Approved: January 27, 1997
Date

MINUTES OF THE Senate Committee on Financial Institutions and Insurance.

The meeting was called to order by Chairperson Don Steffes at 9:00 a.m. on January 21, 1997 in Room 529-S of the Capitol.

All members were present except:

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

Conferees appearing before the committee: Roger Viola, Security Benefit Group
Jim Maag, Kansas Bankers Association
Sharon Patnode, Legislative Post Audit
Tom Wilder, Insurance Department
Brad Smoot, Blue Cross/Blue Shield
Trish Pfannestiel, Legislative Post Audit
Art Palmer, Kansas Life & Health Guaranty Association
Bobbi Mariani, Division of Personnel Services

Others attending: See attached list

Roger Viola, Security Benefit Group, appeared before the Committee with a bill draft which would allow the conversion of a mutual insurance company to a stock insurance company (Attachment 1) This proposal would modernize the existing demutualization statutes.

Senator Clark moved for the introduction of the proposed bill into legislation. The motion was seconded by Senator Becker. Motion carried.

Jim Maag, representing the Kansas Bankers Association, requested the introduction of legislation which would limit municipal corporations or quasi-municipal corporations to depositing funds in banks and savings and loan associations incorporated under the laws of Kansas or having their main offices in Kansas (Attachment 2).

Senator Barone moved for the introduction of the proposed bill into legislation. The motion was seconded by Senator Biggs. Motion carried.

Hearing on SB 12: Identifying health care and other medical benefits provided under medical benefit plans for beneficiaries; penalties for non-compliance

Sharon Patnode, Legislative Post Audit, explained that the bill would authorize the Secretary of SRS to request medical benefit providers to make certain information available as it related to potential recipients of Medicaid (Attachment 3). It would also authorize computer matches with insurance companies in order to check Medicaid clients' names against company records. There is a penalty provision of a fine up to $500.00 per month for non-compliance. Similar programs in Wisconsin have been very successful in recouping insurance claims.

Kansas paid $875 million in Medicaid claims this past year. Edits built into the current computer system caught $69 million that was eventually paid out by insurance companies. Delays in payment may have been caused by Medicaid clients being unaware of existing insurance coverage or the claims may have been disputed. EDS has suggested that social security numbers be used in making such matches.

Tom Wilder of the Kansas Insurance Department informed the Committee that SRS cannot enforce requests to insurance companies for matching information from the Kansas Insurance Department under the current statutes (Attachment 4) ERISA plans would not fall under this proposed legislation. The larger insurance companies in the state would be subject to the computer matching program first with smaller companies being considered at a later date.

Private companies do the matching in Iowa and are paid a percent by the state of the recovered amounts from

insurance companies. It was suggested that the insurance companies pay for the underwriting of this program rather than the state as they are the ones causing the need for the legislation.

Brad Smoot, Blue Cross/Blue Shield, voiced concern on the word "may" in Line 27 of the bill as the intent of the bill is that the state will pay for the development of the program.

The Committee recommended a more thorough cost benefit analysis of reimbursement for reasonable costs and the cost of developing the appropriate software before they make a decision. Chairman Steffes appointed a Subcommittee chaired by Senator Praeger with Senators Feliciano and Becker serving. The hearing was continued.

Hearing on SB 15 -- Kansas employees deferred compensation

Trish Pfannestiel, Senior Auditor with Legislative Post Audit, informed the Committee that a request for inquiry in the administration and liability of the State regarding the Kansas Public Employee's Deferred Compensation program came from the Legislative Post Audit Committee after a statewide single audit (Attachment 5). Aetna is the third-party administrator and investment provider for the fund. The problem of who would be responsible should Aetna default or mismanage the funds (insolvency) was the catalyst for this proposed legislation. This $174.5 million fund is growing 10-15% each year. The law is unclear whether Kansas Guaranty Association would be liable for amounts up to $100,000 in fixed-return accounts. The State may be held liable in such cases in which the money would come from the General Fund. Options for the Legislature are (a) to do nothing, (b) specifically exclude the program's fixed-return accounts from coverage by the Guaranty Association, or (c) to have the Association's coverage include moneys in the program's fixed-return accounts. This bill would specifically state that moneys in the fixed-return accounts are covered by the Kansas Life and Health Guaranty Association.

Art Palmer, Kansas Life and Health Insurance Guaranty Association, asked that the Committee defer consideration until their board could meet to review the language within the bill (Attachment 6). They have requested language which would limit the Association's liability to compensation plans written by insurance companies as these are the only companies the Association can assess in case of default.

Tom Wilder, Kansas Insurance Department, spoke in support of the bill (Attachment 7). He did remind the Committee that at this point the accounts cannot be advertised as being covered by the Guaranty Association.

Bobbi Mariani, Assistant Director of the Division of Personnel Services, presented testimony in support of the bill as it would protect the value of fixed accounts by ensuring protection from the Guaranty Association (Attachment 8). She pointed out that the Internal Revenue Service requires this money to be held in allocated accounts or it is subject to being considered an asset of the state. Aetna has taken the position that this money is actually being held in trust for the investors and is covered. Ms. Mariani recommend a model be developed and adopted by the National Association of Insurance Commissioners.

The hearing was continued.

Senator Corbin moved for the approval of the minutes of January 14 and 15. Motion was seconded by Senator Feliciano. Motion carried.

The meeting was adjourned at 9:55 a.m. The next meeting is scheduled for January 22, 1997.

SENATE FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE GUEST LIST

DATE: 1/21 p 1/2

NAME	REPRESENTING
Tom Wilder	Kansas Insurance Dept
Art Palmer	Ks Life & Health Guaranty Assn
Brad Smoot	BCBS
Callie Jill Denton	Peterson's Assoc.
Roger Franzke	KGC
Jerry Slaughter	KMS
Lynn Mary	KBA
Danielle Noe	Governors Office
Megan Grisss	Kearny Law Office
Bob Alderson	KPhA
Darin Conklin	KPhA
Bill Sneed	Am Vestors
Amy Campbell	R. Rice Law Office
Susan M. Baker	Hein + Weir
Kevin Davis	American Family
Ken Henderson	KMS
Teresa Hetenauer	State Farm
Matthew Goddard	HCBA
Roger Viola	Security Benefit Group

SENATE FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE GUEST LIST

DATE: 1/21 p. 2/2

NAME	REPRESENTING
Trish Copeland	Security Benefit Group
Nancy Bryant	Secretary of State
Candace Davis	SRS
Rich Gattuso	Health Midwest
Chris Keeshan	Kansas Trial Lawyers
Cindy Delfelder	Ks Ret. Sys. Plan
TK Shively	Ks. Legal Services
Sharon Patwode	Legislative Post Audit
David Hanson	Ks Insur Assocs
Pat Morris	KS Assoc. of Ins. Agents
Rogers Brazier	State Treasurer

January 21, 1997

To: Members of the Kansas Senate Financial Institutions and Insurance Committee

Re: Bill to Amend K.S.A. 40-4001 et seq.

My name is Roger Viola and I am Senior Vice President, General Counsel and Secretary of Security Benefit Life Insurance Company. Security Benefit is a Kansas domiciled company with its offices located in Topeka. It currently employs approximately 525 Kansans and is engaged in the manufacture and distribution of annuities, mutual funds, life insurance and retirement plans.

Security Benefit is a mutual life insurance company which means it is owned by its policyholders. The mutual form of organization has certain inherent limitations, primarily its inability to raise equity capital through the issuance of stock. In terms of being able to grow, this puts it at a severe disadvantage vis-à-vis its stock company counterparts.

There does exist, however, a process through which a mutual insurer can become a stock insurer and that process is typically called "demutualization." In fact, Kansas currently has a demutualization statute but, unfortunately, it is archaic and is not in tune with the demutualization statutes which have been adopted by many other states during the past few years. In fact, I cannot foresee any company ever using it as a structure by which to demutualize.

The demutualization statute which I am presenting today would displace the current Kansas statute and would replace it with one containing the models which have been adopted by other states and utilized by several nationally recognized mutual insurers in converting their form of organization from mutual to stock. Two of these models were not even in existence at the time the current Kansas statute was passed.

In is my belief that the model we are presenting today is one that will promote economic growth and development in this state. It will allow companies such as Security Benefit and its mutual counterparts in Kansas to grow and, consequently, increase both its employment and tax base in this state. And yet, it will not deprive the mutual policyholders from anything to which they would otherwise be entitled.

I would like to request that the proposed statute be introduced for consideration by this Committee and I will look forward to sharing further information about it with you.

Senate F.I.I
Attachment 1
January 21, 1997

CHAPTER 40. INSURANCE

ARTICLE 40. CONVERSION OF DOMESTIC MUTUAL INSURER INTO DOMESTIC STOCK INSURER

40-4001. Conversion of domestic mutual insurer into domestic stock insurer.

A domestic mutual insurer issuing nonassessable policies may be converted into a domestic stock insurer. To that end, it may provide and carry out a plan for such conversion by complying with the requirements of this act. **Because it is not possible to anticipate all of the circumstances and considerations which may arise incident to a conversion from a mutual insurer to a stock insurer, the commissioner of insurance should have broad authority in reviewing such conversion, and the procedures and criteria to be applied by the commissioner of insurance should be flexible within the parameters of this article. This article shall be liberally construed to effect the legislative intent set forth in this section and shall not be interpreted to limit the powers granted to the commissioner of insurance by other provisions of the law.**

40-4002. Resolution by board of directors; plan of conversion; approval by commissioner **of insurance** and policyholders; withdrawal or amendment of plan.

