

Approved: 3/14/96  
Date

MINUTES OF THE Senate Committee on Financial Institutions and Insurance.

The meeting was called to order by Chairperson Dick Bond at 9:08 a.m. on March 13, 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: David Hanson, KS Assn. of Property and Casualty Insurers  
Rob Woodard, Kansas Farm Bureau Insurance Company  
Tom Wilder, Kansas Insurance Department  
Patrick Mulvihill, Kansas Insurance Department

Others attending: See attached list

Senator Praeger made a motion to approve the minutes of the meeting of March 12 as submitted. Senator Steffes seconded the motion. The motion carried.

The chairman opened the hearing on **HB 2713**, which would allow property and casualty insurance companies to hold securities in clearing corporations which are located outside the United States. David Hanson, Kansas Association of Property and Casualty Insurers, appeared as a proponent of this legislation and explained that this bill will give property and casualty insurance companies the same opportunities to use foreign clearing corporations as granted to life insurance companies during the 1995 legislative session. (Attachment #1)

Rob Woodard, Kansas Farm Bureau, also appeared in support of this bill. (Attachment #2) In response to Senator Bond's question, Mr. Woodard defined a "clearing corporation" as a bank or trust company which makes electronic entries and transfers on behalf of a client.

Tom Wilder stated that the Insurance Department supports the changes outlined in **HB 2713** and recommended favorable consideration of this bill. (Attachment #3)

There were no further questions and no other conferees; the hearing was closed. Senator Emert made a motion to move **HB 2713** favorably. Senator Steffes seconded the motion; the motion carried. Senator Steffes will carry this bill on the Senate floor.

The hearing was opened on **HB 2717**, relating to authorized investments for property and casualty insurance companies. David Hanson, Kansas Association of Property and Casualty Insurers, also appeared as a proponent of this bill, explaining that it will allow property and casualty insurance companies to invest in financial futures contracts as life insurance companies are allowed to do following 1995 legislation. (Attachment #4)

Rob Woodard, Kansas Farm Bureau, advised the committee that this bill would allow any Kansas insurance company, other than life, to use designated financial instruments to engage in hedging transactions and certain income generating transactions. (Attachment #5) Mr. Woodard also explained that a "hedging" transaction is a financial instrument transaction entered into and maintained to reduce the risk of a change in the value of assets or liabilities which the insurer has acquired or the currency exchange risk to assets or liabilities which the insurer has acquired or incurred or anticipates acquiring or incurring.

Tom Wilder testified that the Insurance Department supports this bill, the language of which was taken from the NAIC Model Investment Code. (Attachment #6)

At Senator Corbin's request, the committee discussed and received clarification of the definition of "collar" contained in Section 1(b)(2). There were no further questions or conferees; the hearing on **HB 2717** was closed.

Senator Lee moved to pass **HB 2717** favorably. Senator Praeger seconded the motion; the motion carried. Senator Corbin will carry this bill.

CONTINUATION SHEET

MINUTES OF THE Senate Committee on Financial Institutions & Insurance, Room 529-S Statehouse, on March 13, 1996.

Chairman Bond opened the hearing on HB 2661, pertaining to risk-based capital. Patrick Mulvihill, Kansas Insurance Department, explained that this bill is intended to make risk-based capital requirements applicable to property and casualty insurance companies as well as life insurance companies. (Attachment #7) Mr. Mulvihill also clarified that, as a safety precaution, property and casualty companies would be required to maintain an amount of capital and/or surplus commensurate with the risk inherent in each company's operations. Additionally, passage of HB 2661 would enhance the Insurance Department's ability to monitor the financial condition of property and casualty companies and to take any appropriate regulatory action in a timely manner. Mr. Mulvihill expressed his concern with the reference in section 1(j) to instructions which are in effect on July 1, 1996, stating that changes could be made on a yearly basis and, therefore, a definite date should not be a part of this legislation. The Chairman expressed his concerns about giving the NAIC legislative power over the insurance industry and stated that changes could be made during each session of the legislature, if necessary.

David Hanson, Kansas Association of Property and Casualty Insurance Companies, testified in support of HB 2661 and presented a proposed balloon amendment to section 8(b) prohibiting the Insurance Commissioner from using RBC reports or plans for ratemaking or as evidence in any rate proceeding. (Attachment #8) Mr. Wilder stated that this amendment is acceptable to the Insurance Department.

