Approved: March 14, 1995
Date

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on March 13, 1995 in Room 123-S of the Capitol.

Members present: Senators Salisbury, Burke, Downey, Feleciano, Gooch, Harris, Hensley, Kerr, Petty, Ranson, Reynolds, Steffes and Vidricksen.

Committee staff present: Lynne Holt, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Bob Nugent, Revisor of Statutes
Betty Bomar, Committee Secretary

Conferees appearing before the committee:
Jeffrey A. Chanay, General Counsel, Kansas Motor Carries Association
Mary E. Turkington, Executive Director, Kansas Motor Carriers Association
Patrick Nichols, Kansas Trial Lawyers Association
Anita Larson, Assistant Counsel, Security Benefit Group, Inc.

Others attending: See attached list

Upon motion by Senator Steffes, seconded by Senator Reynolds, the Minutes of the March 9, 1995 meeting were unanimously adopted.

SB 326- Workers compensation coverage for motor vehicle owner-operators

Jeffrey A. Chanay, General Counsel, Kansas Motor Carriers Association testified in support of SB 326. Mr. Chanay stated the bill is designed to remove licensed motor carriers that utilize the services of solo owner-operators from the subcontracting provision of the Kansas Workers Compensation Act. Mr. Chanay informed the Committee the proposed amendment applies only to owner-operators who own a single motor vehicle that is driven exclusively by the owner. SB 326 also applies only to bona fide owner-operators and not to drivers that are statutory or common law employees. SB 326 puts Kansas owner-operators and licensed motor carriers on a competitive par with owner-operators and licensed motor carriers in neighboring states. SB 326 does not prohibit an owner-operator from independently purchasing workers compensation coverage or an industrial accident policy if the owner-operator so chooses. SB 326 allows Kansas motor carriers to compete on a more favorable basis with states such as Missouri and Oklahoma that have laws that provide that licensed motor carriers are not responsible for the workers compensation claims of solo owner-operators. Mr. Chanay advised the request for this legislation is the extreme shortage of drivers as owner-operators are not being utilized by licensed motor carriers due to the expense of workers compensation insurance requirement. See attachment 1

Mary E. Turkington, Executive Director, Kansas Motor Carriers Association, testified in support of SB 326. Independent owner-operators are independent businessmen who have invested substantially in over-the-road equipment to earn a living leasing that equipment to a licensed motor carrier under a long term lease to transport freight. These owner-operators are not paid a salary. They establish contracts with the licensed motor carrier for a percentage of the freight revenue on the loads they haul. The owner-operators also participate in costs of insurance, fuel, license fees, federal highway use taxes and related operating costs incurred by the operator of the individually-owned over-the-road equipment.. Kansas carriers are at a distinct disadvantage with neighboring states in recruiting owner-operators due to the workers compensation requirement. SB 326 applies only to an owner-operator who owns a motor vehicle that is driven exclusively by the owner. Such an owner-operator would not be required to have workers compensation coverage. Alternate occupational insurance could be purchased to meet the health or injury needs of the owner-operator. Such alternative insurance is documented to be at least one-half as costly as the current workers compensation coverage. The carrier in Kansas need this legislation to provide jobs and transportation services in this state. See attachment 2

The Committee questioned the availability of occupational insurance referred to by Ms. Turkington. Senator Hensley asked Ms. Turkington whether the provisions in SB 326 had been presented to the Workers' Compensation Advisory Council. Ms. Turkington advised it had not.

Patrick Nichols, appeared in opposition to SB 326 on behalf of the Kansas Association of Trial Lawyers. SB 326 dismembers the Workers Compensation Act in piecemeal fashion, detrimental to the Act . The present Act insures there is no duplication of insurance. Mr. Nichols states SB 326 is bad law and policy.