(a) A resolution shall be adopted by a 2/3 majority of the **entire** board of directors of the insurer which shall state the ~~reason~~ **reasons** such conversion would benefit the insurer and be in the best interests of its policyholders. Following adoption of such resolution a detailed plan of conversion shall be developed and shall be approved by a 2/3 majority of the **entire board of directors. The plan of conversion shall not be effective unless the plan has been so approved by the** board of directors.

(b) ~~The~~ **A draft of the plan of conversion may be submitted to the commissioner of insurance for preliminary examination and comment prior to or after the adoption of the resolution described in subsection (a) of this section.**

(c) After the completion of the process of preliminary examination and comment, the plan shall be submitted to the commissioner of insurance for approval in writing, subject to the provisions of K.S.A. 40-~~4004~~ **4006** and amendments thereto. **The plan of conversion shall not be effective unless the plan has been so**~~(c) If~~ approved by the commissioner~~, the~~ **of insurance.**

(d) The plan shall be approved by a majority vote of the policyholders voting in person or by proxy at a meeting of the ~~members~~ policyholders called for that purpose, pursuant to the bylaws of the insurer. The plan of conversion shall not be effective unless the plan has been so approved by the policyholders.

(e) ~~(d)~~ The board of directors by a vote of not less than 2/3 of the entire board may, at any time prior to the ~~date~~ issuance of the ~~meeting called~~ certificate of authority pursuant to ~~subsection (c)~~ K.S.A. 40-4010:

(1) ~~Withdraw~~ withdraw the plan, if conversion is deemed to be no longer in the best interests of the insurer or its policyholders; or

(2) amend the plan, except that no amendment which materially changes the plan shall take effect unless ~~a hearing in accordance with the provisions of the Kansas administrative procedure act is held thereon and~~ such amendment is approved by the commissioner ~~and the policyholders subject to the same conditions and procedures applicable to the original plan.~~ of insurance. In the event of a material change to the plan, the commissioner of insurance:

~~(e)~~ (A) shall order a hearing to be conducted in accordance with the provisions of the Kansas administrative procedure act before approving or disapproving such material change, and

(B) may require that such a change be approved by the policyholders pursuant to subsection (d) of this section.

(f) The plan shall be filed in the office of the commissioner of insurance after having been approved as provided ~~above.~~ in subsections (a), (c) and (d) above.

(g) For purposes of this article, "policyholder" shall mean a policyholder of the mutual insurer on the day the plan of conversion is initially approved by the board of directors of the mutual insurer.

40-4003. Plan of conversion; contents required~~; distribution of conversion value.~~

~~The plan of conversion shall include the following:~~

~~(a) A provision to be included in the amended articles of incorporation of the converted insurer to the effect that, for a period not to exceed five years from the final act of conversion, no individual, corporation, firm or affiliated group of individuals, corporations or firms, other than the parent~~

~~corporation, may own, directly or indirectly, more than 5% of the voting stock of the insurer, unless permitted under the terms of subsection (e) . As used in this act, "parent corporation" means the corporation specified in the plan approved by the board of directors, the commissioner of insurance and the policyholders.~~

~~(b) A description of any amendments to the insurer's articles of incorporation to effect a conversion from a mutual corporation into a stock corporation. Any other amendments proposed for the articles of incorporation shall be set forth in the plan.~~

~~(c) The establishment of a conversion value, as of the calendar quarter ending immediately preceding the date of the adoption of the resolution specified in subsection (a) of K.S.A. 40-4002, and amendments thereto. The conversion value shall be equal to the company's policyholders' surplus, determined in accordance with the statutory method of accounting used in preparing the last annual statement filed with the commissioner of insurance. The insurer shall submit a list of qualified disinterested appraisers, from which the commissioner of insurance shall appoint one or more such appraisers, who shall establish the conversion value in accordance with the above procedure.~~
~~(d) The procedure by which each eligible policyholder shall receive a proportionate amount of the conversion value in the manner prescribed herein and in subsection (e) . For a fire and casualty insurance company, such amount shall be based upon net premium paid to the general account of the insurer within three years prior to the date on which the board of directors approved the plan. For a life and health insurance company, such amount shall be based on a reasonable determination of the policyholder's contribution to the insurer's statutory surplus, according to generally accepted actuarial principles and practices, except that each eligible policyholder shall be entitled to an option for at least one share of stock. An eligible policyholder shall be a policyholder of the insurer on the date of approval of the plan by the board of directors whose policy or policies have been in effect for not less than two out of three years immediately prior to the date the board of directors approved the plan, but if the insured is a crop hail insurance policyholder, then the policyholder shall be eligible if the policy or policies have been in effect for at least 90 days during the 365 days immediately preceding the approval of the plan by the board of directors.~~

~~(e) The insurer or any holding company of the insurer shall distribute such proportionate conversion value in the following method:~~

~~(1) Each eligible policyholder will be issued an option to purchase stock in the converted company;~~

~~(2) the total stated value of the stock to be issued shall be equal to the conversion value as determined in subsection (c) ;~~

~~(3) the stock option shall provide that the eligible policyholders may purchase the stock at its stated value;~~

~~(4) the maximum amount of stock that may be purchased by each eligible policyholder shall be in proportion to the eligible policyholder's share of the conversion value, with the number of shares rounded to the nearest whole number, plus any shares purchased pursuant to purchased stock options, subject to the limitations provided in paragraph (10) of this subsection;~~

~~(5) eligible policyholders not exercising their option to purchase the stock shall be entitled to sell such option to any person or corporation, including the parent corporation;~~
~~(6) the sale of any such stock option shall transfer to the purchaser all rights in and conditions to the option;~~

~~(7) all stock options shall be exercised within 60 days from the date such options are distributed to the eligible policyholders and the options shall expire at the end of such sixty-day period;~~

~~(8) the converted company or the parent corporation shall purchase, at a price not less than the amount set forth in the plan, all stock options that have not been exercised within 60 days from the date such options are distributed to the eligible policyholders;~~

~~(9) the converted company or the parent corporation shall purchase, at the stated value, all stock not purchased pursuant to the stock options and such purchase must be made within 60 days from the date the stock options expire;~~

~~(10) notwithstanding the provisions of paragraph (4) of this subsection, for five years from the conversion date, no individual, corporation, firm or affiliated group of individuals, corporations or firms, other than a parent corporation, may own, directly or indirectly, more than 5% of the voting stock of the insurer, unless:~~

~~(A) The individual is an eligible policyholder whose proportionate share of the conversion is 5% or more and such individual may not purchase stock totaling more than the individual's proportionate share of the conversion value; or~~

~~(B) the purchase is permitted by the commissioner and authorized by the converted company's board of directors.~~

~~The above distribution method shall constitute full payment and discharge of the eligible policyholder's proportionate conversion value, but this provision shall not be held to prohibit the converted company or the parent corporation from including in the plan provisions for the distribution of any other valuable consideration to eligible policyholders. Notwithstanding any other provision of law, the policyholders shall have no other~~

~~rights resulting from membership in a mutual insurance company with respect to the insurer.~~

~~(f) A statement as to the number of shares to be authorized for the insurer and their value. The paid-in capital and surplus of the converted capital stock insurer shall be in an amount not less than two times the minimum initial paid-in capital and surplus required of a domestic stock insurer doing business as of the same date as the converted company, to transact like kinds of insurance.~~

~~(g) Provisions establishing the method by which the initial board of directors of the stock insurer will be selected.~~

~~40-4004.~~

The plan of conversion must comply with the terms and conditions set forth in subsection (a), (b) or (c) as follows:

(a) Plan of conversion in which policyholders exchange their membership interests for cash, securities, policy credits, dividends, subscription rights or other consideration, or some combination thereof.

A mutual insurer seeking to convert pursuant to this subsection may do so by:

(1) filing a plan of conversion containing:

(A) A description of the structure, forms and allocation of the proposed consideration to the policyholders, the projected range of the number of shares of capital stock, if any, to be issued by the new stock insurer or parent company of the new stock insurer, or any other company, and such other proposed conditions and provisions as determined by the mutual insurer not to be inconsistent with this article. For purposes of this article, "parent company" means any company which on or after the effective date of the conversion owns, directly or indirectly, fifty-one percent (51%) or more of the capital stock of the new stock insurer;

(B) a description of any amendments to the insurer's articles of incorporation;

(C) provisions establishing the method by which the initial board of directors of the stock insurer will be selected; and

(D) any other additional information as the commissioner of insurance may reasonably request.

(2) providing consideration to the policyholders entitled thereto in the form of cash, stock, policy credits, dividends, subscription rights, a combination thereof, or such other valuable consideration as the commissioner of insurance may approve. With the approval of the commissioner of insurance, such consideration may be paid into a trust or other account or entity existing for the benefit of policyholders, which is established by the company for the purpose of effecting the conversion.

(b) Plan of conversion in which policyholders exchange their membership interests solely for subscription rights.

