

Approved: 2/21/96  
Date

MINUTES OF THE Senate Committee on Financial Institutions and Insurance.

The meeting was called to order by Chairperson Dick Bond at 9:06 a.m. on February 20, 1996 in Room 529-S of the Capitol.

All members were present.

Committee staff present: Dr. William Wolff, Legislative Research Department  
Fred Carman, Revisor of Statutes  
June Kossover, Committee Secretary

Conferees appearing before the committee: Robert Storey, Unionamerica Insurance Company  
James A. Greer, III, Unionamerica Insurance Company  
Tom Wilder, Kansas Insurance Department  
William Sneed, Health Insurance Association of America

Others attending: See attached list

Senator Emert moved to approve the minutes of the meeting of February 19 as submitted. Senator Clark seconded the motion; the motion carried.

The hearing was opened on **SB 645**, concerning reinsurance. Robert Storey introduced James Greer, Unionamerica Insurance Company, who explained that the intent of this legislation is to add one piece of the NAIC model language to Kansas statute to allow Kansas insurance companies to cede a portion of their risk to a trust established by the assuming insurer in a financial institution located in the United States. (Attachment #1) Mr. Greer also explained the concept of reinsurance.

Tom Wilder, Kansas Insurance Department, also testified in favor of **SB 645** (Attachment #2) and proposed a technical amendment to insert section (b) (3) of KSA 40-221a instead of section (b) (3) (A) as was drafted in the bill. (Attachment #3) Mr. Wilder also explained that only \$20 million surplus is required by this bill whereas Lloyd's of London must maintain a \$100 million surplus because Lloyd's is a group of individuals instead of an insurance company and it is felt that a higher surplus is necessary for that group.

In response to Senator Bond's question, Mr. Wilder explained that the Insurance Department must approve of the agreement and receives an annual statement; therefore, the trust would be verified by the Insurance Department.

Senator Bond suggested that the language throughout should read "insurer or group" instead of "insurer," and Mr. Wilder agreed that this amendment should be made.

Mr. Storey advised the committee that this legislation has already been adopted in 47 states.

Senator Steffes made a motion to amend as per the balloon and to amend the language to read "insurer or group". Senator Praeger seconded the motion. The motion carried.

Senator Steffes made a motion to recommend **SB 645** favorably as amended. Senator Praeger seconded the motion; the motion carried.

The committee received the subcommittee report on **SB 444**, which prohibits discrimination against victims of sexual abuse, from Senator Praeger, chair of the subcommittee. Senator Praeger explained that the subcommittee recommended striking all reference to property and casualty insurance so that the legislation will apply only to accident and health insurance, and to add the new Kansas Insurance Department definition of abuse on page 4. (Attachment #4) This language was placed under the unfair discrimination section of the bill but, except for the definition of abuse, will not change the original language. Senator Emert questioned the need to include section (c) of KSA 60-3102 in the definition of abuse since this section deals only with acts against a minor.

Senator Praeger made a motion to amend **SB 444** according to the balloon and to delete the reference to section (c) of KSA 60-3102. Senator Hensley seconded the motion. The motion carried.

Senator Corbin moved to recommend **SB 444** favorably as amended. Senator Praeger seconded the motion; the motion carried. Senator Praeger will carry this bill in the Senate.

CONTINUATION SHEET

MINUTES OF THE Senate Committee on Financial Institutions & Insurance, Room 529-S Statehouse, on February 20, 1996.

Tom Wilder, Kansas Insurance Department, presented a proposal to amend **SB 529** by creating **Substitute SB 529**. (Attachment #5) This legislation, heard in committee on February 8, concerns the mandatory reinstatement of insurance policies in case of mental incapacity of an insured. The substitute bill will require that after the effective date, each long-term care policyholder must designate another person to receive notice of cancellation and termination notice must be sent to both the insured and the designated other person, or a waiver must be executed by the policyholder. The language in the substitute bill is used in other states and standard forms for designating another person or for waiving the naming of another person are available and are subject to approval by the Kansas Insurance Department.

Bill Sneed, Health Insurance Association of America, stated that the responsibility for obtaining a signed waiver rests with the agent or company and that this legislation is acceptable to his organization.

Senator Hensley made a motion to amend **SB 529** as **Substitute SB 529** with the Insurance Department language. Senator Praeger seconded the motion. The motion carried.

Dr. Wolff was requested to distribute the balloon and supplemental note on SB 475 and SB 476 to members of the committee so that they might have an opportunity to familiarize themselves with the changes prior to tomorrow's meeting.

The committee adjourned at 9:48 a.m. The next meeting is scheduled for February 21, 1996.

# SENATE FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE GUEST LIST

DATE: 2/20/96

NAME	REPRESENTING
R Brazier	ST. Treasurer
Bob Storey	Winn-Dixie Ins Co.
Jay Greer	" "
Tom Wilder	Kansas Insurance Dept
Bill Sneed	Am Vestors
Lee Wright	Farmers Ins Group
David Hanson	Ks Insur. Assocs.
Sue Bord	
RUD GRANT	KCCI
STEVE KEARNEY	CIGNA
Kathy Ketterer	Prudential
Chuck Jones	KBA
TAD KRAMAR	SECURUM BENEFIT
Lois Callahan	Kammco

**TESTIMONY OF JAMES A. GREER II**  
**PARTNER, LEBOEUF, LAMB, GREENE & MACRAE**  
**IN SUPPORT OF SENATE BILL NO. 645**

Mr. Chairman and Members of the Committee, I thank you for the opportunity to appear before you on behalf of Unionamerica Insurance Company Limited ("Unionamerica"). My firm, LeBoeuf, Lamb, Greene & MacRae, represents other insurance companies (see attached list) that will also be affected by this legislation.

**Background:**

This legislation relates to reinsurance provided by Unionamerica, one of several leading non-U.S. insurance companies, for which my law firm, LeBoeuf, Lamb, Greene & MacRae, is United States Insurance Regulatory Counsel. Unionamerica, and many of these other insurers are important as a market for hard-to-place reinsurance and commercial insurance. For example, they have long participated in the catastrophe reinsurance programs of insurers throughout the world. In Kansas and elsewhere, reinsurance protection against the perils of damage from tornados and hail has been sought from our clients over the years. These insurers have also provided substantial amounts of reinsurance for medical malpractice and other forms of professional indemnity coverage written by insurers in the United States and elsewhere. Both of these types of reinsurance have been and continue to be in demand. In addition, our clients have traditionally provided reinsurance of a wide variety of other hard-to-place coverages.