Mr. Nichols testified the purpose of SB 326 is to remove the owner-operator relationship from the Workers Compensation Act. As such there will be no need for the purchase of any insurance by the owner. If operators comply with the law they must charge accordingly. Since the owner-operator charges according to costs of doing business, the owner-operator fees will have to increase proportionately. Costs can only be saved if the owner-operator elects to not obtain insurance, thus exposing himself to the risk of uninsured injury. In such cases, the medical care is paid either by the Workers Compensation Fund for insolvent employers or by the State Welfare System. The burden should be on the industry, not on the people of Kansas. The current law provides a mechanism in place to guarantee that someone will have insurance to cover the costs of the injury. If there is no insurance then those costs will be paid by social welfare system.

Mr. Nichols testified the legislation would establish a separate category of workers which creates a question of constitutionality.Mr. Nichols advised it is not good law to single out one small group of employers in the state and give them preferential treatment over all the others without good cause.. See attachment 3.

HB 2139 Open end investment companies, amending articles of incorporation

Anita Larson, Assistant Counsel, Security Benefit Group, Inc., testified in support of HB 2139. Ms. Larson advised that HB 2139 provides that the board of directors of a mutual fund may, without shareholder approval, amend, by resolution, the corporation's articles to (i) increase or decrease the number of authorized shares of the corporation or (ii) authorize the issuance of an indefinite number of shares of the corporation. The elimination of the need for a shareholder meeting to change the number of authorized shares will save shareholders of mutual funds money. The proposed amendment applies only to open-end investment companies or mutual funds. It does not apply to other corporations. The sole purpose of mutual funds is to sell shares, take the money raised, and invest it in stocks, bonds, or other securities. "Open-end" suggests if all of a mutual fund's authorized shares are sold, more shares are authorized. The Security and Exchange Commission allows open-end mutual funds to register an indefinite number of authorized shares. When an investor sells shares, the shares are redeemed, not resold on the secondary market. See attachment 4

In response to questioning, Ms. Larson testified the number of authorized shares could be changed by vote of the shareholders but the cost is estimated to be $30,000.

The Committee adjourned at 9:00 a.m.

The next meeting is scheduled for Tuesday, March 14, 1995.

9:30

SENATE COMMERCE COMMITTEE GUEST LIST

DATE: March 13, 1995

NAME	REPRESENTING
Jeff Chaney	Ks Motor Carriers Assoc.
Jon Newman	KS Governmental Consulting
Mary E. Turkington	Ks Motor Carriers Assn
Tom Whitaker	Ks Motor Carriers Assn
Larry Magill	Ks. Assn. of Ins. Agents
Rick McKee	KS Livestock Assoc
[illegible]	KTLA
[illegible]	KTLA
Bill Sneed	State Farm
Richard Thomas	DOR/ Workers Comp
Anita Larson	Security Benefit Group
Chris Swickard	" "
Ron Smith	Ks Bankers Assoc
Larry Doc Cvitkovich	Ks Motor Carriers Assn

MEMORANDUM

To: Senate Commerce Committee

From: Jeffrey A. Chanay, Entz & Chanay

Date: March 13, 1995

Subject: Senate Bill 326

Madam Chairman and Members of the Committee:

My name is Jeff Chanay and I am an attorney in private practice with the Topeka law firm of Entz & Chanay. I appear today as General Counsel for the Kansas Motor Carriers Association and in support of Senate Bill 326.

Senate Bill 326 is designed to remove licensed motor carriers that utilize the services of solo owner-operators from the subcontracting provision of the Kansas Workers Compensation Act as found in K.S.A. 44-503. Other conferees will address the competitive reasons for this bill. I testify separately only as to certain practical aspects of Senate Bill 326.

K.S.A. 44-503 provides that a "principal" who contracts out any part of the principal's trade or business to a "contractor" is liable to pay workers compensation benefits to any employee of the contractor who is injured while performing the contracted work. This, in essence, creates a system of double workers compensation coverage for the employees of a "contractor." Under the provisions of K.S.A. 44-503, an injured employee of a contractor has the choice of bringing a workers compensation claim against either his direct employer (the contractor) or the principal. If the employee chooses to bring the action against the principal, the principal will either be wholly responsible for the loss, or may bring a subrogation action against the direct employer.

