

Approved: January 17, 1996
Date

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Chairperson Bill Bryant at 3:30 p.m. on January 9, 1996 in Room 527S of the Capitol.

All members were present except: Representative Phill Kline
Representative Clyde Graeber
Representative Delbert Crabb
Representative Tom Sawyer

Committee staff present: Bill Wolff, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Nikki Feuerborn, Committee Secretary

Conferees appearing before the committee: Pete McGill, Community Bankers Association
Jim Maag, Kansas Bankers Association
Judy Stork, Kansas Bank Commissioner's Office
Kathleen Sebelius, Commissioner of Insurance

Others attending: See attached list

Pete McGill, representing Community Banker's Association, requested the introduction of legislation which would prohibit Kansas from participating in interstate branching according to the recently proposed federal legislation (Attachment 1). Jim Maag of the Kansas Bankers Association joined him in the request to "opt out" of merger transactions involving out of state banks thus prohibiting interstate branches.

Representative Correll moved for the introduction of this proposal as a committee bill. The motion was seconded by Representative Humerickhouse. Motion carried.

Judy Stork, Kansas Bank Commissioner's Office, requested the introduction of legislation which would amend four existing statutes: 9-1108; 9-1110; 9-1604; and 9-1703 (Attachment 2). The proposed legislation would change the required two-thirds affirmative vote by stockholders in liquidation processes to a majority vote. The proposal would also allow the Bank Commissioner oversight in the reactivation of trust departments.

Representative Donovan moved for the introduction of the proposed legislation as a Committee bill. Motion was seconded by Representative Gilbert. Motion carried.

Kathleen Sebelius, Insurance Commissioner, proposed eight pieces of legislation in the areas of consumer protection, regulatory relief, financial requirements, and fraud and criminal investigations (Attachment 3).

Representative Samuelson moved that the proposed legislation be introduced as committee bills. Representative Cox seconded the motion. Motion carried.

The meeting was adjourned at 3:55 p.m.

The next meeting is scheduled for January 17, 1996.

HOUSE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE GUEST LIST

DATE: 1-9-96

NAME	REPRESENTING
Danielle Nee	KCUA
Joel Franke	FFC
Joe Fuganic	KCA
Bill Sheed	State Farm
Judi Stork	OSBC
Paul W. Hill	KCUA CBA
Wendy Fink	CBA
Paul J. Hill	CBA
PAT MORRIS	KAIA
Kathy Loulace	CBA
Jessie Hoffmann	CBA
Sue Anderson	CBA
Tom Wilder	Kansas Insurance Dept.
Matthew Goddard	Heartland Community Bankers
Jeff Sonnich	Heartland Community Bankers
John C. Bottenberg	D.otta Dental
Kathy Peterson	Prudential Insurance
Chad D. Tenpenny	Sec of State
Aletia M. Vaughn	Insurance Dept.

HOUSE FINANCIAL INSTITUTIONS AND INSURANCE
COMMITTEE GUEST LIST

DATE: January 9, 1996

NAME	REPRESENTING
Chuck Stones	KBA
Kathy Taylor	-
Jim Haag	-
Bill Cator	Consumer Credit

HOUSE BILL NO. _____

AN ACT relating to banks and banking; providing for a prohibition on merger transactions involving out-of-state banks; prohibiting interstate branches; amending K.S.A. 1995 Supp. 9-519 and repealing the existing section; also repealing K.S.A. 9-813 and K.S.A. 1995 Supp. 9-540.

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

New Section 1. Notwithstanding any other law:

(a) Pursuant to section 44(a)(2), federal deposit insurance act (12 U.S.C. section 1831u(a)(2)), a Kansas bank may not engage in an acquisition and merger transaction involving an out-of-state bank;

(b) an out-of-state bank may not establish a de novo branch bank in this state or acquire a branch bank in this state by purchase or other means;

(c) a Kansas bank may not establish a de novo branch bank in a state other than this state or acquire a branch bank in a state other than this state by purchase or other means; and

(d) no foreign bank shall establish or maintain any branch bank, agency, office or other place of business in this state.

Sec. 2. K.S.A. 1995 Supp. 9-519 is hereby amended to read as follows: 9-519. For the purposes of K.S.A. 9-520 through 9-524, and amendments thereto, and K.S.A. 9-532 through 9-539, and amendments thereto, and section 1 of this act unless otherwise required by the context:

(a) (1) "Bank holding company" means any company:

(A) Which directly or indirectly owns, controls, or has power to vote 25% or more of any class of the voting shares of a bank or 25% or more of any class of the voting shares of a company which is or becomes a bank holding company by virtue of this act;

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Attachment 1

(B) which controls in any manner the election of a majority of the directors of a bank or of a company which is or becomes a bank holding company by virtue of this act;

(C) for the benefit of whose shareholders or members 25% or more of any class of the voting shares of a bank or 25% or more of any class of the voting shares of a company which is or becomes a bank holding company by virtue of this act, is held by trustees; or

(D) which, by virtue of acquisition of ownership or control of, or the power to vote the voting shares of, a bank or another company, becomes a bank holding company under this act.

(2) Notwithstanding paragraph (1), no company:

(A) Shall be deemed to be a bank holding company by virtue of its ownership or control of shares acquired by it in connection with its underwriting of securities if such shares are held only for such period of time as will permit the sale thereof on a reasonable basis;

(B) formed for the sole purpose of participating in a proxy solicitation shall be deemed to be a bank holding company by virtue of its control of voting rights of shares acquired in the course of such solicitation;

(C) shall be deemed to be a bank holding company by virtue of its ownership or control of shares acquired in securing or collecting a debt previously contracted in good faith, provided such shares are disposed of within a period of two years from the date on which such shares could have been disposed of by such company;

(D) owning or controlling voting shares of a bank shall be deemed to be a bank holding company by virtue of its ownership or control of shares held in a fiduciary capacity except where such shares are held for the benefit of such company or its shareholders.

(b) "Company" means any corporation, trust, limited partnership, association or similar organization including a bank but shall not include any corporation the majority of the shares

of which are owned by the United States or by any state, or include any individual or partnership.

(c) "Bank" means an insured bank as defined in section 3(h) of the federal deposit insurance act, 12 U.S.C. 1813(h), except the term shall not include a national bank which engages only in credit card operations, does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others, does not accept any savings or time deposits of less than \$100,000, accepts deposits only from corporations which own 51% or more of the voting shares of the bank holding company or its parent corporation of which the bank engaging only in credit card operations is a subsidiary, maintains only one office that accepts deposits, and does not engage in the business of making commercial loans.

(d) "Subsidiary" with respect to a specified bank holding company means:

(1) Any company more than 5% of the voting shares of which, excluding shares owned by the United States or by any company wholly owned by the United States, is directly or indirectly owned or controlled by such bank holding company or is held by it with power to vote;

(2) any company the election of a majority of the directors of which is controlled in any manner by such bank holding company; or

(3) any company more than 5% of the voting shares of which is held by trustees for the benefit of such bank holding company or its shareholders.

(e) "Commissioner" means the Kansas state bank commissioner.

(f) "Kansas bank" means any bank, as defined by subsection (c), which, in the case of a state chartered bank, is a bank chartered under the authority of the state of Kansas, and in the case of a national banking association, a bank with its main office located in Kansas.

(g) "Kansas bank holding company" means a bank holding company, as defined by subsection (a), with total subsidiary bank

deposits in Kansas which exceed the bank holding company's subsidiary bank deposits in any other state.

(h) "Out-of-state bank holding company" means any holding company which is not a Kansas bank holding company as defined in subsection (g).

(i) "Foreign bank" means any company organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa or the Virgin Islands, which engages in the business of banking, or any subsidiary or affiliate, organized under such laws, of any such company.

