Approved January 22, 1992
Date

MINUTES OF THE House COMMITTEE ON Insurance

The meeting was called to order by Representative Turnquist
Chairperson

3:40 ~~a.m.~~/p.m. on Tuesday, January 21, 1992 in room 531 N of the Capito

All members were present except:

Representative Ensminger - Excused
Representative Helgerson - Excused

Committee staff present:

Mr. Chris Courtwright - Research
Mr. Fred Carnes - Revisor
Mrs. Nikki Feuerborn - Secretary
Mr. Mark Hunter - Intern

Conferees appearing before the committee:

Mr. Ron Todd, Commissioner of Insurance

Representative Turnquist called the meeting to order at 3:40 p.m. by introducing and welcoming the new members to the committee. They are Representatives Gilbert and Pauls. Representative Weiland is the new vice-chairman of the committee.

A list of bills now being held in the committee was prepared and distributed by Chris Courtwright of Research. (See Attachment 1).

Insurance Commissioner Ron Todd thanked the committee for its cooperation and the passage of bills to comply with the NAIC model. Kansas is now one of nine states who have complied and received accreditation. Commissioner Todd then explained the legislative proposals as prepared by his office and requested they be introduced into legislation. (See Attachment 2). He then introduced his administrative assistant, Mr. Dick Brock, who will work closely with the committee during this legislative session.

Representative Neufeld moved to introduce the legislation as requested by Commissioner Todd. Representative Flower seconded the motion. Motion carried.

Representative Turnquist announced a Senate and House Joint Committee meeting on Workers Compensation to be held on Monday, January 27, 1992, in the Old Supreme Court Room. He asked that members of the committee attend.

Adjourned at 4:25 p.m.

GUEST LIST

COMMITTEE: House Insurance Committee DATE: January 21, 1992

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Bill Sneed	Topeka	State Farm
ALAN COBB	TOPEKA	Delta Dental
Bill Curtis	Topeka	Ks. Assoc. of School Bds.
Jim Oliver		PIA of Ks
LARRY GIRL	TOPEKA	KAMMCO
Dick Brock	"	Ins Dept
L M. CORNISH	"	Ks Life Assn & PIA & Ks PIC Cos
LARRY MAGILL	"	I.I.A.K.
Martha Hodgesmith	Topeka	Ks. Assoc. of Rehabilitation Facilities
Anne Smith	Topeka	Ks. Assoc of Counties
Amy Jack	Lawrence	Rep. Weiland
Richard Wilson	Mosher	Alliance Ins Co
William L. Mitchell	Hutchinson	Alliance Ins. Co.
Tom Slattery	Topeka	AGC of Ks
ART BROWN	KC.	KS. Elec Assn
DAN MORGAN	KC	AGC, KC Chapter
Tom Bell	Topeka	KHA
Lori Callahan	Topeka	kammco

MEMORANDUM 1/21/1992

TO: Rep Larry Turnquist, Chairman
FROM: Chris Courtwright, KLRD
RE: Holdover Bills in Insurance Committee

House Bills

HB 2002 -- Changes alcoholism, drug abuse, and mental health mandate to allow three days of inpatient coverage prior to a determination that care is medically unnecessary.

HB 2061 -- Exempts guaranty fund association assessments from the retaliatory features of the premiums tax.

HB 2221 -- Requires all accident and health insurers to establish rating differentials for smokers and non-smokers.

HB 2304 -- Exempts voluntary employees' beneficiary associations that provide health insurance from regulatory oversight by the Commissioner.

HB 2305 -- Requires licensing of administrative service managers and others responsible for conducting daily operations of third-party administrators (TPAs). Also regulates multiple employer welfare arrangements (MEWAs).

HB 2414 -- Tightens regulation of group-funded workers compensation pools.

HB 2420 -- Allows long-term care policies to base eligibility on functional and cognitive assessments.

HB 2440 -- Increases from 25 to 50 employees the maximum number an employer can have to bel eligible to participate in a small employer health benefit plan.

HB 2442 -- Repeals most health insurance mandates for individual policies and requires that the mandated benefits be offered for group policies only if requested by the policyholder.

Attachment 1
1 of 1
Ins. Comm.

HB 2458 -- Requires insurers providing disability benefits to give insureds 30 days written notice prior to cancellation and to state the reasons for the cancellation.

HB 2459 -- Allows certain employers with 5 or more operating locations in the state to form group-funded workers compensation pools.

HB 2499 -- Prohibits health insurance contracts from discriminating against certain types of health care providers, making violations subject to the Unfair Trade Practices Act.

Sub HB 2511 -- Creates Kansas Health Insurance Association to make limited health insurance coverage available for certain persons unable to obtain coverage.

HB 2622 -- Creates a payroll deduction option for state employees wanting to participate in the Kansas Public Employees Whole Life Plan.

HCR 5011 -- Directs the Insurance Commissioner to establish a health risk pooling mechanism.

Senate Bills

SB 66 -- Various amendments relating to conversion and continuation rights regarding health insurance.

SB 189 -- Updates statutes relating to regulation of TPAs to more closely conform to current NAIC model legislation.

SB 217 -- Requires motor vehicle insurance policies to provide rate reductions for persons age 55+ who have successfully completed an accredited accident prevention course.

Explanatory Memorandum For

Legislative Proposal No. 1

Legislative Proposal No. 1 is an NAIC model act which is, essentially, a reinsurance counterpart to 1990 Senate Bill No. 514 enacted by the Kansas legislature relating to managing general agents.

This proposal pertains to persons who locate, negotiate, arrange or purchase from another insurer reinsurance on a risk or risks a client insurer has assumed on either a primary or reinsurance basis. The transfer of primary liability under an insurance policy to another insurer is called ceded reinsurance. The transfer of liability that has been assumed under a reinsurance contract to another reinsurer is called a retrocession. These are the types of transactions Legislative Proposal No. 1 involves.

Basically, the proposal provides for the licensing of individuals or firms engaged in this kind of business and imposes certain obligations on them and the reinsurers that utilize their services.

Ins. Comm.
Attachment 2

1 of 2

LEGISLATIVE PROPOSAL NO. 1

AN ACT relating to insurance; reinsurance intermediaries; requirements; prohibitions.

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

Section 1. This act may be cited as the reinsurance intermediary act.

Sec. 2. As used in this act:

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

(b) "Controlling person" means any person, firm, association or corporation who directly or indirectly has the power to direct or cause to be directed, the management, control or activities of the reinsurance intermediary.

(c) "Insurer" means any person, firm, association or corporation duly licensed in this state pursuant to the applicable provisions of the insurance law as an insurer.

(d) "Licensed producer" means an agent, broker or reinsurance intermediary licensed pursuant to the applicable provision of the insurance law.

(e) "Reinsurance intermediary" means a reinsurance intermediary-broker or a reinsurance intermediary-manager as these terms are defined in subsection (f) and (g) of this section.

(f) "Reinsurance intermediary-broker" or "reinsurance broker" means any person, other than an officer or employee of the ceding insurer, firm, association or corporation who solicits, negotiates or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of such insurer.

(g) "Reinsurance intermediary-manager" or "reinsurance manager" means any person, firm, association or corporation who has authority to bind or manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department or underwriting office, and acts as an agent for such reinsurer whether known as a reinsurance manager, manager or other similar term. Notwithstanding the

above, the following persons shall not be considered a reinsurance manager, with respect to such reinsurer, for the purposes of this act:

(1) An employee of the reinsurer;

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

(3) an underwriting manager who, pursuant to contract, manages all the reinsurance operations of the reinsurer, is under common control with the reinsurer, subject to the holding company act, and whose compensation is not based on the volume of premiums written;

(4) the manager of a group, association, pool or organization of insurers which engage in joint underwriting or joint reinsurance and who are subject to examination by the chief insurance regulatory official of the state in which the manager's principal business office is located.

(h) "Reinsurer" means any person, firm, association or corporation duly licensed in this state pursuant to the applicable provisions of the insurance law as an insurer with the authority to assume reinsurance.

(i) "To be in violation" means that the reinsurance intermediary, insurer or reinsurer for whom the reinsurance intermediary was acting failed to substantially comply with the provisions of this act.

(j) For purposes of this act, a "qualified United States financial institution" means an institution that:

(1) Is organized or, in the case of a U.S. office of a foreign banking organization licensed, under the laws of the United States or any state thereof:

(2) is regulated, supervised and examined by U.S. federal or state authorities having regulatory authority over banks and trust companies; and

(3) has been determined by either the commissioner, or the securities valuation office of the national association of insurance commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

Sec. 3. (a) No person, firm, association or corporation shall act as a reinsurance broker in this state if the reinsurance broker maintains an office either directly or as a member or employee of a firm or association, or an officer, director or employee of a corporation:

(1) In this state, unless such reinsurance broker is a licensed producer in this state; or

(2) in another state, unless such reinsurance broker is a licensed producer in this state or another state having a law substantially similar to this law or such reinsurance broker is licensed in this state as a nonresident reinsurance intermediary.

(b) No person, firm, association or corporation shall act as a reinsurance manager:

(1) For a reinsurer domiciled in this state, unless such reinsurance manager is a licensed producer in this state;

(2) in this state, if the reinsurance manager maintains an office either directly or as a member or employee of a firm or association, or an officer, director or employee of a corporation in this state, unless such reinsurance manager is a licensed producer in this state;

(3) in another state for a nondomestic insurer, unless such reinsurance manager is a licensed producer in this state or another state having a law substantially similar to this law or such person is licensed in this state as a nonresident reinsurance intermediary.

(c) The commissioner may require a reinsurance manager subject to subsection (b) to:

(1) File a bond in an amount from an insurer acceptable to the commissioner for the protection of each reinsurer represented; and

(2) maintain an errors and omissions policy in an amount acceptable to the commissioner.

(d)(1) The commissioner may issue a reinsurance intermediary license to any person, firm, association or corporation who has complied with the requirements of this act. Before any such license may be issued, the applicant shall submit proper application therefor on a form prescribed by the commissioner which shall be accompanied by an initial fee of $150.

Any license so issued shall remain in effect until suspended, revoked, voluntarily surrendered or otherwise terminated by the commissioner or licensee subject to payment of an annual continuation fee of $100 on or before May 1 of each year. Any such license issued to a firm or association will authorize all the members of such firm or association and any designated employees to act as reinsurance intermediaries under the license, and all such persons shall be named in the application and any supplements thereto. Any such license issued to a corporation shall authorize all of the officers, and any designated employees and directors thereof to act as

reinsurance intermediaries on behalf of such corporation, and all such persons shall be named in the application and any supplements thereto.

(2) If the applicant for a reinsurance intermediary license is a nonresident, such applicant, as a condition precedent to receiving or holding a license, shall designate the commissioner as agent for service of process in the manner, and with the same legal effect, provided for by this act for designation of service of process upon insurers holding a Kansas certificate of authority; and also shall furnish the commissioner with the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such nonresident reinsurance intermediary may be served. Such licensee shall promptly notify the commissioner in writing of every change in its designated agent for service of process, and such change shall not become effective until acknowledged by the commissioner.

(e) The commissioner may, after a hearing conducted in accordance with the provisions of the Kansas administrative procedures act, held on not less than 20 days notice, refuse to issue a reinsurance intermediary license if, in his judgment, the applicant, any one named on the application, or any member, principal, officer or director of the applicant, is not trustworthy, or any controlling person of such applicant is not trustworthy to act as a reinsurance intermediary, or any of the foregoing has given cause for revocation or suspension of such license, or has failed to comply with any prerequisite for the issuance of such license.

(f) Licensed attorneys at law of this state when acting in their professional capacity as such shall be exempt from this section.

Sec. 4. Transactions between a reinsurance broker and the insurer it represents in such capacity shall only be entered into pursuant to a written authorization, specifying the responsibilities of each party. The authorization shall, at a minimum, provide that:

(a) The insurer may terminate the reinsurance broker's authority at any time;

(b) the reinsurance broker shall render accounts to the insurer accurately detailing all material transactions, including information necessary to support all commissions, charges and other fees received by, or owing, to the reinsurance broker, and remit all funds due to the insurer within 30 days of receipt;

(c) all funds collected for the insurer's account shall be held by the reinsurance broker in a fiduciary capacity in a bank which is a qualified U.S. financial institution as defined herein;

(d) the reinsurance broker shall comply with section 5 of this act;

(e) the reinsurance broker shall comply with the written standards established by the insurer for the cession or retrocession of all risks; and

(f) the reinsurance broker shall disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded.

Sec. 5. (a) For at least 10 years after expiration of each contract of reinsurance transacted by the reinsurance broker, the reinsurance broker shall keep a complete record for each transaction showing:

(1) The type of contract, limits, underwriting restrictions, classes or risks and territory;

(2) period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation;

(3) reporting and settlement requirements of balances;

(4) rate used to compute the reinsurance premium;

(5) names and addresses of assuming reinsurers;

(6) rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance broker;

(7) related correspondence and memoranda;

(8) proof of placement;

(9) details regarding retrocessions handled by the reinsurance broker including the identity of retrocessionaires and percentage of each contract assumed or ceded;

(10) financial records, including but not limited to, premium and loss accounts; and

(11) when the reinsurance broker procures a reinsurance contract on behalf of a licensed ceding insurer:

(A) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

(B) if placed through a representative of the assuming reinsurer, other than an employee, written evidence that such reinsurer has delegated binding authority to the representative.

(b) The insurer shall have access and the right to copy and audit all accounts and records maintained by the reinsurance broker related to its business in a form usable by the insurer.

Sec. 6. (a) An insurer shall not engage the services of any person, firm, association or corporation to act as a reinsurance broker on its behalf unless such person is licensed as required by section 3(a) of this act.