A mutual insurer seeking to convert to a stock insurer pursuant to this subsection may do so by:

(1) filing a plan of conversion containing:

(A) a provision that each policyholder is to receive, without payment, nontransferable subscription rights to purchase a portion of the capital stock of the converted stock company and that, in the aggregate, all policyholders shall have the right, prior to the right of any other party, to purchase one hundred per cent (100%) of the capital stock of the converted company. As an alternative to subscription rights in the converted stock company, the plan may provide that each eligible member is to receive, without payment, nontransferable subscription rights to purchase a portion of the capital stock of one of the following:

(i) a corporation organized for the purpose of purchasing and holding the stock of the converted stock company;

(ii) a stock insurance company owned by the mutual company into which the mutual company will be merged; or

(iii) an unaffiliated stock insurance company or other corporation that will purchase the stock of the converted stock company;

(B) a provision that the subscription rights shall be allocated in whole shares among the policyholders using a fair and equitable formula. This formula may, but need not, take into account how the different classes of policies of the policyholders contributed to the surplus of the mutual company or any other factors that may be fair and equitable;

(C) a fair and equitable means for allocating shares of capital stock in the event of an oversubscription to

shares by policyholders exercising subscription rights received under this section;

(D) at the option of the converting company, a provision that any shares of capital stock not subscribed to by policyholders exercising subscription rights received under this section may be sold in a public offering or through a private placement or other alternative method approved by the commissioner of insurance that is fair and equitable to policyholders, provided, however, that the offering to others of shares not purchased by policyholders exercising such subscription rights must be at a price not less than the offering price to such policyholders;

(E) a provision which sets the total price of the capital stock equal to the estimated pro forma market value of the converted stock company based upon an independent evaluation by one or more qualified experts. This pro forma market value may be the value that is estimated to be necessary to attract full subscription for the shares, as indicated by the independent evaluation and may be stated as a range of pro forma market value;

(F) a provision which sets the purchase price per share of capital stock equal to any reasonable amount;

(G) a provision that any person or group of persons acting in concert shall not acquire, in the public offering or pursuant to the exercise of subscription rights, more than five per cent (5%) of the capital stock of the converted stock company, except with the approval of the commissioner of insurance. This limitation does not apply to any entity that is to purchase one hundred per cent (100%) of the capital stock of the converted company as part of the plan of conversion approved by the commissioner of insurance; and

(H) a provision that the rights of a holder of a surplus note to participate in the conversion, if any, shall be governed by the terms of the surplus note; and

(2) providing subscription rights to the policyholders entitled thereto in accordance with the provisions of the plan of conversion as described in paragraph (1) above. With the approval of the commissioner of insurance, stock that will be issued pursuant to such subscription rights may be provided to a trust or other account or entity existing for the benefit of policyholders which is

established by the company for the purpose of effecting the conversion.

(c) Plan of conversion in which policyholders exchange their membership interests for membership interests in a mutual holding company.

(1) A plan of conversion adopted pursuant to this section shall provide that the mutual insurer will become a stock insurer and that the owners of policies of the converted insurer that are in force on the effective date of the plan of conversion or thereafter will become members of a mutual holding company organized pursuant to subsection (2) of this section for as long as their policies remain in force.

(2) A mutual insurer seeking to convert to a stock insurer pursuant to this subsection may do so by:

(A) forming a mutual holding company and continuing the corporate existence of the insurer as a stock insurance company that is a wholly-owned subsidiary (except to the extent qualifying shares are required to be held by directors of an insurance company admitted and authorized to do business in Kansas pursuant to K.S.A. 40-305) of a stock holding company of which at least fifty-one percent (51%) of the voting stock is held by the mutual holding company;

(B) forming a mutual holding company and continuing the corporate existence of the insurer as a stock insurance company of which at least fifty-one percent (51%) of the voting stock is held by the mutual holding company; or

(C) forming a mutual holding company and continuing the corporate existence of the insurer as a stock insurance company with another ownership structure that is approved by the commissioner of insurance, provided at least fifty-one percent (51%) of the voting stock of the stock insurance company is ultimately held by the mutual holding company.

(3) A mutual holding company is not an insurer for purposes of this chapter, but the provisions of this chapter with regard to corporate organization and procedure of mutual insurers and the election of directors by mutual insurers, and those provisions of Chapter 17 that are applicable to mutual insurers, shall apply to the mutual holding company.

(4) A mutual holding company and any stock holding company shall each be deemed to be a "holding company" of the insurer within the meaning of article 33 of this

chapter. Approval of the plan of conversion by the commissioner of insurance pursuant to this article shall constitute approval of the acquisition of control by the mutual holding company and stock holding company, if applicable, under K.S.A. 40-3304, without any separate filings or other action.

(5) A mutual holding company shall not dissolve, liquidate or wind-up and dissolve except through proceedings under article 36 of this chapter for the liquidation or dissolution of the converted insurer or as the commissioner of insurance may otherwise approve. A mutual holding company may, however, convert to a stock corporation in accordance with the terms of this article and a plan of conversion approved by the commissioner of insurance to be fair and equitable after a hearing upon notice to the company's members.

(6) The charter of the mutual holding company shall be filed with the commissioner of insurance and shall contain the matters required to be contained in the charter of a mutual insurer by Article 5 or Article 12 of this chapter, as applicable, except that the name of the mutual holding company shall contain the word "mutual" and shall not contain the word "insurance" and the company's powers shall not include doing an insurance business.

(7) The commissioner of insurance may, by regulation, require a mutual holding company to file annual statements with the commissioner of insurance in such form as the commissioner of insurance shall prescribe.

(8) Any subsidiaries of the company that has been reorganized pursuant to this article may remain as subsidiaries of such company or become subsidiaries of the mutual or stock holding company provided that if such subsidiaries shall become subsidiaries of a stock holding company, then the reorganized company shall be reimbursed the value of its holdings in such subsidiaries, as reflected on the company's most recently filed financial statements, in the event shares of the stock holding company are or have been issued to other than the mutual holding company.

(9) With the written approval of the commissioner of insurance, and subject to conditions that the commissioner of insurance may impose, a mutual holding company may:

(A) merge or consolidate with, or acquire the assets of, a mutual holding company;

(B) together with its converted insurer subsidiary, merge or consolidate with or acquire the assets of any other insurer; or

(C) engage in any other merger, consolidation or acquisition transaction which may be approved by the commissioner of insurance.

(10) A member of a mutual holding company is not, as a member, personally liable for the acts, debts, liabilities or obligations of such company. No assessment of any kind may be imposed upon the members of a mutual holding company by the board of directors, members or creditors of such company or because of any liability of any company owned or controlled by the mutual holding company or because of any act, debt or liability of the mutual holding company.

(11) A membership interest in a mutual holding company shall not constitute a security under the laws of this state.

(12) The commissioner of insurance shall retain jurisdiction over any mutual holding company or stock holding company organized pursuant to this section to assure that policyholder interests are protected.

40-4004. Closed block.

The commissioner of insurance may, in the commissioner's discretion, require that the conversion plan of a mutual life insurer provide for the establishment, for policyholder dividend purposes only, of a closed block. In the event that the commissioner of insurance requires such a closed block, the closed block will consist of all of the participating individual policies of life insurance of the mutual life insurer in force on the effective date of the plan of conversion for which the insurer had an experience-based dividend scale payable in the year in which the plan is adopted. Assets of the insurer shall be allocated to any such closed block in an amount that produces cash-flows, together with anticipated revenues from the closed block business, expected to be reasonably sufficient (1) to support the closed block business, including payment of claims and those expenses and taxes specified in the plan and (2) to provide for continuation of dividend scales in effect on the adoption date if the experience underlying the scales continues, and for appropriate adjustments in the scales if the experience changes. The plan may provide for conditions under which the converted insurer may cease to maintain the closed block and its allocated assets. Regardless of such a cessation, the obligation under the policies constituting the closed block business remain the obligations of the converted insurer. Dividends on those policies shall be apportioned by the board of directors of the converted insurer in accordance with the terms of the policies.

40-4005. Policyholder rights upon conversion.

(a) All policies in force on the effective date of conversion remain in force under the terms of the policies, except that the following rights, to the extent they existed in the mutual company, shall be extinguished on the effective date of the conversion:

(1) any voting rights of the policyholders in the mutual insurance company that were provided under the policies;

(2) any assessment provisions provided for under the policies; and

(3) any right to share in the surplus of the mutual company provided for under the policies, except that:

(A) holders of participating policies in effect on the date of conversion continue to have a right to receive dividends as provided in the participating policies, if any, unless the holders of such participating policies receive a nonparticipating policy as a substitute for the participating policy pursuant to (B) below; and

(B) upon the renewal date of a participating policy, the converted stock company may issue the insured a nonparticipating policy as a substitute for the participating policy, except that no such substitutions may be issued for the mutual company's life policies, guaranteed renewable accident and health policies and guaranteed renewable, noncancelable accident and health policies.

(b) Unless otherwise ordered by the commissioner of insurance and notwithstanding any provisions of law to the contrary, policyholders are not required to be given preemptive rights, and, except as provided in the plan of conversion and in subsection (a) of this section, policyholders shall have no other rights resulting from membership in a mutual insurance company with respect to the insurer.

40-4006. Consideration and approval or disapproval of plan by commissioner of insurance; hearings.