(j) "Branch bank" means any office, agency or other place of business located within this state, other than the place of business specified in the bank's certificate of authority, at which deposits are received, checks paid, money lent or trust authority exercised.

(k) "out-of-state bank" means a bank that is:

(1) A national bank having its main office in a state other than this state; or

(2) a state-chartered bank chartered by a state other than this state.

Sec. 3. K.S.A. 9-813 and K.S.A. 1995 Supp. 9-519 and 9-540 are hereby repealed.

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

9-1108. Voluntary liquidation of banks. Upon the affirmative vote of ~~at least two-thirds~~ a majority of the outstanding voting stock, any bank may liquidate by paying in full all of its depositors and creditors. Any bank desiring to liquidate voluntarily shall file notice thereof with the commissioner and immediately surrender its certificate of authority to transact a banking business. The commissioner may examine ~~such~~ the bank at any time during the period in which it is being liquidated and may compel ~~such~~ the bank to file reports with the commissioner during the time it is being liquidated. Upon the completion of the liquidation the bank shall remove all advertising signs, and the commissioner shall make a final examination to determine that all depositors and creditors have been paid before any distribution is made to stockholders. (L. 1947, ch. 102 § 37; June 30.)

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Attachment 2
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9-1110. **Sale of bank assets.** Upon the affirmative vote of ~~at least two-thirds~~ a majority of the outstanding voting stock, any bank for the purpose of liquidation, ~~or~~ merger or consolidation may sell all or any part of its assets to any other bank, either state or national, and may receive in payment therefor cash or its equivalent, ~~or~~ shares of stock in the purchasing bank, or both. (L. 1951, ch. 120, § 2; June 30.)

9-1604. Liquidation, consolidation or merger. Upon the affirmative vote of ~~at least two thirds~~ a majority of the outstanding voting stock, any bank having trust authority may liquidate, or may consolidate or merge its trust department with any other bank having trust authority or with any trust company, and any trust company may liquidate, or may consolidate or merge with any other trust company or with any bank having trust authority: *Provided*, That such liquidation, consolidation or merger shall not be effective until the commissioner has approved the same in writing after the terms thereof have been submitted to the commissioner for ~~his or her~~ examination and approval. (L. 1951, ch. 120, § 3, June 30.)

9-1703. Annual assessment, banks, and trust companies and savings and loan associations; examinations; disposition of receipts; bank commissioner fee fund. (a) The expense of every regular examination, together with the expense of administering the banking and savings and loan laws, including salaries, travel expenses, supplies and equipment, shall be paid by the banks and savings and loan associations of the state, and for this purpose the bank commissioner shall, prior to the beginning of each fiscal year, make an estimate of the expenses to be incurred by the department during such fiscal year. From this total amount the commissioner shall deduct the estimated amount of the anticipated annual income to the fund from all sources other than bank and savings and loan association assessments. The commissioner shall allocate and assess the remainder to the banks and savings and loan associations in the state on the basis of their total assets, as reflected in the last March 31 report called for by the federal deposit insurance corporation under the provisions of section 7 of the federal deposit insurance act, 12 USC 1817 and amendments thereto or K.S.A. 17-5610 and amendments thereto, except that the annual assessment will not be less than \$1,000 for any bank or savings and loan association.

(b) The expense of every regular trust examination, together with the expense of administering trust laws, including salaries, travel expenses, supplies and equipment, shall be paid by the trust companies and trust departments of banks of this state, and for this purpose, the bank commissioner, prior to the beginning of each fiscal year, shall make an estimate of the trust expenses to be incurred by the department during such fiscal year. The commissioner shall allocate and assess the trust departments and trust companies in the state on the basis of their total fiduciary assets, as reflected in the last December 31 report filed with the commissioner pursuant to K.S.A. 9-1704 and amendments thereto, except that the annual assessment will not be less than \$1,000 for any active trust department or trust company. A trust department or a trust company which has no fiduciary assets, as reflected in the last preceding year-end report filed with the commissioner, may be granted inactive status by the commissioner and the annual assessment shall not be more than \$100 for an inactive trust department or trust company. **No inactive trust department or trust company shall accept any fiduciary assets or exercise a part of or all of its trust**

authority until such time as it has applied for and received prior written approval of the commissioner to reactivate its trust authority.

(c) A statement of each assessment made under the provisions of subsection (a) or (b) shall be sent by the commissioner to each bank, savings and loan association, trust department and trust company on July 1 or the next business day thereafter. If a bank, savings and loan association or trust company exits as a corporate entity with the secretary of state's office as of the close of business June 30, and is authorized by the office of the state bank commissioner to conduct banking, savings and loan or trust business, one-half of the amount so assessed shall be due and payable on or before July 15. If a bank, savings and loan association or trust company exists as a corporate entity with the secretary of state's office as of close of business on December 31, and is authorized to conduct banking, savings and loan or trust business, the remaining one-half of the amount assessed shall be due and payable on or before January 15. Any expenses incurred or services performed on account of any bank, trust department or trust company or other corporation which are outside of the normal expense of an examination required under the provisions of K.S.A. 9-1701, and amendments thereto or K.S.A. 17-5612 and amendments thereto, shall be charged to and paid by the corporation for whom they were incurred or performed. The commissioner may impose a penalty upon any bank, savings and loan association, trust department or trust company which fails to pay its annual assessment. The penalty shall be assessed in the amount of \$50 for each day the assessment is not paid. The counting period for such penalty shall begin February 1 or August 1.

The bank commissioner shall remit all moneys received by or for such commissioner from such examination fees to the state treasurer at least monthly. Upon receipt of each remittance, the state treasurer shall deposit the entire amount in the treasury. Twenty percent of each deposit shall be credited to the state general fund and the balance shall be credited to the bank commissioner fee fund. All expenditures from the bank commissioner fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the bank commissioner or by a person or persons designated by the

commissioner.

(d) As used in this section, "savings and loan association" means a Kansas state-chartered savings and loan association.

(e) In the event a bank, savings and loan association or trust company is merged into, consolidated with, or the assets and liabilities of which are purchased and assumed by another bank, savings and loan association or trust company, between the preceding March 31, for ~~bank~~ banks and savings and loan associations, or the preceding December 31, for trust companies, and July 1, the surviving or acquiring bank, savings and loan association or trust company is obligated to pay the assessment on the assets merged, consolidated or assumed for the fiscal year commencing July 1. (L. 1995, ch. 25, § 1; July 1.)

MEMORANDUM

To: House Committee on Financial Institutions
and Insurance

From: Kathleen Sebelius, Commissioner
of Insurance

Re: Request for Introduction of Legislation

Date: January 9, 1995

I would like to request that the House Committee on Financial Institutions and Insurance introduce the following legislative proposals on behalf of the Kansas Department of Insurance. Drafts of the various bills have been prepared and are available for review by the Committee.

Consumer Protection

Automobile Insurance/Minimum Coverage: The bill requires automobile insurance companies to offer policyholders more than the minimum statutory physical damage coverage or personal injury liability limits when the policy is renewed if the insured requests the additional coverage.

Rental Cars/Protection For Third Party Drivers: The legislation requires rental car companies that are self-insured to provide primary insurance coverage to third parties who are injured or have property damage as the result of an accident involving a car owned by the rental car company.

Commingling Of Agent And Client Funds: The bill amends K.S.A. 40-247 to require insurance agents to set up a separate bank account for client funds. This new requirement will be effective January 1, 1997. The bill also provides that agents and brokers are responsible in a fiduciary capacity for all funds received from their clients.

Regulatory Relief

Countersignature Law: The legislation amends K.S.A. 40-246 to repeal the requirement for an out of state agent who holds a Kansas license to obtain the signature of a Kansas resident agent on an insurance policy.