(b) An insurer may not employ an individual who is employed by a reinsurance broker with which it transacts business, unless such reinsurance broker is under common control with the insurer and subject to the holding company act.

(c) The insurer shall annually obtain a copy of statements of the financial condition of each reinsurance broker with which it transacts business.

Sec. 7. Transactions between a reinsurance manager and the reinsurer it represents in such capacity shall only be entered into pursuant to a written contract, specifying the responsibilities of each party, which shall be approved by the reinsurer's board of directors. At least 30 days before such reinsurer assumes or cedes business through such producer, a true copy of the approved contract shall be filed with the commissioner for approval. The contract shall, at a minimum, provide that:

(a) The reinsurer may terminate the contract for cause upon written notice to the reinsurance manager. The reinsurer may immediately suspend the authority of the reinsurance manager to assume or cede business during the pendency of any dispute regarding the cause for termination;

(b) the reinsurance manager will render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges and other fees received by, or owing to the reinsurance manager, and remit all funds due under the contract to the reinsurer on not less than a monthly basis;

(c) all funds collected for the reinsurer's account will be held by the reinsurance manager in a fiduciary capacity in a bank which is a qualified U.S. financial institution as defined herein. The reinsurance manager may retain no more than three months estimated claims payments and allocated loss adjustment expenses. The reinsurance manager shall maintain a separate bank account for each reinsurer that it represents;

(d) for at least 10 years after expiration of each contract of reinsurance transacted by the reinsurance manager, the reinsurance manager shall keep a complete record for each transaction showing:

(1) The type of contract, limits, underwriting restrictions, classes or risks and territory;

(2) period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation, and disposition of outstanding reserves on covered risks;

(3) reporting and settlement requirements of balances;

(4) rate used to compute the reinsurance premium;

(5) names and addresses of reinsurers;

(6) rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance manager;

(7) related correspondence and memoranda;

(8) proof of placement;

(9) details regarding retrocessions handled by the reinsurance manager, as permitted by section 9(d) of this act, including the identity of retrocessionaires and percentage of each contract assumed or ceded;

(10) financial records, including but not limited to, premium and loss accounts; and

(11) when the reinsurance manager places a reinsurance contract on behalf of a ceding insurer:

(A) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

(B) if placed through a representative of the assuming reinsurer, other than an employee, written evidence that such reinsurer has delegated binding authority to the representative.

(e) the reinsurer shall have access and the right to copy all accounts and records maintained by the reinsurance manager related to its business in a form usable by the reinsurer;

(f) the contract cannot be assigned in whole or in part by the reinsurance manager;

(g) the reinsurance manager shall comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection or cession of all risks;

(h) sets forth the rates, terms and purposes of commissions, charges and other fees which the reinsurance manager may levy against the reinsurer;

(i) if the contract permits the reinsurance manager to settle claims on behalf of the reinsurer:

(1) All claims shall be reported to the reinsurer in a timely manner;

(2) a copy of the claim file shall be sent to the reinsurer at its request or as soon as it becomes known that the claim:

(A) Has the potential to exceed the lesser of an amount determined by the commissioner or the limit set by the reinsurer;

(B) involves a coverage dispute;

(C) may exceed the reinsurance manager's claims settlement authority;

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

(E) is closed by payment of the lesser of an amount set by the commissioner or an amount set by the reinsurer;

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

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

(j) if the contract provides for a sharing of interim profits by the reinsurance manager, that such interim profits will not be paid until one year after the end of each underwriting period for property business and five years after the end of each underwriting period for casualty business and not until the adequacy of reserves on remaining claims has been verified pursuant to section 9(c) of this act;

(k) the reinsurance manager shall annually provide the reinsurer with a statement of its financial condition prepared by an independent certified accountant;

(l) the reinsurer shall periodically but no less than semi-annually, conduct an on-site review of the underwriting and claims processing operations of the reinsurance manager;

(m) the reinsurance manager shall disclose to the reinsurer any relationship it has with any insurer prior to ceding or assuming any business with such insurer pursuant to this contract;

(n) within the scope of its actual or apparent authority the acts of the reinsurance manager shall be deemed to be the acts of the reinsurer on whose behalf it is acting.

Sec. 8. The reinsurance manager shall not:

(a) Cede retrocessions on behalf of the reinsurer, except that the reinsurance manager may cede facultative retrocessions pursuant to obligatory facultative agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for such retrocessions. Such guidelines shall include a list of reinsurers with which such automatic agreements are in effect, and for each such reinsurer, the coverages and amounts or percentages that may be reinsured, and commission schedules;

(b) commit the reinsurer to participate in reinsurance syndicates;

(c) appoint any producer without assuring that the producer is lawfully licensed to transact the type of reinsurance for which he is appointed;

(d) without prior approval of the reinsurer, pay or commit the reinsurer to pay a claim, net of retrocessions, that exceeds the lesser of an amount specified by the reinsurer or one percent of the reinsurer's policyholder's surplus as of December 31 of the last complete calendar year;

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

(f) jointly employ an individual who is employed by the reinsurer unless such reinsurance manager is under common control with the reinsurer subject to the holding company act;

(g) appoint a sub-reinsurance manager.

Sec. 9. (a) A reinsurer shall not engage the services of any person, firm, association or corporation to act as a reinsurance manager on its behalf unless such person is licensed as required by section 3(b) of this act.

(b) The reinsurer shall annually obtain a copy of statements of the financial condition of each reinsurance manager which such reinsurer has

engaged prepared by an independent certified accountant in a form acceptable to the commissioner.

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

(d) Binding authority for all retrocessional contracts or participation in reinsurance syndicates shall rest with an officer of the reinsurer who shall not be affiliated with the reinsurance manager.

(e) Within 30 days of termination of a contract with a reinsurance manager, the reinsurer shall provide written notification of such termination to the commissioner.

(f) A reinsurer shall not appoint to its board of directors, any officer, director, employee, controlling shareholder or subproducer of its reinsurance manager. This subsection shall not apply to relationships governed by the holding company act or, if applicable, the broker controlled insurer act.

Sec. 10. (a) A reinsurance intermediary shall be subject to examination by the commissioner pursuant to K.S.A. 1991 Supp. 40-222 and K.S.A. 40-223. The commissioner shall have access to all books, bank accounts and records of the reinsurance intermediary in a form usable to the commissioner.

(b) A reinsurance manager may be examined as if it were the reinsurer.

Sec. 11. (a) A reinsurance intermediary, insurer or reinsurer found by the commissioner, after a hearing conducted in accordance with the Kansas administrative procedures act, to be in violation of any provision(s) of this act shall;

(1) For each separate violation, pay a penalty in an amount not exceeding $5,000;

(2) be subject to revocation or suspension of its license; and

(3) if a violation was committed by the reinsurance intermediary, such reinsurance intermediary shall make restitution to the insurer, reinsurer, rehabilitator or liquidator of the insurer or reinsurer for the net losses incurred by the insurer or reinsurer attributable to such violation.

(b) The decisions, determination or order of the commissioner pursuant to subsection (a) of this section shall be subject to judicial review pursuant to the K.S.A. 77-601 et seq.

(c) Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided in the insurance law.

(d) Nothing contained in this act is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, creditors or other third parties or confer any rights to such persons.

Sec. 12. The commissioner may adopt reasonable rules and regulations for the implementation and administration of the provisions of this act.

Sec. 13. This act shall take effect and be in force from and after December 31, 1992 and its publication in the statute book. Contracts between an insurer and a reinsurance broker or a reinsurer and a reinsurance manager which became effective on or before the effective date of this act may continue in full effect and force until June 30, 1993.

Explanatory Memorandum For

Legislative Proposal No. 2

This is a model act developed by the National Association of Insurance Commissioners to provide additional safeguards against abuse practices which may occur when the same individual or organization controls the sale and solicitation of business, the underwriting, and the payment of claims.

The proposal specifies certain provisions which must be included in the contract between a controlling broker and the controlled insurer and imposes various disclosure, audit and reporting requirements.

LEGISLATIVE PROPOSAL NO. 2

AN ACT relating to insurance; property and casualty insurance; insurance brokers; controlled transactions.

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

Section 1. This act may be cited as the business transacted with broker controlled insurer act.

Sec. 2. Definitions. As used in this act:

(a) "Accredited state" means a state in which the insurance department or regulatory agency has qualified as meeting the minimum financial regulatory standards promulgated and established by the national association of insurance commissioners.

(b) "Captive insurers" are insurance companies owned by another organization whose exclusive purpose is to insure risks of the parent organization and affiliated companies or, in the case of groups and associations, insurance organizations owned by the insureds whose exclusive purpose is to insure risks to member organizations and/or group members and their affiliates.

(c) "Control" or "controlled" has the meaning ascribed in K.S.A. 1991 Supp. 40-3302(e).

(d) "Controlled insurer" means a licensed insurer which is controlled, directly or indirectly by a broker.

(e) "Controlling broker" means a broker who, directly or indirectly, controls an insurer.

(f) "Licensed insurer" or "insurer" means any person, firm, association or corporation duly licensed to transact a property or casualty insurance business in this state. The following, inter alia, are not licensed insurers for the purposes of this act:

(1) All risk retention groups as defined in the superfund amendments reauthorization act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986); the risk retention act, 15 U.S.C. section 3901 et seq. (1982 & Supp. 1986); and K.S.A. 1991 Supp. 40-4101 et seq.; and

(2) all residual market pools and joint underwriting authorities or associations.

(g) "Broker" means an insurance broker or brokers as defined in K.S.A. 40-3702(a), or any other person, firm, association or corporation, when, for any compensation, commission or other thing of value, such person, firm, association or corporation acts or aids in any manner in soliciting, negotiating or procuring the making of any insurance contract on behalf of an insured other than the person, firm, association or corporation. "Broker" does not mean an insurance agent as defined in K.S.A. 1991 Supp. 40-239.

Sec. 3. This act shall apply to licensed insurers as defined in section 2 of this act, either domiciled in this state or domiciled in a state that is not an accredited state having in effect a substantially similar law. All provisions of the insurance holding company act, to the extent they are not superseded by this act, shall continue to apply to all parties within holding company systems subject to this act.

Sec. 4. (a) Applicability of section.

(1) The provisions of this section 4 shall apply if, in any calendar year, the aggregate amount of gross written premium on business placed with a controlled insurer by a controlling broker is equal to or greater than five percent of the admitted assets of the controlled insurer, as reported in the controlled insurer's quarterly statement filed as of September 30 of the prior year.

(2) Notwithstanding paragraph (1) of this subsection, the provisions of this section shall not apply if:

(A) The controlling broker:

(i) places insurance only with the controlled insurer, or only with the controlled insurer and a member or members of the controlled insurer's holding company system, or the controlled insurer's parent, affiliate or subsidiary and receives no compensation based upon the amount of premiums written in connection with such insurance; and

(ii) accepts insurance placements only from non-affiliated subproducers, and not directly from insureds; and

(B) The controlled insurer, except for insurance business written through a residual market facility established pursuant to Kansas statutes or administrative regulations accepts insurance business only from a

controlling broker, a broker controlled by the controlled insurer, or a broker that is a subsidiary of the controlled insurer.

(b) Required contract provisions. A controlled insurer shall not accept business from a controlling broker and a controlling broker shall not place business with a controlled insurer unless there is a written contract between the controlling broker and the insurer specifying the responsibilities of each party, which contract has been approved by the board of directors of the insurer and contains the following minimum provisions:

(1) The controlled insurer may terminate the contract for cause, upon written notice to the controlling broker. The controlled insurer shall suspend the authority of the controlling broker to write business during the pendency of any dispute regarding the cause for the termination;

(2) the controlling broker shall render accounts to the controlled insurer detailing all material transactions, including information necessary to support all commissions, charges and other fees received by, or owing to, the controlling broker;

(3) the controlling broker shall remit all funds due under the terms of the contract to the controlled insurer on at least a monthly basis. The due date shall be fixed so that premiums or installments thereof collected shall be remitted no later than 90 days after the effective date of any policy placed with the controlled insurer under this contract;

(4) all funds collected for the controlled insurer's account shall be held by the controlling broker in a fiduciary capacity, in one or more appropriately identified bank accounts in banks that are members of the federal reserve system, in accordance with the provisions of the insurance law as applicable. Notwithstanding the foregoing, funds of a controlling broker not required to be licensed in this state shall be maintained in compliance with the requirements of the controlling broker's state of domicile;

(5) the controlling broker shall maintain separately identifiable records of business written for the controlled insurer;

(6) the contract shall not be assigned in whole or in part by the controlling broker;

(7) the controlled insurer shall provide the controlling broker with its underwriting standards, rules and procedures, manuals setting forth the

rates to be charged, and the conditions for the acceptance or rejection of risks. The controlling broker shall adhere to the standards, rules, procedures, rates and conditions. The standards, rules, procedures, rates and conditions shall be the same as those applicable to comparable business placed with the controlled insurer by a broker other than the controlling broker;

(8) the rates and terms of the controlling broker's commissions, charges or other fees and the purposes for those charges or fees. The rates of the commissions, charges and other fees shall be no greater than those applicable to comparable business placed with the controlled insurer by brokers other than controlling brokers. For purposes of this paragraph and paragraph (7) of this subsection, examples of "comparable business" includes the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business;

(9) if the contract provides that the controlling broker, on insurance business placed with the insurer, is to be compensated contingent upon the insurer's profits on that business, then such compensation shall not be determined and paid until at least five years after the premiums on liability insurance are earned and at least one year after the premiums are earned on any other insurance. In no event shall the commissions be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified pursuant to subsection (c) of this section;

(10) a limit on the controlling broker's writings in relation to the controlled insurer's surplus and total writings. The insurer may establish a different limit for each line or sub-line of business. The controlled insurer shall notify the controlling broker when the applicable limit is approached and shall not accept business from the controlling broker if the limit is reached. The controlling broker shall not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached; and

(11) the controlling broker may negotiate but shall not bind reinsurance on behalf of the controlled insurer on business the controlling broker places with the controlled insurer, except that the controlling broker may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines including, for both reinsurance assumed and ceded, a

list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured and commission schedules.