There being no further conferees, the hearing was closed. Senator Hensley made a motion to amend HB 2661 as requested. Senator Emert seconded the motion; the motion carried.

Senator Hensley moved to recommend HB 2661 favorably as amended. Senator Steffes seconded the motion. The motion carried. Senator Hensley will carry this bill on the Senate floor.

The committee adjourned at 9:46 a.m. The next meeting is scheduled for March 14, 1996.



Testimony to the Senate Financial Institutions and Insurance Committee

March 13, 1996

Subject: HB #2713

Mr. Chairman, Members of the Committee: My name is David Hanson and I am appearing on behalf of the Kansas Association of Property and Casualty Insurers. The Association is made up of Kansas domestic insurers who write property and casualty type coverages, such as homeowners' and automobile policies.

The Association expresses its full support of HB 2713. These bills parallel revisions the legislature made last session regarding investments by life insurance companies.

Briefly, HB 2713 amends K.S.A. 40-2a20 and K.S.A. 84-8-108 to allow property and casualty companies to clear through and register securities with international clearing corporations. Under current Kansas law, insurers, other than life companies, can only use certain domestic clearing corporations. International clearing corporations are not authorized. Due to the current globalization of financial markets and the increase in cross-border investment activity, authorization to use international clearing corporations is crucial.

Traditionally, when an investor purchased a security, the investor received a physical certificate evidencing ownership. Today, securities are often not held in this physical certificate form. Trades are effected by way of book entry. That is, a security is registered in an owner's name in the records of the clearing corporation. If sold, upon receipt of the purchase price, the clearing corporation re-registers the security in the purchaser's name. International clearing corporations operate in the same manner as domestic clearing corporations. The difference is that international clearing corporations are used to clear and register internationally traded securities issued by foreign and United States entities.

The number of entities that issue securities through international clearing corporations continue to increase. The reason being, the international market offers an opportunity to maximize the number of potential investors and to maximize yield. For example, a United States corporation may choose to issue debt securities in the global market because foreign investors may be willing to receive a lower rate of interest in exchange for payments made in US currency.

Let me point out, HB 2713 relates only to the registration and clearing of securities. It does not expand the types of securities in which property and casualty insurers are authorized to

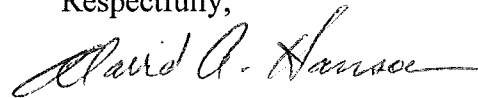
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invest. The existing limitations on investments in foreign securities remain unchanged.

As of last year, fourteen (14) states had taken specific steps to authorize the use of international clearing corporations. We hope that the Kansas Legislature this session will extend the same opportunity to property and casualty insurers it did for life insurance companies last session. As I mentioned earlier, the language used in HB 2713 is parallel to the revisions made last session to K.S.A. 40-2b20 involving life insurers.

Again , we appreciate the Committee giving us the opportunity to present testimony as proponents of HB 2713. We feel that the proposal provides domestic property casualty insurers more opportunities and greater flexibility in making investment decisions. This added flexibility ultimately provides better security by allowing companies to more easily adjust to an ever changing financial climate. Thank you again and we respectfully urge your favorable consideration of HB 2713.

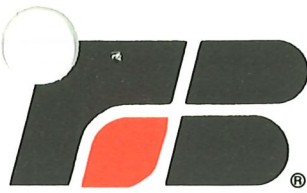
Respectfully,



DAVID A. HANSON

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*Farm Bureau Mutual Insurance Company, Inc.*

*KFB Insurance Company, Inc.*

March 13, 1996

RE: House Bill 2713 - International Clearing Corporations

Dear Chairman and Committee Members:

My name is Rob Woodard and I work in the investment department for Kansas Farm Bureau Services, an affiliate of The Kansas Farm Bureau. The Kansas Farm Bureau is a diversified agricultural organization offering life and property/casualty insurance through its affiliates and subsidiaries. We support House Bill 2713.

House Bill 2713 is identical in content to a bill introduced and passed as amended last year on behalf of life insurance companies. That bill (HB No. 2212) allowed, under restriction, life insurance companies in Kansas to clear through and register securities with international clearing corporations. We seek today to have the comparable property casualty statute amended.