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Agent Licensing Requirements: The bill amends K.S.A. 40-246b to repeal the requirement for insurance agents to annually reapply for an excess lines license to sell fire and casualty insurance. The excess lines license will be renewed each year upon the payment of a \$50 registration fee and certification that the agent has errors and omissions insurance coverage. The proposed legislation would also amend K.S.A. 40-241 by changing the time period for applicants to reapply for an agent's examination if they have previously failed the exam. In addition, the bill makes several technical changes to K.S.A. 40-240f regarding the continuing education requirements for insurance agents.

Financial Requirements

Risk Based Capital Standards: This statutory change is required to meet state accreditation standards established by the National Association of Insurance Commissioners. The bill amends the Kansas Risk Based Capital Act to include property and casualty insurers and health insurance companies under the provisions of the act. The current Kansas risk based capital law only applies to life insurers. The act sets out financial solvency examination standards for insurance companies.

Fraud and Criminal Investigations

Revocation Of Broker's License: The bill provides that when the Insurance Department revokes the license of an agent then the agency and/or broker license of the individual would automatically be revoked.

Arson Investigation: The bill adds the Insurance Department to the list of state and federal agencies which automatically receive reports from insurance companies of suspected arson or other fraudulent insurance acts.

_____ Bill No. _____

AN ACT concerning insurance; relating to private passenger automobile insurance; amending K.S.A. 40-276, 40-276a, and 40-277 and repealing the existing sections.

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

Section 1. K.S.A. 40-276 is hereby amended to read as follows: 40-276. As used in this act: "Policy of automobile ~~liability~~ insurance" means a policy insuring against the liability of the insured for the death, disability or damages of another and against loss or damage to the property of another, *or loss of or damage to, or destruction of the insured's automobile or both*, arising from the use of an automobile that is issued to cover the following types of automobiles owned by an individual or by husband and wife, including automobiles hired under a long term contract and written on a specified car basis:

(a) A motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance for passengers, nor rented to others;

(b) Any other four-wheel motor vehicle with a load capacity of one thousand five hundred (1,500) pounds or less which is not used in the occupation, profession or business of the named insured, other than farming: ~~Provided, That~~ *but* the term "policy of

automobile ~~liability~~ insurance" shall not include policies of automobile ~~liability~~ insurance (1) issued through the Kansas automobile ~~assigned risk~~ *insurance* plan, (2) insuring more than four automobiles, nor (3) insuring the automobile hazard of garages, automobile sales agencies, repair shops, service stations or public parking places.

Sec. 2. K.S.A. 276a is hereby amended to read as follows: 40-276a. Any insurance company that denies renewal of an automobile ~~liability~~ insurance policy in this state shall give at least thirty (30) days written notice to the named insured, at his *or her* last known address, or cause such notice to be given by a licensed agent of its intention not to renew such policy: ~~Provided, however, That~~ *but* no insurance company shall deny the renewal of an automobile ~~liability~~ insurance policy except in one or more of the following circumstances:

(a) When such insurance company is required or has been permitted by the commissioner of insurance, in writing, to reduce its premium volume in order to preserve the financial integrity of such insurer;

(b) when such insurance company ceases to transact such business in this state;

(c) when such insurance company is able to show competent medical evidence that the insured has a physical or mental disablement that impairs his ability to drive in a safe and reasonable manner;

(d) when unfavorable underwriting factors, pertinent to the risk, are existent, and of a substantial nature, which could not have reasonably been ascertained by the company at the initial issuance of the policy or the last renewal thereof;

(e) when the policy has been continuously in effect for a period of five (5) years:

Provided, That such five-year period shall begin at the first policy anniversary date following the effective date of this act: *Provided further*, That if such policy is renewed or continued in force after the expiration of such period or any subsequent five-year period, the provisions of this subsection shall apply in any such subsequent period; or

(f) when any of the reasons specified as reasons for *a unilateral reduction or cancellation coverage* in K.S.A. 40-277 are existent:

~~*Provided*, That~~ (g) (1) when failure to renew is based upon termination of agency contract, obligation to renew will be satisfied if the insurer has manifested its willingness to renew, and (2) obligation to renew is terminated on the effective date of any other ~~*similar*~~ automobile ~~liability~~ insurance procured by the named insured with respect to any automobile designated in both policies: ~~*Provided further*, That~~ .

(h) Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of such renewal:

~~*Provided further*, That~~ .

(i) Nothing in this section shall require an insurance company to renew an automobile ~~liability~~ insurance policy if such renewal would be contrary to restrictions of membership in the company which are contained in the articles of incorporation or the bylaws of such company.

Sec. 3. K.S.A. 40-277 is hereby amended to read as follows: 40-277.

No insurance company shall issue a policy of automobile ~~liability~~ insurance in this state unless the cancellation condition of the policy or endorsement thereon includes the following limitations pertaining to cancellation by the insurance company:

After this policy has been in effect for 60 days, or if the policy is a renewal, effective immediately, the company shall not *unilaterally reduce or* exercise its right to cancel the insurance afforded under ~~(here insert the appropriate coverage references)~~ *hereunder* solely because of age or unless

1. The named insured fails to discharge when due any of his obligations in connection with the payment of premium for this policy or any installment thereof whether payable directly or under any premium finance plan; or
2. the insurance was obtained through fraudulent misrepresentation; or
3. the insured violates any of the terms and conditions of the policy; or
4. the named insured or any other operator, either resident in the same household, or who customarily operates an automobile insured under the policy,
 - (a) has had such person's driver's license suspended or revoked during the policy period, or
 - (b) is or becomes subject to epilepsy or heart attacks, and such individual cannot produce a certificate from a physician testifying to such person's ability to operate a motor vehicle, or
 - (c) is or has been convicted during the 36 months immediately preceding the effective date of the policy or during the policy period, for:

- (1) Any felony, or

(2) criminal negligence, resulting in death, homicide or assault, arising out of the operation of a motor vehicle, or

(3) operating a motor vehicle while in an intoxicated condition or while under the influence of drugs, or

(4) leaving the scene of an accident without stopping to report, or

(5) theft of a motor vehicle, or

(6) making false statements in an application for a driver's license, or

(7) a third moving violation, committed within a period of 18 months, of (i) any regulation limiting the speed of motor vehicles, (ii) any of the provisions in the motor vehicle laws of any state, the violation of which constitutes a misdemeanor or traffic infraction, or (iii) any ordinance traffic infraction, or ordinance which prohibits the same acts as a misdemeanor statute of the uniform act regulating traffic on highways, whether or not the violations were repetitious of the same offense or were different offenses.

Sec. 4. K.S.A. 40-276, 40-276a, and 40-277 are hereby repealed.

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

_____ **Bill No.** _____

AN ACT relating to automobile insurance; concerning self insurance; amending K.S.A. 40-3104 and repealing the existing section.

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

Section 1. K.S.A. 40-3104 is hereby amended to read as follows: K.S.A. 40-3104.

Coverage required; self-insurance; penalties

(a) Every owner shall provide motor vehicle liability insurance coverage in accordance with the provisions of this act for every motor vehicle owned by such person, unless such motor vehicle: (1) Is included under an approved self-insurance plan as provided in subsection (f); (2) is used as a driver training motor vehicle, as defined in K.S.A. 72-5015, and amendments thereto, in an approved driver training course by a school district or an accredited nonpublic school under an agreement with a motor vehicle dealer, and such motor vehicle liability insurance coverage is provided by the school district or accredited nonpublic school; (3) is included under a qualified plan of self-insurance approved by an agency of the state in which such motor vehicle is registered and the form prescribed in subsection (b) of K.S.A. 40-3106, and amendments thereto, has been filed; or (4) is expressly exempted from the provisions of this act.