(c) Audit committee. Every controlled insurer shall have an audit committee of the board of directors composed of independent directors. The audit committee shall annually meet the management, the insurer's independent certified public accountants, and an independent casualty actuary or other independent loss reserve specialist acceptable to the commissioner to review the adequacy of the insurer's loss reserves.

(d) Reporting requirements.

(1) In addition to any other required loss reserve certification, the controlled insurer shall annually, on April 1 of each year, file with the commissioner an opinion of an independent casualty actuary or other independent loss reserve specialist acceptable to the commissioner, reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of year-end, including incurred but not reported losses, on business placed by the broker; and

(2) the controlled insurer shall annually report to the commissioner the amount of commissions paid to the broker, the percentage such amount represents of the net premiums written and comparable amounts and percentage paid to noncontrolling brokers for placements of the same kinds of insurance.

Sec. 5. The broker, prior to the effective date of the policy, shall deliver written notice to the prospective insured disclosing the relationship between the broker and the controlled insurer; except that, if the business is placed through a person who is not a controlling broker, the controlling broker shall retain in his or her records a signed commitment from such person that he or she is aware of the relationship between the insurer and the broker and that the person has or will notify the insured.

Sec. 6. (a)(1) If the commissioner believes the controlling broker or any other person has not complied with this act, or any regulation or order promulgated hereunder, the commissioner may, after a hearing conducted under the provisions of the Kansas administrative procedures act, order the controlling broker to cease placing business with the controlled insurer; and

(2) if it was found that because of such noncompliance, the controlled insurer or any policyholder thereof has suffered any loss or damage, the

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commissioner may maintain a civil action or intervene in an action brought by or on behalf of the insurer or policyholder for recovery of compensatory damages for the benefit of the insurer or policyholder or other appropriate relief.

(b) If an order for liquidation or rehabilitation of the controlled insurer has been entered pursuant to L. 1991, ch. 125, and the receiver appointed under that order believes that the controlling broker or any other person has not materially complied with this act, or any regulation or order promulgated hereunder, and the insurer suffered any loss or damage therefrom, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

(c) Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided for in chapter 40, Kansas statutes annotated.

(d) Nothing contained in this section is intended to or shall in any manner alter or affect the rights of policyholders, claimants, creditors or other third parties.

Sec. 7. This act shall take effect and be in force from and after December 31, 1992 and its publication in the statute book.

Explanatory Memorandum For

Legislative Proposal No. 3

This proposal suggests several amendments to the Kansas statutes governing the activities of insurance holding companies. As a result of our accreditation review conducted by representatives of the National Association of Insurance Commissioners, two provisions in our existing law were found to be deficient. These deficiencies did not prevent us from becoming accredited but will prevent us from remaining accredited if not corrected. Therefore, Legislative Proposal No. 3 recommends these amendments. However, Kansas was one of the first states to enact an insurance holding company act having done so in 1974. Therefore, this proposal also suggests a number of amendments that will make its provisions more comparable to the current NAIC model.

LEGISLATIVE PROPOSAL NO. 3

AN ACT relating to insurance; holding companies; registration; acquisitions; mergers; requirements; amending K.S.A. 1991 Supp. 40-3302, 40-3304, 40-3305, 40-3306, 40-3314 and K.S.A. 40-3309, 40-3310 and 40-3311 and repealing the existing sections.

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

Section 1. K.S.A. 1991 Supp. 40-3302 is hereby amended to read as follows: 40-3302. As used in this act, unless the context otherwise requires:

(a) "Affiliate" of, or person "affiliated" with, a specific person, means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(b) "Commissioner of insurance" means the commissioner of insurance, the commissioner's deputies, or the insurance department, as appropriate.

(c) "Control" including the terms "controlling", "controlled by" and "under common control with", means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power by vote, or holds proxies representing 10% or more of the voting securities of any other person. The presumption may be rebutted only for registration purposes pursuant to K.S.A. 40-3305 and amendments thereto by a showing made in the manner provided by subsection (i) of K.S.A. 40-3305 and amendments thereto, that control does not exist in fact. The commissioner of insurance may determine, after a hearing in accordance with the provisions of the Kansas administrative procedure act, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(d) "Insurance holding company system" means two or more affiliated persons, one or more of which is an insurer.

(e) "Insurer" means any corporation, company, association, society, fraternal benefit society, mutual nonprofit hospital service corporation, nonprofit medical service corporation, nonprofit dental service corporation, nonprofit optometric service corporation, reciprocal exchange, person or partnership writing contracts of insurance, indemnity or suretyship in this state upon any type of risk or loss except lodges, societies, persons or associations transacting business pursuant to the provisions of K.S.A. 40-202 and amendments thereto.

(f) "Person" means an individual, corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert~~,~~. ~~but shall not include any securities broker performing no more than the usual and customary broker's function.~~

(g) "Securityholder" of a specified person means one who owns any security of such person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing.

(h) "Subsidiary" of a specified person means an affiliate controlled by such person directly, or indirectly, through one or more intermediaries.

(i) "Voting security" means any security convertible into or evidencing a right to acquire a voting security.

Sec. 2. K.S.A. 1991 Supp. 40-3304 is hereby amended to read as follows: 40-3304. (a) No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities ~~for~~ or, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the commissioner of insurance and has sent to such

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insurer, a statement containing the information required by this section and such offer, request, invitation, agreement or acquisition has been approved by the commissioner of insurance in the manner hereinafter prescribed. The requirements of this section shall not apply to the merger or consolidation of those companies subject to the requirements of K.S.A. 40-507 and 40-1216 to 40-1225, inclusive, and amendments thereto.

For the purposes of this section a domestic insurer shall include any ~~other~~ person controlling a domestic insurer unless such ~~other~~ person as determined by the commissioner is either directly or through its affiliates primarily engaged in business other than the business of insurance. However, such person shall file a pre-acquisition notification with the commissioner containing the information set forth in K.S.A. 1991 Supp. 40-3314(c)(1) 30 days prior to the proposed effective date of the acquisition. Failure to file is subject to K.S.A. 1991 Supp. 40-3314(e)(3). For the purposes of this section, "person" shall not include any securities broker holding, in the usual and customary brokers function, less than 20% of the voting securities of an insurance company or of any person which controls an insurance company.

(b) The statement to be filed with the commissioner of insurance hereunder shall be made under oath or affirmation, shall be accompanied by a nonrefundable filing fee of $1000, and shall contain the following information:

(1) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (a) of this section is to be affected, hereinafter called "acquiring party", and: (A) If such person is an individual, such individual's principal occupation and all offices and positions held during the past five years and any conviction of crimes other than minor traffic violations during the past 10 years; (B) if such person is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as such person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such person and such person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions.

Such list shall include for each such individual the information required by subparagraph (A) of this subsection;

(2) the source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose <u>including any pledge of the insurer's stock, or the stock of any of its subsidiaries or controlling affiliates,</u> and the identity of persons furnishing such consideration, except that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing such statement so requests;

(3) fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each such acquiring party or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence, and similar unaudited information as of a date not earlier than 90 days prior to the filing of the statement;

(4) any plans or proposals which each acquiring party may have to liquidate such insurer, to sell its assets or merge or consolidate it with any person or to make any other material change in its business or corporate structure or management;

(5) the number of shares of any security referred to in subsection (a) of this section which each acquiring party proposes to acquire and the terms of the offer, request, invitation, agreement or acquisition referred to in subsection (a) of this section, and a statement as to the method by which the fairness of the proposal was arrived at;

(6) the amount of each class of any security referred to in subsection (a) of this section which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(7) a full description of any contracts, arrangements or understandings with respect to any security referred to in subsection (a) of this section in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or

withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements or understandings have been entered into;

(8) a description of the purchase of any security referred to in subsection (a) of this section during the 12 calendar months preceding the filing of the statement, by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor;

(9) a description of any recommendations to purchase any security referred to in subsection (a) of this section made during the 12 calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of such acquiring party;

(10) copies of all tender offers for, requests or invitations for tenders of, exchange offers for and agreements to acquire or exchange any securities referred to in subsection (a) of this section, and, if distributed, of additional soliciting material relating thereto;

(11) the terms of any agreement, contract or understanding made with <u>or proposed to be made with</u> any broker-dealer as to solicitation of securities referred to in subsection (a) of this section for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto;

(12) such additional information as the commissioner of insurance may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest.

If the person required to file the statement referred to in subsection (a) of this section is a partnership, limited partnership, syndicate or other group, the commissioner of insurance may require that the information called for by paragraphs (1) through (12) of subsection (b) of this section shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member or person is a corporation or the person required to file the statement referred to in subsection (a) of this section is a corporation, the commissioner of insurance may require that the information called for by paragraphs (1) through (12) of subsection (b) of this section shall be given with respect to such corporation, each officer and director of such corporation and each

person who is directly or indirectly the beneficial owner of more than 10% of the outstanding voting securities of such corporation.

If any material change occurs in the facts set forth in the statement filed with the commissioner of insurance and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner of insurance and sent to such insurer within two business days after the person learns of such change.

(c) If any offer, request, invitation, agreement or acquisition referred to in subsection (a) of this section is proposed to be made by means of a registration statement under the securities act of 1933 or in circumstances requiring the disclosure of similar information under the securities exchange act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subsection (a) of this section may utilize such documents in furnishing the information called for by that statement.

(d)(1) The commissioner of insurance shall approve any merger or other acquisition of control referred to in subsection (a) of this section unless, after a public hearing thereon conducted in accordance with the provisions of the Kansas administrative ~~proeedure~~ procedures act, the commissioner finds that:

(A) After the change of control the domestic insurer referred to in subsection (a) of this section would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(B) the effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein~~;~~. In applying the competitive standard in this paragraph:

(i) The informational requirements of K.S.A. 1991 Supp. 40-3314(c)(1) and the standards of K.S.A. 1991 Supp. 40-3314(d)(2) shall apply;

(ii) the merger or other acquisition shall not be disapproved if the commissioner finds that any of the situations meeting the criteria provided by K.S.A. 1991 Supp. 40-3314(d)(3) exist; and

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(iii) the commissioner may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time.

(C) the financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders;

(D) the plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest; or

(E) the competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control~~.~~; or

(F) the acquisition is likely to be hazardous or prejudicial to the insurance buying public.

(2) The public hearing referred to in paragraph (1) of subsection (d) of this section shall be held as soon as practical after the statement required by this subsection (a) of this section is filed, and at least 20 days' notice thereof shall be given by the commissioner of insurance to the person filing the statement. Not less than seven days' notice of such public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the commissioner of insurance. At such hearing, the person filing the statement, ~~shall be a party. Notwithstanding the provisions of K.S.A. 77-521 and amendments thereto,~~ the insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected thereby shall have the right to ~~intervene in the hearing and to~~ present evidence, examine and cross-examine witnesses, and offer oral and written arguments in accordance with the Kansas administrative procedures act. In the absence of intervention, such insurer or person shall have right to present oral or written statements in accordance with subsection (c) of K.S.A. 77-523 and amendments thereto.

(3) The commissioner may retain at the acquiring person's expense any attorneys, actuaries, accountants and other experts not otherwise a part of

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the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control.

~~(e) No statement, information, notice or other material filed with the commissioner pursuant to this section shall be required to be provided to any securityholder by mail or otherwise from and after the effective date of this act.~~

~~(f)~~(e) The provisions of this section shall not apply to:

~~(1) Any offers, requests, invitations, agreements or acquisitions by the person referred to in subsection (a) of this section of any voting security referred to in subsection (a) of this section which, immediately prior to the consummation of such offer, request, invitation, agreement or acquisition, was not issued and outstanding;~~

~~(2)~~ any offer, request, invitation, agreement or acquisition which the commissioner of insurance by order shall exempt therefrom as: ~~(A)~~(1) Not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer; or ~~(B)~~(2) as otherwise not comprehended within the purposes of this section.

~~(g)~~(f) The following shall be violations of this section:

(1) The failure to file any statement, amendment or other material required to be filed pursuant to subsection (a) or (b) of this section; or

(2) the effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the commissioner of insurance has given the commissioner's approval thereto.

~~(h)~~(g) The courts of this state are hereby vested with jurisdiction over every securityholder of a domestic insurer and every person not resident, domiciled or authorized to do business in this state who files a statement with the commissioner of insurance under this section and over all actions involving such person arising out of violations of this section. Each such person shall be deemed to have performed acts equivalent to and constituting an appointment by such a person of the commissioner of insurance to be such person's true and lawful attorney upon whom may be served all lawful process in any action, suit or proceeding arising out of violations of this section. Copies of all such lawful process shall be served on the commissioner of insurance and transmitted by registered or certified mail by the commissioner of insurance to such person at such person's last known address.

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Sec. 3. K.S.A. 1991 Supp. 40-3305 is hereby amended to read as follows: 40-3305. (a) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner of insurance, except a foreign insurer subject to ~~disclosures~~ registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section.

Any insurer which is subject to registration under this section shall register within ~~60 days after the effective date of this act or~~ 15 days after it becomes subject to registration, and annually thereafter by May 1 of each year ~~whichever is later,~~ unless the commissioner of insurance for good cause shown extends the time for registration, and then within such extended time. The commissioner of insurance may require any authorized insurer which is a member of a holding company system and which is not subject to registration under this section to furnish a copy of the registration statement, the summary specified in subsection (c) of this section or other information filed by such insurance company with the insurance regulatory authority of its domiciliary jurisdiction.