Under current law, property casualty insurers in Kansas can use certain domestic clearing corporations. International clearing corporations are not authorized. We are not aware of a determination being made that international clearing corporations are unsafe or risky. We believe that international clearing corporations simply were not contemplated. Due to the globalization of financial markets and the increase in cross-border investment activity, authorization to use international clearing corporations is crucial.

Traditionally, when an investor purchased a security, the investor received a physical certificate evidencing ownership. Now, securities are seldom held in physical form. Trades are effected through book entry. A security is registered in an owner's name in the records of a clearing corporation. If it is sold, upon receipt of the purchase price, the clearing corporation re-registers the security in the purchaser's name.

International clearing corporations operate in the same manner as domestic clearing corporations. The difference is that international clearing corporations

are used to clear and register internationally traded securities issued by foreign and United States entities.

The world's largest international clearing system is Euroclear. Euroclear is used by approximately 3,000 banks, brokers and other securities institutions that are active in the international market. Euroclear is used for settlement of over 54,000 debt and equity securities, including securities of foreign and United States entities.

Euroclear is a safe and reliable system. Book entry settlement is much safer than physical form because it eliminates the risk of physical loss or damage. However, since trades are effected by computer entry, computer system security safeguards and disaster relief programs have been implemented. Likewise, procedures for validation of trade instructions have been developed.

The Euroclear system is operated by Morgan Guaranty Trust Company of New York, Brussels office. Morgan Guaranty Trust is fully regulated by the U.S. Federal Reserve Board and State of New York Banking Department. Finally, if Euroclear were declared insolvent, securities registered with Euroclear would not become a part of the Morgan Guaranty Trust's estate.

Euroclear has been in operation for over 25 years. Daily securities and cash transactions average \$66 billion. In 1993, \$17 trillion dollars of securities cleared through Euroclear. On average, Euroclear processes 40,000 transactions every day. Recent statistics reveal securities valuing approximately \$1.5 trillion were held by Euroclear.

The number of entities that issue securities through international clearing corporations continues to increase. Issuers of securities choose the international market to maximize the number of potential investors and to maximize yield. For example, a United States corporation may choose to issue debt securities in the global market because foreign investors may be willing to receive a lower rate of interest in exchange for payments made in United States dollars.

This bill relates to the registration and clearing of securities only. It does not expand the type of securities in which property/casualty issuers are authorized to invest. The existing limitations on investments in foreign securities remain unchanged. A property/casualty insurer can invest no more than 5% of its admitted assets in obligations of foreign governments, other than obligations of Canada. Investments in obligations of foreign companies are not specifically authorized. However, such investments may be made under the "leeway clause," and consequently cannot in the aggregate exceed 10% of an insurer's admitted assets.

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Other states have reacted to the continued trend towards globalization of financial markets. Our research indicates that fourteen states have taken specific steps to authorize the use of international clearing corporations. We hope that Kansas will join these states by adopting House Bill 2713.

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

Respectfully submitted,



Robert Woodard, CFA  
Portfolio Manager  
Farm Bureau Mutual Insurance Co., Inc.

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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: H.B. 2713 (Clearing Corporations)

Date: March 13, 1996

House Bill 2713 allows property and casualty insurance companies to hold securities in "clearing corporations" which are located outside of the United States. A clearing corporation is an organization which holds and trades securities for other companies. The current statute allows these insurers to hold securities in United States clearing corporations which are regulated by the Federal Reserve System or the state banking commissioner.

As you are aware, the Kansas Legislature approved amendments to K.S.A. 40-2b20 in 1995 which permitted life insurance companies to use the services of foreign clearing corporations. It is appropriate to extend this investment authority to other types of insurers. The clearing corporations would have to be operated or owned by a bank, trust company or other business entity that is subject to regulation by the United States Comptroller of the Currency, Federal Reserve Board or Securities and Exchange Commission.

The Kansas Department of Insurance supports the changes outlined in H.B. 2713 and requests the Committee recommend the legislation favorably for passage.