(b) An owner of an uninsured motor vehicle shall not permit the operation there upon a highway or upon property open to use by the public, unless such motor vehicle is expressly exempted from the provisions of this act.

(c) No person shall knowingly drive an uninsured motor vehicle upon a highway or upon property open to use by the public, unless such motor vehicle is expressly exempted from the provisions of this act.

(d) Any person operating a motor vehicle upon a highway or upon property open to use by the public shall display, upon demand, evidence of financial security to a law enforcement officer. The law enforcement officer shall issue a citation to any person who fails to display evidence of financial security upon such demand. The law enforcement officer shall attach a copy of the insurance verification form prescribed by the secretary of revenue to the copy of the citation forwarded to the court.

No citation shall be issued to any person for failure to provide proof of financial security when evidence of financial security meeting the standards of subsection (e) is displayed upon demand of a law enforcement officer. Whenever the authenticity of such evidence is questionable, the law enforcement officer may initiate the preparation of the insurance verification form prescribed by the secretary of revenue by recording information from the evidence of financial security displayed. The officer shall immediately forward the form to the department of revenue, and the department shall proceed with verification in the manner prescribed in the following paragraph. Upon

return of a form indicating that insurance was not in force on the date indicated on the form, the department shall immediately forward a copy of the form to the law enforcement officer initiating preparation of the form.

(e) Unless the insurance company subsequently submits an insurance verification form indicating that insurance was not in force, no person charged with violating subsections (b), (c) or (d) shall be convicted if such person produces in court, within 20 days of the date of arrest or of issuance of the citation, evidence of financial security for the motor vehicle operated, which was valid at the time of arrest or of issuance of the citation. For the purpose of this subsection, evidence of financial security shall be provided by a policy of motor vehicle liability insurance, an identification card or certificate of insurance issued to the policyholder by the insurer which provides the name of the insurer, the policy number and the effective and expiration dates of the policy, or a certificate of self-insurance signed by the commissioner of insurance. Upon the production in court of evidence of financial security, the court shall record the information displayed thereon on the insurance verification form prescribed by the secretary of revenue, immediately forward such form to the department of revenue, and stay any further proceedings on the matter pending a request from the prosecuting attorney that the matter be set for trial. Upon receipt of such form the department shall mail the form to the named insurance company for verification that insurance was in force on the date indicated on the form. It shall be the duty of insurance companies to notify the department within 30 calendar days of the receipt of such forms of any insurance that was not in force on the date specified. Upon return of any form to the

department indicating that insurance was not in force on such date, the department shall immediately forward a copy of such form to the office of the prosecuting attorney or the city clerk of the municipality in which such prosecution is pending when the prosecuting attorney is not ascertainable. Receipt of any completed form indicating that insurance was not in effect on the date specified shall be prima facie evidence of failure to provide proof of financial security and violation of this section. A request that the matter be set for trial shall be made immediately following the receipt by the prosecuting attorney of a copy of the form from the department of revenue indicating that insurance was not in force. Any charge of violating subsection (b), (c) or (d) shall be dismissed if no request for a trial setting has been made within 60 days of the date evidence of financial security was produced in court.

(f) Any person in whose name more than 25 motor vehicles are registered in Kansas may qualify as a self-insurer by obtaining a certificate of self-insurance from the commissioner of insurance. The certificate of self-insurance issued by the commissioner shall cover such owned vehicles and those vehicles, registered in Kansas, leased to such person if the lease agreement requires that motor vehicle liability insurance on the vehicles be provided by the lessee. Upon application of any such person, the commissioner of insurance may issue a certificate of self-insurance, if the commissioner is satisfied that such person is possessed and will continue to be possessed of ability to pay any claim judgment obtained against such person arising out of the ownership, operation, maintenance or use of any motor vehicle described in this subsection. A self-insurer shall provide direct and primary liability coverage up to its self-insured retention

arising out of the ownership, operation, maintenance or use of a self-insured vehicle.

Such liability coverage shall be provided to any person using the self-insured vehicle with the expressed or implied consent of the self-insurer. As used in this section the term "self-insured retention" means the limit of liability the self-insurer has filed with and has been approved by the commissioner of insurance.

Upon notice and a hearing in accordance with the provisions of the Kansas administrative procedure act, the commissioner of insurance may cancel a certificate of self-insurance upon reasonable grounds. Failure to provide direct and primary liability coverage or personal injury protection benefits required by K.S.A. 40-3109 or to pay any claim judgment against a self-insurer, arising out of the ownership, operation, maintenance or use of a motor vehicle registered in such self-insurer's name, ~~within 30 days after such judgment shall have become final~~, shall constitute reasonable grounds for the cancellation of a certificate of self-insurance.

For the purposes of this section, self-insurers shall be subject to the provisions of Section 9 and Section 10 of K.S.A. 1994 Supp. 40-2404 and K.S.A. 40-2404a as may hereafter be amended.

(g)(1) Any person violating any provision of this section shall be guilty of a class B misdemeanor and shall be subject to a fine of not less than \$200 nor more than \$1,000 or confinement in the county jail for a term of not more than six months, or both such fine and confinement.

(2) Any person convicted of violating any provision of this section within three years of any such prior conviction shall be guilty of a class A misdemeanor.

(h) In addition to any other penalties provided by this act for failure to have or maintain financial security in effect, the director, upon receipt of a report required by K.S.A. 8-1607 or 8-1611, and amendments thereto, or a denial of such insurance by the insurance company listed on the form prescribed by the secretary of revenue pursuant to subsection (d) of this section, shall, upon notice and hearing as provided by K.S.A. 40-3118, and amendments thereto, suspend:

(1) The license of each driver in any manner involved in the accident;

(2) the license of the owner of each motor vehicle involved in such accident, unless the vehicle was stolen at the time of the accident, proof of which must be established by the owner of the motor vehicle. Theft by a member of the vehicle owner's immediate family under the age of 18 years shall not constitute a stolen vehicle for the purposes of this section;

(3) the registrations of all vehicles owned by the owner of each motor vehicle involved in such accident;

(4) if the driver is a nonresident, the privilege of operating a motor vehicle within this state; or

(5) if such owner is a nonresident, the privilege of such owner to operate or permit the operation within this state of any motor vehicle owned by such owner.

(i) The suspension requirements in subsection (h) shall not apply:

(1) To the driver or owner if the owner had in effect at the time of the accident an automobile liability policy as required by K.S.A. 40-3107, and amendments thereto, with respect to the vehicle involved in the accident;

(2) to the driver, if not the owner of the vehicle involved in the accident, if there was in effect at the time of the accident an automobile liability policy with respect to such driver's driving of vehicles not owned by such driver;

(3) to any self-insurer as defined by subsection (u) of K.S.A. 40-3103, and amendments thereto;

(4) to the driver or owner of any vehicle involved in the accident which was exempt from the provisions of this act pursuant to K.S.A. 40-3105, and amendments thereto;

(5) to the owner of a vehicle described in subsection (a)(2).

(j) For the purposes of provisions (1) and (2) of subsection (i) of this section, the director may require verification by an owner's or driver's insurance company or agent thereof that there was in effect at the time of the accident an automobile liability policy as required in this act.

Any suspension effected hereunder shall remain in effect until satisfactory proof of financial security has been filed with the director as required by subsection (d) of K.S.A. 40-3118, and amendments thereto, and such person has been released from liability or is a party to an action to determine liability pursuant to which the court temporarily stays such suspension pending final disposition of such action, has entered into an agreement for the payment of damages, or has been finally adjudicated not to be liable in respect to such accident and evidence of any such fact has been filed with the director and has paid the reinstatement fee herein prescribed. Such reinstatement fee shall be \$25 except that if the registration of a motor vehicle of any owner is suspended within

one year following a prior suspension of the registration of a motor vehicle of such owner under the provisions of this act such fee shall be \$75.