(a) The commissioner of insurance shall examine the plan submitted pursuant to subsection (b) or (c) of K.S.A. 40-4002, and amendments thereto. As a part of ~~the~~ such examination, the commissioner of insurance~~, within 30 days after its receipt,~~ shall order a hearing on the plan to be conducted in accordance with the provisions of the Kansas administrative procedure act and shall give not less than 20 days' written notice of the date of hearing to the insurer and give not less than 20 days' written notice to policyholders by publication or otherwise. The commissioner of insurance shall approve the plan ~~unless~~ if the commissioner of insurance finds ~~the plan is unfair or inequitable to policyholders, will cause the insurer to become unable to fulfill such insurer's contractual obligations or is not in accordance~~ that:

(1) the plan of conversion is fair and equitable to policyholders;

(2) the plan of conversion complies with the provisions of this ~~act.~~ article;

~~40-4005.~~(3) the plan of conversion does not unjustly enrich any director, officer, agent or employee of the insurer; and

(4) the new stock insurer would meet minimum requirements to be issued a certificate of authority by the commissioner of insurance to transact business in this state and the continued operations of the new stock insurer would not be hazardous to existing or future policyholders or the public.

(b) The amount of consideration provided by the converting insurer to policyholders shall be deemed to be fair and equitable pursuant to subsection (a) of this section if the consideration is at least the amount of statutory surplus attributable to contributions of policyholders, as defined in subsection (g) of K.S.A. 40-4002.

(c) Upon submission of a plan of conversion, the commissioner of insurance may request any additional documents or information in the possession of the insurer or its affiliates as are reasonably necessary to enable the commissioner of insurance to make the findings required by this section for the approval of the plan.

40-4007. Same; meeting for approval by policyholders.

The meeting called for approval of the plan by the policyholders prescribed by K.S.A. 40-4002 shall be called by a majority of the board of directors, the chairperson of the board or the president. A copy of the plan and any information the commissioner of insurance deems necessary to policyholder understanding shall accompany the notice.

40-~~4006~~ 4008. Purchase of stock of the insurer by certain persons.

(a) For five years from the conversion date, no person (including any individual, corporation, firm or affiliated group of individuals, corporations or firms), other than a parent corporation, may own, directly or indirectly, more than five percent (5%) of the voting stock (including any securities that may be convertible into voting stock) of the converted insurer, unless:

(1) the person is a policyholder whose allocated share of the consideration provided for in the plan of conversion is five percent (5%) or more of the voting stock (including any securities that may be convertible into voting stock), and such individual may not purchase stock totaling more than the individual's allocated share of such consideration; or

(2) the purchase is permitted by the commissioner of insurance and authorized by the converted company's board of directors.

(b) In the event of any violation of this section, or in the event of any action that, if consummated, would constitute a violation of this section, all voting securities of the converted insurer (or of the person controlling the converted insurer) that is acquired by any person in excess of the maximum amount permitted to be acquired by the person pursuant to this section shall be

deemed to be nonvoting securities of the converted insurer (or of the person controlling the converted insurer). The violation or action may be enforced or enjoined by an appropriate proceeding commenced by the converted insurer, the person controlling the converted insurer, the commissioner, any policyholder or stockholder of the converted insurer on behalf of the converted insurer (or on behalf of the person controlling the converted insurer) in the court in the judicial district in which the converted insurer has its home office or in any other court having jurisdiction. The court may issue any order it finds necessary to cure the violation or to prevent the proposed action that would constitute a violation.

(c) Nothing provided in this article ~~Nothing herein provided~~ shall be deemed to prohibit the insurer's directors, officers, agents or employees from being eligible to purchase stock or other securities of the insurer, subject to the provisions of ~~subparagraphs (A) and (B) of paragraph (10) of subsection (e) of K.S.A. 40-4003.~~ subsection (a) of this section.

~~40-4007. Limitation~~ 40-4009. No unfair advantage; limitation on fees and commissions of certain persons aiding in the conversion.

(a) No director, officer, agent or employee of the insurer shall secure any unfair advantage through a plan of conversion by reducing the volume of new business written, by cancellation or by reducing or by any other means seeking to reduce, limit or alter the number or identity of the insurer's policyholders entitled to participate in such plan.

(b) No director, officer, agent or employee of the insurer shall receive any fee, commission or other valuable consideration whatsoever, other than regular salary and compensation, for in any manner aiding, promoting or assisting in the conversion except as set forth in the plan approved by the commissioner of insurance. This provision shall not be deemed to prohibit the payment of reasonable fees and compensation to attorneys at law, accountants, appraisers, actuaries, financial advisers or other similar professionals for services performed in the independent practice of their professions, even though they may also be directors of the insurer.

40-~~4008~~ **4010**. Issuance of certificate of authority as final act of conversion; conversion not to affect rights of insurer.

Within 30 days of receipt of the filing of the approved plan in accordance with subsection ~~(e)~~**(f)** of K.S.A. 40-4002 and the amended articles of incorporation, the commissioner of insurance shall issue a new certificate of authority to the insurer. Notwithstanding the actions of any other jurisdiction, the issuance of such certificate shall be deemed the final act of conversion and the mutual insurer shall concurrently become a stock insurer. **The date of the issuance of such certificate shall be the "conversion date" of the insurer.** The stock insurer shall be a continuation of the mutual insurer and deemed to have been organized at the time the converted mutual insurer was organized. The conversion shall in no way annul, modify or change any of such insurer's existing suits, rights, contracts or liabilities except as provided in the plan. The insurer, after conversion, shall exercise all the rights and powers and perform all the duties conferred or imposed by law upon insurers writing the classes of insurance written by it and shall retain the rights and contracts existing prior to conversion, subject to the effect of the plan.

40-~~4009~~ **4011**. Directors and officers of mutual insurer, service.

The directors and officers of the mutual insurer shall serve until new directors and officers have been duly elected and qualified pursuant to the plan and articles of incorporation or bylaws of the ~~insurer.~~ **converted insurer or of the affiliates of the converted insurer, if applicable, unless otherwise determined by the board of directors of the converting insurer.**

~~40-4010~~ **40-4012**. Securities issued pursuant to plan exempt from Kansas securities laws.

The offer or sale of securities issued pursuant to the plan developed and approved in accordance with the provisions of this ~~act~~ **article** shall be exempt from the Kansas securities laws.

40-~~4011~~ **4013**. Actions challenging validity of conversion; security required.

No action challenging the validity of a conversion, or any aspect of such conversion under this ~~act~~ **article**, may be commenced more than 30 days after the final act of conversion.

In any action challenging the plan of conversion or charging that the directors of the ~~insurer or converted insurer~~ **converting insurer, the converted insurer, the mutual holding company or the stock holding company, as applicable,** or any

other person or persons have acted improperly in connection with any aspect of the conversion, the **converting** insurer or converted insurer in whose right such action is brought or the defendant or defendants shall be entitled at any ~~state~~ **stage** of the proceedings before final judgment to require the plaintiff or plaintiffs to give security for the reasonable expenses including attorney fees, which may be incurred by the **converting** insurer, converted insurer or any other parties defendant in connection with such action. Thereafter, the amount of such security, from time to time, may be increased or decreased in the discretion of the court having jurisdiction of such action upon a showing that the security provided has or may become inadequate or excessive.

40-~~4012~~ **4014**. Rules and regulations.

The commissioner of insurance shall have the authority to adopt such rules and regulations as may be necessary to carry out the provisions of this act.

40-~~4013. Commissioner~~ **4015. Commissioner's authority to retain experts and** to charge insurer for expenses.

The commissioner of insurance shall also have the authority to **retain experts and may** charge and collect from the insurer the actual amount of expenses**, including the expenses of retaining experts,** reasonably incurred by the state in discharge of the commissioner's duties hereunder.

40-~~4014~~ **4016**. Filing amended articles of incorporation with secretary of state.

Within 24 hours of issuance of the certificate of authority to the converted stock insurer, a certified copy of the amended articles of incorporation of the insurer shall be filed with the secretary of state.

Section 1. K.S.A. 9-1401 is hereby amended to read as follows:

9-1401. (a) The governing body of any municipal corporation or quasi-municipal corporation shall designate by official action recorded upon its minutes the ~~state and national banks, state and federally chartered savings and loan associations and federally chartered savings banks with home offices located in the state of Kansas~~ banks and savings and loan associations incorporated under the laws of this state, and the banks, savings and loan associations, and savings banks organized under the laws of the United States and having their main offices in this state which shall serve as depositories of its funds and the officer and official having the custody of such funds shall not deposit such funds other than at such designated banks, ~~state or federally chartered~~ savings and loan associations and ~~federally chartered~~ savings banks. The ~~state and national banks, state and federally chartered savings and loan associations and federally chartered savings banks which~~ banks and savings and loan associations incorporated under the laws of this state, and the banks, savings and loan associations and savings banks organized under the laws of the United States and having their main offices in this state, which have offices in the county or counties in which all or part of such municipal corporation or quasi-municipal corporation is located shall be designated as such official depositories if the municipal or quasi-municipal corporation can obtain satisfactory security therefor~~, and such official depositories have a home office located in the state of Kansas~~.