Certain fairness problems arising under K.S.A. 44-503 were addressed last year by the legislature in Senate Bill 767, which passed both houses and was signed into law. Senate Bill 767, as amended, created a new subsection (g) in K.S.A. 44-503 and declared that a "principal" is not liable to an employee of a "contractor" for workers compensation benefits if the contractor has secured workers compensation coverage for its direct employees. If, however, the contractor has not secured the requisite workers compensation coverage, the principal remains liable under K.S.A. 44-503(a).

Unfortunately, Senate Bill 767, as amended, did not take care of a persistent problem experienced by Kansas licensed motor carriers and independent owner-operators. Under K.S.A. 44-503(a) and (g), licensed motor carriers must either provide direct workers compensation coverage for its independent owner-operators or ensure that the independent owner-operator has its own workers compensation coverage. The specific problem is that owner-operators are not required to carry workers compensation coverage in Missouri and Oklahoma and other neighboring states. Thus, it is less expensive for owner-operators to operate in our neighboring states than in Kansas. Consequently,

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Kansas licensed motor carriers are at a competitive disadvantage in securing owner-operators to haul Kansas goods to customers or markets.

Senate Bill 326 applies only to owner-operators who own a single motor vehicle that is driven exclusively by the owner. Senate Bill 326 also applies only to bona fide owner-operators and not to drivers that are statutory or common law employees. It should be made clear that if not for K.S.A. 44-503, these solo owner-operators would not be required to have workers compensation coverage. Senate Bill 326 simply puts Kansas owner-operators and licensed motor carriers on a competitive par with owner-operators and licensed motor carriers in our neighboring states. Nothing in Senate Bill 326 prohibits an owner-operator from independently purchasing workers compensation coverage or an industrial accident policy if the owner-operator so chooses.

Senate Bill 326 is narrowly tailored to provide relief to Kansas licensed motor carriers and solo owner-operators. Passage of Senate Bill 326 will allow Kansas motor carriers to compete on a more favorable basis with states such as Missouri and Oklahoma that have laws that clearly provide that licensed motor carriers are not responsible for the workers compensation claims of solo owner-operators.

Thank you for your consideration of this matter, and I respectfully request that the Committee recommend Senate Bill 326 favorably for passage.

STATEMENT

By The

KANSAS MOTOR CARRIERS ASSOCIATION

Supporting Senate Bill 326 which
would permit Owner/Operators options
on Workers Compensation Insurance.

Presented to the Senate Commerce Committee,
Senator Alicia Salisbury, Chairman; State-
house, Topeka, Monday, March 13, 1995.

MADAM CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I am Mary E. Turkington, Executive Director of the Kansas Motor Carriers Association with offices in Topeka. I appear here on behalf of our members and the highway transportation industry. Mr. Jeff Chanay, attorney-at-law with offices in Topeka, has outlined the basic provisions of Senate Bill 326 which we strongly support.

Our industry has relied on quality, independent owner-operators for many years. These independent owner-operators are NOT employees. They are independent businessmen who have invested substantially in over-the-road equipment to earn a better living leasing that equipment to a licensed motor carrier under a long-term lease to transport freight.

Such owner-operators are NOT paid a salary. They establish contracts with the licensed motor carrier for a percentage of the freight revenue on the loads they haul. Such owner-operators also participate in costs of insurance, fuel, license fees, federal highway use taxes and related operating costs incurred by the operation of their individually-owned over-the-road equipment.

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These owner-operators must be skilled drivers, must be good operators in caring for their equipment, and must be good businessmen in choosing a lease arrangement that will generate a good return on their investment. Out-of-pocket costs often dictate the environment in which such an independent businessman chooses to operate.

A year ago we advised this committee that the current driver shortage underscores the need for Kansas carriers to be competitive in leasing quality owner-operators. That driver shortage has been compounded as we appear before you today.