(k) The provisions of this section shall not apply to motor carriers of property or passengers regulated by the corporation commission of the state of Kansas.

(l) The provisions of subsection (d) shall not apply to vehicle dealers, as defined in K.S.A. 8-2401, and amendments thereto, for vehicles being offered for sale by such dealers.

Section 2. K.S.A. 40-3104 is hereby repealed.

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

_____ Bill No. _____

AN ACT concerning insurance; providing for segregated fund accounts for insurance agents or brokers; amending K.S.A. 1994 Supp. 40-247 and repealing the existing sections.

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

Section 1. K.S.A. 1994 Supp. 40-247 is hereby amended to read as follows:

40-247. (a) An insurance agent or broker who acts in negotiating or renewing or continuing a contract of insurance including any type of annuity by an insurance company lawfully doing business in this state, and who receives any money or substitute for money as a premium for such a contract from the insured, whether such agent or broker shall be entitled to an interest in same or otherwise, shall be deemed to hold such premium in trust for the company making the contract. *Every insurance agent or broker shall be responsible in a fiduciary capacity for all funds received or collected as an agent or broker from their clients. Effective January 1, 1997, every insurance agent or broker shall not combine any such funds received from clients with the agent's or broker's own funds or with funds held by the agent or broker in any other capacity.* If such agent or broker fails to pay the same over to the company ~~after written demand made upon such~~

~~agent or broker~~, less such agent's or broker's commission and any deductions, to which by the written consent of the company such agent or broker may be entitled, such failure shall be prima facie evidence that such agent or broker has used or applied the premium for a purpose other than paying the same over to the company.

(b) (1) An agent or broker who violates the provisions of this section shall be guilty of a :

(A) Severity level 7, nonperson felony if the value of the insurance premium is \$25,000 or more;

(B) severity level 9, nonperson felony if the value of the insurance premium is at least \$500 but less than \$25,000; or

(C) class A nonperson misdemeanor if the value of the insurance premium is less than \$500.

(2) If the value of the insurance premium is less than \$500 and such agent or broker has, within five years immediately preceding commission of the crime, been convicted of violating this section two or more times shall be guilty of a severity level 9, nonperson felony. *Nothing in this section shall be construed to require any agent or broker to maintain a separate bank deposit for each principal, provided such deposits are clearly ascertainable from the books of account and records of the agent or broker.*

Sec. 2. K.S.A. 40-247 is hereby repealed.

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

AN ACT concerning insurance; relating to countersignature requirements of certain policies and contracts of insurance; amending K.S.A. 40-246 and repealing the existing section.

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

Section 1. K.S.A. 40-246 is hereby amended to read as follows: 40-246. The commissioner of insurance is prohibited from issuing any license or authority to write policies of insurance, or to solicit and obtain such policies, to any person, agent or corporation, unless such person, agent, or corporation is a legal resident of this state at the time such license or authority is issued. Under such regulations and restrictions deemed necessary by the commissioner of insurance, licenses may be issued to nonresident agents, who are licensed by the state in which they reside, upon the payment of an annual fee of \$10. Whenever any other state imposes on Kansas companies or agents additional or greater fees, obligations, or prohibitions, the same shall be imposed on similar companies and agents of such other state. ~~Except for a policy or contract of life insurance, all policies or contracts shall be signed by a resident agent or a nonresident agent of a state which (1) does not require a countersignature, or (2) will permit Kansas residents possessing a nonresident agent's license of that state to countersign. By prior written agreement between a licensed resident agent and the issuing company, a facsimile signature, or the printing of the name and address of such licensed resident agent on the policy form or endorsement, shall~~

be deemed to meet the countersignature and signature requirements of this section. Whenever any person, agent or corporation so authorized to issue policies of insurance and solicit and transact insurance business shall remove from this state the authority issued to such person, agent or corporation shall be revoked, and the same shall be null and void.

~~To the end that the state may receive the full tax imposed by law upon the premium receipts of insurance companies, and to the end, that proper supervision of the business may be vested in the state, it shall be unlawful for any fire, marine or fire and marine insurance company or casualty or surety company or association not incorporated under the laws of this state to make, write, place or cause to be made, written or placed any policy or bonds issued by any company, authorized to contract of insurance of any kind or character or any indemnity agreement upon property or persons situated in this state, except bid bonds issued by any company, authorized to issue such bonds and to do business in this state, in connection with any public or private construction contract and professional liability insurance policies issued to members of a professional association having in excess of 10,000 members insured when the premium for such policies is paid by the association from the association's funds, unless the same is signed by a resident agent of a state which (1) does not require countersignature, or (2) will permit Kansas residents possessing a nonresident agent's license of that state to countersign, who shall receive the usual and customary commission thereon when the premium is paid.~~

~~Nothing contained in this section shall apply to direct insurance covering the rolling stock belonging to and used in the operation and maintenance of the plant and business of railroad corporations or other common carriers, or property in transit, while in the possession or custody of railroad corporations or other common carriers.~~

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

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

_____ Bill No. _____

AN ACT concerning insurance; relating to insurance agents' examinations and licenses; amending K.S.A. 40-240f, 40-241, and 40-246b and repealing the existing sections.

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

Section 1. K.S.A. 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. Effective January 1, 1997, the term shall mean the date of birth of the licensed agent who is required to complete C.E.C.'s and report the completion of such C.E.C.'s to the commissioner pursuant to this section, except that such due date shall not be earlier than two years from the date of the agent's initial licensure.

(2) "Approved subject" or "approved course" means any educational presentation involving insurance fundamentals, insurance law, insurance policies and coverage, insurance needs, insurance risk management, insurance agency 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 *or the commissioner's designee* 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 *at least 50 to 60* minutes of each clock hour of instruction or the C.E.C. value assigned by the commissioner *or the commissioner's designee*. The C.E.C. values shall be assigned in whole units. The commissioner *or the commissioner's designee* 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. Effective January 1, 1997, for those agents who were born in an odd-numbered year, the term shall mean the period starting with the agent's biennial due date in 1997 and each two-year period thereafter, for those agents who were born in an even-numbered year, the term shall mean the period starting with the agent's biennial due date in 1998 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 which, on and after April 1, 1995, shall include at least one hour of instruction in insurance ethics. No more than three C.E.C.'s shall be in insurance agency management.

(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 which, on and after April 1, 1995, shall include at least one hour of instruction in insurance ethics. No more than three C.E.C.'s shall be in insurance agency management.

(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 prearranged 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 *or the commissioner's designee* 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.

~~(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. the remainder of the biennium in which the courses were attended and the entire biennium immediately following.~~

~~(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) (2) If the required report showing proof of continuing education completion is not received by the commissioner by the biennial due date, the individual agent's qualification and corresponding license or licenses shall be 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 \$100 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 *will expire*.

(4) (3) An applicant for an individual agent's license who previously held a license which ~~terminated~~ *expires* 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) (4) An applicant for an individual agent's license who previously held a license which ~~was terminated~~ *expired* 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) (5) 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.

~~(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 or *the commissioner's designee* 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~~ *provider* 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 *course* fee in the amount of \$50 per course or a ~~nonrefundable fee in the amount of \$250 per year for all courses, and a nonrefundable annual provider fee of \$100.~~

(3) Upon receipt of such information, the commissioner *or the commissioner's designee* 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 *or the commissioner's designee* 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 the remainder of the 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)~~ (6) 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 (f)(2)(H) of this section shall not apply to approvals granted hereunder.

(8) (7) The C.E.C. value assigned to any course, program of study or subject, other than a correspondence course or other course pursued by independent study, shall in no way be contingent upon passage or satisfactory completion of any examination given in connection with such course, program of study or subject.