(b) Every insurer subject to registration shall file a registration statement on a form provided by the commissioner of insurance, which shall contain current information about:

(1) The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer;

(2) the identity and relationship of every member of the insurance holding company system;

(3) the following agreements in force~~, relationships subsisting~~ and transactions currently outstanding or which have occurred during the last calendar year between such insurer and its affiliates:

(A) loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(B) purchases, sales, or exchanges of assets;

(C) transactions not in the ordinary course of business;

(D) guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to

liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(E) all management agreements and service contracts and all cost sharing arrangements~~;--other--than--cost--allocation--arrangements--based--upon generally-accepted-accounting-principles~~;

(F) reinsurance agreements ~~covering-all-or-substantially-all-of-one-or more-lines-of-insurance-of-the-ceding-company~~;

(G) dividends and other distributions to shareholders; and

(H) consolidated tax allocation agreements.

(4) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner of insurance;

(5) 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.

(c) All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

~~(c)~~ (d) No information need be disclosed on the registration statement filed pursuant to subsection (b) if such information is not material for the purpose of this section. Unless the commissioner of insurance by rules and regulations or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, ~~or~~ investments, or guarantees involving .5% or less of an insurer's admitted assets as of the December 31 next preceding shall not be deemed material for purposes of this section.

~~(d)~~ (e) Each registered insurer shall keep current the information required to be disclosed in such insurer's registration statement by reporting all material changes or additions on amendment forms provided by the commissioner of insurance within 15 days after the end of the month in which it learns of each such change or addition, except that subject to subsection (c) of K.S.A. 40-3306 and amendments thereto, each registered insurer shall report all dividends and other distributions to shareholders within ~~two~~ 15 business days following the declaration thereof.

(f) Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information

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to an insurer, where such information is reasonably necessary to enable the insurer to comply with the provisions of this act.

~~(e)~~ (g) The commissioner of insurance shall terminate the registration of any insurer which demonstrates that such insurer no longer is a member of an insurance holding company system.

~~(f)~~ (h) The commissioner of insurance may require or allow two or more affiliated insurers subject to registration hereunder to file a consolidated registration statement ~~or consolidated reports amending such insurers' consolidated registration statement or such insurers' individual registration statements~~.

~~(g)~~ (i) The commissioner of insurance may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (a) and to file all information and material required to be filed under this section.

~~(h)~~ (j) The provisions of this section shall not apply to any information or transaction if and to the extent the commissioner of insurance by order shall exempt the same from the provisions of this section.

~~(i)~~ (k) Any person may file with the commissioner of insurance a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the commissioner of insurance disallows such a disclaimer. The commissioner of insurance shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard in accordance with the provisions of the Kansas administrative procedure act.

Sec. 4. K.S.A. 1991 Supp. 40-3306 is hereby amended to read as follows: 40-3306. (a) 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~~ charges or fees for services performed shall be reasonable;

(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~~ expenses incurred and payment received shall be allocated to the insurer in conformity insurance accounting practices consistently applied;

(4) the books, accounts and records of each party to all such transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions including such accounting information necessary to support the reasonableness of the charges or fees to the respective parties; and

(5) 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.

~~(b) For purposes of this act, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to such insurer's financial needs, the following factors, among others, shall be considered:~~

~~(1) The size of the insurer as measured by such insurer's assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria;~~

~~(2) the extent to which the insurer's business is diversified among the several lines of insurance;~~

~~(3) the number and size of risks insured in each line of business;~~

~~(4) the extent of the geographical dispersion of the insurer's insured risks;~~

~~(5) the nature and extent of the insurer's reinsurance program;~~

~~(6) the quality, diversification, and liquidity of the insurer's investment portfolio;~~

~~(7) the recent past and projected future trend in the size of the insurer's surplus as regards policyholders;~~

~~(8) the surplus as regards policyholders maintained by other comparable insurers;~~

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~~----(9)--the-adequacy-of-the-insurer's-reserves;-and~~

~~----(10)---the--quality--and--liquidity--of--investments--in--subsidiaries--made pursuant--to--K.S.A.--40-3303,--and--amendments--thereto.---The--commissioner--of insurance-may--treat--any-such-investment--as-a-disallowed-asset-for-purposes of--determining--the-adequacy-of-surplus-as-regards-policyholders-whenever-in the-commissioner's-judgment-such-investment-so-warrants.~~

~~(c)~~ (b) The following transactions involving a domestic insurer and any person in such insurer's holding company system may not be entered into unless the insurer has notified the commissioner in writing of such insurer's intention to enter into such transaction at least 30 days prior thereto, or such shorter period as the commissioner may permit, and the commissioner has not disapproved such transaction within such period.

(1) Sales, purchases, exchanges, loans or extensions of credit, guarantees or investments provided such transactions are equal to or exceed:

(A) With respect to nonlife insurers, the lesser 3% of the insurer's admitted assets or 25% of surplus as regards policyholders;

(B) with respect to life insurers, 3% of the insurer's admitted assets, each as of December 31 next preceding.

(2) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes such loans or extensions of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, purchase assets of, or make investments in, any affiliate of the insurer making such loans or extensions of credit provided such transactions are equal to or exceed:

(A) With respect to nonlife insurers, the lesser of 3% of the insurer's admitted assets or 25% of surplus as regards policyholders;

(B) with respect to life insurers, 3% of the insurer's admitted assets, each as of December 31 next preceding.

(3) Reinsurance agreements or modifications thereto in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds 5% of the insurer's surplus as regards policyholders, as of December 31 next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate

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that any portion of such assets will be transferred to one or more affiliates of the insurer;

(4) all management agreements, service contracts and all cost-sharing arrangements; and

(5) any material transactions, specified by regulation, which the commissioner determines may adversely affect the interests of the insurer's policyholders.

Nothing herein contained shall be deemed to authorize or permit any transactions which, in the case of an insurer not a member of the same holding company system, would be otherwise contrary to law.

(c) A domestic insurer may not enter into transactions which are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the commissioner determines that such separate transactions were entered into over any 12 month period for such purpose, he may exercise his authority under K.S.A. 1991 Supp. 40-3311.

(d) The commissioner, in reviewing transactions pursuant to subsection (a), paragraph (2), shall consider whether the transactions comply with the standards set forth in subsection (a), paragraph (1) and whether they may adversely affect the interests of policyholders.

(e) The commissioner shall be notified within 30 days of any investment of the domestic insurer in any one corporation if the total investment in such corporation by the insurance holding company system exceeds 10% of such corporation's voting securities.

~~(d)(1)~~ (f)(1) No insurer subject to registration under K.S.A. 40-3305, and amendments thereto, shall pay any extraordinary dividend or make any other extraordinary distribution to such insurer's shareholders until:

(A) Thirty days after the commissioner of insurance has received notice of the declaration thereof and has not within such period disapproved such payment; or

(B) the commissioner of insurance shall have approved such payment within such 30-day period.

(2) For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or

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distributions made within the preceding 12 months exceeds the ~~greater~~ lesser of:

(A) Ten percent of such insurer's surplus as regards policyholders as of December 31 next preceding; or

(B) the net gain from operations of such insurer, if such insurer is a life insurer, or the net investment income, if such insurer is not a life insurer, not including realized capital gains for the 12-month period ending December 31 next preceding, but shall not include pro rata distributions of any class of the insurer's own securities. An extraordinary dividend or distribution shall also include any dividend or distribution made or paid out of any funds other than surplus profits arising from the insurer's business, as defined in K.S.A. 40-233, and amendments thereto. The provisions of K.S.A. 40-233, and amendments thereto, shall not be construed so as to prohibit an insurer, subject to registration under K.S.A. 40-3305, and amendments thereto, from making or paying an extraordinary dividend or distribution in accordance with this section. In determining whether a dividend is extraordinary, an insurer other than a life insurer may carry forward net income from the previous two calendar years that has not already been paid out as dividends. This carry-forward shall be computed by taking the net income from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years.

(3) Notwithstanding any other provisions of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval thereof, and such a declaration shall confer no rights upon shareholders until:

(A) The commissioner of insurance has approved the payment of such dividend or distribution; or

(B) the commissioner of insurance has not disapproved such payment within the 30-day period referred to above.

(g)(1) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with this act.

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(2) Nothing herein shall preclude a domestic insurer from having or sharing a common management or cooperative or joint use of personnel, property or services with one or more other persons under arrangements meeting the standards of K.S.A. 1991 Supp. 40-3306.

(h) For purposes of this act, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to such insurer's financial needs, the following factors, among others, shall be considered:

(1) The size of the insurer as measured by such insurer's assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria;

(2) the extent to which the insurer's business is diversified among the several lines of insurance;

(3) the number and size of risks insured in each line of business;

(4) the extent of the geographical dispersion of the insurer's insured risks;

(5) the nature and extent of the insurer's reinsurance program;

(6) the quality, diversification, and liquidity of the insurer's investment portfolio;

(7) the recent past and projected future trend in the size of the insurer's surplus as regards policyholders;

(8) the surplus as regards policyholders maintained by other comparable insurers;

(9) the adequacy of the insurer's reserves; and

(10) the quality and liquidity of investments in affiliates. The commissioner of insurance may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in the commissioner's judgment such investment so warrants.

Sec. 5. K.S.A. 1991 Supp. 40-3308 is hereby amended to read as follows: 40-3308. All information, documents and copies thereof obtained by or disclosed to the commissioner of insurance or any other person in the course of an examination or investigation made pursuant to K.S.A. 40-3307 and amendments thereto and all information reported pursuant to K.S.A. 40-3305 and amendments thereto, shall be given confidential treatment and shall not be subject to subpoena. Such information, documents and copies

thereto shall not be made public by the commissioner of insurance, the national association of insurance commissioners or any other person, except to insurance departments of other states and as otherwise provided in this section, without the prior written consent of the insurer to which it pertains. If the commissioner of insurance, after giving the insurer and its affiliates who would be affected thereby, notice and opportunity to be heard in accordance with the provisions of the Kansas administrative procedure act, determines that the interests of policyholders, shareholders or the public will be served by the publication thereof, the commissioner may publish all or any part thereof in such a manner as the commissioner may deem appropriate.

Sec. 6. K.S.A. 40-3310 is hereby amended to read as follows: 40-3310. (a) Whenever it appears to the commissioner of insurance that any insurer or any director, officer, employee or agent thereof has committed or is about to commit a violation of this act or of any rule, regulation, or order issued by the commissioner of insurance hereunder, the commissioner of insurance may apply to the district court in and for the county in which the principal office of the insurer is located or if such insurer has no such office in this state then to the district court of Shawnee county for an order enjoining such insurer or such director, officer, employee or agent thereof from violating or continuing to violate this act or any such rule, regulation or order, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors and shareholders or the public may require.

(b) No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of this act or of any rule, regulation or order issued by the commissioner of insurance hereunder may be voted at any shareholders' meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though such securities were not issued and outstanding; but no action taken at any such meeting shall be invalidated by the voting of such securities, unless the action would materially affect control of the insurer or unless the courts of this state have so ordered. If an insurer or the commissioner of insurance has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the

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provisions of this act or of any rule, regulation or order issued by the commissioner of insurance hereunder the insurer or the commissioner of insurance may apply to the district court of Shawnee county or to the district court for the county in which the insurer has its principal place of business to enjoin any offer, request, invitation, agreement or acquisition made in contravention of K.S.A. 40-3304 or any rule, regulation, or order issued by the commissioner of insurance thereunder to enjoin the voting of any security so ~~required~~ acquired to void any vote of such security already cast at any meeting of shareholders, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors and shareholders or the public may require.

(c) In any case where a person has acquired or is proposing to acquire any voting securities in violation of this act or any rule, regulation or order issued by the commissioner of insurance hereunder, the district court in Shawnee county or the district court for the county in which the insurer has its principal place of business may, on such notice as the court deems appropriate, upon the application of the insurer or the commissioner of insurance seize or sequester any voting securities of the insurer owned directly or indirectly by such person, and issue such orders with respect thereto as may be appropriate to effectuate the provisions of this act. Notwithstanding any other provisions of law, for the purposes of this act the situs of the ownership of the securities of domestic insurers shall be deemed to be in this state.

Sec. 7. K.S.A. 40-3311 is hereby amended to read as follows: 40-3311. Any insurer, without just cause, failing to file any registration statement within the time prescribed in subsections (a) and (d) of K.S.A. 40-3305 and amendments thereto shall be subject to a penalty of $100 for each day's delay. The maximum penalty under this section is $10,000. The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

(b) Every director or officer of an insurance holding company system who knowingly violates, participates in, or assents to, or who knowingly shall permit any of the officers or agents of the insurer to engage in transactions or make investments which have not been properly reported or

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submitted pursuant to subsection (a) of K.S.A. 40-3305 or subsections (c) or (d) of K.S.A. 40-3306 and amendments thereto, or which otherwise violates this act, shall pay, in such directors' or officers' individual capacity, a civil forfeiture of not more than $5,000 per violation, after notice and hearing before the commissioner. In determining the amount of the civil forfeiture, the commissioner shall take into account the appropriateness of the forfeiture with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(c) Whenever it appears to the commissioner that any insurer subject to this act or any director, officer, employee or agent thereof has engaged in any transaction or entered into a contract which is subject to K.S.A. 40-3306 and amendments thereto and which would not have been approved had such approval been requested, the commissioner may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing the commissioner may also order the insurer to void any such contracts and restore the status quo if such action is in the best interest of the policyholders, creditors or the public.