Companies simply cannot find enough qualified drivers to operate company-owned equipment. Intensive advertising campaigns, operation even of company-owned driver training schools, and support of driver training schools offered by public and private institutions, still do not meet the needs for professional, over-the-road drivers. The owner-operator is the best alternative carriers can utilize to provide service to customers and deliver the nation's freight.

Kansas carriers have a distinct disadvantage in recruiting such owner-operators because of the workers compensation requirements outlined by Mr. Chanay.

Thirteen states - Alabama, Florida, Georgia, Indiana, Iowa, Maryland, Missouri, Oklahoma, Oregon, Texas, Tennessee, Washington and Wyoming - have adopted statutes which specifically address issues that establish the owner-operator as an independent contractor for workers compensation purposes and provides that the motor carrier with whom the owner-operator contracts need not provide the workers compensation coverage for such a non-employee.

It is critical that Kansas companies which have loads to move for Kansas shippers be able to compete with other jurisdictions on leasing owner-operator lessors. Kansas jobs and Kansas businesses are what this bill is all about.

Senate Bill 326 has been narrowly drafted to apply ONLY to the owner-operator who owns a motor vehicle that is driven exclusively by the owner. Such an owner-operator would not be REQUIRED to have workers compensation coverage. Alternate occupational insurance could be purchased to meet the health or injury needs of that owner-operator. The cost of such alternative insurance has been documented to be at least one-half as costly as the current workers compensation coverages. Missouri and Oklahoma, for instance, both offer the alternative insurance coverages and make it increasingly difficult for a Kansas carrier to attract an owner-operator to help haul company freight.

Attached to my testimony is a copy of a letter a small trucking firm in Hugoton, Kansas, directed to Rep. David J. Heinemann in November, 1994. I have included the letter with this statement to give you specific information from a Kansas trucking company. I can provide you with additional information from other Kansas companies who have the same problems.

Let me emphasize again that the proposed legislation applies ONLY to the owner-operator who owns a motor vehicle that is driven exclusively by the owner. Any owner-operator who may have additional equipment driven by those who are employees of the owner-operator would continue to be required to have workers compensation coverages for affected operations.

Our carriers urgently need this legislation to provide jobs and transportation services in this state. We ask your help to solve this problem which has become even more acute for our industry.

######

MARTIN TRUCKING, INC.

RONALD MARTIN, PRES.
DOUG MARTIN, V. PRES.

316-544-4920
FAX 316-544-4990

JIM MARTIN, SEC.
WILL MARTIN, TREAS.

1411 INDUSTRIAL P.O. BOX M HUGOTON, KS 67951

NOV 2 8 1994

NOVEMBER 22, 1994

REPRESENTATIVE DAVID J. HEINEMANN
505 N. SIXTH STREET
GARDEN CITY, KS. 67846

DEAR MR. HEINEMANN:

MARTIN TRUCKING INC. IS A MODERATE SIZE TRUCKING FIRM, LOCATED IN THE SOUTHWEST CORNER OF KANSAS AT HUGOTON. OUR OPERATION RELIES HEAVILY ON LEASE OPERATORS, SOME ARE KANSAS RESIDENTS; HOWEVER, MOST ARE NON-RESIDENTS. DUE TO OUR LOCATION MOST OF OUR BUSINESS IS DONE OUTSIDE OF KANSAS.

THE ISSUE MARTIN TRUCKING WANTS TO ADDRESS IS THE EMPLOYER/EMPLOYEE RELATIONSHIP OF LEASE OPERTORS REGARDING WORKERS COMPENSATION INSURANCE REQUIREMENTS IN THE STATE OF KANSAS.

LAST YEAR THE SENATE PASSED SENATE BILL #767. BACKED BY THE KMCA ONLY TO HAVE THE HOUSE REVISE IT BEFORE BEING INTRODUCED AND THEN REPEAL ITS VERSION. IF CHANGES IN THE MANDATED WORKERS COMPENSATION LAW ARE NOT MADE IN 1995, MARTIN TRUCKING AND SEVERAL OTHER TRUCKING FIRMS IN THE AREA AS WELL AS NUMEROUS OTHER SMALL BUSINESSES MAY BE FORCED TO CLOSE THEIR DOORS.