Testimony to the Senate Financial Institutions and Insurance Committee

March 13, 1996

Subject: HB # 2717

Mr. Chairman, Members of the Committee: My name is David Hanson and I am appearing on behalf of the Kansas Association of Property and Casualty Insurers. The Association is made up of Kansas domestic insurers who write property and casualty type coverages, such as homeowners' and automobile policies.

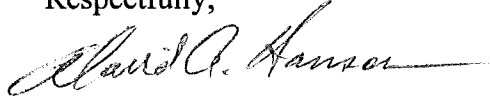
The Association expresses its full support of HB 2717. The language of HB 2717 is parallel to the revisions made last session to K.S.A. 40-2b25 relating to life insurance companies. It appears that most of these revisions, with the exception of some added safeguards suggested by the Kansas Insurance Department, came from language developed by the National Association of Insurance Commissioners ("NAIC") Model Investment Code on the particular subject.

HB 2717 gives domestic property and casualty insurers greater investment flexibility by providing additional types of financial instruments, while at the same time creating additional safeguards. K.S.A. 40-2a24 currently allows insurance companies to invest in financial futures contracts as part of a hedging transaction tied to a specific asset or group assets. HB 2717 would permit property and casualty insurance companies to invest in additional types of financial futures contracts. This bill will allow domestic property and casualty insurance companies to invest, subject to review by the Kansas Insurance Department and statutory restrictions, in financial instruments which provide hedging transactions and certain income generation transactions. In essence, this bill allows an insurance company to invest in financial futures contracts which provide somewhat of a shield from interest rate volatility, that is, financial instruments which are less sensitive to interest rate increases or decreases. Because of the highly technical nature these types of securities, the bill requires that the insurance company be able to demonstrate to the Commissioner of Insurance the intended characteristics of the financial instrument, along with the ongoing effectiveness of the investment. Additionally, the bill limits the amount a domestic insurance company may invest of its portfolio in these types of investments. As I noted earlier, under last year's revisions, life insurance companies currently have access to these types of financial instruments and the provisions seem to be working well. The property and casualty companies are merely requesting similar access.

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Again , we appreciate the Committee giving us the opportunity to present testimony as proponents of HB 2717. We feel that the proposal provides domestic property casualty insurers more opportunities and greater flexibility in making investment decisions. This added flexibility ultimately provides better security by allowing companies to more easily adjust to an ever changing financial climate. Thank you again and we respectfully urge your favorable consideration of HB 2717.

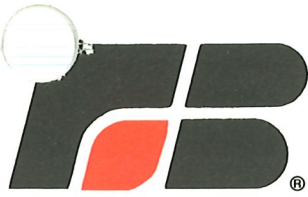
Respectfully,



DAVID A. HANSON

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*Farm Bureau Mutual Insurance Company, Inc.*

*KFB Insurance Company, Inc.*

March 13, 1996

RE: House Bill 2717 - Financial Hedging Transactions

Dear Chairman and Committee Members:

My name is Rob Woodard and I work in the investment department for Kansas Farm Bureau Services, an affiliate of The Kansas Farm Bureau. The Kansas Farm Bureau is a diversified agricultural organization offering life and property/casualty insurance through its affiliates and subsidiaries. We support House Bill 2717.

House Bill 2717 is identical in content to a Senate Bill introduced and passed (as amended) last year on behalf of life insurance companies. That bill (SB 345) replaced the existing statute regarding the use of financial instruments to engage in hedging transactions and certain income generation transactions. We seek today to have the comparable property casualty statute amended.

H.B. 2717 would amend K.S.A. 40-2a24 concerning the authorized investments of "other than life" insurance companies. The bill would strike all the existing language and incorporate language developed by the National Association of Insurance Commissioners and agreed to but not yet formally presented as part of a redraft of its Model Investment Code.

Any Kansas Insurance company (other than life) would be allowed to use designated financial instruments to engage in hedging transactions and certain income generation transactions. To do so, the company must be able to demonstrate to the Insurance Commissioner the intended hedging characteristics and the effectiveness of the financial instrument transaction or combination of transactions through cash flow testing or other appropriate analysis.