(d) Whenever it appears to the commissioner that any insurer or any director, officer, employee or agent thereof has committed a willful violation of this act, the commissioner may cause criminal proceedings to be instituted by the district court for the county in which the principal office of the insurer is located or if such insurer has no such office in this state, then by the district court for Shawnee county against such insurer or the responsible director, officer, employee or agent thereof. Any insurer which willfully violates this act may be fined not more than $50,000. Any individual who willfully violates this act may be fined in individual capacity not more than $10,000 or, be imprisoned for not more than one to three years, or both.

(e) Any officer, director or employee of an insurance holding company system who knew or reasonably should have known they were subscribing to or making or causing to be made any false statements, false reports or false filings with the intent to deceive the commissioner in the performance of duties under this act, upon conviction thereof, shall be imprisoned for not more than five to 10 years or fined $100,000, or both. Any fines imposed shall be paid by the officer, director or employee in such person's individual capacity.

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New Sec. 8. Whenever it appears to the commissioner that any person has committed a violation of this act which makes the continued operation of an insurer contrary to the interests of policyholders or the public, the commissioner may, after giving notice and an opportunity to be heard, determine to suspend, revoke or refuse to renew such insurer's license or authority to do business in this state for such period as he finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law.

Sec. 9. K.S.A. 1991 Supp. 40-3413 is hereby amended to read as follows: 40-3413. (a) Definitions. The following definitions shall apply for the purposes of this section only:

(1) "Acquisition" means any agreement, arrangement or activity the consummation of which results in a person acquiring directly or indirectly the control of another person and includes, but is not limited to, the acquisition of voting securities, the acquisition of assets, bulk reinsurance and mergers.

(2) An "involved insurer" includes an insurer which either acquires or is acquired, is affiliated with an acquirer or acquired or is the result of a merger.

(b) Scope.

(1) Except as provided in paragraph (2) of this subsection, this section applies to any acquisition in which there is a change in control of an insurer authorized to do business in this state.

(2) This section shall not apply to the following:

(A) An acquisition subject to approval or disapproval by the commissioner pursuant to K.S.A. 40-3304 and amendments thereto;

(B) a purchase of securities solely for investment purposes so long as such securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in any insurance market in this state. If a purchase of securities results in a presumption of control under K.S.A. 40-3302(c) and amendments thereto, it is not solely for investment purposes unless the commissioner of the insurer's state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and such disclaimer action or affirmative finding is

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communicated by the domiciliary commissioner to the commissioner of this state;

(C) the acquisition of a person by another person when both persons are neither directly nor through affiliates primarily engaged in the business of insurance, if pre-acquisition notification is filed with the commissioner in accordance with subsection (c)(1) 30 days prior to the proposed effective date of the acquisition. However, such pre-acquisition notification is not required for exclusion from this section if the acquisition would otherwise be excluded from this section by any other subparagraph of subsection (b)(2);

(D) the acquisition of already affiliated persons;

(E) an acquisition if, as an immediate result of the acquisition:

(i) In no market would the combined market share of the involved insurers exceed 5% of the total market;

(ii) there would be no increase in any market share; or

(iii) in no market would:

(aa) The combined market share of the involved insurers exceeds 12% of the total market; and

(bb) the market share increases by more than 2% of the total market.

For the purpose of this subparagraph (2)(E), a market means direct written insurance premium in this state for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this state.

(F) An acquisition for which a pre-acquisition notification would be required pursuant to this section due solely to the resulting effect on the ocean marine insurance line of business;

(G) an acquisition of an insurer whose domiciliary commissioner affirmatively finds that such insurer is in failing condition, there is a lack of feasible alternative to improving such condition, the public benefits of improving such insurer's condition through the acquisition exceed the public benefits that would arise from not lessening competition, and such findings are communicated by the domiciliary commissioner to the commissioner of this state.

(c) Pre-acquisition notification, waiting period. An acquisition covered by subsection (b) may be subject to an order pursuant to subsection (e) unless the acquiring person files a pre-acquisition notification and the waiting period has expired. The acquired person may file a pre-acquisition

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notification. The commissioner shall give confidential treatment to information submitted under this subsection in the same manner as provided in K.S.A. 40-3308 and amendments thereto.

(1) The pre-acquisition notification shall be in such form and contain such information as prescribed by the national association of insurance commissioners relating to those markets which, under subsection (b)(2)(E), cause the acquisition not to be exempted from the provisions of this section. The commissioner may require such additional material and information to determine whether the proposed acquisition, if consummated, would violate the competitive standard of subsection (d). The required information may include an opinion of an economist as to the competitive impact of the acquisition in this state accompanied by a summary of the education and experience of such person indicating the ability to render an informed opinion.

(2) The waiting period required shall begin on the date of receipt of the commissioner of a pre-acquisition notification and shall end on the earlier of the 30th day after the date of such receipt or termination of the waiting period by the commissioner. Prior to the end of the waiting period, the commissioner on a one-time basis may require the submission of additional needed information relevant to the proposed acquisition, in which event the waiting period shall end on the earlier of the 30th day after receipt of such additional information by the commissioner or termination of the waiting period by the commissioner.

(d) Competitive standard.

(1) The commissioner may enter an order under subsection (e)(1) with respect to an acquisition if there is substantial evidence that the effect of the acquisition may be substantially to lessen competition in any line of insurance in this state or tend to create a monopoly therein or if the insurer fails to file adequate information in compliance with subsection (c).

(2) In determining whether a proposed acquisition would violate the competitive standard of paragraph (1) of subsection (d), the commissioner shall consider the following:

(A) Any acquisition covered under subsection (b) involving two or more insurers competing in the same market is prima facie evidence of violation of the competitive standards:

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(i) If the market is highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	Insurer B
4%	4% or more
10%	2% or more
15%	1% or more

(ii) or, if the market is not highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	Insurer B
5%	5% or more
10%	4% or more
15%	3% or more
19%	1% or more

A highly concentrated market is one in which the share of the four largest insurers is 75% or more of the market. Percentages not shown in the tables are interpolated proportionately to the percentages that are shown. If more than two insurers are involved, exceeding the total of the two columns in the table is prima facie evidence of violation of the competitive standard in paragraph (1) of this subsection (d). For the purpose of this subparagraph (A), the insurer with the largest share of the market shall be deemed to be Insurer A.

(B) There is a significant trend toward increased concentration when the aggregate market share of any grouping of the largest insurers in the market, from the two largest to the eight largest, has increased by 7% or more of the market over a period of time extending from any base year five to 10 years prior to the acquisition up to the time of the acquisition. Any acquisition or merger covered under subsection (b) involving two or more insurers competing in the same market is prima facie evidence of violation of the competitive standard in paragraph (1) of this subsection (d) if:

(i) There is a significant trend toward increased concentration in the market;

(ii) one of the insurers involved is one of the insurers in a grouping of such large insurers showing the requisite increase in the market share; and

(iii) another involved insurer's market is 2% or more.

(C) For the purposes of subsection (d)(2):

(i) The term "insurer" includes any company or group of companies under common management, ownership or control;

(ii) the term "market" means the relevant product and geographical markets. In determining the relevant product and geographical markets, the commissioner shall give due consideration to, among other things, the definitions or guidelines, if any, promulgated by the national association of insurance commissioners and to information, if any, submitted by parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business, such line being that used in the annual statement required to be filed by insurers doing business in this state, and the relevant geographical market is assumed to be this state;

(iii) the burden of showing prima facie evidence of violation of the competitive standard rests upon the commissioner.

(D) Even though an acquisition is not prima facie violative of the competitive standard under subparagraphs (2)(A) and (B) of this subsection (d), the commissioner may establish the requisite anticompetitive effect based upon other substantial evidence. Even though an acquisition is prima facie violative of the competitive standard under subparagraphs (2)(A) and (B) of this subsection (d), a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making a determination under this paragraph include, but are not limited to, the following: Market shares, volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry, and ease of entry and exit into the market.

(3) An order may not be entered under subsection (e)(1) if:

(A) The acquisition will yield substantial economies of scale or economies in resource utilization that cannot be feasibly achieved in any other way, and the public benefits which would arise from such economies exceed the public benefits which would arise from not lessening competition; or

(B) the acquisition will substantially increase the availability of insurance, and the public benefits of such increase exceed the public benefits which would arise from not lessening competition.

(e) Orders and penalties.

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(1)(A) If an acquisition violates the standards of this section, the commissioner may enter an order:

(i) Requiring an involved insurer to cease and desist from doing business in this state with respect to the line or lines of insurance involved in the violation; or

(ii) denying the application of an acquired or acquiring insurer for a license to do business in this state.

(B) Such an order shall not be entered unless:

(i) There is a hearing;

(ii) notice of such hearing is issued prior to the end of the waiting period and not less than 15 days prior to the hearing; and

(iii) the hearing is concluded and the order is issued no later than 60 days after the end of the waiting period. Every order shall be accompanied by a written decision of the commissioner setting forth findings of fact and conclusions of law.

(C) An order entered under this paragraph shall not become final earlier than 30 days after it is issued, during which time the involved insurer may submit a plan to remedy the anticompetitive impact of the acquisition within a reasonable time. Based upon such plan or other information, the commissioner shall specify the conditions, if any, under the time period during which the aspects of the acquisition causing a violation of the standards of this section would be remedied and the order vacated or modified.

(D) An order pursuant to this subsection (e)(1) shall not apply if the acquisition is not consummated.

(2) Any person who violates a cease and desist order of the commissioner under this subsection (e)(1) and while such order is in effect, may after notice and hearing and upon order of the commissioner, be subject at the discretion of the commissioner to any one or more of the following:

(A) A monetary penalty of not more than $10,000 for each day of violation; and/or

(B) suspension or revocation of such person's license.

(3) Any insurer or other person who fails to make a filing required by this section and who also fails to demonstrate a good faith effort to comply with any such filing requirement, shall be subject to a fine ~~or~~ of not more than $50,000.

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(f) Inapplicable provisions. Subsections (b) and (c) of K.S.A. 40-3310 and amendments thereto do not apply to acquisitions covered under subsection (b).

Sec. 10. K.S.A. 1991 Supp. 40-3302, 40-3304, 40-3305, 40-3306, 40-3308, 40-3314, K.S.A. 40-3310 and 40-3311 are hereby repealed.

Sec. 11. This act shall take effect and be in force from and after its publication in the statute book.

Explanatory Memorandum For

Legislative Proposal No. 4

Legislative Proposal No. 4 suggests several changes in the statutes relating to insurance agents. Specifically, it proposes to:

(a) Amend K.S.A. 1990 Supp. 40-240f to provide for suspension and monetary penalty prior to license revocation for failure to furnish timely evidence of completion of continuing education requirements;

(b) Reduce the length of time providers of continuing education courses must retain attendance records from seven years to no more than four years;

(c) Amend K.S.A. 1990 Supp. 40-241 to reduce from 5 to 4 the classes of insurance for which an agent's examination is required by eliminating variable contracts as a separate class; and

(d) Amend penalty for late agents' certification to <u>not more</u> than $25 per day instead of <u>at least</u> $25 per day.

LEGISLATIVE PROPOSAL NO. 4

AN ACT relating to insurance; agents; license; certification; continuing education; penalties; amending K.S.A. 1991 Supp. 40-240f, 40-241 and 40-241i and repealing the existing sections.

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

Section 1. K.S.A. 1991 Supp. 40-240f is hereby amended to read as follows: 40-240f. (a) For purposes of this section:

(1) "Biennial due date" means March 31, 1991, and March 31 of each odd-numbered year thereafter.

(2) "Approved subject" or "approved course" means any educational presentation involving insurance fundamentals, insurance law, insurance policies and coverage, insurance needs, insurance risk management, or other areas, which is offered in a class, seminar or other similar form of instruction, and which has been approved by the commissioner under this section as expanding skills and knowledge obtained prior to initial licensure or developing new and relevant skills and knowledge.

(3) "C.E.C." means continuing education credit. One C.E.C. is 50 to 60 minutes of each clock hour of instruction or the C.E.C. value assigned by the commissioner. The C.E.C. values shall be assigned in whole units. The commissioner shall assign a C.E.C. value to each approved subject on a case-by-case basis.

(4) "Biennium" means the period beginning on the effective date of this section and ending on March 31, 1991, and each two-year period thereafter.

(5) "Inactive agent" means a licensed agent who presents evidence satisfactory to the commissioner which demonstrates that such agent will not do any act toward transacting the business of insurance for not less than two but not more than six years from the date such evidence is received by the commissioner. Such additional periods may be granted by the commissioner upon further presentation of evidence satisfactory to the commissioner.

(b)(1) Every licensed agent who is an individual and holds a property or casualty qualification, or both, shall biennially obtain a minimum of twelve C.E.C.'s in courses certified as property and casualty.

(2) Every licensed agent who is an individual and holds a life, accident and health, or variable contracts qualification, or any combination thereof, shall biennially complete twelve C.E.C.'s in courses certified as life, accident and health, or variable contracts.

(3) Every licensed agent who is an individual and holds a crop only qualification shall biennially obtain a minimum of two C.E.C.'s in courses certified as crop under the property and casualty category.

(4) Every licensed agent who is an individual and is licensed only for title insurance shall biennially obtain a minimum of four C.E.C.'s in courses certified by the board of abstract examiners as title under the property and casualty category.

(5) Every licensed agent who is an individual and holds a life insurance license solely for the purpose of selling life insurance or annuity products used to fund a pre-arranged funeral program and whose report of compliance required by subsection (f) of this section is accompanied by a certification from an officer of each insurance company represented that the agent transacted no other insurance business during the period covered by the report shall biennially obtain a minimum of two C.E.C.'s in courses certified as life or variable contracts under the life, accident and health, or variable contracts category.