**The Legislation:**

The bill adopts without change the section of the National Association of Insurance Commissioners' ("NAIC") Model Credit-for-Reinsurance bill relating to assumption of reinsurance by an insurance company that maintains substantial trusteed assets and surplus in the United States for the benefit of its U.S. cedents.<sup>1</sup> The relevant portion of the NAIC

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<sup>1</sup>Reinsurance is "insurance of insurance companies." It is a well-recognized contractual arrangement, whereby an insurer can transfer excess risks to other insurers, thereby strengthening its financial condition. When an insurer incurs a loss or other liability that is covered by reinsurance it has ceded to another insurer, it may take credit on its financial statement for the receivable from the reinsurer, provided the reinsurer is licensed or otherwise approved ("accredited") by the insurance regulator in the insurer's state of domicile. Heretofore, Kansas domestic companies could only take credit for reinsurance ceded to other companies licensed in the state of Kansas unless the reinsurer provided the insurer with collateral in the form of cash, marketable securities, or a clean, irrevocable, evergreen letter of credit. As a result, Kansas domestic insurers have less freedom to chose the markets to which they may cede reinsurance than non-domestic insurers licensed to do

(continued...)

Senate 714  
2/20/96  
Attachment #1

Model bill appears in Subparagraph (A) in lines 17-29 on page 2 of Senate Bill No. 645 (copy attached). Obtaining adoption of the proposed amendment in Kansas is part of a nationwide effort. The NAIC has already approved this credit-for-reinsurance amendment, and substantially the same amendment has been adopted or enacted in 47 states and the District of Columbia. Legislation containing substantially the same language of this amendment will become effective in Ohio on March 1 this year. A bill containing this language is pending in the State of Washington, and we have begun efforts to obtain enactment of this legislation in Florida this year.

**Impact on Kansas:**

Adoption of this NAIC Model Credit-for-Reinsurance law provision will enable leading reinsurers in the international market to improve their service to Kansas domestic insurers for such classes as medical malpractice and catastrophe reinsurance, as well as other hard-to-place risks.

If these insurers' status as accredited reinsurers is accepted, there could be a reduction in cost or increase in availability to the Kansas domestic insurance companies that now obtain reinsurance from highly-respected insurers in the world reinsurance market. Whether or not they currently cede reinsurance to our clients, Kansas domestic insurers may find there would also be an increase in the attractiveness of their reinsurance cessions with a consequent decrease in the cost or increase in availability of reinsurance, or both, at least some of which benefits would probably be passed on to Kansas direct policyholders in the form of lower premiums, increased coverage, or both. Kansas domestic companies might also benefit because most of their major competitors are licensed in Kansas but domiciled in other states, and therefore would not be subject to the same inhibitions as those currently suffered by Kansas domestic insurers.

In conclusion, I hope I have made clear the intent of this legislation. I would be happy to try to answer any questions you may have respecting it. Thank you for your attention.

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<sup>1</sup>(...continued)

business in Kansas. In addition, they may have had to pay higher prices for the reinsurance they have purchased. Any attendant increase in costs or decrease in availability of coverage may have been passed to the Kansas policyholders of Kansas domestic insurers.

List of LeBoeuf, Lamb, Greene & MacRae Clients:

Axa Reinsurance  
Eisen Und Stahl Rückversicherungs-Aktiengesellschaft  
Hannover Rückversicherungs-Aktiengesellschaft  
St. Paul Reinsurance Company Limited  
Sphere Drake (Bermuda) Limited  
Sphere Drake Insurance plc  
Terra Nova Insurance Company Limited  
Unionamerica Insurance Company Limited  
Zurich Re (U.K.) Limited



Kathleen Sebelius  
Commissioner of Insurance  
**Kansas Insurance Department**

**MEMORANDUM**

To: Senate Financial Institutions  
and Insurance Committee

From: Tom Wilder, Director of  
Government and Public Affairs

Re: S.B. 645 (Reinsurance of Risks)

Date: February 20, 1996

The Kansas Department of Insurance appears today in support of Senate Bill 645. This legislation allows domestic insurance companies to cede a portion of their risk to a trust established by an assuming insurer in a financial institution located in the United States. The trust fund must include a surplus above the anticipated claims against the trust of at least \$20 million. A number of insurers who provide reinsurance coverage prefer to do business through a trust arrangement. The requirement for a surplus in the reinsurance trust of at least \$20 million provides protection to those Kansas policyholders whose insurance is ceded by a domestic company to the trust.

The language in S.B. 645 is taken from the NAIC Model Law on Credit for Reinsurance. The Insurance Department believes that this provision should be inserted in Section (b) (3) of K.S.A. 40-221a instead of Section (b) (3) (A) of that statute as is currently in the bill. This is a technical amendment that does not change the intent of the new language. A proposed amendment is attached to my testimony.

The Kansas Department of Insurance asks the Committee to report S.B. 645 favorably as amended.

*Senate 7141  
2/20/96  
Attachment #2*

40-221a Reinsurance

(a) Any insurance company organized under the laws of this state may (1) with the consent of the commissioner of insurance, cede all of its risks to any other solvent insurance company authorized to transact business in this state or accept all of the risks of any other company, (2) accept all or any part of an individual risk or all or any part of a particular class of risks which it is authorized to insure, and (3) cede all or any part of an individual risk or all or any part of a particular class of risks to another solvent insurer or insurers having the power to accept such reinsurance.