"Financial instrument" would be defined as an agreement, option, instrument, or any series or combination thereof; to make or take delivery of, or assume or relinquish, a specified amount of one or more underlying interests, or to make a

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cash settlement in lieu thereof; or which has a price, performance, value or cash flow based primarily upon the actual or expected price, level, performance, value or cash flow of one or more underlying interests. "Underlying interest" would be defined as the assets, other interests, or a combination underlying a financial instrument, such as any one or more securities, currencies, rates, indices, commodities, or financial instruments.

"Financial instruments" would be further defined to include options, warrants, caps, floors, collars, swaps, forwards, future, and any other substantially similar agreements, options, or instruments, or any series or combination of instruments. (Most of the instruments listed are defined individually in the bill.)

Investing in these types of securities takes a specialized investment manager. To that end, the statute requires that the insurance company must be able to demonstrate to the Commissioner of Insurance the intended characteristics of the financial instrument, along with the ongoing effectiveness of the investment. Additionally, subsection (c) of the bill limits the amount of the portfolio that a domestic insurance company may invest in these types of investments. Thus, you will have an ongoing review by the Insurance Department of these investments prior to and during the course of holding the investments, along with the overall cap as provided.

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

Respectfully submitted,



Robert Woodard, CFA  
Portfolio Manager  
Farm Bureau Mutual Insurance Co., Inc.

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**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: H.B. 2717 (Investments in Financial Futures)

Date: March 13, 1996

The Kansas Insurance Department supports House Bill 2717 which amends K.S.A. 40-2a24 to give property and casualty insurers additional authority to invest in financial futures contracts. The amendments to the statute are taken from the National Association of Insurance Commissioners Model Investment Code. Although the NAIC is still in the process of developing the model act, the provisions pertaining to futures contracts have been approved. The Kansas Legislature gave similar authority to life insurance companies last year in 1995 S.B. 345. It is appropriate to also provide this investment flexibility to other insurers.

Financial futures contracts are investments which require intelligent financial management by the insurance company. There are limits placed on the investment in such instruments under Subsection (14) of the statute. In addition, the Insurance Department is required to monitor these investments as part of our financial surveillance of insurance companies.

The Insurance Department asks the Committee to approve H.B. 2717.

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

**MEMORANDUM**

**TO:** Senate Financial Institutions and Insurance Committee

**FROM:** Patrick Mulvihill  
Assistant Chief Examiner

**DATE:** March 13, 1996

**SUBJECT:** House Bill No. 2661, As Amended by House Committee  
(Risk-Based Capital)

We presently have existing laws (Article 2c of Chapter 40 of the Kansas Statutes Annotated) which require life insurance companies to be subject to risk-based capital requirements. The primary purpose of House Bill No. 2661 is not to change these requirements but to make the necessary amendments to the statutes so that risk-based capital requirements are also applicable to property and casualty insurance companies.

House Bill No. 2661 is based off of model legislation from the National Association of Insurance Commissioners (NAIC). The model legislation, as it pertains to property and casualty insurance companies, had not yet been fully developed and approved by the NAIC when our state enacted similar legislation for life insurance companies in 1994. It should be noted that in order to comply with the NAIC Accreditation Standards, each state must adopt the NAIC's Risk-Based Capital for Insurers Model Act or a substantially similar law. It appears that by adopting House Bill No. 2661, the Kansas Insurance Department will be able to demonstrate compliance with this Accreditation Standard.

Currently, property and casualty insurance companies are subject to specified fixed minimum capital and/or surplus requirements to qualify for a Kansas Certificate of Authority. House Bill No. 2661 would supplement this fixed requirement by requiring property and casualty insurance companies to maintain an amount of capital and/or surplus that is commensurate with the risk inherent in each company's operations, i.e., the type of business they write, the strength of their

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investment portfolio, their underwriting philosophy, marketing strategies, rate of growth and so forth. Utilization of risk-based capital requirements is a more effective alternative to fixed minimum capital and/or surplus requirements in that the amount of risk-based capital that is required of property and casualty companies will be unique to each company and the required amount of risk-based capital will vary as a company's operating conditions change over time.