(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 ~~subject independently~~, other than an agent's examination, approved by the commissioner ~~or the commissioner's designee~~, and who passes an independently monitored examination, shall receive credit for the C.E.C.'s assigned by the commissioner ~~or the commissioner's designee~~ 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~~ *provide evidence of* compliance with continuing education requirements imposed by their state of domicile.

Sec. 2. K.S.A. 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 amendments thereto.

There shall be 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.

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 again fails to satisfactorily complete the examination, it may be retaken following another waiting period of not less than seven days from the date 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; *except that following a waiting period of two years from the date of the applicant's last examination attempt an applicant will be treated as a new applicant and new examination and waiting periods will apply.* The certification fee shall not be returned for any reason. The 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. 40-246b is hereby amended to read as follows: 40-246b. The commissioner of insurance may issue to any duly licensed resident agent of this state, who has been licensed as a fire or casualty, or both, resident agent in this or any other

state or combination thereof, for three consecutive years immediately prior to application for the type of license herein prescribed, upon proper application therefor, an ~~annual~~ excess coverage license to negotiate the types of contracts of fire insurance enumerated in K.S.A. 40-901, and the type of casualty insurance contracts enumerated in K.S.A. 40-1102, or reinsurance, or to place risks, or to effect insurance or reinsurance for persons or corporations other than such agent, with insurers not authorized to do business in this state. An agent, as defined in K.S.A. 40-241e, may place the kind or kinds of business specified in this act for which such agent is licensed pursuant to K.S.A. 40-240 and 40-241 with an insurer not authorized to do business in this state by placing such business with a person licensed pursuant to the provisions of this act and may share in the applicable commissions on such business. Before any such ~~annual~~ license shall be issued, the applicant shall submit proper application therefor on a form prescribed by the commissioner, which application shall be accompanied by ~~an a~~ ~~annual~~ fee of \$50. *Such license shall be renewable each year on May 1 upon the payment of a \$50 fee and certification of appropriate errors and omissions coverage as required by K.S.A. 40-246f.* Excess lines agents licensed by the department on the effective date of this act shall be exempt from the experience requirement..

The agent so licensed shall on or before March 1 of each year, file with the insurance department of this state, a sworn affidavit or statement to the effect that, after diligent effort, such agent has been unable to secure the amount of insurance required to protect the property, person, or firm described in such agent's affidavit or statement from loss or damage in regularly admitted companies during the preceding year. Mere rate

differential shall not be grounds for placing a particular risk in a nonadmitted carrier when an admitted carrier would accept such risk at a different rate. The licensed excess coverage agent must, prior to placing insurance with an insurer not authorized to do business in this state, obtain the written consent of the prospective named insured and provide such insured the following information in a form promulgated by the commissioner:

(a) a statement that the coverage will be obtained from an insurer not authorized to do business in this state;

(b) a statement that the insurer's name appears on the list of companies maintained by the commissioner pursuant to K.S.A. 40-246E;

(c) a notice that the insurer's financial condition, policy forms, rates and trade practices are not subject to the review or jurisdiction of the commissioner;

(d) a statement that the protection of the guaranty associations is not afforded to policyholders of the insurer; and

(e) a statement or notice with respect to any other information deemed necessary by the commissioner pertinent to insuring with an insurer not authorized to do business in this state.

In the event the insured desires that coverage be bound with an insurer not admitted to this state and it is not possible to obtain the written consent of the insured prior to binding the coverage, the excess lines agent may bind the coverage after advising the insured of the information set out above and shall obtain written confirmation that the

insured desires that coverage be placed with an insurer not admitted to this state within 30 days after binding coverage.

When business comes to a licensed excess lines agent for placement with an insurer not authorized to do business in this state from an agent not licensed as an excess lines agent, it shall be the responsibility of the licensed excess lines agent to ascertain that the insured has been provided the preceding information and has consented to being insured with an insurer not authorized to do business in this state. Each excess lines agent shall keep a separate record book in such agent's office showing the transactions of fire and casualty insurance and reinsurance placed in companies not authorized to do business in this state, the amount of gross premiums charged thereon, the insurer in which placed, the date, term and number of the policy, the location and nature of the risk, the name of the assured and such other information as the commissioner may require and such record shall be available at all times for inspection by the commissioner of insurance or the commissioner's authorized representatives. The commissioner may revoke or suspend any license issued pursuant to the provisions of this act in the same manner and for the same reasons prescribed by K.S.A. 40-242.

Any policy issued under the provisions of this statute shall have stamped or endorsed in a prominent manner thereon, the following: This policy is issued by an insurer not authorized to do business in Kansas and, as such, the form, financial condition and rates are not subject to review by the commissioner of insurance and the insured is not protected by any guaranty fund.

If business is placed with a nonadmitted company that is subsequently determined to be insolvent, the excess lines agent placing such business with such company is relieved of any responsibility to the insured as it relates to such insolvency, if the excess lines agent has satisfactorily complied with all requirements of this section pertaining to notification of the insured, has properly obtained the written consent of the insured and has used due diligence in selecting the insurer. It shall be presumed that due diligence was used in selecting the insurer if such insurer was on the list compiled pursuant to K.S.A. 40-246E at the time coverage first became effective.

Sec. 4. K.S.A. 40-240f, 40-241, and 40-246b are hereby repealed.

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

_____ Bill No. _____

AN ACT concerning insurance; relating to risk-based capital requirements; amending K.S.A. 40-2c01, 40-2c02, 40-2c03, 40-2c05, 40-2c11, 40-2c13, 40-2c15, 40-2c18, and 40-2c24 and repealing the existing sections.

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

Section 1. K.S.A. 40-2c01 is hereby amended to read as follows: 40-2c01. As used in this act:

(a) "Adjusted RBC report" means an RBC report which has been adjusted by the commissioner in accordance with K.S.A. 1994 Supp. 40-2c04.

(b) "Corrective order" means an order issued by the commissioner specifying corrective actions which the commissioner has determined are required to address a RBC level event.

(c) "Domestic insurer" means any ~~life insurance company~~ *or risk retention group which is licensed and organized in this state pursuant to K.S.A. 40-401 and amendments thereto.*

(d) "Foreign insurer" means any life insurance company or risk retention group not domiciled in this state which is licensed or registered to do business in this state pursuant to K.S.A. 40-209 and amendments thereto.

(e) "NAIC" means the national association of insurance commissioners.

(f) "Life and health insurer" means any insurance company licensed under articles 4 or 5 of the Chapter 40 of the Kansas Statutes Annotated or a licensed property and casualty insurer writing only accident and health insurance.

(g) "Property and casualty insurer" means any insurance company licensed under articles 9, 10, 11, 12, 12a, 15, or 16 of Chapter 40 of the Kansas Statutes Annotated but shall not include monoline mortgage guaranty insurers, financial guaranty insurers and title insurers.

~~(f)~~ (h) "Negative trend", with respect to a life and health insurer, means a negative trend over a period of time, as determined in accordance with the "trend test calculation" included in the RBC instructions defined in subsection ~~(h)~~ (j).

~~(g)~~ (i) "RBC" means risk-based capital.

~~(h)~~ (j) "RBC instructions" means the RBC report including risk-based capital instructions promulgated by the NAIC and adopted as rules and regulations by the commissioner.

~~(i)~~ (k) "RBC level" means an insurer's company action level RBC, regulatory action level RBC, authorized control level RBC, or mandatory control level RBC where:

(1) "Company action level RBC" means, with respect to any insurer, the product of 2.0 and its authorized control level RBC;

(2) "regulatory action level RBC" means the product of 1.5 and its authorized control level RBC;

(3) "authorized control level RBC" means the number determined under the risk-based capital formula in accordance with the RBC instructions; and

(4) "mandatory control level RBC" means the product of .70 and the authorized control level RBC.