(b) Any insurance company organized under the laws of this state may take credit as an asset or as a deduction from loss and unearned premium reserves on such ceded risks to the extent reinsured by an insurer or insurers authorized to transact business in this state, but such credit on ceded risks reinsured by any insurer which is not authorized to transact business in this state may be taken in an amount not exceeding:

(1) The amount of deposits by, and funds withheld from, the assuming insurer pursuant to express provision therefor in the reinsurance contract, as security for the payment of the obligations thereunder, if such deposits or funds are held subject to withdrawal by, and under the control of, the ceding insurer or are placed in trust for such purposes in a bank which is insured by the federal deposit insurance corporation or its successor, if withdrawals from such trust cannot be made without the consent of the ceding company;

(2) The amount of a clean and irrevocable letter of credit issued by a bank which is insured by the federal deposit insurance corporation or its successor if such letter of credit is initially issued for a term of at least one year and by its terms is automatically renewed at each expiration date for at least an additional one-year term unless at least 30 days prior written notice of intention not to renew is given to the ceding company by the issuing bank or the assuming company and provided that such letter of credit is issued under arrangements satisfactory to the commissioner of insurance as constituting security to the ceding insurer substantially equal to that of a deposit under paragraph (1) of this subsection; or

(3) ~~the amount of loss and unearned premium reserves on such ceded risks to a group of underwriters including incorporated and individual unincorporated underwriters, if the assuming underwriters group maintains a trust fund in a qualified United States financial institution, as defined in subsection (b)(3)(E), for the payment of the valid claims, as determined by the commissioner for the purpose of determining the sufficiency of the trust fund, of its United States policyholders and ceding insurers, their assigns and successors in interest. The assuming underwriters group shall report annually to the~~

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~~—commissioner information substantially the same as that required to be reported on the national association of insurance commissioners annual statement form by licensed insurers to enable the commissioner to determine the sufficiency of the trust fund.~~

~~—(A) The trust shall consist of a trustee account representing the group's liabilities attributable to business written in the United States. The group shall maintain a trustee surplus of which \$100,000,000 shall be held jointly for the benefit of United States ceding insurers of any member of the group. The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and must be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members. The group shall make available to the commissioner an annual certification by the group's domiciliary regulator and its independent public accountants as to the solvency of each underwriter.~~ *an assuming insurer which maintains a trust fund in a qualified United States financial institution, as defined in (b)(3)(D), for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the Commissioner information substantially the same as that required to be reported on the national association of insurance commissioners annual statement form by licensed insurers to enable the Commissioner to determine the sufficiency of the trust fund. In the case of a single assuming insurer, the trust shall consist of a trustee account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, the assuming insurer shall maintain a trustee surplus of not less than \$20,000,000. In the case of a group including incorporated and individual unincorporated underwriters, the trust shall consist of a trustee account representing the group's liabilities attributable to business written in the United States and, in addition, the group shall maintain a trustee surplus of which \$100,000,000 shall be held jointly for the benefit of United States ceding insurers of any member of the group; the incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members; and the group shall make available to the Commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accountants.*

(A) ~~(B)~~ Such trust must be in a form approved by the commissioner of insurance. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, their assigns and successors in interest. The trust and the assuming ~~group insurer~~ shall be subject to examination as determined by the commissioner. The trust, described herein, must remain in effect for as long as the assuming ~~group insurer~~ shall have outstanding obligations due under the reinsurance agreements subject to the trust.

(B) ~~(C)~~ No later than February 28 of each year the trustees of the trust

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shall report to the commissioner in writing setting forth the balance of the trust and listing the trust's investments at the preceding year end and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31.

(C) ~~(D)~~ The credit authorized under subsection (b)(3)~~(A) through (C)~~ shall not be allowed unless the assuming ~~group~~ *insurer* agrees in the reinsurance agreements:

(i) That in the event of the failure of the assuming ~~group~~ *insurer* to perform its obligations under the terms of the reinsurance agreement, the assuming ~~group~~ *insurer*, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or of any appellate court in the event of an appeal; and

(ii) to designate the commissioner or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the ceding company.

(iii) This provision is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if such an obligation to do so is created in the agreement.

(D) ~~(E)~~ A "qualified United States financial institution" means, for purposes of those provisions of this law specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that:

(i) Is organized, or (in the case of a U.S. branch or agency office of a foreign banking organization) licensed, under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers; and

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

The foregoing provisions of paragraphs (1), (2) and (3) of subsection (b) shall not apply to a domestic title insurance company subject to the provisions of K.S.A. 40-1107a and amendments thereto.

(c) Any reinsurance ceded by a company organized under the laws of this state or ceded by any company not organized under the laws of this state and transacting business in this state must, pursuant to express provisions contained in the reinsurance agreement, be payable by the assuming insurer on the basis of the liability of the ceding company under the contract or contracts reinsured without diminution because of

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the insolvency of the ceding company and any such reinsurance agreement which may be canceled on less than 90 days' notice must provide in the reinsurance agreement for a run-off of the reinsurance in force at the date of cancellation.

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## SENATE BILL No. 645

By Committee on Financial Institutions and Insurance

2-9

9 AN ACT concerning insurance; reinsurance of risks; amending K.S.A.  
10 1995 Supp. 40-221a and repealing the existing section.

11

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

13 Section 1. K.S.A. 1995 Supp. 40-221a is hereby amended to read as  
14 follows: 40-221a. (a) Any insurance company organized under the laws of  
15 this state may (1) with the consent of the commissioner of insurance, cede  
16 all of its risks to any other solvent insurance company authorized to trans-  
17 act business in this state or accept all of the risks of any other company,  
18 (2) accept all or any part of an individual risk or all or any part of a  
19 particular class of risks which it is authorized to insure, and (3) cede all  
20 or any part of an individual risk or all or any part of a particular class of  
21 risks to another solvent insurer or insurers having the power to accept  
22 such reinsurance.

23 (b) Any insurance company organized under the laws of this state  
24 may take credit as an asset or as a deduction from loss and unearned  
25 premium reserves on such ceded risks to the extent reinsured by an in-  
26 surer or insurers authorized to transact business in this state, but such  
27 credit on ceded risks reinsured by any insurer which is not authorized to  
28 transact business in this state may be taken in an amount not exceeding:

29 (1) The amount of deposits by, and funds withheld from, the assum-  
30 ing insurer pursuant to express provision therefor in the reinsurance con-  
31 tract, as security for the payment of the obligations thereunder, if such  
32 deposits or funds are held subject to withdrawal by, and under the control  
33 of, the ceding insurer or are placed in trust for such purposes in a bank  
34 which is insured by the federal deposit insurance corporation or its suc-  
35 cessor, if withdrawals from such trust cannot be made without the consent  
36 of the ceding company;

37 (2) the amount of a clean and irrevocable letter of credit issued by a  
38 bank which is insured by the federal deposit insurance corporation or its  
39 successor if such letter of credit is initially issued for a term of at least  
40 one year and by its terms is automatically renewed at each expiration date  
41 for at least an additional one-year term unless at least 30 days prior written  
42 notice of intention not to renew is given to the ceding company by the  
43 issuing bank or the assuming company and provided that such letter of

