehabilitation if the rehabilitator shall find the al-
 38 lowance of such setoffs appropriate.

39 (c) The liquidator shall provide persons that assumed business
 40 from the insurer with accounting statements identifying debts which
 41 are currently due and payable. Such persons may setoff against such
 42 debts only mutual credits which are currently due and payable by
 43 the insurer to such persons for the period covered by the accounting

Delete

(7) Except as provided
 in K.S.A. 40-3602, the
 obligation of the person
 is to pay premiums whether
 earned or unearned, to the
 insurer.