(c) Individual agents who hold licenses with both a property or casualty qualification, or both, and a life, accident and health, or variable contracts qualification, or any combination thereof, and who earn C.E.C.'s from courses certified by the commissioner as qualifying for credit in any class, may apply those C.E.C.'s toward either the property or casualty continuing education requirement or to the life, accident and health, or variable contracts continuing education requirement. However, a C.E.C. shall not be applied to satisfy both the biennial property or casualty requirement, or both, and the biennial requirement for life, accident and health, or variable contracts, or any combination thereof.

(d) An instructor of an approved subject shall be entitled to the same credit as a student completing the study.

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(e)(1) An individual agent who has been licensed for more than one year shall, on or before the biennial due date, file a report with the commissioner that such agent has met the continuing education requirements for the previous biennium ending on such biennial due date. Every individual agent shall maintain a record of all courses attended together with a certificate of attendance for three years after the date of attendance.

(2) A newly licensed individual agent shall have the remainder of the biennium in which such agent is initially licensed plus the next biennium to comply with the C.E.C. requirements.

(3) If the required report showing proof of continuing education completion is not ~~furnished~~ received by the commissioner by the biennial due date, the individual agent's qualification and corresponding license or licenses shall ~~not~~ be ~~renewed by the commissioner~~ automatically suspended for a period of 90 calendar days or until such time as the agent satisfactorily demonstrates completion of the continuing education requirement whichever is sooner and a penalty of $250 shall be assessed for each license suspended. If the required proof of continuing education completion and the monetary penalty is not furnished within 90 calendar days of the biennial due date, the individual agent's qualification and corresponding license or licenses shall be revoked.

(4) An applicant for an individual agent's license who previously held a license which terminated on or after May 1, 1989, because of failure to meet continuing education requirements and who seeks to be relicensed shall pass the examination required for issuance of the new qualification and license and provide evidence that appropriate C.E.C.'s have been completed for the prior biennium.

(5) An applicant for an individual agent's license who previously held a license which was terminated on or before April 30, 1989, for failure to meet the minimum educational requirements contained in K.S.A. 40-240b as it existed prior to the passage of this act and who seeks to be relicensed shall pass the examination required for issuance of the new license.

(6) Upon written application by an individual agent, the commissioner may, in cases involving medical hardship or military service, extend the time within which to fulfill the minimum continuing educational requirements for a period of not to exceed 180 days.

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(7) This section shall not apply to inactive agents as herein defined during the period of such inactivity. Upon return to active status or expiration of the maximum inactive period, the agent shall have the remainder of the current calendar year plus the next calendar year to comply with the continuing education requirement.

(f)(1) A course, program of study, or subject shall be submitted to and certified by the commissioner in order to qualify for purposes of continuing education.

(2) The following information shall be furnished with each request for certification:

(A) Name of provider or sponsoring organization;

(B) course title;

(C) date course will be offered;

(D) location where course will be offered;

(E) outline of the course including a schedule of times when subjects will be presented;

(F) names and qualifications of instructors;

(G) number of C.E.C.'s requested; and

(H) a nonrefundable fee in the amount of $50 per course or a nonrefundable fee in the amount of $250 per year for all courses.

(3) Upon receipt of such information, the commissioner shall grant or deny certification as an approved subject and indicate the number of C.E.C.'s that will be recognized for the subject. Each approved subject or course shall be assigned by the commissioner to one or both of the following classes:

(A) Property and casualty insurance contracts or

(B) life insurance contracts (including annuity and variable contracts) and accident and health insurance contracts.

(4) A course or subject shall have a value of at least one C.E.C.

(5) A provider seeking approval of a course for continuing education credit shall provide for the issuance of a certificate of attendance to each person who attends a course offered by it. The certificate shall be signed by either the course instructor or the provider's authorized representative. Providers shall also maintain a list of all persons who attend courses offered by them for continuing education credit for ~~at least seven years from the date the courses are offered~~ the remainder of the

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biennium in which the courses are offered and the entire biennium immediately following.

(6) A course may be approved after a program of study has been held if the required material is furnished within 60 days after the program was completed and prior to the biennial due date.

(7) The commissioner may grant approval to specific programs of study that have appropriate merit, such as programs with broad national or regional recognition, notwithstanding the lack of a request for certification. The fee prescribed by subsection (g)(2)(H) of this section shall not apply to approvals granted hereunder.

(g) The commissioner shall provide, upon request, a list of all approved continuing education courses currently available to the public.

(h) An individual agent who studies independently for an insurance examination, other than an agent's examination, approved by the commissioner, and who passes an independently monitored examination, shall receive credit for the C.E.C.'s assigned by the commissioner as recognition for the approved subject. No other credit shall be given for independent study.

(i) The commissioner may waive the continuing education requirements imposed by this act for nonresident agents who have complied with continuing education requirements imposed by their state of domicile.

(j) This section shall take effect and be in force from and after May 1, 1989.

Sec. 2. K.S.A. 1991 Supp. 40-241 is hereby amended to read as follows: 40-241. Any applicant or prospective applicant for an agent's license, if an individual, shall be given an examination by the commissioner or the commissioner's designee to determine whether such applicant possesses the competence and knowledge of the kinds of insurance and transactions under the license applied for, or to be applied for, of the duties and responsibilities of such a license and of the pertinent provisions of the laws of this state. The applicant shall be tested on each class or subclassification of insurance which may be written. An examination fee prescribed in rules and regulations adopted by the commissioner shall be paid by the applicant and shall be required for each class of insurance for each attempt to pass the examination. Such examination fee shall be in addition to the certification fee required under K.S.A. 40-252, and

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amendments thereto. There shall be ~~five~~ four classes of insurance for the purposes of this act:

(1) Life;

(2) accident and health;

(3) casualty and allied lines; and

(4) property and allied lines~~; and~~.

~~(5) variable contracts.~~

The commissioner of insurance shall adopt rules and regulations with respect to the scope, subclassification, type and conduct of such examination. Examinations shall be given to applicants at least twice a month in Topeka, Kansas, and at least quarterly in other convenient locations in the state of Kansas. The commissioner shall publish or arrange for the publication of information and material which applicants can use to prepare for such examination. One or more rating organizations, advisory organizations or other associations may be designated by the commissioner to assist in, or assume responsibility for, distribution of the study manuals to applicants and other interested parties. Persons purchasing the study manual shall be charged a reasonable fee established or approved by the commissioner. In the event the publication and distribution of the study material or the development and conduct of examinations is delegated to private firms, organizations or associations and the state incurs no expense or obligation, the provisions of K.S.A. 75-3738 to 75-3744, inclusive, and amendments thereto, shall not apply. If the commissioner of insurance finds that the individual applicant is trustworthy, competent and has satisfactorily completed the examination, the commissioner shall forthwith issue to the applicant a license as an insurance agent but the issuance of such license shall confer no authority to transact business in this state until the agent has been certified by a company pursuant to K.S.A. 40-241i and amendments thereto. If such applicant fails to satisfactorily complete the examination, the examination may be retaken following a waiting period of not less than seven days from the date of the last attempt. If the applicant fails to satisfactorily complete the examination, it may be retaken following another waiting period of not less than seven days of the most recent attempt. Thereafter, the examination may be retaken following a waiting period of not less than six months from the date of the most recent attempt. The certification fee shall not be returned for any reason. The

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commissioner of insurance shall keep a permanent record of all agents' licenses issued and the insurance companies that the respective agents were certified to represent under such licenses for a period of 10 years.

Sec. 3. K.S.A. 40-241i is hereby amended to read as follows: 40-241i. (a) Any company authorized to transact business in this state may, upon determining that the agent is of good business reputation and, if an individual, has had experience in insurance or will immediately receive a course of instruction in insurance and on the policies and policy forms of such company, certify such agent as the agent of the company under the license in effect for the agent. The certification shall be made to the commissioner on a form prescribed by the commissioner within 15 days of appointment of the agent by the company and shall be accompanied by the certification fees set forth in K.S.A. 40-252, and amendments thereto. Such appointment shall be effective immediately and shall remain in effect until May 1, unless the commissioner is notified to the contrary or the license of the certified agent is terminated. The certification fee shall not be returned for any reason, and failure of the company to certify an agent within 15 working days of such agent's appointment shall subject the company to a penalty of not ~~less~~ more than $25 per calendar day from the date of appointment to the date proper certification is recorded by the insurance department.

(b) Certification of other than an individual agent will automatically include each licensed insurance agent who is an officer, director, partner, employee or otherwise legally associated with the corporation, association, partnership or other legal entity appointed by the company. The required annual certification fee shall be paid for each licensed agent certified by the company at the time of the original certification of the agency and any continuation thereof.

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

(d) Duly licensed insurance agents transacting business in accordance with the provisions of article 41 of chapter 40 of the Kansas Statutes Annotated, and amendments thereto, shall be deemed to be certified by a

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company for the kinds of insurance permitted under the license in effect for the agent.

Sec. 4. K.S.A. 1991 Supp. 40-240f, 40-241 and 40-241i are hereby repealed.

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

Explanatory Memorandum For

Legislative Proposal No. 5

Legislative Proposal No. 5 is a complement to 1991 House Bill No. 2441 which nullified a federal preemption of Kansas insurance company investment laws with respect to investments in mortgage related securities. Enactment of this proposal would add provisions to the statutes governing the investments of insurance companies organized under the laws of this state which would permit investment in mortgage related securities subject to certain limitations and quality standards.

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LEGISLATIVE PROPOSAL NO. 5

AN ACT relating to insurance; investments; insurance companies other than life; mortgage related securities; amending L. 1991, Chapter 122 and repealing the existing section.

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

New Section 1. Any insurance company other than life heretofore or hereafter organized under any law of this state may invest with the direction or approval of a majority of its board of directors or authorized committee thereof, any of its funds, or any part thereof in:

(a) Mortgage related securities issued or guaranteed by the federal home loan mortgage corporation and federal national mortgage association but the amount invested in any one such issue shall not exceed 2% of the admitted assets of the company as shown by its last annual report or a more recent quarterly financial statement filed with the commissioner of insurance;

(b) mortgage related securities issued by or in the name of any private entity which are designated "1" or "2" by the national association of insurance commissioners in their most recently published valuations of securities manual or supplement thereto or are rated investment grade by standard and poor's (at least BBB-) or moody's (at least Baa3) at the time of acquisition. The investment in any one such issue shall not exceed 2% of the admitted assets of the company as shown by its last annual report or a more recent quarterly financial statement filed with the commissioner of insurance.

(c) For purposes of this section "mortgage related securities" shall mean a security that either:

(1) Represents ownership of one or more promissory notes or certificates of interest or participation in such notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of such notes, certificates, or participations of amounts payable under, such notes, certificates, or participations), which notes:

(A) Are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in U.S.C. section 5402(6) of title 42, whether such manufactured home is considered real or personal property under the laws of the state in which it is to be located; and

(B) were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution which is supervised and examined by a federal or state authority, or by a mortgagee approved by the secretary of housing and urban development pursuant to U.S.C. sections 1709 and 1715b of title 12, or, where such notes involve a lien on the manufactured home, by any such institution or by any financial institution approved for insurance by the secretary of housing and urban development pursuant to U.S.C. section 1703 of title 12; or

(2) is secured by one or more promissory notes or certificates of interest or participations in such notes (with or without recourse to the issuer thereof) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, on notes meeting the requirements of subparagraphs (1)(A) and (B) or certificates of interest or participations in promissory notes meeting such requirements.

For the purposes of this paragraph, the term "promissory note", when used in connection with a manufactured home, shall also include a loan, advance, or credit sale as evidenced by a retail installment sales contract or other instrument; or

(3) involve offers or sales of one or more promissory notes directly secured by a first lien on a single parcel of real estate upon which is located a dwelling or other residential or commercial structure, and participation interests in such notes:

(A) Where such securities are originated by a savings and loan association, savings bank, commercial bank, or similar banking institution which is supervised and examined by a federal or state authority, and are offered and sold subject to the following conditions:

(i) the minimum aggregate sales price per purchaser shall not be less than $250,000;

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(ii) the purchaser shall pay cash either at the time of the sale or within 60 days thereof; and

(iii) each purchaser shall buy for his own account only; or

(B) where such securities are originated by a mortgagee approved by the secretary of housing and urban development pursuant to U.S.C. sections 1709 and 1715b of title 12 and are offered or sold subject to the three conditions specified in subparagraph (3)(A) to any institution described in such subparagraph or to any insurance company subject to the supervision of the insurance commissioner, or any agency or officer performing like function, of any state or territory of the United States or the District of Columbia, or the federal home loan mortgage corporation, the federal national mortgage association, or the government national mortgage association.

Transactions between any of the entities described in subparagraph (3)(A) or (3)(B) involving non-assignable contracts to buy or sell the foregoing securities which are to be completed within two years, where the seller of the foregoing securities pursuant to any such contract is one of the parties described in subparagraph (3)(A) or (3)(B) who may originate such securities and the purchaser of such securities pursuant to any such contract is any institution described in subparagraph (3)(A) or any insurance company described in subparagraph (3)(B), the federal home loan mortgage corporation, federal national mortgage association, or the government national mortgage association and where the foregoing securities are subject to the three conditions for sale set forth in subparagraphs (3)(A)(i) through (iii).