Senate HDH  
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Attachment #3

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1 credit is issued under arrangements satisfactory to the commissioner of  
2 insurance as constituting security to the ceding insurer substantially equal  
3 to that of a deposit under paragraph (1) of this subsection; or

4 (3) the amount of loss and unearned premium reserves on such ceded  
5 risks to ~~a group of underwriters including incorporated and individual~~  
6 ~~unincorporated underwriters~~, if the assuming underwriters group main-  
7 tains a trust fund in a qualified United States financial institution, as  
8 defined in subsection (b)(3)(E), for the payment of the valid claims, as  
9 determined by the commissioner for the purpose of determining the suffi-  
10 ciency of the trust fund, of its United States policyholders and ceding  
11 insurers, their assigns and successors in interest. The assuming under-  
12 writers group shall report annually to the commissioner information sub-  
13 stantially the same as that required to be reported on the national asso-  
14 ciation of insurance commissioners annual statement form by licensed  
15 insurers to enable the commissioner to determine the sufficiency of the  
16 trust fund.

17 (A) *Credit shall be allowed when the reinsurance is ceded to an as-*  
18 *suming insurer which maintains a trust fund in a qualified United States*  
19 *financial institution, as defined in subsection (b)(3)(E), for the payment*  
20 *of the valid claims of its United States policyholders and ceding insurers,*  
21 *their assigns and successors in interest. The assuming insurer shall report*  
22 *annually to the commissioner information substantially the same as that*  
23 *required to be reported on the NAC annual statement form by licensed*  
24 *insurers to enable the commissioner to determine the sufficiency of the*  
25 *trust fund. In the case of a single assuming insurer, the trust shall consist*  
26 *of a trusteed account representing the assuming insurer's liabilities at-*  
27 *tributable to business written in the United States and, in addition, the*  
28 *assuming insurer shall maintain a trusteed surplus of not less than*  
29 *\$20,000,000. The trust shall consist of a trusteed account representing*  
30 *the group's liabilities attributable to business written in the United States.*  
31 *The group shall maintain a trusteed surplus of which \$100,000,000 shall*  
32 *be held jointly for the benefit of United States ceding insurers of any*  
33 *member of the group. The incorporated members of the group shall not*  
34 *be engaged in any business other than underwriting as a member of the*  
35 *group and must be subject to the same level of solvency regulation and*  
36 *control by the group's domiciliary regulator as are the unincorporated*  
37 *members. The group shall make available to the commissioner an annual*  
38 *certification by the group's domiciliary regulator and its independent pub-*  
39 *lic accountants as to the solvency of each underwriter.*

an assuming insurer which maintains a trust fund in a qualified United States financial institution, as defined in (b)(3)(D), for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the national association of insurance commissioners annual statement form by licensed insurers to enable the commissioner to determine the sufficiency of the trust fund. In the case of a single assuming insurer, the trust shall consist of a trusteed account representing the assuming insurer's liability attributable to business written in the United States and, in addition, the assuming insurer shall maintain a trusteed surplus of not less than \$20,000,000. In the case of a group including incorporated and individual unincorporated underwriters, the trust shall consist of a trusteed account representing the group's liabilities attributable to business written in the United States and, in addition, the group shall maintain a trusteed surplus of which \$100,000,000 shall be held jointly for the benefit of United States ceding insurers of any member of the group; the incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members; and the group shall make available to the commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accountants.

40 (B) Such trust must be in a form approved by the commissioner of  
41 insurance. The trust instrument shall provide that contested claims shall  
42 be valid and enforceable upon the final order of any court of competent  
43 jurisdiction in the United States. The trust shall vest legal title to its assets

(A)

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1 in the trustees of the trust for its United States policyholders and ceding  
2 insurers, their assigns and successors in interest. The trust and the assum-  
3 ing group shall be subject to examination as determined by the commis- insurer  
4 sioner. The trust, described herein, must remain in effect for as long as  
5 the assuming group shall have outstanding obligations due under the re-  
6 insurance agreements subject to the trust.

7 (C) No later than February 28 of each year the trustees of the trust (B)  
8 shall report to the commissioner in writing setting forth the balance of  
9 the trust and listing the trust's investments at the preceding year end and  
10 shall certify the date of termination of the trust, if so planned, or certify  
11 that the trust shall not expire prior to the next following December 31.

12 (D) The credit authorized under subsection (b)(3) (A) through (C) (C)  
13 shall not be allowed unless the assuming group agrees in the reinsurance insurer  
14 agreements:

15 (i) That in the event of the failure of the assuming group to perform  
16 its obligations under the terms of the reinsurance agreement, the assum-  
17 ing group, at the request of the ceding insurer, shall submit to the juris-  
18 diction of any court of competent jurisdiction in any state of the United  
19 States, will comply with all requirements necessary to give such court  
20 jurisdiction, and will abide by the final decision of such court or of any  
21 appellate court in the event of an appeal; and

22 (ii) to designate the commissioner or a designated attorney as its true  
23 and lawful attorney upon whom may be served any lawful process in any  
24 action, suit or proceeding instituted by or on behalf of the ceding com-  
25 pany.

26 (iii) This provision is not intended to conflict with or override the  
27 obligation of the parties to a reinsurance agreement to arbitrate their  
28 disputes, if such an obligation to do so is created in the agreement.

29 (E) A "qualified United States financial institution" means, for pur- (D)  
30 poses of those provisions of this law specifying those institutions that are  
31 eligible to act as a fiduciary of a trust, an institution that:

32 (i) Is organized, or (in the case of a U.S. branch or agency office of  
33 a foreign banking organization) licensed, under the laws of the United  
34 States or any state thereof and has been granted authority to operate with  
35 fiduciary powers; and

36 (ii) is regulated, supervised and examined by federal or state author-  
37 ities having regulatory authority over banks and trust companies.

38 The foregoing provisions of paragraphs (1), (2) and (3) of subsection  
39 (b) shall not apply to a domestic title insurance company subject to the  
40 provisions of K.S.A. 40-1107a and amendments thereto.