(b) Every officer or person depositing public funds shall deposit all such public funds coming into such officer or person's possession in their name and official title as such officer. If the governing body of the municipal corporation or quasi-municipal corporation fails to designate an official depository or depositories, the officer thereof having custody of its funds shall deposit such funds with one or more ~~state or national banks, state or federally chartered savings and loan associations or federal chartered savings banks~~ banks and savings and loan associations incorporated under the laws of this state, or banks, savings and loan associations and savings banks organized under the laws of the United States and having their main offices in this state which have offices in the county or counties in which all or part of such municipal corporation or quasi-municipal corporation is located if satisfactory security can be obtained therefor and if not then elsewhere, but upon so doing shall serve notice in writing on the governing body showing the names and locations of such banks, ~~state or federally chartered~~ savings and loan associations and ~~federally chartered~~ savings banks where such funds are deposited, and upon so doing the officer having custody of such funds shall not be liable for the loss of any portion thereof except for official misconduct or for the misappropriation of such funds by such officer.

(c) As used in this section and K.S.A. 9-1402, 9-1403 and 9-1405, and amendments thereto, "municipal corporation or quasi-municipal corporation" includes each investing governmental unit under K.S.A. 12-1675, and amendments thereto.

Senate I&D
Attachment 2
Jan 21, 1997

Sec. 2. K.S.A. 1996 Supp. 9-1402 is hereby amended to read as follows:

9-1402. (a) Before any deposit of public moneys or funds shall be made by any municipal corporation or quasi-municipal corporation of the state of Kansas with any ~~state or national bank, state or federally chartered savings and loan association or federally chartered savings bank~~ bank or savings and loan association incorporated under the laws of this state, or any bank, savings and loan association or savings bank organized under the laws of the United States and having its main office in this state, such municipal or quasi-municipal corporation shall obtain security for such deposit in one of the following manners prescribed by this section.

(b) Such bank, ~~state or federally chartered~~ savings and loan association or ~~federally chartered~~ savings bank may give to the municipal corporation or quasi-municipal corporation a personal bond in double the amount which may be on deposit at any given time.

(c) Such bank, ~~state or federally chartered~~ savings and loan association or ~~federally chartered~~ savings bank may give a corporate surety bond of some surety corporation authorized to do business in this state, which bond shall be in an amount equal to the public moneys or funds on deposit at any given time less the amount of such public moneys or funds which is insured by the federal deposit insurance corporation or its successor and such bond shall be conditioned that such deposit shall be paid promptly on the order of the municipal corporation or quasi-municipal corporation making such deposits.

(d) ~~Any state or national~~ Such bank, ~~state or federally chartered~~ savings and loan association or ~~federally chartered~~ savings bank may deposit, maintain, pledge and assign, . . .

(14) Commercial paper that does not exceed 270 days to maturity and which has received one of the two highest commercial paper credit ratings by a nationally recognized investment rating firm.

(e) No ~~state or national~~ bank, ~~state or federally chartered~~ savings and loan association or ~~federally chartered~~ savings bank may deposit and maintain for the benefit of the governing body of a municipal corporation or quasi-municipal corporation of the state of Kansas, any securities which consist of: . . . .

Sec. 3. K.S.A. 9-1403 is hereby amended to read as follows:

9-1403. (a) During the periods of peak deposits occurring at tax paying time and tax distributing time and continuing for a period of not to exceed 60 continuous days at any given time and not to exceed 120 days in any calendar year the amount of security for the deposit of public moneys as required under K.S.A. 9-1402, and amendments thereto, may be reduced by not more than 1/2 in an amount thereof.

(b) The provisions of this section shall apply only to the deposits of all municipal corporations and quasi-municipal corporations, but the custodian of the funds of each of such municipal corporations or quasi-municipal corporations together with an officer of the depository ~~state or national~~ bank, ~~state or federally chartered~~ savings and loan association or ~~federally chartered~~ savings bank may enter into an agreement which designates in writing the beginning of each such sixty-day period, and a copy thereof, fully executed, shall be kept on file in the office of the governing body of such municipal corporation or quasi-municipal corporation and in the files of such bank, ~~state or federally chartered~~ savings and loan association or ~~federally chartered~~ savings bank.

Sec. 4. K.S.A. 1996 Supp. 9-1405 is hereby amended to read as follows:

9-1405. (a) All bonds and securities given by any bank, state or federally chartered savings and loan association or federally chartered savings bank to secure public moneys of the United States or any board, commission or agency thereof, shall be deposited as required by the United States government or any of its designated agencies.

(b) All bonds and securities pledged to secure the deposits of any municipal corporation or quasi-municipal corporation shall be deposited with a ~~bank, trust company, or national bank authorized to do business in Kansas~~ bank or trust company incorporated under the laws of this state or a bank organized under the laws of the United States and having its main office in this state having adequate modern facilities for the safekeeping of securities, . . .

Sec. 5. K.S.A. 9-1406 is hereby amended to read as follows:

9-1406. No public officer nor the sureties upon such officer's bond shall be liable for any loss sustained by the failure or default of any designated depository or depositories after a deposit or deposits have been made in an officially designated bank, ~~state or federally chartered~~ savings and loan association or ~~federally chartered~~ savings bank as provided in this act. This exemption from liability shall apply even though other statutes shall require the furnishing of a bond or other securities by the designated depositories of public moneys.

Sec. 6. K.S.A. 9-1407 is hereby amended to read as follows:

9-1407. That portion of any deposit of public moneys or funds which is insured by the federal deposit insurance corporation, or its successor, ~~or the federal savings and loan~~

~~insurance corporation, or its successor~~, need not be secured as provided in this act.

Sec. 7. K.S.A. 1996 Supp. 12-1675 is hereby amended to read as follows:

12-1675. (a) The governing body of any county, city, township, school district, area vocational-technical school, community college, firemen's relief association, community mental health center, community facility for the mentally retarded or any other governmental entity, unit or subdivision in the state of Kansas having authority to receive, hold and expend public moneys or funds may invest any moneys which are not immediately required for the purposes for which the moneys were collected or received, and the investment of which is not subject to or regulated by any other statute.

(b) Such moneys shall be invested only:

(1) In temporary notes or no-fund warrants issued by such investing governmental unit:

~~(2) in time deposit, open accounts or certificates of deposit with maturities of not more than two years: (A) In commercial banks which have offices located in such investing governmental unit, or (B) if the office of no commercial bank is located in such investing governmental unit, then in commercial banks which have offices in the county or counties in which all or part of such investing governmental unit is located.~~

~~(3) in time certificates of deposit with maturities of not more than two years: (A) With state or federally chartered savings and loan associations or federally chartered savings banks which have offices located in such investing governmental unit; or (B) if the office of no state or federally chartered savings bank is located in such governmental unit, then with state or federally chartered savings and loan associations or federally chartered savings banks which have offices in the county or counties in which all or part of such investing governmental unit is located.~~

(2) in time deposit, open accounts, certificates of deposit, or time certificates of deposit with maturities of not more than two years: (A) In banks and savings and loan associations incorporated under the laws of this state, and banks, savings and loan associations, and savings banks organized under the laws of the United States and having their main offices in this state, which have offices located in such investing governmental unit; or (B) if no office of a bank or savings and loan association incorporated under the laws of this state, or bank, savings and loan association, or savings bank organized under the laws of the United States and having its main office in this state is located in such investing governmental unit, then in banks and savings and loan associations incorporated under the laws of this state, and banks, savings and loan associations, and savings banks organized under the laws of the United States having their main offices in this state, which have offices in the county or counties in which all or part of such investing governmental unit is located;

~~(4)~~ (3) in repurchase agreements with: (A) ~~Commercial banks, state or federally chartered savings and loan associations or federally chartered savings banks~~ banks and savings and loan associations incorporated under the laws of this state, and banks, savings and loan associations, and savings banks organized under the laws of the United States and having their main offices in this state, which have offices located in such investing governmental unit, for direct obligations of, or obligations that are insured as to principal and interest by, the United States government or any agency thereof; or (B) (i) ~~if the office of no commercial bank, state or federally chartered savings and loan association or federally chartered savings bank~~ if no office of a bank or savings and loan association incorporated under the laws of this state, or a bank, savings and loan association, or savings bank organized under the laws of the United States and having its main office in this state is located in such investing governmental unit; or (ii) if no such ~~commercial~~ bank, ~~state or federally chartered~~ savings and loan association or ~~federally chartered~~ savings bank ~~has~~ having an office located in such investing governmental unit is willing to enter into such an agreement with the investing governmental unit at an interest rate equal to or greater than the investment rate, as defined in subsection ~~(1)~~ (j) of K.S.A. 1996 Supp. 75-4201, and amendments thereto, then such repurchase agreements may be entered into with ~~commercial banks, state or federally chartered savings and loan associations or federally chartered savings banks~~ banks and savings and loan associations incorporated under the laws of this state, and banks, savings and loan associations, and savings banks organized under the laws of the United States and having their main offices in this state which have offices in the county or counties in which all or part of such investing governmental unit is located; or (C) if no bank, ~~state or federally chartered savings and loan association or federally chartered savings bank which has its~~ or savings and loan association incorporated under the laws of this state, or bank, savings and loan association, or savings bank organized under the laws of the United States and having its main office in this state having an office in such county or counties is willing to enter into such an agreement with the investing governmental unit at an interest rate equal to or greater than the investment rate, as defined in subsection ~~(1)~~ (j) of K.S.A. 1996 Supp. 75-4201, and amendments thereto, then such repurchase agreements may be entered into with ~~commercial banks, state or federally chartered savings and loan associations or federally chartered savings banks which have offices in the state of Kansas;~~ banks and savings and loan associations incorporated under the laws of this state, and banks, savings and loan associations, and savings banks organized under the laws of the United States and having their main offices in this state;