~~(j)~~ (l) "RBC plan" means a comprehensive financial plan containing the elements specified in K.S.A. 1994 Supp. 40-2c06. If the commissioner rejects the RBC plan, and it is revised by the insurer, with or without the commissioner's recommendation, the plan shall be called the "revised RBC plan."

~~(k)~~ (m) "RBC report" means the report required by K.S.A. 1994 Supp. 40-2c02.

~~(l)~~ (n) "Total adjusted capital" means the sum of:

(1) An insurer's capital and surplus or surplus only if a mutual insurer; and

(2) such other items, if any, as the RBC instructions may provide.

~~(m)~~ (o) "Commissioner" means the commissioner of insurance.

Sec. 2. K.S.A. 40-2c02 is hereby amended to read as follows: 40-2c02. Every domestic insurer, concurrent with or prior to submission of the annual statement required by K.S.A. 1994 Supp. 40-225 and amendments thereto, shall prepare and submit to the commissioner a report of its RBC levels as of the end of the calendar year just ended in a form and containing such information as is required by the RBC instructions. In addition, every domestic insurer shall file its RBC report:

(a) With the NAIC in accordance with the RBC instructions; and

(b) with the insurance commissioner in any state in which the insurer is authorized to do business, if such insurance commissioner has notified the insurer of its request in writing, in which case the insurer shall file its RBC report not later than the later of:

- (1) Fifteen days from the receipt of notice to file its RBC report with that state; or
- (2) the filing date otherwise specified in this subsection.

Sec. 3. K.S.A. 40-2c03 is hereby amended to read as follows: 40-2c03.

(a) ~~A~~ *A life and health insurer's RBC shall be determined in accordance with the formula set forth in the RBC instructions. The formula shall take into account and may adjust for the covariance between:*

- ~~(a)~~ (1) The risk with respect to the insurer's assets;
 - ~~(b)~~ (2) the risk of adverse insurance experience with respect to the insurer's liabilities and obligations;
 - ~~(c)~~ (3) the interest rate risk with respect to the insurer's business; and
 - ~~(d)~~ (4) all other business risks and such other relevant risks as are set forth in the RBC instructions;
- determined in each case by applying the factors in the manner set forth in the RBC instructions.

(b) A property and casualty insurer's RBC shall be determined in accordance with the formula set forth in the RBC Instructions. The formula shall take into account and may adjust for the covariance between:

- (1) *asset risk;*

(2) *credit risk;*

(3) *underwriting risk; and*

(4) *all other business risks and such other relevant risks as are set forth in the*

RBC Instructions;

determined in each case by applying the factors in the manner set forth in the RBC instructions.

(c) An excess of capital over the amount produced by the risk-based capital requirements contained in this act and the formulas, schedules and instructions referenced in this act is desirable in the business of insurance. Accordingly, insurers should seek to maintain capital above the RBC levels required by this act. Additional capital is used and useful in the insurance business and helps to secure an insurer against various risks inherent in, or affecting, the business of insurance and not accounted for or only partially measured by the risk-based capital requirements contained in this act.

Sec. 4. K.S.A. 40-2c05 is hereby amended to read as follows: 40-2c05:

"Company action level event" means any of the following events:

(a) The filing of an RBC report by an insurer which indicates that:

(1) The insurer's total adjusted capital is greater than or equal to its regulatory action level RBC but less than its company action level RBC; or

(2) ~~the~~ *if a life and health* insurer has total adjusted capital which is greater than or equal to its company action level RBC but less than the product of its authorized control level RBC and 2.5 and also has a negative trend.

(b) The notification by the commissioner to the insurer of an adjusted RBC report that indicates the event described in subsection (a)(1) or (2), unless the insurer challenges the adjusted RBC report pursuant to K.S.A. 1994 Supp. 40-2c19 and such challenge has not been rejected by the commissioner.

Sec. 5. K.S.A. 40-2c11 is hereby amended to read as follows: 40-2c11.

"Regulatory action level event" means, with respect to any insurer, any of the following events:

(a) The filing of an RBC report by the insurer which indicates that the insurer's total adjusted capital is greater than or equal to its authorized control level RBC but less than its regulatory action level RBC;

(b) the notification by the commissioner to an insurer of an adjusted RBC report that indicates the result described in subsection (a) if the insurer does not challenge the adjusted RBC report pursuant to K.S.A. 1994 Supp. 40-2c19;

(c) the filing of an adjusted RBC report that indicates the result described in subsection (a) if the commissioner has rejected the insurer's challenge after a hearing held pursuant to K.S.A. 1994 Supp. 40-2c19;

(d) the failure of the insurer to file an RBC report by the filing date, unless the insurer has provided an explanation for such failure which is satisfactory to the commissioner and has cured the failure within 10 days after the filing date;

(e) the failure of the insurer to submit an RBC plan to the commissioner within the time period set forth in K.S.A. 1994 Supp. 40-2c07;

(f) notification by the commissioner to the insurer that:

(1) The RBC plan or revised RBC plan submitted by the insurer is, in the judgment of the commissioner, unsatisfactory; and

(2)(A) the insurer has not challenged the determination pursuant to K.S.A. 1994 Supp. 40-2c19; or

(B) the commissioner has rejected such challenge.

(g) Notification by the commissioner to the insurer that the insurer has failed to adhere to its RBC plan or revised RBC plan, but only if such failure has a substantial adverse effect on the ability of the insurer to eliminate the ~~regulatory~~ *company* action level event in accordance with its RBC plan or revised RBC plan and the commissioner has so stated in the notification, if:

(1) The insurer has not challenged such determination pursuant to K.S.A. 1994 Supp. 40-2c19; or

(2) the commissioner has rejected such challenge.

Sec. 6. K.S.A. 40-2c13 is hereby amended to read as follows: 40-2c13. In determining corrective actions, the commissioner may take into account such factors as are deemed relevant with respect to the insurer based upon the commissioner's examination or analysis of the assets, liabilities and operations of the insurer, including, but not limited to, the results of any sensitivity tests undertaken pursuant to the RBC instructions. The RBC plan or revised RBC plan shall be submitted:

(a) Within 45 days after the occurrence of the regulatory action level event;

(b) within 45 days after the notification to the insurer that the commissioner has rejected the insurer's challenge to an adjusted RBC report pursuant to K.S.A. 1994 Supp. 40-2c19; or

(c) within 45 days after notification to the insurer that the commissioner has rejected the insurer's challenge to a revised RBC plan, *pursuant to K.S.A. 1994 Supp. 40-2c19.*

Sec. 7. K.S.A. 40-2c15 is hereby amended to read as follows: 40-2c15.

"Authorized control level event" means any of the following events:

(a) The filing of an RBC report by the insurer which indicates that the insurer's total adjusted capital is greater than or equal to its mandatory control level RBC but less than its authorized control level RBC;

(b) the notification by the commissioner to the insurer of an adjusted RBC report that indicates the event described in subsection (a) if:

(1) The insurer does not challenge the adjusted RBC report pursuant to K.S.A. 1994 Supp. 40-2c19; or

(2) the commissioner has rejected such challenge;

(c) the failure of the insurer to respond, in a manner satisfactory to the commissioner, to a corrective order if the insurer has not challenged the corrective order under K.S.A. 1994 Supp. 40-2c19; or

(d) if the commissioner has rejected the challenge *to the corrective order* or modified the corrective order *pursuant to K.S.A. 1994 Supp. 40-2c19*, the failure of the

insurer to respond, in a manner satisfactory to the commissioner, to the corrective order subsequent to rejection or modification by the commissioner.

Sec. 8. K.S.A. 40-2c18 is hereby amended to read as follows: 40-2c18.