MARTIN TRUCKING IS CONTINUALLY LOSING OWNER-OPERATORS TO NEIGHBORING STATES NOT REQUIRING WORKER COMPENSATION COVERAGE. PREMIUM INCREASES FOR 1995 RENEWAL HAVE INCREASED APPROXIMATELY $500.00, BRINGING THE PREMIUM TO $3800.00 ANNUALLY. THIS DOES NOT TAKE INTO ACCOUNT THE INCREASE IN LIABILITY AND CARGO INSURANCE, ADVALORUM TAXES, FUEL TAX, HIGHWAY USE TAX AND TAG PACKAGES. FEW, IF ANY OTHER EMPLOYER OR BUSINESS HAVE TO PAY A $10,000.00 UP FRONT FEE ANNUALLY FOR THE PRIVILEGE OF DOING BUSINESS. THE INCREASED COST OF WORKER COMPENSATION IN THE STATE OF KANSAS IS CAUSING MANY OWNER-OPERATORS TO RELOCATE IN THE STATES NOT REQUIRING WORKER COMPENSATION.

WITH DEREGULATION IN THE NEAR FUTURE MANY NEW FIRMS WILL SPRING UP, MOST OF WHICH IN ALL PROBABILITY WILL OPERATE <u>WITHOUT</u> WORKER COMPENSATION. IT IS IMPOSSIBLE TO COMPETE IN THE TRANSPORTATION INDUSTRY WHEN THE PLAYING FIELD IS NOT LEVEL.

2-4

ANY INFORMATION OR HELP YOU CAN GIVE ON THIS ISSUE TO BRING RELIEF TO THE LESSOR AND THE INDEPENDENT CONTRACTOR WILL BE APPRECIATED. HOPEFULLY YOU WILL MAKE THIS A PRIORITY ISSUE IN THE UP COMING LEGISLATIVE SESSION. WE WILL BE LOOKING FORWARD TO HEARING FROM YOU ON THIS MATTER.

SINCERELY YOURS,

Doug Martin

DOUG MARTIN, V-PRESIDENT
MARTIN TRUCKING INC.

DM:kk

CC: GEORGE GOMEZ
600 MERCHANTS BANK TOWER
800 S.W. JACKSON-SIXTH FLOOR
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K M C A
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SEN. STEVE MORRIS
600 S. TRINDLE
HUGOTON, KS 67951

KTLA TESTIMONY IN OPPOSITION TO SENATE BILL 326

March 13,1995
Presented by Patrick Nichols
Topeka, KS

On behalf of the consumers, injured workers and interested parties KTLA presents its comments in opposition to the proposal to exempt a single industry from the social contract of workers compensation. No compelling reasons exist to single out the trucking industry for special treatment and it should be refused.

The proposed bill seeks an exception to the general/subcontractor joint liability to injured employees and would remove the relationship of the motor vehicle owners and operators from the coverage under the Workers Compensation Act.

This special interest treatment was rejected in 1993 when introduced by the trucker's lobby. SB 767 was designed to accomplish the same special favoritism. The need expressed at that time was to save money by avoiding the purchase of duplicate insurance by both the general and the subcontractor. The bill was opposed by KTLA and others because it would have created a large class of uninsured workers and generated no real savings. Instead the statute was amended to relieve any general contractor of the obligation to carry duplicative insurance. The special interest legislation was modified by compromise and passed into law.

The burden of persuasion should be on the proponent of the bill. The avowed purposes of last years bill has been met: no longer is duplicate insurance required. The obvious question now arises. Why should we now revisit this issue, the expressed need having previously been met?