~~(5)~~ (4) in United States treasury bills or notes with maturities as the governing body shall determine, but not exceeding two years. Such investment transactions shall only be conducted with ~~the following, which is doing business within the state of Kansas, any state or national bank, state or federally chartered~~

~~savings and loan association, or federally chartered savings bank~~ banks and savings and loan associations incorporated under the laws of this state, and banks, savings and loan associations, and savings banks organized under the laws of the United States and having their main offices in this state, the federal reserve bank of Kansas City, Missouri; or with primary government securities dealers which report to the market report division of the federal reserve bank of New York, or any broker-dealer engaged in the business of selling government securities which is registered in compliance with the requirements of section 15 or 15C of the securities exchange act of 1934 and registered pursuant to K.S.A. 17-1254, and amendments thereto;

~~(6)~~ (5) in the municipal investment pool established in K.S.A. 1995 Supp. 12-1677a, and amendments thereto;

~~(7)~~ (6) in the investments authorized and in accordance with the conditions prescribed in K.S.A. 1995 Supp. 12-1677b, and amendments thereto; or

~~(8)~~ (7) in multiple municipal client investment pools managed by the trust departments of ~~commercial~~ banks incorporated under the laws of this state and banks organized under the laws of the United States and having their main offices in this state, which have offices located in the county or counties where such investing governmental unit is located or with trust companies incorporated under the laws of this state which have contracted to provide trust services under the provisions of K.S.A. 9-2107, and amendments thereto, with ~~commercial~~ banks incorporated under the laws of this state and banks organized under the laws of the United States and having their main offices in this state, which have offices located in the county or counties in which such investing governmental unit is located. Public moneys invested under this paragraph shall be secured in the same manner as provided for under K.S.A. 9-1402, and amendments thereto. Pooled investments of public moneys made by trust departments under this paragraph shall be subject to the same terms, conditions and limitations as are applicable to the municipal investment pool established by K.S.A. 1995 Supp. 12-1677a, and amendments thereto.

(c) The investments authorized in paragraphs (4), (5), (6), or (7) ~~or (8)~~ of subsection (b) shall be utilized only if the ~~appropriate eligible commercial banks, which have offices located in the investing governmental unit or in the county or counties in which all or a part of such investing governmental unit is located if no such bank has an office which is located within such governmental unit, or the appropriate eligible state or federally chartered savings and loan associations or federally chartered savings banks, which have offices located in the investing governmental unit or in the county or counties in which all or a part of such investing governmental unit is located if no such state or federally chartered savings and loan association or federally chartered savings bank has an office which is located within such governmental unit~~, banks, savings and loan associations, and savings banks eligible for investments authorized in paragraph 2 of subsection (b), cannot or will not make the

investments authorized in paragraph (2) ~~or (3)~~ of subsection (b) available to the investing governmental unit at interest rates equals to or greater than the investment rate, as defined in subsection ~~(1)~~ (j) of K.S.A. 1996 Supp. 75-4201, and amendments thereto.

(d) In selecting a depository pursuant to paragraph (2) ~~or (3)~~ of subsection (b), if a ~~commercial~~ bank, ~~state or federally chartered~~ savings and loan association or ~~federally chartered~~ savings bank eligible for an investment deposit thereunder has an office located in the investing governmental unit and such financial institution will make such deposits available to the investing governmental unit at interest rates equal to or greater than the investment rate, as defined in subsection ~~(1)~~ (j) of K.S.A. 1996 Supp. 75-4201, and amendments thereto, and such financial institution otherwise qualifies for such deposit, the investing governmental unit shall select one or more of such eligible financial institutions for deposit of funds pursuant to this section. If no such financial institution qualifies for such deposits, the investing governmental unit shall select for such deposits one or more eligible ~~commercial~~ banks, ~~state or federally chartered~~ savings and loan associations or ~~federally chartered~~ savings banks which have offices in the county or counties in which all or a part of such investing governmental unit is located which will make such deposits available to the investing governmental unit at interest rates equal to or greater than the investment rate, as defined in subsection ~~(1)~~ (j) of K.S.A. 1996 Supp. 75-4201, and amendments thereto, and which otherwise qualify for such deposits.

(e)(1) All security purchases and repurchase agreements shall occur on a delivery versus payment basis.

(2) All securities, including those acquired by repurchase agreements, shall be perfected in the name of the investing governmental unit and shall be delivered to the purchaser or a third-party custodian which may be the state treasurer.

Sec. 8. K.S.A. 12-1676 is hereby amended to read as follows:

12-1676. Except as otherwise provided in K.S.A. 12-1678a, and amendments thereto, the provisions of this act authorizing the investment of moneys shall not apply to moneys collected or received by a county for apportionment, credit or distribution to the state or any political subdivision thereof. Interest paid by ~~commercial banks~~ eligible banks, savings and loan associations, and savings banks on time deposit, open accounts, time certificates of deposit and certificates of deposit of investing governmental units ~~and by state or federally chartered savings and loan associations or federally chartered savings banks on time certificates of deposit of investing governmental units~~ shall be at rates agreed upon by the governmental units and the eligible banks, ~~state or federally chartered~~ savings and loan associations or ~~federally chartered~~ savings banks.

Sec. 9. K.S.A. 1996 Supp. 12-1677b is hereby amended to read as follows:

12-1677b. (a) The governing body of any city or county which has a written investment policy approved by the governing body of such city or county and approved by the pooled money investment board may invest and reinvest pursuant to the approved investment policy in the following investments, as authorized under paragraph ~~(7)~~ (6) of subsection (b) of K.S.A. 12-1675, and amendments thereto:

(1) Direct obligations of, or obligations that are insured as to principal and interest by, the United States of America or any agency thereof and obligations and securities of United States sponsored enterprises which under federal law may be accepted as security for public funds, except that such investments shall not be in mortgage-backed securities;

(2) interest-bearing time deposits in any ~~of the following, which is doing business within the state of Kansas, any state or national bank, state or federally chartered savings and loan association, or federally chartered savings bank~~ banks and savings and loan associations incorporated under the laws of this state, and banks, savings and loan associations, and savings banks organized under the laws of the United States and having their main offices in this state; or

(3) repurchase agreements with ~~a Kansas bank, savings and loan association, a federally chartered savings bank~~ banks and savings and loan associations incorporated under the laws of this state, and banks, savings and loan associations, and savings banks organized under the laws of the United States and having their main offices in this state or with a primary government securities dealer which reports to the market reports division of the federal reserve bank of New York for direct obligations of, or obligations that are insured as to principal and interest by, the United States Government or any agency thereof and obligations and securities of United States government sponsored enterprises which under federal law may be accepted as security for public funds.

(b) The investment policy of any city or county approved by the pooled money investment board under this section shall be reviewed and approved at least annually by such board or when such city or county makes changes in such investment policy.

(c) City and county investment policies shall address liquidity, diversification, safety of principal, yield, maturity and quality, and capability of investment management staff.

(d)(1) All security purchases shall occur on a delivery versus payment basis.

(2) All securities shall be perfected in the name of the city or county and shall be delivered to the purchaser or a third party custodian which may be the state treasurer.

(3) Investment transactions shall only be conducted with ~~the following, which is doing business within the state of Kansas, any state or national bank, state or federally chartered savings and loan association, or federally chartered savings bank~~ banks and savings and loan associations incorporated under the laws of this

state, and banks, savings and loan associations, and savings banks organized under the laws of the United States and having their main offices in this state; or with primary government securities dealers which report to the market report division of the federal reserve bank of New York; or any broker-dealer which is registered in compliance with the requirements of section 15C of the securities exchange act of 1934 and registered pursuant to K.S.A. 17-1254, and amendments thereto.

(4) The maximum maturity for investments under subsection (a) shall be four years.

(e) Investments in securities under paragraph (1) of subsection (a) shall be limited to securities which do not have any more interest rate risk than do direct United States government obligations of similar maturities. For purposes of this subsection, "interest rate risk" means market value changes due to changes in current interest rates.

(f) A city or county which violates subsection (c) or (d) of K.S.A. 12-1675 and amendments thereto or the rules and regulations of the pooled money investment board shall forfeit its rights under this section for a two year period and shall be reinstated only after a complete review of its investment policy as provided for in subsection (b). Such forfeiture shall be determined by the pooled money investment board after notice and opportunity to be heard in accordance with the Kansas administrative procedure act.

Sec. 10. K.S.A. 1996 Supp. 75-4201 is hereby amended to read as follows:

75-4201. As used in this act, unless the context otherwise requires:

(a) "Treasurer" means state treasurer.

(b) "Controller" means director of accounts and reports.

(c) "Board" means the pooled money investment board.

(d) "Bank" means a state bank incorporated under the laws of Kansas or a national bank having such bank's ~~home~~ main office within the state of Kansas. . . .

(12) Whenever a bond is authorized to be pledged as a security under this section, such bond shall be accepted as a security if: (i) In the case of a certificated bond, it is assigned, delivered or pledged to the holder of the deposit for security; (ii) in the case of an uncertificated bond, registration of a pledge of the bond is authorized by the system and the pledge of the uncertificated bond is registered; or (iii) in a form approved by the attorney general, which assures the availability of the bond proceeds pledged as a security for public deposits.