41 (c) Any reinsurance ceded by a company organized under the laws of  
42 this state or ceded by any company not organized under the laws of this  
43 state and transacting business in this state must, pursuant to express pro-

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1 visions contained in the reinsurance agreement, be payable by the assum-  
2 ing insurer on the basis of the liability of the ceding company under the  
3 contract or contracts reinsured without diminution because of the insol-  
4 vency of the ceding company and any such reinsurance agreement which  
5 may be canceled on less than 90 days' notice must provide in the rein-  
6 surance agreement for a run-off of the reinsurance in force at the date  
7 of cancellation.

8 Sec. 2. K.S.A. 1995 Supp. 40-221a is hereby repealed.

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

# SENATE BILL No. 444

By Committee on Financial Institutions and Insurance

1-11

9 AN ACT relating to insurance; concerning unfair trade practices; prohib-  
10 iting discrimination against victims of domestic abuse; amending  
11 ~~K.S.A. 40-2402 and K.S.A. 1995 Supp. 40-2404 and repealing the ex-~~  
12 ~~isting sections.~~

13  
14 *Be it enacted by the Legislature of the State of Kansas:*

15 ~~Section 1. K.S.A. 40-2402 is hereby amended to read as follows: 40-~~  
16 ~~2402. When used in this act:~~

17 (a) "Person" means any individual, corporation, association, partner-  
18 ship, reciprocal exchange, inter-insurer, Lloyd's insurer, fraternal benefit  
19 society and any other legal entity engaged in the business of insurance,  
20 including agents, brokers and adjusters. Person also means mutual non-  
21 profit hospital service organizations, nonprofit medical service corpora-  
22 tions, nonprofit medical and hospital service corporations, as defined in  
23 articles 18, 19 and 19e of chapter 40 of the Kansas Statutes Annotated,  
24 and amendments thereto; administrators, as defined in article 38 of chap-  
25 ter 40 of the Kansas Statutes Annotated, and amendments thereto; and  
26 health maintenance organizations, as defined in article 32 of chapter 40  
27 of the Kansas Statutes Annotated, and amendments thereto.

28 (b) "Commissioner" means the commissioner of insurance of this  
29 state.

30 (c) "Insurance policy" or "insurance contract" means any contract of  
31 insurance, indemnity, medical or hospital service, suretyship or annuity  
32 issued, proposed for issuance or intended for issuance by any person.

33 (d) "Abuse" means the occurrence of one or more of the following  
34 acts:

35 (1) Attempting to cause or intentionally, knowingly or recklessly caus-  
36 ing another person, including a minor child, bodily injury, physical harm,  
37 severe emotional distress, psychological trauma, rape sexual assault or  
38 involuntary sexual intercourse;

39 (2) Knowingly, engaging in a course of conduct or repeatedly com-  
40 mitting acts toward another person, including a minor child, including  
41 following the person or minor child without proper authority, under cir-  
42 cumstances that place the person or minor child in reasonable fear of  
43 physical injury or harm.

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- 1 (3) ~~subjecting another person, including a minor child to false im-~~
- 2 ~~prisonment; or~~
- 3 (4) ~~attempting to cause or intentionally, knowingly or recklessly caus-~~
- 4 ~~ing damage to property so as to intimidate or attempt to control the be-~~
- 5 ~~havior of another person including a minor child~~
- 6 (e) ~~"Abuse-related claim" means a claim made by a subject of abuse~~
- 7 ~~under an insurance policy for a loss resulting from an act of abuse.~~
- 8 (f) ~~"Abuse related medical condition" means a medical condition sus-~~
- 9 ~~tained by a subject of abuse which arises in whole or in part out of an act~~
- 10 ~~or pattern of abuse.~~
- 11 (g) ~~"Abuse status" means the fact or perception that a person is, has~~
- 12 ~~been or may be a subject of abuse, irrespective of whether the person has~~
- 13 ~~sustained abuse-related medical conditions or has incurred abuse-related~~
- 14 ~~claims.~~

15 ~~See 2.~~ / K.S.A. 1995 Supp. 40-2404 is hereby amended to read as  
 16 follows: 40-2404. The following are hereby defined as unfair methods of  
 17 competition and unfair or deceptive acts or practices in the business of  
 18 insurance:

Section 1.

19 (1) *Misrepresentations and false advertising of insurance policies.*  
 20 Making, issuing, circulating or causing to be made, issued or circulated,  
 21 any estimate, illustration, circular, statement, sales presentation, omission  
 22 or comparison which:

- 23 (a) Misrepresents the benefits, advantages, conditions or terms of any
- 24 insurance policy;
- 25 (b) misrepresents the dividends or share of the surplus to be received
- 26 on any insurance policy;
- 27 (c) makes any false or misleading statements as to the dividends or
- 28 share of surplus previously paid on any insurance policy;
- 29 (d) is misleading or is a misrepresentation as to the financial condition
- 30 of any person, or as to the legal reserve system upon which any life insurer
- 31 operates,
- 32 (e) uses any name or title of any insurance policy or class of insurance
- 33 policies misrepresenting the true name thereof,
- 34 (f) is a misrepresentation for the purpose of inducing or tending to
- 35 induce the lapse, forfeiture, exchange, conversion or surrender of any
- 36 insurance policy;
- 37 (g) is a misrepresentation for the purpose of effecting a pledge or
- 38 assignment of or effecting a loan against any insurance policy, or
- 39 (h) misrepresents any insurance policy as being shares of stock.

40 (2) *False information and advertising generally.* Making, publishing,  
 41 disseminating, circulating or placing before the public, or causing, directly  
 42 or indirectly, to be made, published, disseminated, circulated or placed  
 43 before the public, in a newspaper, magazine or other publication or in

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1 the form of a notice, circular, pamphlet, letter or poster, or over any radio  
2 or television station, or in any other way, an advertisement, announce-  
3 ment or statement containing any assertion, misrepresentation or state-  
4 ment with respect to the business of insurance or with respect to any  
5 person in the conduct of such person's insurance business, which is un-  
6 true, deceptive or misleading.

7 (3) *Defamation.* Making, publishing, disseminating or circulating, di-  
8 rectly or indirectly, or aiding, abetting or encouraging the making, pub-  
9 lishing, disseminating or circulating of any oral or written statement or  
10 any pamphlet, circular, article or literature which is false, or maliciously  
11 critical of or derogatory to the financial condition of any person, and which  
12 is calculated to injure such person.