New Section 2. Any life insurance company heretofore or hereafter organized under any law of this state may invest with the direction or approval of a majority of its board of directors or authorized committee thereof, any of its funds, or any part thereof in:

(a) Mortgage related securities issued or guaranteed by the federal home loan mortgage corporation and federal national mortgage association but the amount invested in any one such issue shall not exceed 2% of the admitted assets of the company as shown by its last annual report or a more recent quarterly financial statement filed with the commissioner of insurance;

(b) mortgage related securities issued by or in the name of any private entity which are designated "1" or "2" by the national association of insurance commissioners in their most recently published valuations of securities manual or supplement thereto or are rated investment grade by standard and poor's (at least BBB-) or moody's (at least Baa3) at the time of acquisition. The investment in any one such issue shall not exceed 2% of the admitted assets of the company as shown by its last annual report or a more recent quarterly financial statement filed with the commissioner of insurance.

(c) For purposes of this section "mortgage related securities" shall mean a security that either:

(1) Represents ownership of one or more promissory notes or certificates of interest or participation in such notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of such notes, certificates, or participations of amounts payable under, such notes, certificates, or participations), which notes:

(A) Are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in U.S.C. section 5402(6) of title 42, whether such manufactured home is considered real or personal property under the laws of the state in which it is to be located; and

(B) were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution which is supervised and examined by a federal or state authority, or by a mortgagee approved by the secretary of housing and urban development pursuant to U.S.C. sections 1709 and 1715b of title 12, or, where such notes involve a lien on the manufactured home, by any such institution or by any financial institution approved for insurance by the secretary of housing and urban development pursuant to U.S.C. section 1703 of title 12; or

(2) is secured by one or more promissory notes or certificates of interest or participations in such notes (with or without recourse to the issuer thereof) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, on notes

meeting the requirements of subparagraphs (1)(A) and (B) or certificates of interest or participations in promissory notes meeting such requirements.

For the purposes of this paragraph, the term "promissory note", when used in connection with a manufactured home, shall also include a loan, advance, or credit sale as evidenced by a retail installment sales contract or other instrument; or

(3) involve offers or sales of one or more promissory notes directly secured by a first lien on a single parcel of real estate upon which is located a dwelling or other residential or commercial structure, and participation interests in such notes:

(A) Where such securities are originated by a savings and loan association, savings bank, commercial bank, or similar banking institution which is supervised and examined by a federal or state authority, and are offered and sold subject to the following conditions:

(i) the minimum aggregate sales price per purchaser shall not be less than $250,000;

(ii) the purchaser shall pay cash either at the time of the sale or within 60 days thereof; and

(iii) each purchaser shall buy for his own account only; or

(B) where such securities are originated by a mortgagee approved by the secretary of housing and urban development pursuant to U.S.C. sections 1709 and 1715b of title 12 and are offered or sold subject to the three conditions specified in subparagraph (3)(A) to any institution described in such subparagraph or to any insurance company subject to the supervision of the insurance commissioner, or any agency or officer performing like function, of any state or territory of the United States or the District of Columbia, or the federal home loan mortgage corporation, the federal national mortgage association, or the government national mortgage association.

Transactions between any of the entities described in subparagraph (3)(A) or (3)(B) involving non-assignable contracts to buy or sell the foregoing securities which are to be completed within two years, where the seller of the foregoing securities pursuant to any such contract is one of the parties described in subparagraph (3)(A) or (3)(B) who may originate such securities and the purchaser of such securities pursuant to any such contract is any institution described in subparagraph (3)(A) or any

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insurance company described in subparagraph (3)(B), the federal home loan mortgage corporation, federal national mortgage association, or the government national mortgage association and where the foregoing securities are subject to the three conditions for sale set forth in subparagraphs (3)(A)(i) through (iii).

Sec. 3. L. 1991, Chapter 22 is hereby amended to read as follows: Section 1. Notwithstanding the provisions of section 106 of the secondary mortgage market enhancement act of 1984, P.L. 98-440 (15 U.S.C. 77r-1), the provisions of articles 2a and 2b of chapter 40 of the Kansas Statutes Annotated relating to the qualifications, limitations and kinds of investments that insurance companies domiciled in Kansas may purchase and hold shall apply. ~~except as provided in section 2.~~

~~----Sec. 2. Investments in securities that are:~~

~~----(a) Offered and sold pursuant to section 4(5) of the securities act of 1933 (15 U.S.C. 77d(5)),~~

~~----(b) mortgage related securities as defined in section 3(a)(41) of the securities exchange act of 1934 (15 U.S.C. 78c(a)(41)), or~~

~~----(c) securities issued or guaranteed by the federal home loan mortgage corporation or the federal national mortgage association, shall be considered to be obligations issued by the United States for purposes of articles 2a and 2b of chapter 40 of the Kansas Statutes Annotated.~~

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

Sec. 4. L. 1991, chapter 22 is hereby repealed.

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

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Explanatory Memorandum For

Legislative Proposal No. 6

This proposal imposes separate and specific limits on the concentration of medium and lower quality obligations in which a domestic insurer can invest. This recommendation follows a model developed by the National Association of Insurance Commissioners which sets an aggregate limit of 20% of admitted assets in such investments. Within this aggregate limit, sublimits are proposed with respect to medium and lower grade bonds separately as well as a limit on the investment in any one institution.

LEGISLATIVE PROPOSAL NO. 6

AN ACT relating to insurance; investments of insurance companies organized under the laws of this state; limitations.

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

Section 1. Definitions. As used in this act:

(a) "Medium grade obligations" means obligations which are designated "3" by the national association of insurance commissioners in their most recently published valuations of securities manual.

(b) "Lower grade obligations" means obligations which are designated "4", "5" or "6" by the national association of insurance commissioners in their most recently published valuations of securities manual.

(c) "Admitted assets" means the amount shown on the insurer's last annual report as filed with the state commissioner of insurance.

(d) "Aggregate amount" of medium grade and lower grade obligations means the aggregate statutory statement value thereof.

(e) "Institution" means a corporation, a joint-stock company, an association, a trust, a business partnership, a business joint venture or similar entity.

(f) "Insurance company" or "insurer" means an insurance company other than life organized under the laws of this state.

Sec. 2. (a) No insurance company shall acquire, directly or indirectly, any medium grade or lower grade obligation of any institution if, after giving effect to any such acquisition, the aggregate amount of all medium grade and lower grade obligations then held by such insurer would exceed 20 percent of its admitted assets. Within this limitation no more than 10 percent of its admitted assets shall consist of lower grade obligations; no more than three percent of its admitted assets shall consist of obligations designated five or six in the valuations of securities manual; and, no more than one percent of its admitted assets shall consist of obligations designated six in the valuations of securities manual. Attaining or exceeding the limit of any one category shall not preclude an

insurer from acquiring obligations in other categories subject to the specific and multi-category limits.

(b) No insurer organized under the laws of this state may invest more than one percent of its admitted assets in medium grade obligations issued, guaranteed or insured by any one institution nor may it invest more than one half of one percent of its admitted assets in lower grade obligations issued, guaranteed or insured by any one institution. In no event, shall such insurer invest more than one percent of its admitted assets in any medium or lower grade obligations issued, guaranteed or insured by any one institution.

(c) Nothing contained in this act shall prohibit an insurer from acquiring any obligations which it has committed to acquire if the insurer would have been permitted to acquire that obligation pursuant to this act on the date on which such insurer committed to purchase that obligation.

(d) Notwithstanding the limitations of subsection (b) of this section an insurer may acquire an obligation of an institution in which the insurer already has one or more obligations, if the obligation is acquired in order to protect an investment previously made in the obligations of the institution; provided that all such acquired obligations shall not exceed one-half of one percent of the insurer's admitted assets.

(e) Nothing contained in this act shall prohibit an insurer to which this act applies from acquiring an obligation as a result of a restructuring of a medium or lower grade obligation already held or require such insurer to sell or otherwise dispose of any obligation legally acquired prior to the effective date of this act.

(f) Nothing contained in this act shall permit or be construed as permitting an insurer to exceed, alter or otherwise circumvent any of the limitations or restrictions applicable to the investments authorized by K.S.A. 40-2a01 et seq.

(g) The board of directors of any insurance company organized under the laws of this state which acquires or invests, directly or indirectly, more than two percent of its admitted assets in medium grade and lower grade obligations, shall adopt a written plan for the making of such investments. The plan, in addition to guidelines with respect to the quality of the issues invested in, shall contain diversification standards acceptable to

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the commissioner which may include, but not be limited to, standards for issuer, industry, duration, liquidity and geographic location.

Section 3. Definitions. As used in this act:

(a) "Medium grade obligations" means obligations which are designated "3" by the national association of insurance commissioners in their most recently published valuations of securities manual.

(b) "Lower grade obligations" means obligations which are designated "4", "5" or "6" by the national association of insurance commissioners in their most recently published valuations of securities manual.

(c) "Admitted assets" means the amount shown on the insurer's last annual report as filed with the state commissioner of insurance.

(d) "Aggregate amount" of medium grade and lower grade obligations means the aggregate statutory statement value thereof.

(e) "Institution" means a corporation, a joint-stock company, an association, a trust, a business partnership, a business joint venture or similar entity.

(f) "Insurance company" or "insurer" means any life insurance company organized under the laws of this state.

Sec. 4. (a) No insurance company shall acquire, directly or indirectly, any medium grade or lower grade obligation of any institution if, after giving effect to any such acquisition, the aggregate amount of all medium grade and lower grade obligations then held by such insurer would exceed 20 percent of its admitted assets. Within this limitation no more than 10 percent of its admitted assets shall consist of lower grade obligations; no more than three percent of its admitted assets shall consist of obligations designated five or six in the valuations of securities manual; and, no more than one percent of its admitted assets shall consist of obligations designated six in the valuations of securities manual. Attaining or exceeding the limit of any one category shall not preclude an insurer from acquiring obligations in other categories subject to the specific and multi-category limits.

(b) No insurer organized under the laws of this state may invest more than one percent of its admitted assets in medium grade obligations issued, guaranteed or insured by any one institution nor may it invest more than one half of one percent of its admitted assets in lower grade obligations issued, guaranteed or insured by any one institution. In no event, shall

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such insurer invest more than one percent of its admitted assets in any medium or lower grade obligations issued, guaranteed or insured by any one institution.

(c) Nothing contained in this act shall prohibit an insurer from acquiring any obligations which it has committed to acquire if the insurer would have been permitted to acquire that obligation pursuant to this act on the date on which such insurer committed to purchase that obligation.

(d) Notwithstanding the limitations of subsection (b) of this section an insurer may acquire an obligation of an institution in which the insurer already has one or more obligations, if the obligation is acquired in order to protect an investment previously made in the obligations of the institution; provided that all such acquired obligations shall not exceed one-half of one percent of the insurer's admitted assets.

(e) Nothing contained in this act shall prohibit an insurer to which this act applies from acquiring an obligation as a result of a restructuring of a medium or lower grade obligation already held or require such insurer to sell or otherwise dispose of any obligation legally acquired prior to the effective date of this act.

(f) Nothing contained in this act shall permit or be construed as permitting an insurer to exceed, alter or otherwise circumvent any of the limitations or restrictions applicable to the investments authorized by K.S.A. 40-2b01 et seq.

(g) The board of directors of any insurance company organized under the laws of this state which acquires or invests, directly or indirectly, more than two percent of its admitted assets in medium grade and lower grade obligations, shall adopt a written plan for the making of such investments. The plan, in addition to guidelines with respect to the quality of the issues invested in, shall contain diversification standards acceptable to the commissioner which may include, but not be limited to, standards for issuer, industry, duration, liquidity and geographic location.

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

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Explanatory Memorandum For

Legislative Proposal No. 7

Legislative Proposal No. 7 relates to the issuance of "surplus notes" by a mutual insurance company. In essence, a "surplus note" is a loan to a mutual insurer that by its terms can be repaid only from the surplus -- surplus of the insurer and only with the approval of the Commissioner. Because of these limitations on repayment, a "surplus note" is not considered a liability. Therefore, these transactions are one of the few ways a mutual insurer can obtain an external addition to surplus.

This proposal suggests an increase in the maximum interest rate that can be paid on "surplus notes". It also extends the authority to issue such notes to mutual fire and tornado companies.

LEGISLATIVE PROPOSAL NO. 7

AN ACT relating to insurance; advancements to company; rate of interest; conditions; amending K.S.A. 40-1209 and repealing the existing section.

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

Section 1. K.S.A. 40-1209 is hereby amended to read as follows: 40-1209. Any director, officer or member of any such company, or any other person, may advance to such company any sum or sums of money necessary for the purposes of its business or to enable it to comply with any of the requirements of the laws of this state, and such moneys and such interest thereon as may have been agreed upon, not exceeding ~~five-percentum~~ an amount per annum equal to 1 1/2 percentage points below the maximum rate of interest prescribed by K.S.A. 16-207(b) for real estate transactions. The rate of interest to be applied to any specific certificate of indebtedness shall be calculated using the most immediate prior month's usury rate published by the Secretary of State in the Kansas Register, shall, with the approval of the commissioner, be payable only out of the surplus remaining after providing for all reserves and other liabilities, and shall not otherwise be a liability or claim against the company or any of its assets. No commission or promotion expenses shall be paid in connection with the advance of any such money to the company, and the amount of such advance shall be reported in each annual statement: Provided, however, That such certificates of indebtedness shall not be issued nor retired without the approval of the commissioner of insurance who must be satisfied that all requirements of the law have been met.

New Sec. 2. Any mutual fire and tornado insurance company organized under the laws of this state pursuant to K.S.A. 40-1001 et seq. may accept advances of money and issue certificates of indebtedness thereon subject to the terms and conditions prescribed by K.S.A. 40-1209 as now or hereafter amended.

Sec. 3. K.S.A. 40-1209 is hereby repealed.