(n) "Savings bank" means a federally chartered savings bank insured by the federal deposit insurance corporation or its successor and ~~doing business~~ having its main office within the state of Kansas.

(o) "Savings and loan association" means a state or federally chartered savings and loan association insured by the

federal deposit insurance corporation or its successor and ~~doing business~~ having its main office within the state of Kansas. . . .

Doc. #105931.02

TESTIMONY BEFORE THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE
SENATE BILL No. 12
Legislative Division of Post Audit
Sharon Patnode, Senior Auditor
January 21, 1997

Senate Bill No. 12, introduced by the Legislative Post Audit Committee, addresses the identification of other medical insurance for Medicaid recipients. The Committee requested that this bill be drafted in response to the performance audit conducted by Post Audit staff entitled, *Determining Whether Kansas' Medicaid Program Makes Maximum Use of Third Party Insurers.* In that audit, we found the Department couldn't always identify other insurance coverage for Medicaid clients, even though clients are asked to provide that information. The result is that the State may be paying medical costs for Medicaid clients that should be paid by other insurance carriers. A summary of our audit findings in this area is attached.

Some other states do computer matches with insurance companies to ensure they've identified Medicaid clients' other insurance coverage. We found the Department had attempted to match Medicaid clients' names against records of Blue Cross and Blue Shield of Kansas, but was unsuccessful because insurance companies aren't required to provide such information in Kansas, and because of the costs involved to the insurance companies.

To address this situation, we recommended that the Department periodically match the names of Medicaid clients against the names of policy holders for major health insurance companies, and work with the Legislature to help develop appropriate statutory language requiring companies to participate in such cross-matches. We also recommended that the legislation should authorize the Department to reimburse the insurance companies for the cost of the data matches. The Department should maintain information about the data matches that will allow it to know if the matches are cost-effective.

This bill requires medical benefit plan providers in Kansas to identify those they insure, upon the request of the Secretary of Social and Rehabilitation Services. This information will be used by the Department to periodically match the names of its Medicaid clients against the names of medical benefit plan policy holders in order to identify other insurance so those insurers can be billed and make applicable payments before Medicaid pays any medical bills. This bill allows the Secretary to reimburse each medical benefit plan provider for the reasonable cost of providing that information. In addition, failure to provide the information will result in notification to the Insurance Commissioner, who may invoke monetary penalties in accordance with State law.

Senate Financial Inst. & Ins.
Attachment 3
1/21/97

that other coverage exists, so they can bill other insurers before submitting the bill to Medicaid. It also helps avoid the potential for overpayments, or the need to go back and rebill the private insurer after-the-fact.

Our reviews showed that, although information about other insurance coverage usually was entered accurately into the Department's computer system, that information wasn't always entered on a timely basis.

Department staff recently tested their own performance in this area and found that, about three-fourths of the time, information about private insurance wasn't entered in the computer system on a timely basis, or there wasn't enough information to make a judgment about timeliness. Our own sample of 44 case files for recipients having other insurance from the Department's Hutchinson, Topeka, and Wichita Area Offices showed the same problems. In 17 cases (39%), information hadn't been entered in the computer in a timely manner. For 14 (32%) cases, we couldn't tell whether the insurance information had been entered within 60 days.

The Amounts of Partial Payments Made By Insurance Companies Appear To Be Correct

We reviewed a random sample of 28 Medicaid claims which had a portion paid by other insurance companies. In other words, private insurance paid only a portion of the claim, and Medicaid subsequently paid the remainder. We examined these claims to determine whether the amounts paid by the other insurers were correct.

To make this determination, we examined policy information and the "Explanation of Benefits" statements sent by the insurance company with the partial payment amounts. These statements explain payment factors such as deductible and coinsurance amount, co-payment percentages, and non-covered procedures. We also called the insurance companies when clarification was needed. The partial payment amounts were correct in all the claims in our sample.

The Department doesn't match Medicaid clients' names against records of major insurance companies that provide health insurance in Kansas. When a person first applies for Medicaid (and annually thereafter), Department staff ask whether he or she has other health insurance coverage, or is covered under a spouse's or parent's health insurance plan. Medicaid recipients who receive other forms of public assistance must submit a monthly report describing changes in household status and income, as well as any changes related to their other insurance.

As noted earlier, the Department also matches Medicaid clients' names with names on other computer databases that could show the client has private insurance coverage. These include the following:

- periodic computer matches with the Department of Human Resources' employment records, and the federal Social Security Administration's wage and earnings files. Such matches can help identify whether a Medicaid recipient is employed and may have insurance coverage through his or her employer.

- annual computer matches with U.S. Department of Defense records to identify Medicaid recipients who have private health insurance with CHAMPUS—the military personnel insurer

- periodic computer matches with workers compensation records to determine whether a Medicaid recipient may have received medical services for a work-related injury and, therefore, may have insurance other than Medicaid to pay for the services

During this audit, we noted the Department generally hasn't tried to match its Medicaid clients' names against records of such major insurance companies as Blue Cross/Blue Shield or Aetna. Department officials told us they tried to conduct a computer match with Blue Cross/Blue Shield in the fall of 1995, but the insurance company was only interested in cross matching Medicare tie-in coverage—insurance policies supplemental to Medicare. Kansas law doesn't require companies to participate in such computer matches.

As described below, other states we contacted generally do computer matches with insurance companies to try to ensure they've identified Medicaid clients' other insurance coverage:

- Since 1991, Wisconsin law has required private insurance companies to comply with the state Medicaid agency's request for data matches within 180 days of the request. The Medicaid Program reimburses private insurers for development and operations costs associated with these matches. Wisconsin officials told us the program is cost-effective, particularly regarding inpatient hospital claims and doctors services.

- A Colorado Medicaid official told us Colorado currently has requested proposals to perform data matches with the 10 largest private insurance companies in the state. These matches initially would be performed monthly, then quarterly.

- The Iowa Medicaid Program has contracted with a private company to perform data monthly matches with about 40 private insurance companies. The private company performing the matches receives a percentage of the moneys Medicaid recovers as a result of the matches.

The Department doesn't determine whether Medicaid claims under $1,000 that resulted from accidents might be covered by other insurance. The Health Care Financing Administration requires states to identify Medicaid claims resulting from accidents. When a Medicaid recipient is injured in an automobile accident, for example, the Department is required to determine whether another person or business is responsible for the accident and should pay the recipient's medical bills.

The Department doesn't investigate an accident claim until the total amount billed for one person exceeds $1,000. According to Department officials, this threshold was developed in 1990 after the Department determined it wasn't cost-effective to pursue claims totalling less than that.

The Health Care Financing Administration approved the $1,000 threshold at the time. However, other nearby states have much lower thresholds. Colorado's threshold is $250; Iowa's and Missouri's are $500.

We tried to determine the proportion of $1,000-plus accident claims to all accident-related claims incurred by Medicaid recipients. If a significant portion of all claims were smaller than $1,000, it may make sense to lower that threshold. However, EDS officials told us it would take several weeks and several hours of computer programming time to obtain that data.

As a result, we weren't able to determine whether the $1,000 threshold is appropriate. Nevertheless, this is an area the Department should review, given that nearby states have such low thresholds.

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. 12 (Medicare Benefits/Private Pay Insurance)

Date: January 21, 1997

I am appearing today in support of S.B. 12 which allows the Secretary of the Department of Social and Rehabilitation Services to find out from health insurers and other companies which pay health benefits, whether a Medicaid beneficiary is also covered by private health insurance. The legislation will give the state the ability to tap into private funds in those cases where the beneficiary has other insurance available.

If you have any questions, please let me know.

Senate F.I.& I.
Attachment 4
1/21/97

420 SW 9th Street
Topeka, Kansas 66612-1678

913 296-3071
Fax 913 296-2283

Consumer Assistance Hotline
1 800 432-2484 (Toll Free)

TESTIMONY BEFORE THE
SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

SENATE BILL No. 15

Legislative Division of Post Audit
Trish Pfannenstiel, Senior Auditor
January 21, 1997

When the Legislative Post Audit Committee reviewed the Statewide Single Audit, members of the Committee noted that the assets of the Kansas Public Employees' Deferred Compensation Program exceeded $175.4 million in fiscal year 1995. Committee members raised a number of questions about how those moneys were being administered, including what liability the State would have for employees' investments should Aetna—the third-party administrator and investment provider for the Deferred Compensation Program—default or mismanage those funds.

In response to those concerns, the Committee directed our office to conducted a performance audit entitled, *Reviewing the Kansas Public Employees' Deferred Compensation Program.* During that audit, we found that, under State law, the State assumes no liability for any losses incurred by Program participants in the event of insolvency or mismanagement of funds by Aetna [K.S.A. 75-5524(c)].

However, in August 1992, in response to employees' questions about what would happen if Aetna were to become insolvent, the Department of Administration sent a letter addressed to all State employees stating that moneys invested in Aetna's fixed-return accounts were covered by the Kansas Life and Health Insurance Guaranty Association up to $100,000. That letter is attached. As a result of that letter, the following unfolded:

1—we contacted officials at the Kansas Guaranty Association and were told that, because current law isn't clear, the moneys in the Deferred Compensation Program's fixed-return accounts may or may not be covered by the Association.