The flaws inherent in any favored treatment still remain, the bill is bad law and policy. Its purpose now is to simply remove the owner-operator relationship from the Act. As such there will be no need for the purchase of any insurance by the owner. Cost savings is not a justification now. If the operators comply with the law they must charge accordingly. Since the owner-operator must charge according to his costs of doing business, the owner-operator's fees will have to increase proportionately. Costs can only be saved if the owner-operator

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elects to "go bare" thus exposing himself and his own employees to the risk of uninsured injury. In such cases the medical care is paid either by the Workers Compensation Fund for insolvent employers or by the State Welfare System. The burden should be on the industry itself not on the people of the State.

The legislation is bad policy. It would create a large class of uninsured workers. In order to keep costs down owner-operators are likely to fail to purchase their own insurance. If the companies are relieved of liability under the Workers Compensation Act they will not purchase insurance. Under the current law there is a mechanism in place to guarantee that someone will have insurance to cover the costs of the injury. If there is no insurance then those costs will be paid by social welfare system.

An unintended consequence of the bill could threaten the insurers of the industry and the owners themselves. By removing the relationship from coverage under the Workers Compensation Act they likewise forfeit its protections and subject themselves to civil liability in tort for negligence. Considering the extensive cutbacks in benefits enacted by the 1993 legislature, actions in tort presents an increasingly attractive alternative to benefits under the Act. The civil liability for negligence presents an exposure to loss that is far greater in amount and far less predictable in nature. The industry could very well be worse off as a result of their perceived need for special treatment.

To argue that compliance with the Act creates a competitive disadvantage is disingenuous. All businesses which chafe under the perceived costs of the system suffer equally. However, those who seek exclusion, as here, forget their original motivations for agreeing to it in the first place; limited liability. Under the common law they face significantly greater liability in any given case. Moreover the costs are shared by all other employers in the state. The protections to all come at a given cost but it is one which was agreed upon as generally beneficial.

In addition to the harms to society and to the industry itself, other employers could logically be expected to seek similar preferred treatment. Builders would want to have the carpenters declared to be "independent contractors" if they provide their own hammer and nails. Businessmen would want to have secretarial staff declared

"independent contractors" by having them bring their own keyboards. The possibilities for further special interest legislation are endless.

This legislation is bad government. Good government attempts to find general rules and apply them throughout the spectrum of affected industry without favoritism or special treatment. This bill presents the reverse, singling out one industry and giving it special treatment to the disadvantage of all others. The rules which define independent contractor and which create vicarious liability in Workers Compensation System have been refined by the Courts and the Legislature over generations. They apply, typically, across the board to all types of industries. Other industries must bear the burden of vicarious liability in Workers Compensation, why should this one be excluded? The Workers Compensation Act is not a Christmas tree on which ornaments of special favor can be hung, it is a social compact between the workers and the employers of this state which must deal fairly and equitably with all.

This legislation is bad law. It is a violation of the Constitution to treat similarly situated classes of people differently. There must be a rational basis for distinguishing between such groups or the distinction is constitutionally invalid. ***Stevenson v. Sugar Creek Manufacturing*** held that reducing insurance rates was not a rational basis for such distinctions. This bill would provide treatment for one industry different from all others, the trucking industry; this bill would provide treatment for some trucking companies (licensed motor carriers) that would be different that the treatment provided others who drive trucks who are not licensed motor carriers. These types of special interest laws or disfavored by the courts and for good reason. The rest of us have to live under the costs and benefits of the act and so should this industry

The 1993 Amendments to the Workers Compensation Act were accompanied by a great deal of uncertainty as to what changes were needed and why. It was obvious to Legislators then, as it should be now, that there is a clear lack of information as to the effect of certain changes on the Workers Compensation System and on the industries which seek those changes. Now, once again, we are prepared to embark willy-nilly on changes whose economic impact we can not begin to foresee, in an effort to solve a problem which is inadequately defined and for which we have no assurance of success.

It is not good government to take a social compact such as the Workers Compensation Act and use it as a vehicle for special interest favors. It is not good law to single out one small group of employers in the state and give them preferential treatment over all others. It is not good policy to open the door to an onslaught of other industries who will seek similar changes and to create a new class of uninsured workers, the burden of which will be born by the state at large, not the industry which profits from their labors.