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

Explanatory Memorandum For

Legislative Proposal No. 8

Legislative Proposal No. 8 amends the law relating to uninsured/underinsured motorist coverage included in automobile liability policies. The amendment would simply clarify the language of the statute to remove or alleviate disputes regarding what we believe was the original legislative intent by adding the word "duplicative" to the exclusion language which attempts to prioritize the payment of benefits when UM/UIM, personal injury protection and/or workers compensation benefits apply to the injuries sustained in an accident.

LEGISLATIVE PROPOSAL NO. 8

AN ACT relating to insurance; automobile insurance, uninsured and underinsured motorists coverage; permissible exclusions; amending K.S.A. 1991 Supp. 40-284 and repealing the existing section.

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

Section 1. K.S.A. 1991 Supp. 40-284 is hereby amended to read as follows: 40-284. (a) No automobile liability insurance policy covering liability arising out of the ownership, maintenance, or use of any motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state, unless the policy contains or has endorsed thereon, a provision with coverage limits equal to the limits of liability coverage for bodily injury or death in such automobile liability insurance policy sold to the named insured for payment of part or all sums which the insured or the insured's legal representative shall be legally entitled to recover as damages from the uninsured owner or operator of a motor vehicle because of bodily injury, sickness or disease, including death, resulting therefrom, sustained by the insured, caused by accident and arising out of ownership, maintenance or use of such motor vehicle, or providing for such payment irrespective of legal liability of the insured or any other person or organization. No insurer shall be required to offer, provide or make available coverage conforming to this section in connection with any excess policy, umbrella policy or any other policy which does not provide primary motor vehicle insurance for liabilities arising out of the ownership, maintenance, operation or use of a specifically insured motor vehicle.

(b) Any uninsured motorist coverage shall include an underinsured motorist provision which enables the insured or the insured's legal representative to recover from the insurer the amount of damages for bodily injury or death to which the insured is legally entitled from the owner or operator of another motor vehicle with coverage limits equal to the limits of liability provided by such uninsured motorist coverage to the extent such

coverage exceeds the limits of the bodily injury coverage carried by the owner or operator of the other motor vehicle.

(c) The insured named in the policy shall have the right to reject, in writing, the uninsured motorist coverage required by subsections (a) and (b) which is in excess of the limits for bodily injury or death set forth in K.S.A. 40-3107 and amendments thereto. A rejection by an insured named in the policy of the uninsured motorist coverage shall be a rejection on behalf of all parties insured by the policy. Unless the insured named in the policy requests such coverage in writing, such coverage need not be provided in any subsequent policy issued by the same insurer for motor vehicles owned by the named insured, including, but not limited to, supplemental, renewal, reinstated, transferred or substitute policies where the named insured had rejected the coverage in connection with a policy previously issued to the insured by the same insurer.

(d) Coverage under the policy shall be limited to the extent that the total limits available cannot exceed the highest limits of any single applicable policy, regardless of the number of policies involved, persons covered, claims made, vehicles or premiums shown on the policy or premiums paid or vehicles involved in an accident.

(e) Any insurer may provide for the exclusion or limitation of coverage:

(1) When the insured is occupying or struck by an uninsured automobile or trailer owned or provided for the insured's regular use;

(2) when the uninsured automobile is owned by a self-insurer or any governmental entity;

(3) when there is no evidence of physical contact with the uninsured motor vehicle and when there is no reliable competent evidence to prove the facts of the accident from a disinterested witness not making claim under the policy;

(4) to the extent that duplicative workers' compensation benefits apply;

(5) when suit is filed against the uninsured motorist without notice to the insurance carrier; and

(6) to the extent that duplicative personal injury protection benefits apply.

(f) An underinsured motorist coverage insurer shall have subrogation rights under the provisions of K.S.A. 40-287 and amendments thereto. If a tentative agreement to settle for liability limits has been reached with an

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underinsured tortfeasor, written notice must be given by certified mail to the underinsured motorist coverage insurer by its insured. Such written notice shall include written documentation of pecuniary losses incurred, including copies of all medical bills and written authorization or a court order to obtain reports from all employers and medical providers. Within 60 days of receipt of this written notice, the underinsured motorist coverage insurer may substitute its payment to the insured for the tentative settlement amount. The underinsured motorist coverage insurer is then subrogated to the insured's right of recovery to the extent of such payment and any settlement under the underinsured motorist coverage. If the underinsured motorist coverage insurer fails to pay the insured the amount of the tentative tort settlement within 60 days, the underinsured motorist coverage insurer has no right of subrogation for any amount paid under the underinsured motorist coverage.

Sec. 2. K.S.A. 1991 Supp. 40-284 is hereby repealed.

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

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Explanatory Memorandum For

Legislative Proposal No. 9

This proposal addresses an emerging activity whereby a person or organization will pay a life insurance policyowner a percentage of the death or other benefits that will be payable upon the death of the insured in return for being named a beneficiary on the policy. Such arrangements can inure to the benefit of insureds who are terminally ill or otherwise find themselves in a situation where the opportunity to convert a death benefit to a living benefit would be helpful. However, in the absence of any safeguards whatsoever, such arrangements can easily be abusive to consumer interests.

Legislative Proposal No. 9 is a first step toward preventing or minimizing such abuses without prohibiting a practice that may be beneficial in some situations.

LEGISLATIVE PROPOSAL NO. 9

AN ACT relating to insurance; life insurance; purchase of policy benefits; notice to beneficiary; cancellation of transaction.

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

New Section 1. As used in this act "person" means an individual, partnership, corporation or other entity that purchases life insurance policies or becomes a beneficiary under life insurance policies by paying the policyowner a percentage of the expected policy benefits.

Sec. 2. Any person purchasing a life insurance policy already in force or beneficiary rights under any such life insurance policy from an existing policyowner for less than 90% of the expected policy benefits at maturity shall provide notice of the transaction to the last known address of the first beneficiary named on the life insurance policy that is the subject of the transaction. The notice must be sent by certified mail to such address no later than midnight of the day the policyowner receives payment and the policyowner shall have until midnight of the third business day after the day on which the policyowner signs the agreement to cancel the transaction.

Sec. 3. This act shall not apply to an insurance company in the course of exercising existing contractual provisions which permit the acceleration of life or annuity benefits in advance of the time they would otherwise be payable or to any assignee of a life insurance policy that has been used to collateralize a loan.

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

Explanatory Memorandum For

Legislative Proposal No. 10

This is simply a housekeeping amendment necessitated by the Omnibus Reconciliation Act of 1990 (OBRA 90). The certification process for medicare supplement policies was materially changed by the 1990 legislation. Therefore, the Kansas enabling act relating to minimum medicare supplement standards should identify the current applicable federal law.

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LEGISLATIVE PROPOSAL NO. 10

AN ACT relating to insurance; accident and sickness insurance; medicare supplement policies; minimum standards; rules and regulations; amending K.S.A. 40-2221 and repealing the existing section.

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

Section 1. K.S.A. 40-2221 is hereby amended to read as follows: 40-2221. In addition to any other statutory authority not inconsistent herewith, the commissioner shall adopt regulations establishing specific standards for medicare supplement policies delivered or issued for delivery in this state. The standards so established shall equal, but not exceed, the minimum standards and requirements ~~established by section 507, P.L. 96-265~~ permitted by section 1882 of the federal social security act (42 U.S.C., section 1395 et. seq.).

Sec. 2. K.S.A. 40-2221 is hereby repealed

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

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Explanatory Memorandum For

Legislative Proposal No. 11

This proposal suggests amendments to the statutes governing the transaction of excess coverage business in Kansas. Excess coverage is insurance written through specially licensed agents in insurers that are not admitted (don't have a Certificate of Authority) to do business in Kansas.

There are provisions in these statutes that permit such insurers to be included on an "approved list" if they meet certain standards. There are also provisions which permit the removal of such insurers from the "approved list" for certain reasons.

This proposal recommends three additional reasons an insurer may be removed from the "approved list".

LEGISLATIVE PROPOSAL NO. 11

AN ACT relating to insurance; excess coverage; approved list of insurers; removal from list; amending K.S.A. 40-246e and repealing the existing section.

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

Section 1. K.S.A. 40-246e is hereby amended to read as follows: 40-246e. The commissioner shall maintain a list of insurers not authorized to do business in this state for review by any interested person. Only those insurers who have filed a certified copy of their most recent annual statement with the commissioner in the form prescribed by K.S.A. 40-225 or, if domiciled outside the United States, have filed their most recent annual statement with the national association of insurance commissioners may appear on the list. No excess lines agent shall place insurance on a Kansas domiciled risk with an insurer whose name does not appear on this list. No company shall appear on the list whose capital or surplus as shown on the annual statement does not equal or exceed $1,500,000. Individual unincorporated insurers not listed by the national association of insurance commissioners may appear on the list if they are authorized to transact an insurance business in at least one state of the United States, possess assets which are held in trust for the benefit of American policyholders in the sum of not less than $50,000,000 and pay the filing fee required by this section. Insurance exchanges who issue contracts on behalf of their members and pay the filing fee required by this section may appear on the list if their individual members have a capital or surplus equal to or in excess of $1,500,000 and the aggregate capital or surplus of all members of the exchange is at least $15,000,000. A nonrefundable filing fee of $200 shall be required of any insurer submitting its annual statement for review by the commissioner for inclusion on such list. The commissioner shall remove an insurer's name from the listing only when: (a) The insurer requests such removal; or (b) the insurer fails to file its latest annual statement and required filing fee prior to May 1 of each year as required by this section; or (c) the commissioner is notified by the insurance supervisory authority

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of any state of the United States that such insurer has had its authority to transact business restricted; or has been declared insolvent or placed in receivership, conservatorship, rehabilitation or any similar status wherein the business of the insurer is formally supervised by an insurance supervisory authority pursuant to an order by the court of competent jurisdiction; or (d) the commissioner is notified by the N.A.I.C. that any insurer domiciled outside the United States has been declared insolvent or placed in receivership, conservatorship, rehabilitation or any similar status wherein the business of the insurer is formally supervised by an insurance supervisory authority pursuant to an order by any court of competent jurisdiction; or (e) the insurer has failed to effectuate prompt, fair and equitable settlement of a claim or claims in which liability has become reasonably clear; or (f) the insurer refuses to cooperate or demonstrates an unwillingness to comply with reasonable regulatory requirements. There shall be no liability on the part of and no cause of action of any nature shall arise against the commissioner, the commissioner's employees, or the state of Kansas as a result of any insurer's name appearing or not appearing on the list required by this section if such list is constructed and maintained in good faith and without malice.

Sec. 2. K.S.A. 40-246e is hereby repealed.

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

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Explanatory Memorandum For

Legislative Proposal No. 12

This proposal suggests a housekeeping amendment to the statutes governing group-funded workers' compensation pools. Obviously, the fiscal year of each pool does not end at the same time yet the current statute establishes a common date for a certified financial statement. As a result, the statement is either very difficult to develop by the reporting date or its content is somewhat outdated. Legislative Proposal No. 12 suggests a minor amendment that will make the reporting date consistent with the end of the fiscal year for each pool.

LEGISLATIVE PROPOSAL NO. 12

AN ACT relating to insurance; group-funded workers' compensation pools; amending K.S.A. 1990 Supp. 44-584 and repealing the existing section.

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

Section 1. K.S.A. 1990 Supp. 44-584 is hereby amended to read as follows: 44-584. (a) The application for a new certificate or a renewal of an existing certificate shall be signed by the trustees of the trust fund created by the pool. Any application for a renewal of an existing certificate shall meet at least the standards established in subsections (f), (g), (h), (i), (j), (k), (l), (m) and (n) of K.S.A. 44-582 and amendments thereto. After evaluating the application the commissioner shall notify the applicant that the plan submitted is approved or conversely, if the plan submitted is inadequate, the commissioner shall then fully explain to the applicant what additional requirements must be met. If the application is denied, the applicant shall have 15 days to make an application for hearing by the commissioner after service of the denial notice. The hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(b) All certificates granted hereunder shall expire on April 30 of each year unless sooner suspended or revoked by the commissioner.

(c) Whenever the commissioner shall deem it necessary the commissioner make may, or direct to be made, an examination of the affairs and financial condition of any pool, except that once every five years the commissioner shall conduct an examination of the affairs and financial condition of each pool. Each pool shall submit a certified independent audited financial statement ~~on or before March 31 of each~~ no later than 90 days after the end of the pool's fiscal year. The financial statement shall include outstanding reserves for claims and for claims incurred but not reported. Each pool shall file payroll records, accident experience and compensation reports and such other reports and statements at such times and in such manner as the commissioner shall require. Whenever it appears to the commissioner from such examination or other satisfactory evidence that the

solvency of any such pool is impaired, or that it is doing business in violation of any of the laws of this state, or that its affairs are in an unsound condition so as to endanger its ability to pay or cause to be paid the compensation in the amount, manner and time due as provided for in the Kansas workmen's compensation act, the commissioner shall, before filing such report or making the same public, grant such pool upon reasonable notice a hearing in accordance with the provisions of the Kansas administrative procedure act, and, if on such hearing the report be confirmed, the commissioner shall suspend the certificate of authority for such pool until its solvency shall have been fully restored and the laws of the state fully complied with. The commissioner may, if there is an unreasonable delay in restoring the solvency of such pool and in complying with the law, revoke the certificate of authority of such pool to do business in this state. Upon revoking any such certificate the commissioner shall communicate the fact to the attorney general, whose duty it shall be to commence and prosecute an action in the proper court to dissolve such pool or to enjoin the same from doing or transacting business in this state. The commissioner of insurance may call a hearing under K.S.A. 40-222b, and amendments thereto, and the provisions shall apply to group workers' compensation pools.

Sec. 2. K.S.A. 1990 Supp. 44-584 is hereby repealed.

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

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