2—because of the representations made in the letter sent out by the Department of Administration, it's conceivable the State could be held liable for employees' losses in the unlikely event Aetna were to become insolvent, and employees' funds were determined not to be covered. In addition, participants may have made some investment decisions in the Program based on information provided in that letter.

Senate F&I
Attachment 5
Jan. 21, 1997

To ensure that State law reflects legislative intent regarding the Guaranty Association's coverage of the Deferred Compensation's fixed-return accounts, the Legislature has several policy options available:

1—**do nothing**, and should this situation arise, leave the interpretation up to the courts as to whether or not the moneys in the Deferred Compensation Program's fixed-return accounts are covered by the Kansas Life and Health Guaranty Association

2—the statute could be written to specifically **exclude the Program's fixed-return accounts** from coverage by the Association

3—specify in statute that the Association's coverage **includes moneys in the Program's fixed-return accounts**

After a discussion of the options available, the Legislative Post Audit Committee decided to introduce legislation—Senate Bill No. 15—that would specifically state that moneys in the fixed-return accounts of the State's Deferred Compensation Program <u>are</u> covered by the Kansas Life and Health Guaranty Association in the event an investment provider or third-party administrator would become insolvent or mismanage funds. Providing for this coverage won't increase the State's costs—any losses charged to the Guaranty Association would be assessed against all insurance companies doing business in Kansas. In addition, this bill would make the law in line with where the industry is headed in providing coverage for these types of funds.

STATE OF KANSAS

DEPARTMENT OF ADMINISTRATION

DIVISION OF ACCOUNTS AND REPORTS

JOAN FINNEY
Governor

JAMES R. COBLER
Director of Accounts and Reports

900 Jackson, Room 251
Landon State Office Building
Topeka, KS 66612-1220
(913) 296-2311
FAX (913) 296-6841

August 17, 1992

TO EMPLOYEES OF THE STATE OF KANSAS:

Some public employees have participated in the Kansas Deferred Compensation Plan for a long time and the accumulated cash value in their account is substantial. "What, if any, protection do I have if Aetna Life Insurance and Annuity Company, the company that administers my account, becomes insolvent?" is a typical question. The following is a brief but fair description of exactly what is at risk and what protection exists to reduce the risk.

In the first place, Aetna Life Insurance and Annuity Company (ALIAC) is a financially sound, well-managed subsidiary of the Aetna Life and Casualty Company whose affiliates comprise one of the most prominent multiple-line insurance groups in the country. As of June 29, 1992, Standard and Poors rated the claims paying ability of ALIAC 'AAA' (Superior) and stated: "The rating reflects its strong capitalization, good profitability and conservative investment portfolio." Consequently, the question posed relates to a situation that is highly unlikely to occur.

In addition, amounts invested in the Aetna Variable Fund (Common Stock), Aetna Income Shares (Bond Fund), Aetna Variable Encore (Money Market Fund), Aetna Guaranteed Equity Trust and Aetna Investment Advisors Fund are not and do not become the property of ALIAC. As a result, insolvency of ALIAC would have no effect on the funds in these accounts.

Amounts invested in the Fixed Account and Guaranteed Accumulation Account would be at risk if, despite the current strong financial condition of ALIAC, the company became insolvent, but there is a safety net. In 1972, the Kansas legislature created the Kansas Life and Health Insurance Guaranty Association. This Association provides a mechanism to protect policy holders, certificate holders and their beneficiaries in the case of financial impairment of life and health insurance companies. Therefore, in the event ALIAC becomes financially impaired, the accumulated cash value invested in the Fixed Account or Guaranteed Accumulation Account options of the deferred compensation plan would be covered by the Guaranty Association up to a maximum of $100,000. In most cases participants may actually be entitled to a total recovery in excess of $100,000 because even an insolvent insurance company can usually honor some portion of its contractual obligations. The $100,000 Guaranty Association coverage would be in addition to any payments made by the insolvent insurer. For example, if the resources of the insolvent insurer were sufficient to accommodate a 70% payback and a participant in the Fixed or Guaranteed Accumulation option had an account balance of $300,000, the participant would receive $210,000 from the insurance company's estate and $90,000 from the Guaranty Association. The total recovery could, of course, never exceed the cash value of the two accounts.

5-3

Nancy Echols, Director
Division of Personnel Services

James R. Cobler, Director
Division of Accounts and Reports

LAW OFFICES OF

GOODELL, STRATTON, EDMONDS & PALMER, L.L.P.

515 SOUTH KANSAS AVENUE

TOPEKA, KANSAS 66603-3999

913-233-0593

TELECOPIER: 913-233-8870

E-MAIL: GSEP@CJNETWORKS.COM

GERALD L. GOODELL
WAYNE T. STRATTON
ARTHUR E. PALMER
H. PHILIP ELWOOD
HAROLD S. YOUNGENTOB
GERALD J. LETOURNEAU
CHARLES R. HAY
PATRICK M. SALSBURY
JOHN H. STAUFFER, JR.
LES E. DIEHL
DAVID E. BRUNS
N. LARRY BORK
JOHN D. ENSLEY
CATHERINE M. WALBERG

STEVE A. SCHWARM
PENNY R. MOYLAN
ANNE M. KINDLING
SCOTT C. PALECKI

SPECIAL COUNSEL
JOSEPH E. McKINNEY
MARTA FISHER LINENBERGER
CURTIS J. WAUGH

OF COUNSEL
ROBERT E. EDMONDS, RETIRED
ROBERT A. McCLURE
JOHN A. BAUSCH
RICHARD W. HOLMES

I am Art Palmer representing the Kansas Life and Health Insurance Guaranty Association. The Guaranty Association is created by statute for the purpose of protecting certain persons from loss due to the insolvency of life or health insurance companies within the limits established by the statute. All life and health insurance companies authorized to do business in Kansas are by statute members of the Association.

The Association has asked that I request the Committee to defer consideration of Senate Bill No. 15 until the Association's Board of Directors has an opportunity to review the specific language of the Bill. The Board of Directors will meet tomorrow, January 22, 1997.

One of the concerns of the Association is that the statutes authorizing the Kansas Public Employees Deferred Compensation Plan authorizes the plan to be written with corporations other than insurance companies. The Board of Directors would like to suggest language making it clear that the Guaranty Association would only cover deferred compensation plans written by insurance companies since those are the only entities the Association has the power to assess. Also, the Board of Directors is not certain the term "fixed-return accounts" without further definition is clear enough to accomplish the goal of the Bill.

The Guaranty Association does not take a position on what insurance products should or should not be covered under the Guaranty Act, but would like to have an opportunity to assist in clarifying the language of the Bill and keeping the Act internally consistent. It is for this purpose that we request a deferment for a few days to permit the Board to meet and for consultation with the Insurance Department on the language.

Senate I & I
Attachment 6
January 21, 1997

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. 15 (Insurance Guaranty Fund)

Date: January 21, 1997

The Kansas Department of Insurance supports Senate Bill 15 which clarifies that state employee retirement fund investments are included under the Kansas Life and Health Insurance Guaranty Association. This fund provides payment to policy holders in the event of an insolvency. The Guaranty Fund is not like bank deposit insurance because a policy holder is not assured full repayment of their investment through the fund. However, the Guaranty Fund is available to help with insurers who are insolvent.

The Department suggests that the Committee check with the Life and Health Guaranty Association to see if they have any comments.

The Insurance Department asks the Committee to favorably recommend S.B. 15 for passage.

If you have any questions, please let me know.

Senate FI & I
Attachment 2
1/21/97

420 SW 9th Street
Topeka, Kansas 66612-1678

913 296-3071
Fax 913 296-2283

Consumer Assistance Hotline
1 800 432-2484 (Toll Free)

Testimony To The

SENATE FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE

By
Bobbi Mariani, Assistant Director
Division of Personnel Services

Tuesday, January 21, 1997
RE: Kansas Public Employees Deferred Compensation Plan - Senate Bill 15

Mr. Chairperson and members of the committee, thank you for the opportunity to appear before you today. I am here in support of Senate Bill 15, which concerns coverage of fixed accounts provided under the Kansas public employees deferred compensation plan and the protection offered by the Kansas Life and Health Insurance Guaranty Association. The proposed language is added to protect the value of fixed accounts by ensuring that these accounts are protected by the Guaranty Association.

A recent audit performed by the Legislative Division of Post Audit found that statutes relating to the State's Deferred Compensation Program do not address the issue of liability coverage by the Guaranty Association. The audit found a potential difference of opinion as to whether moneys invested in such fixed accounts would be covered if the investment provider should ever become insolvent. The Guaranty Association Act does not provide coverage for unallocated annuity contracts. Unallocated contracts are defined as ones that are not issued to and owned by an individual. Because the Internal Revenue Service requires that this money be held as assets of the State, it could be interpreted that participants' money is unallocated and, therefore, not covered. However, since the money is being held in trust on behalf of the individual investors, it might be considered allocated. Aetna has taken the position that these accounts are covered and, in fact, has been filing premium reports and has paid the assessments.

A similar debate is going on at the national level. Until model legislation is drafted and introduced by the National Association of Insurance Commissioners, the amendments in Senate Bill 15 will protect plan participants with fixed accounts in case of insolvency.

Thank you for the opportunity to speak to you today. I would be happy to provide additional information.

G:\MSS\LEGISLAT.97\TESTIMON.97\SB15.TST; January 17, 1997

Senate F & A
Attachment 8
Jan. 21, 1997