13 (4) *Boycott, coercion and intimidation.* Entering into any agreement  
14 to commit, or by any concerted action committing, any act of boycott,  
15 coercion or intimidation resulting in or tending to result in unreasonable  
16 restraint of the business of insurance, or by any act of boycott, coercion  
17 or intimidation monopolizing or attempting to monopolize any part of the  
18 business of insurance.

19 (5) *False statements and entries.* (a) Knowingly filing with any super-  
20 visory or other public official, or knowingly making, publishing, dissemi-  
21 nating, circulating or delivering to any person, or placing before the pub-  
22 lic, or knowingly causing directly or indirectly, to be made, published,  
23 disseminated, circulated, delivered to any person, or placed before the  
24 public, any false material statement of fact as to the financial condition  
25 of a person.

26 (b) Knowingly making any false entry of a material fact in any book,  
27 report or statement of any person or knowingly omitting to make a true  
28 entry of any material fact pertaining to the business of such person in any  
29 book, report or statement of such person.

30 (6) *Stock operations and advisory board contracts.* Issuing or deliv-  
31 ering or permitting agents, officers or employees to issue or deliver,  
32 agency company stock or other capital stock, or benefit certificates or  
33 shares in any common-law corporation, or securities or any special or  
34 advisory board contracts or other contracts of any kind promising returns  
35 and profits as an inducement to insurance. Nothing herein shall prohibit  
36 the acts permitted by K.S.A. 40-232, and amendments thereto.

37 (7) *Unfair Discrimination.* (a) Making or permitting any unfair dis-  
38 crimination between individuals of the same class and equal expectation  
39 of life in the rates charged for any contract of life insurance or the annuity  
40 or in the dividends or other benefits payable thereon, or in any other of  
the terms and conditions of such contract.

41 (b) Making or permitting any unfair discrimination between individ-

of premium, policy fees or rates charged for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever.

(c) Refusing to insure, or refusing to continue to insure, or limiting the amount, extent or kind of coverage available to an individual, or charging an individual a different rate for the same coverage solely because of blindness or partial blindness. With respect to all other conditions, including the underlying cause of the blindness or partial blindness, persons who are blind or partially blind shall be subject to the same standards of sound actuarial principles or actual or reasonably anticipated experience as are sighted persons. Refusal to insure includes denial by an insurer of disability insurance coverage on the grounds that the policy defines "disability" as being presumed in the event that the insured loses such person's eyesight. However, an insurer may exclude from coverage disabilities consisting solely of blindness or partial blindness when such condition existed at the time the policy was issued.

(b) *Rebates.* (a) Except as otherwise expressly provided by law, knowingly permitting, offering to make or making any contract of life insurance, life annuity or accident and health insurance, or agreement as to such contract other than as plainly expressed in the insurance contract issued thereon, paying, allowing, giving or offering to pay, allow or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or giving, selling, purchasing or offering to give, sell or purchase as inducement to such insurance contract or annuity or in connection therewith, any stocks, bonds or other securities of any insurance company or other corporation, association or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract.

(b) Nothing in subsection (7) or (8)(a) shall be construed as including within the definition of discrimination or rebates any of the following practices:

(i) In the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance. Any such bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the company and its policyholders;

(ii) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer

(d) Refusing to insure, or refusing to continue to insure, or limiting the amount, extent or kind of coverage available for accident and health and life insurance to an applicant who is the proposed insured or charge a different rate for the same coverage or excluding or limiting coverage for losses or denying a claim incurred by an insured as a result of abuse based on the fact that the applicant who is the proposed insured is, has been, or may be the subject of domestic abuse, except as provided in subpart (iv). "Abuse" as used in this subsection (7)(d) means one or more acts defined in K.S.A. 60-3102 (a), (b) or (c) between family members, current or former household members, or current or former intimate partners.

(i) An insurer may not ask an applicant for life or accident and health insurance who is the proposed insured if the individual is, has been or may be the subject of domestic abuse or seeks, has sought or had reason to seek medical or psychological treatment or counseling specifically for abuse, protection from abuse or shelter from abuse.

(ii) Nothing in this section shall be construed to prohibit a person from declining to issue an insurance policy insuring the life of an individual who is, has been or has the potential to be the subject of abuse if the perpetrator of the abuse is the applicant or would be the owner of the insurance policy.

(iii) No insurer that issues a life or accident and health policy to an individual who is, has been or may be the subject of domestic abuse shall be subject to civil or criminal liability for the death or any injuries suffered by that individual as a result of domestic abuse.

(iv) Nothing in this section shall be construed to prohibit a person from underwriting or rating a risk on the basis of a preexisting physical or mental condition, even if such condition has been caused by abuse, provided that:

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(A) The person routinely underwrites or rates such condition in the same manner with respect to an insured or an applicant who is not a victim of abuse;

(B) no person shall refuse to insure, refuse to continue to insure, limit the amount, extent or kind of coverage available to an individual or charge a different rate for the same coverage solely because of physical or mental condition, except where the refusal, limitation or rate differential is based on sound actuarial principles;

(C) the fact that an individual is, has been or may be the subject of abuse may not be considered a physical or mental condition; and

(D) such underwriting or rating is not used to evade the intent of this section or any other provision of the Kansas insurance code.

(v) Any person who underwrites or rates a risk on the basis of preexisting physical or mental condition as set forth in subsection (7)(d)(iv), must explain the reason for its action to the applicant or insured in writing.

(vi) The provisions of subsection (d) shall apply to all policies of life and accident and health insurance issued in this state after the effective date of this act and all existing contracts which are renewed on or after the effective date of this act.

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1 in an amount which fairly represents the saving in collection expenses; or  
2 (iii) readjustment of the rate of premium for a group insurance policy  
3 based on the loss or expense experience thereunder, at the end of the  
4 first or any subsequent policy year of insurance thereunder, which may  
5 be made retroactive only for such policy year.

6 (9) *Unfair claim settlement practices.* It is an unfair claim settlement  
7 practice if any of the following or any rules and regulations pertaining  
8 thereto are: (A) Committed flagrantly and in conscious disregard of such  
9 provisions, or (B) committed with such frequency as to indicate a general  
10 business practice.