On behalf of injured consumers and others who have to abide by the social compact that is the basis for Workers Compensation I urge you to reject this bill.

Respectfully Submitted

PATRICK NICHOLS

The Security Benefit
Group of Companies

Security Benefit Life Insurance Company
Security Benefit Group, Inc.
Security Distributors, Inc.
Security Management Company

700 Harrison St.
Topeka, Kansas 66636-0001
(913) 295-3000

March 13, 1995

Subj: House Bill No. 2139
Amendments to Articles of Incorporation of an Open-end Investment Company

Dear Madam Chairperson and Committee Members:

The Security Benefit Group of Companies is a diversified financial services organization offering life insurance, mutual funds, annuities and retirement plans. The parent company, Security Benefit Life Insurance Company, has been in business for over 100 years. The Security Benefit Group of Companies has over $4 billion in assets under management and employs approximately 550 Kansans. We support House Bill 2139.

Security Management Company, a member of Security Benefit Group, is an investment adviser registered with the Security and Exchange Commission (the "SEC"). Security Management Company provides investment advisory services to seven open-end investment companies, more commonly called mutual funds. Each of the funds is organized as a Kansas corporation and is registered under the Investment Company Act of 1940.

K.S.A. 17-6602 presently provides that a corporation may not increase or decrease its authorized capital stock or otherwise affect such shares without stockholder approval. House Bill 2139 would amend this statute to provide that the board of directors of a mutual fund may, without shareholder approval, by resolution amend the corporation's articles to (i) increase or decrease the number of authorized shares of the corporation or (ii) authorize the issuance of an indefinite number of shares of the corporation.

Eliminating the need for a shareholder meeting to change the number of authorized shares will save shareholders of mutual funds money. For example, a shareholder meeting can cost the shareholders of one of our larger funds as much as $30,000 in printing and mailing costs.

The change in the number of authorized shares will not harm the shareholders. The proposed amendment only applies to open-end investment companies or mutual funds. It does not apply to other corporations. Open-end mutual funds are not like other corporations. Unlike other types of corporations, the sole purpose of mutual funds is to sell shares, take the money raised, and invest it in stocks, bonds, or other securities. As the description "open-end" suggests, if all of a mutual fund's authorized shares are sold, more shares are authorized. When an investor sells shares, the shares are redeemed, not resold on the secondary market.

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Attachment 4.

The issuance of additional mutual fund shares does not dilute the value or earnings of those previously issued. The earnings per share and value per share are not effected by the total number of shares issued. The value of a mutual fund share is derived by dividing the value of the mutual fund portfolio by the number of shares outstanding.

Shareholders benefit when the fund sells additional shares. As a mutual fund sells more shares, the fund's fixed expenses, which are paid by the shareholders, are spread among more shares. Also, as the fund grows, it benefits from the economies of scale. For example, due to increased volume and larger trades, the fund may pay reduced brokerage fees or commissions. These savings are passed directly to the shareholders.

Even if House Bill 2139 is enacted, open-end mutual funds will still have shareholder meetings. Shareholders will continue to have meetings to amend the fund's fundamental investment policies, increase investment advisory fees and make other material changes in the fund's operations. Furthermore, the holders of 10% of a fund's outstanding shares can demand that a shareholder meeting be held.

A provision similar to House Bill 2139 has been adopted in Maryland. A number of mutual funds are organized under the laws of that state. In addition, the Security and Exchange Commission allows open-end mutual funds to register an indefinite number of authorized shares. Likewise, I have been informed by the Securities Commissioner for the State of Kansas that he supports this measure.

Mutual funds offer investors many advantages, including diversification and professional management. House Bill 2139, and similar measures, may create an incentive for other mutual funds to organize as Kansas corporations and may eliminate an incentive for Kansas funds to reorganize elsewhere.

Thank you for your time and consideration. I would be happy to address any questions you have.

Very truly yours,

Anita Larson
Assistant Counsel
Security Benefit Group, Inc.