Specifically, this legislation would require a Kansas domestic property and casualty insurance company to calculate its risk-based capital by applying factors to selected annual statement asset, liability and reserve items. Such factors are established by the NAIC and represent the outcome of extensive technical analysis regarding the amount of capital needed to cover the identified risks. If a company is found to be inadequately capitalized, based on the relationship which the formula produced risk-based capital bears to the company's "total adjusted capital", the Commissioner of Insurance would be authorized to take four levels of progressively serious regulatory action against the company which are commensurate with various levels of inadequacy. This action may include requiring the company to file a plan indicating the steps it plans to take to eliminate the risk-based capital deficiency, issuing corrective orders directing the company to take certain actions, initiating receivership proceedings, and placing the company in receivership. Prior to taking any of these actions, insurers would have the right to an administrative hearing conducted by the Insurance Department.

Foreign property and casualty insurance companies would also be required to file risk-based capital information with the Insurance Department when requested to do so by the Commissioner. If a foreign insurer's risk-based capital is inadequate, the Commissioner would be authorized to take action if the company's state of domicile fails to react to the deficiency.

Various amendments were made to House Bill No. 2661 by the House Committee as a result of changes requested by the Kansas Insurance Department and by the property and casualty insurance industry. We support all of the changes except the change in Section 1(j), page 2, lines 4-5. In regard to the definition of "RBC instructions", the reference to RBC instructions "which are in effect on July 1, 1996" has been included at the request of the property and casualty insurance industry. It should be noted that the definition of "RBC instructions" which is included in the NAIC model legislation does not include reference to the instructions as of a particular date. The model legislation defines "RBC instructions" as "the RBC Report including risk-based capital instructions adopted by the NAIC, as such RBC instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC." It is our understanding that before any significant changes would be made to the RBC instructions, the NAIC would hold a public hearing

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regarding the matter. As a result of the amendment by the House Committee, it appears that each time the NAIC makes any changes to the RBC instructions subsequent to July 1, 1996, it may be necessary to amend this statute accordingly.

If House Bill No. 2661 (As Amended by House Committee) is approved, the new requirements would greatly enhance our ability to monitor the financial condition of property and casualty insurance companies and take appropriate regulatory action in a timely manner.

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**TESTIMONY ON HB2661**

TO: Chairman Bond  
Senate Financial Institutions and Insurance Committee  
Capital Building  
Topeka, KS

Re: House Bill No. 2661

Mr. Chairman and Members of the Committee:

Thank you for this opportunity to appear before the Committee. I am David Hanson and am appearing on behalf of Kansas Association of Property and Casualty Insurance companies to support House Bill 2661.

We appreciate the Insurance Department's willingness to work with us to address several concerns we had with the original bill. Specifically, we had suggested New Section 10 from the NAIC model provisions allowing the Insurance Commissioner discretion to exempt small property and casualty insurers from the risk based capital provisions and we also discussed including NAIC model language prohibiting use of risk-based capital information for ratemaking or in any rate proceeding.

A copy of the NAIC model language is attached and we understand the Insurance Department was agreeable to including these provisions. Unfortunately, an important phrase from the NAIC model was left out of the amended language in Section 8 (b) on page 6 of the bill which would clarify that risk-based capital (RBC) information shall not be used by the Commissioner "for ratemaking nor considered or introduced as evidence in any rate proceeding..." Attached is a balloon reflecting the omitted language, which we feel should be included and we understand the Insurance Department does not oppose

The NAIC developed the RBC requirements solely for use by commissioners as a tool to monitor the solvency of insurers and the need for corrective action. They were never intended to be considered by commissioners for rate making or as evidence in rate making hearings. The NAIC felt strongly enough about the proper use of the RBC reports that they included a specific provision in the model provisions prohibiting the use of RBC reports in rate making. The public policy reasons behind the inclusion of this prohibition are compelling. An exceptionally well capitalized insurer should not have to be concerned that their excess capital might prevent a regulator from approving a rate increase. On the other hand, a poorly managed insurer should not be rewarded with a rate increase to supplement its capital.

We also requested the reference date in the definition of "RBC instructions" on page 2, lines 4-5, of the bill and feel that reference is necessary to make sure the NAIC promulgated RBC instructions and formula are those in effect July 1 this year, rather than unknown future revisions, which could adversely affect our companies' risk-based capital and

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their resulting action or control levels. We believe our companies will be in good standing under the current NAIC instructions and formula and we are very concerned about any significant changes in those instructions and formula by the NAIC to be adopted in Kansas without the Legislature reviewing the changes. We believe the reference date accomplishes this.