11 (a) Misrepresenting pertinent facts or insurance policy provisions re-  
12 lating to coverages at issue;

13 (b) failing to acknowledge and act reasonably promptly upon com-  
14 munications with respect to claims arising under insurance policies;

15 (c) failing to adopt and implement reasonable standards for the  
16 prompt investigation of claims arising under insurance policies;

17 (d) refusing to pay claims without conducting a reasonable investi-  
18 gation based upon all available information;

19 (e) failing to affirm or deny coverage of claims within a reasonable  
20 time after proof of loss statements have been completed;

21 (f) not attempting in good faith to effectuate prompt, fair and equi-  
22 table settlements of claims in which liability has become reasonably clear;

23 (g) compelling insureds to institute litigation to recover amounts due  
24 under an insurance policy by offering substantially less than the amounts  
25 ultimately recovered in actions brought by such insureds;

26 (h) attempting to settle a claim for less than the amount to which a  
27 reasonable person would have believed that such person was entitled by  
28 reference to written or printed advertising material accompanying or  
29 made part of an application;

30 (i) attempting to settle claims on the basis of an application which  
31 was altered without notice to, or knowledge or consent of the insured;

32 (j) making claims payments to insureds or beneficiaries not accom-  
33 panied by a statement setting forth the coverage under which payments  
34 are being made;

35 (k) making known to insureds or claimants a policy of appealing from  
36 arbitration awards in favor of insureds or claimants for the purpose of  
37 compelling them to accept settlements or compromises less than the  
38 amount awarded in arbitration;

39 (l) delaying the investigation or payment of claims by requiring an  
40 insured, claimant or the physician of either to submit a preliminary claim  
41 report and then requiring the subsequent submission of formal proof of  
42 loss forms, both of which submissions contain substantially the same in-  
43 formation;

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1 (m) failing to promptly settle claims, where liability has become rea-  
2 sonably clear, under one portion of the insurance policy coverage in order  
3 to influence settlements under other portions of the insurance policy cov-  
4 erage; or

5 (n) failing to promptly provide a reasonable explanation of the basis  
6 in the insurance policy in relation to the facts or applicable law for denial  
7 of a claim or for the offer of a compromise settlement

8 (10) *Failure to maintain complaint handling procedures.* Failure of  
9 any person, who is an insurer on an insurance policy, to maintain a com-  
10 plete record of all the complaints which it has received since the date of  
11 its last examination under K.S.A. 40-222, and amendments thereto; but  
12 no such records shall be required for complaints received prior to the  
13 effective date of this act. The record shall indicate the total number of  
14 complaints, their classification by line of insurance, the nature of each  
15 complaint, the disposition of the complaints, the date each complaint was  
16 originally received by the insurer and the date of final disposition of each  
17 complaint. For purposes of this subsection, "complaint" means any writ-  
18 ten communication primarily expressing a grievance related to the acts  
19 and practices set out in this section.

20 (11) *Misrepresentation in insurance applications.* Making false or  
21 fraudulent statements or representations on or relative to an application  
22 for an insurance policy, for the purpose of obtaining a fee, commission,  
23 money or other benefit from any insurer, agent, broker or individual.

24 (12) *Statutory violations.* Any violation of any of the provisions of  
25 K.S.A. 40-276a, 40-1515, and amendments thereto, or K.S.A. 1995 Supp.  
26 40-2,155 and amendments thereto.

27 (13) *Disclosure of information relating to adverse underwriting de-*  
28 *cisions and refund of premiums.* Failing to comply with the provisions of  
29 K.S.A. 40-2,112, and amendments thereto, within the time prescribed in  
30 such section.

31 (14) *Rebates and other inducements in title insurance.* (a) No title  
32 insurance company or title insurance agent, or any officer, employee,  
33 attorney, agent or solicitor thereof, may pay, allow or give, or offer to pay,  
34 allow or give, directly or indirectly, as an inducement to obtaining any  
35 title insurance business, any rebate, reduction or abatement of any rate  
36 or charge made incident to the issuance of such insurance, any special  
37 favor or advantage not generally available to others of the same classifi-  
38 cation, or any money, thing of value or other consideration or material  
39 inducement. The words "charge made incident to the issuance of such  
40 insurance" includes, without limitations, escrow, settlement and closing  
41 charges.

42 (b) No insured named in a title insurance policy or contract nor any  
43 other person directly or indirectly connected with the transaction involv-

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1 ing the issuance of the policy or contract, including, but not limited to,  
2 mortgage lender, real estate broker, builder, attorney or any officer, em-  
3 ployee, agent representative or solicitor thereof, or any other person may  
4 knowingly receive or accept, directly or indirectly, any rebate, reduction  
5 or abatement of any charge, or any special favor or advantage or any  
6 monetary consideration or inducement referred to in (14)(a).

7 (c) Nothing in this section shall be construed as prohibiting:

8 (i) The payment of reasonable fees for services actually rendered to  
9 a title insurance agent in connection with a title insurance transaction;

10 (ii) the payment of an earned commission to a duly appointed title  
11 insurance agent for services actually performed in the issuance of the  
12 policy of title insurance; or

13 (iii) the payment of reasonable entertainment and advertising ex-  
14 penses.

15 (d) Nothing in this section prohibits the division of rates and charges  
16 between or among a title insurance company and its agent, or one or  
17 more title insurance companies and one or more title insurance agents,  
18 if such division of rates and charges does not constitute an unlawful rebate  
19 under the provisions of this section and is not in payment of a forwarding  
20 fee or a finder's fee.

21 (e) No title insurer or title agent may accept any order for, issue a  
22 title insurance policy to, or provide services to, an applicant if it knows  
23 or has reason to believe that the applicant was referred to it by any pro-  
24 ducer of title business or by any associate of such producer, where the  
25 producer, the associate, or both, have a financial interest in the title in-  
26 surer or title agent to which business is referred unless the producer has  
27 disclosed to the buyer, seller and lender the financial interest of the pro-  
28 ducer of title business or associate referring the title insurance business.

29 (f) No title insurer or title agent may accept an order for title insur-  
30 ance business, issue a title insurance policy, or receive or retain any pre-  
31 mium, or charge in connection with any transaction if: (i) The title insurer  
32 or title agent knows or has reason to believe that the transaction will  
33 constitute controlled business for that title insurer or title agent, and (ii)  
34 20% or more of the gross operating revenue of that title insurer or title  
35 agent during the six full calendar months immediately preceding the  
36 month in which the transaction takes place is derived from controlled  
37 business. The prohibitions contained in this subparagraph shall not apply  
38 to transactions involving real estate located in a county that has a popu-  
39 lation, as shown by the last preceding decennial census, of 10,000 or less.