(a) ~~In the event of a mandatory control level event~~ *With respect to a life and health insurer*, the commissioner shall take actions as are necessary to cause the insurer to be placed under regulatory control under K.S.A. 40-3605 et seq. and amendments thereto. In that event, the mandatory control level event shall be deemed sufficient grounds for the commissioner to take action under K.S.A. 40-3605 et seq. and amendments thereto, *and the commissioner shall have the rights, powers and duties with respect to the insurer as are set forth in K.S.A. 40-3605 et seq.* In the event the commissioner takes actions pursuant to an adjusted RBC report, the insurer shall be entitled to such protections as are afforded to insurers under the provisions of K.S.A. 77-601 et seq. and amendments thereto pertaining to summary proceedings. Notwithstanding any of the foregoing, the commissioner may forego action for up to 90 days after the mandatory control level event if there is a reasonable expectation that the mandatory control level event may be eliminated within the 90-day period.

(b) *With respect to a property and casualty insurer, the commissioner shall take such actions as are necessary to place the insurer under regulatory control under K.S.A. 40-3605 et seq., or, in the case of an insurer which is writing no business and which is running-off its existing business, may allow the insurer to continue its run-off under the supervision of the commissioner. In either event, the mandatory control level event shall be deemed sufficient grounds for the commissioner to take action under K.S.A. 40-3605 et*

seq. and the commissioner shall have the rights, powers, and duties with respect to the insurer as are set forth in K.S.A. 40-3605 et seq. If the commissioner takes actions pursuant to an adjusted RBC report, the insurer shall be entitled to such protections as are afforded to insurers under the provisions of K.S.A. 77-601 et seq. pertaining to summary proceedings. Notwithstanding any of the foregoing, the commissioner may forego action for up to 90 days after the mandatory control level event if there is a reasonable expectation that the mandatory control level event may be eliminated with the 90 day period.

Sec. 9. K.S.A. 40-2c24 is hereby amended to read as follows: 40-2c24. In the event of a company action level event, regulatory action level event or authorized control level event with respect to any foreign insurer as determined under the RBC statute applicable in the state of domicile of the insurer or, if no RBC provision is in force in that state, under the provisions of this act, if the insurance commissioner of the state of domicile of the foreign insurer fails to require the foreign insurer to file an RBC plan in the manner specified under the RBC statute or, if there are no RBC provisions in force in the state, under K.S.A. 1994 Supp. 40-2c05, 40-2c06, 40-2c07, 40-2c08, 40-2c09, and 40-2c10, the commissioner may require the foreign insurer to file an RBC plan with the commissioner. In such event, the failure of the foreign insurer to file an RBC plan with the commissioner shall be grounds to order the insurer to cease and desist from writing new insurance business in this state

Sec. 10. K.S.A. 40-2c01, 40-2c02, 40-2c03, 40-2c05, 40-2c11, 40-2c13, 40-2c15, 40-2c18, and 40-2c24 are hereby repealed.

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

_____ Bill No. _____

AN ACT concerning insurance; relating to the revocation or suspension of an insurance agent's and broker's license; amending K.S.A. 40-242 and repealing the existing statute.

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

Section 1. K.S.A. 40-242 is hereby amended to read as follows: 40-242. (a) The commissioner of insurance may impose a penalty prescribed by subsection (e) or revoke or suspend the license of any broker or agent in the event that investigation by the commissioner discloses that:

- (1) Such license was obtained by fraud or misrepresentations;
- (2) the holder of such license had misrepresented the provisions, terms and conditions contained in any contract of insurance;
- (3) the holder of such license has rebated the whole or any part of any insurance premium or offered in connection with the presentation of a contract of insurance any other inducement not contained in the contract of insurance;
- (4) the holder of such license has intentionally omitted any material fact in such presentation;

(5) the holder of such license has made any misleading representations or incomplete comparisons of policies to any person for the purposes of inducing or tending to induce such persons to lapse, forfeit or surrender such person's insurance then in force;

(6) the holder of such license has been convicted of a misdemeanor or felony involving fraud, deceit, dishonesty, intent to deprive or intent to defraud; or

(7) the interests of the insurer or the insurable interests of the public are not properly served under such license. Actions affecting any license or imposing any penalty shall be taken only after a hearing conducted in accordance with the provisions of the Kansas administrative procedure act.

(b) The imposition of a penalty, or the lapse or suspension of any license by operation of law, by failure to renew or by its voluntary surrender shall not deprive the commissioner of jurisdiction or right to institute or proceed with any disciplinary proceeding against such licensee, to render a decision suspending or revoking such license, or to establish and make a record of the facts of any violation of law for any lawful purpose. No such disciplinary proceedings shall be instituted against any licensee after the expiration of two years from the termination of such license.

(c) In the event the commissioner of insurance imposes a penalty as permitted under subsection (e) or suspends or revokes the license of any agent or broker, any costs incurred as a result of conducting any administrative hearing authorized under the provisions of this section shall be assessed against the broker or agent who is the subject of the hearing or the company or companies represented by such broker or agent who is the party to the matters giving rise to the hearing. As used in this subsection, "costs" shall

include witness fees, mileage allowances, any costs associated with the reproduction of documents which become a part of the hearing record and the expense of making a record of the hearing.

(d) No person whose license as an agent or broker has been suspended or revoked shall be employed by any insurance company doing business in this state either directly, indirectly, as an independent contractor or otherwise to negotiate or effect contracts of insurance, suretyship or indemnity or do any act toward soliciting or otherwise transacting the business of insurance during the period of such suspension or revocation.

(e) In lieu of revocation or suspension of the agent's or broker's license, the commissioner may:

(1) Censure the person; or

(2) issue an order imposing an administrative penalty up to a maximum of \$500 for each violation but not to exceed \$2,500 for the same violation occurring within any six consecutive calendar months unless the agent or broker knew or reasonably should have known the act could give rise to disciplinary action under subsection (a). If the agent or broker knew or reasonably should have known the act could give rise to disciplinary proceedings as aforementioned, the commissioner may impose a penalty up to a maximum of \$1,000 for each violation but not to exceed \$5,000 for the same violation occurring within any six consecutive calendar months.

(f) When the license of any agent is suspended or revoked, the broker's license of such person, or agency license, if organized as a sole proprietorship, is also suspended or revoked.

Sec. 2. K.S.A. 40-242 is hereby repealed.

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

AN ACT concerning arson reporting; relating to the definition of “authorized agencies”;
amending K.S.A. 31-402 and repealing the existing section.

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

Section 1. K.S.A. 31-402 is hereby amended to read as follows: 31-402. As
used in this act, unless the context requires otherwise, the following words and phrases
shall have the meanings ascribed to them in this section.

(a) “Authorized agencies” means:

- (1) The office of state fire marshal;
- (2) the office of the attorney general of Kansas;
- (3) *the office of the commissioner of insurance.*
- ~~(3)~~ (4) the office of a district or county attorney;
- ~~(4)~~ (5) all law enforcement agencies;
- ~~(5)~~ (6) all official fire fighting agencies;

and solely for the purpose of K.S.A. 31-403(a):

- ~~(6)~~ (7) The federal bureau of investigation or any other federal agency;
- ~~(7)~~ (8) the United States attorney’s office;

(c) Material will be “deemed important”, if within the sole discretion of the “authorized agency”, such material is requested by that “authorized agency”.

(d) “Action” shall include nonaction or the failure to take action.

(e) “Immune”, as used in K.S.A. 31-403(e) and 31-404, shall mean that a civil action may not arise from any action taken pursuant to K.S.A. 31-403 and 31-404 in the absence of gross negligence, bad faith, malice or fraud on the part of an individual, insurance company, or person acting in its behalf, or authorized agency.

(f) “Insurance company” includes the Kansas Fair Plan.

Sec. 2. K.S.A. 31-403 is hereby repealed.

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