With the suggested amendment shown in the balloon, we would urge your favorable consideration of House Bill 2661.

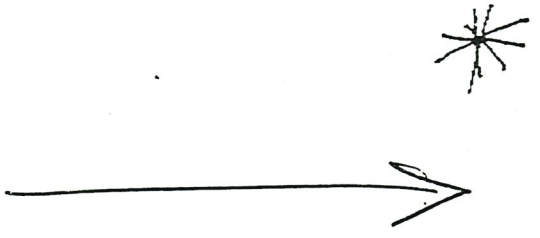
Respectfully,

DAVID A. HANSON

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an inappropriate comparison of any other amount to the insurers' RBC Levels is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of such statement, or the inappropriateness, as the case may be, then the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

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C. It is the further judgment of the legislature that the RBC Instructions, RBC Reports, Adjusted RBC Reports, RBC Plans and Revised RBC Plans are intended solely for use by the commissioner in monitoring the solvency of insurers and the need for possible corrective action with respect to insurers and shall not be used by the commissioner for ratemaking nor considered or introduced as evidence in any rate proceeding nor used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance which an insurer or any affiliate is authorized to write.

Section 9. Supplemental Provisions; Rules; Exemption

- A. The provisions of this Act are supplemental to any other provisions of the laws of this state, and shall not preclude or limit any other powers or duties of the commissioner under such laws, including, but not limited to, [cite rehabilitation and liquidation law and law pertaining to insurers in hazardous financial condition].
- B. The commissioner may adopt reasonable rules necessary for the implementation of this Act.
- C. The commissioner may exempt from the application of this Act any domestic property and casualty insurer which;
  - (1) Writes direct business only in this state;
  - (2) Writes direct annual premiums of [\$X] or less; and
  - (3) Assumes no reinsurance in excess of five percent (5%) of direct premium written.

Drafting Note: It is the drafters' intent that the domiciliary commissioner have the ability to exempt certain insurers doing business only within the commissioner's jurisdiction. The intent is to limit this exemption to insurers that do not write in excess of \$2,000,000 in annual premiums.

Section 10. Foreign Insurers

- A. Any foreign insurer shall, upon the written request of the commissioner, submit to the commissioner an RBC Report as of the end of the calendar year just ended the later of:
  - (1) The date an RBC Report would be required to be filed by a domestic insurer under this Act; or

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 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. and amendments thereto. 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., 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 with the 90-day period.

Sec. 8. K.S.A. 1995 Supp. 40-2c20 is hereby amended to read as follows: 40-2c20. (a) All RBC reports, RBC plans and any corrective orders, including the working papers and the results of any analysis of an insurer performed under this act shall be kept confidential by the commissioner. This information shall not be made public or subject to subpoena, other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner pursuant to this act or any other provision of the insurance laws of this state.

(b) RBC instructions, RBC reports, adjusted RBC reports, RBC plans and revised RBC plans are intended solely for use by the commissioner in monitoring the solvency of insurers and the need for possible corrective action with respect to insurers and shall not be used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance which an insurer or any affiliate is authorized to write.

Sec. 9. K.S.A. 1995 Supp. 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. 1995 Supp. 40-2c05, 40-2c06, 40-2c07, 40-2c08, 40-2c09 and 40-2c10, and amendments thereto, 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 insur-

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ance business in this state.  
 New Sec. 10. The commissioner may exempt from the application of K.S.A. 1995 Supp. 40-2c01 through 40-2c27, and amendments thereto, any domestic property and casualty insurer which:  
 (a) Writes direct business only in this state;  
 (b) writes direct annual premiums of \$2,000,000 or less; and  
 (c) assumes no reinsurance in excess of 5% of direct premiums written.  
 Sec. 11. K.S.A. 1995 Supp. 40-2c01, 40-2c03, 40-2c05, 40-2c11, 40-2c13, 40-2c15, 40-2c18, 40-2c20 and 40-2c24 are hereby repealed.  
 Sec. 12. This act shall take effect and be in force from and after its publication in the statute book.

for ratemaking nor considered or introduced as evidence in any rate proceeding nor used by the commissioner