40 (g) The commissioner shall adopt any regulations necessary to carry  
41 out the provisions of this act.

42 ~~(15) Discrimination against victims of domestic abuse. (a) An person  
or entity engaged in the business of insurance or this state shall not~~

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1 (i) Deny, refuse to issue, refuse to renew, refuse to reissue, cancel or  
2 otherwise terminate an insurance policy or restrict coverage on any in-  
3 dividual because that individual is, has been or may be the subject of  
4 abuse, or seeks, has sought or had reason to seek, medical or psychological  
5 treatment for abuse, protection from abuse or shelter from abuse;

6 (ii) add any surcharge or rating factor to a premium of an insurance  
7 policy because an individual's history of, status as, or potential to be  
8 subject to abuse;

9 (iii) exclude or limit coverage for losses or deny a claim incurred by  
10 an insured as a result of abuse or the potential for abuse;

11 (iv) ask an insured or an applicant for insurance whether that indi-  
12 vidual is, has been or may be the subject of abuse, or seeks, has sought or  
13 had reason to seek medical or psychological treatment specifically for  
14 abuse, protection from abuse or shelter from abuse; or

15 (v) terminate group health coverage for a subject of abuse because  
16 coverage was originally issued in the name of the abuser and the abuser  
17 has divorced, separated from or lost custody of the person who was the  
18 subject of abuse, or the abuser's coverage has terminated voluntarily or  
19 involuntarily. Nothing in this paragraph prohibits the health insurer or  
20 health maintenance organization from requiring the subject of abuse to  
21 pay the full premium for such person's coverage under the health plan or  
22 from requiring the subject of abuse to reside or work within its service  
23 area. The health insurer or health maintenance organization may termi-  
24 nate group health coverage after the continuation coverage required by  
25 this section has been in force for 18 months, if it offers conversion to an  
26 equivalent individual health plan. The continuation coverage required by  
27 this section shall be satisfied by any COBRA coverage provided to a sub-  
28 ject of abuse and is not intended to be in addition to any coverage provided  
29 under COBRA.

30 (b) Nothing in this section shall be construed to prohibit a person  
31 from declining to issue an insurance policy insuring the life of an individ-  
32 ual who is or has been the subject of abuse if the perpetrator of the abuse  
33 is the applicant or would be the owner of the insurance policy.

34 (c) Nothing in this section shall be construed to prohibit a person from  
35 underwriting or rating a risk on the basis of a preexisting physical or  
36 mental condition, even if such condition has been caused by abuse, pro-  
37 vided that:

38 (i) The person routinely underwrites or rates such condition in the  
39 same manner with respect to an insured or an applicant who is not a  
40 victim of abuse;

41 (ii) no person shall refuse to insure, refuse to continue to insure, limit  
42 the amount, extent or kind of coverage available to an individual or charge  
43 a different rate for the same coverage solely because of a physical or



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1 ~~mental condition, except where the refusal, limitation or rate differential~~  
2 ~~is based on sound actuarial principles;~~

3 ~~(iii) the fact that an individual is, has been or may be the subject of~~  
4 ~~abuse may not be considered a physical or mental condition; and~~

5 ~~(iv) such underwriting or rating is not used to evade the intent of this~~  
6 ~~section or any other provision of the Kansas insurance code.~~

7 ~~(d) Any person who underwrites or rates a risk on the basis of pre-~~  
8 ~~existing physical or mental condition as set forth in subsection (15)(c),~~

9 ~~must explain the reason for its action to the applicant or insured in writ-~~  
10 ~~ing.~~

11 Sec. ~~[3]~~ ~~K.S.A. 40-2402 and K.S.A. 1995 Supp. 40-2404 [are]~~ hereby ~~[is]~~  
12 repealed. ~~[2]~~

13 Sec. ~~[4]~~ This act shall take effect and be in force from and after its  
14 publication in the statute book. ~~[3]~~

## Long Term Care Policies/Lapse (Substitute for SB 529)

Section 1. The provisions of this act shall apply to all individual long-term care policies that are subject to lapsing issued to residents of this state on and after the effect date of this act.

Section 2. (a) No individual long-term care policy or certificate shall be issued until the insurer has received from the applicant either a written designation of at least one person, in addition to the applicant, who is to receive notice of lapse or termination of the policy or certificate for nonpayment of premium, or a written waiver dated and signed by the applicant electing not to designate additional persons to receive such notice.

(b) The applicant has the right to designate at least one person who is to receive the notice of termination, in addition to the insured. Designation of an additional person to receive notice of lapse or termination shall not constitute acceptance of any liability by such person for services provided to the insured. The designation shall include the full name and home address of such additional person.

(d) The policy shall include a waiver stated in clear terms in the case of an applicant who elects not to designate an additional person. The waiver shall state that the applicant has the right to designate at least one person other than the applicant who will receive notice of any lapse or termination of the long-term care policy and that the applicant elects not to designate an additional person to receive such notice.

(d) The insurer shall notify the insured of the right to change this written designation, no less often than once every two (2) years.

Section 3. When the policyholder or certificateholder pays premiums for a long-term care insurance policy or certificate through a payroll or pension deduction plan, the requirements contained in Section 2 need not be met until sixty (60) days after the policyholder or certificateholder is no longer on such a payment plan. The application or enrollment form for such policies or certificates shall clearly indicate the payment plan selected by the applicant.

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Section 4. No individual long-term care policy or certificate shall lapse or be terminated for nonpayment of premium unless the insurer, at least thirty (30) days before the effective date of the lapse or termination, has given notice by first-class mail to the insured at their last-known address and to any person designated by the insured pursuant to Section 2 to receive notice of lapse or termination. Notice shall not be given until thirty (30) days after a premium is due and unpaid and will be deemed to have been given five (5) days after the date of mailing.

Section 5. Long-term care insurance policies or certificates shall include a provision which provides for reinstatement of coverage, in the event of lapse if the insurer is provided proof of cognitive impairment or the loss of functional capacity. This option shall be available to the insured if requested within five (5) months after termination and shall allow for the collection of past due premium, where appropriate. The standard of proof of cognitive impairment or loss of functional capacity shall not be more stringent than the benefit eligibility criteria for cognitive impairment or the loss of functional capacity contained in the policy or certificate.

Section 6. This act shall take effect and be in force from and after its publication in the statute book.

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