

Approved: February 19, 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 February 11, 1997 in Room 529-S of the Capitol.

All members were present except: Senator Corbin, Excused

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

Conferees appearing before the committee: Linda DeCoursey, Kansas Insurance Department
Dave Hanson, Kansas Insurance Association
Roger Viola, Security Benefit Group
Lori Callahan, KaMMCO
Robert L. Kennedy, Jr., Kansas Insurance Department

Others attending: See attached list

Hearing on SB 56 -- Payment of outside consulting services for department of insurance

Linda DeCoursey, Kansas Insurance Department, explained to the Committee the need for the authorization to hire outside consultants such as actuaries or computer audit specialists as neither are available through the staff at the Insurance Department (Attachment 1). NAIC has recommended the elimination of the \$25,000 limitation as part of their recent accreditation review. This should be done as the dollar cap may constrict the amount of work the examination staff could perform should they be examining a large company; and the scope of actuarial work could also be influenced by the dollar limitation. The costs incurred in such examinations are subject to payment by the insurance company being audited so there would be no extra costs to the Department or the state. It is not foreseen that this authorization would be needed in the near future but it is important to know that such authority is available should the need to examine foreign companies develop. The Insurance Department cannot hire its own staff actuary because the salary required would be more than that of the Commissioner. North and South Dakota hire their own actuaries so the billing is rarely charged off to the insurance companies.

Dave Hanson, Kansas Insurance Association, spoke in defense of insurance companies who could be subjected to extremely excessive examination costs due to the hiring of outside consultants (Attachment 2). Domestic insurance companies have been subjected to extremely heavy storm losses over the past seven years and are reluctant to endorse any proposal which might subject them to even heavier fees, examination or audit costs. Current law does not limit the extent of an examination or the amount that can be paid for outside consultants and data processing, but rather limits the amount the examined company can be required to reimburse the Commissioner's office. Removing the cap could result in increase costs to the company and ultimately to the policy holder. Other states handle this problem by establishing a fee fund, some departments absorbing a portion of the examination costs, and some have the companies pay the full amount for such an examination. Retaliatory taxes of foreign companies would cause their home states to charge Kansas based insurance companies to pay more taxes in their states.

Lori Callahan, representing KaMMCO, stated their company was concerned with the removal of such a cap as an insurance company would have no control over such a variable (Attachment 3). Ms. Callahan requested the Insurance Department be allowed to hire an in-house actuary and support personnel if costs for examination should exceed \$25,000.

The hearing was closed.

CONTINUATION SHEET

MINUTES OF THE Senate Committee on Financial Institutions & Insurance, Room 529-S Statehouse on February 11, 1997.

Continued hearing on SB 93 - Conversion of a mutual insurer to stock insurer

Roger Viola, Security Benefit Group, introduced Howard Fricke, CEO of the company. Mr. Viola explained the bill draft with the proposed changes which would allow Security Benefit Group to demutualize and become a stock insurer company (Attachment 4). He addressed the raised issues of changing from a simple majority to a 2/3 majority if less than fifty percent of the members are present at a vote on demutualization issues. Forty to fifty percent of their members do vote and they have had 90% affirmative response from them at this time. Specific proxies would be required for voting on such things as demutualization. A comprehensive summary plan in a form approved by the Insurance Commissioner would be sent to each eligible member. Robert L. Kennedy, Jr., of the Insurance Department has approved the bill as it is amended.

Fred Carman, Revisor's Office, presented technical amendments (Attachment 5).

Lori Callahan, representing KaMMCO, explained to the Committee that due to their being classified as an accessible company they are unable to do business in other states (Attachment 6). An amendment added to this proposed legislation striking the assessability language would clear up this problem. Assessability means that if the company should sustain a very large claim and could not cover the request, they would be authorized to assess their members for the additional money needed to honor the claim. KaMMCO was started in the 1980's as a malpractice insurance company for physicians and health care providers in Kansas. Access companies now are considered archaic and do not work in the current economic insurance market. Neither the Health Care Stabilization Fund nor the Insurance Department have any objection to this proposed change.

Ms. Callahan was advised by the Research and Revisor staff that the proposed amendment should be put into separate legislation. Senator Feleciano agreed to introduce the bill in Ways and Means due to deadline restraints.

Dave Hanson, Kansas Life Insurance Association, testified of their approval of the proposed legislation which would significantly improve the existing conversion law. A letter from Steven Lobell, Executive Vice President of the American Home Life Insurance Company was included in the testimony (Attachment 7).

Linda DeCoursey, Kansas Insurance Department, read testimony prepared by Tom Wilder (Attachment 8). The Department supports the bill as amended.

Senator Praeger moved for the adoption of the amendments as presented by SBG and any technical amendments as required by the Revisor's office. The motion was seconded by Senator Feleciano. Motion carried.

Senator Feleciano moved that the bill be passed out favorably as amended. Motion was seconded by Senator Praeger. Motion carried.

Senator Praeger moved that the minutes of February 5 and 6 be approved as presented. Motion was seconded by Senator Becker. Motion carried.

The meeting was adjourned at 10:00 a.m. The next meeting is scheduled for February 12, 1997.

SENATE FINANCIAL INSTITUTIONS & INSURANCE
COMMITTEE GUEST LIST

DATE: 2/11/97

| NAME | REPRESENTING |
|------------------------|------------------------|
| Pat MORRIS | K.A.I.A. |
| Lori Callahan | KanumCO |
| Bill Sneed | AmVestors |
| Stacy Moorhead | Heartland Health, Inc. |
| Bill Wempe | Ks Ins Dept |
| David Hanson | Ks Insur Assocs |
| Bill Wilson | Formers Alliance |
| Robert Franze | KGC |
| Matt Goddard | HCBA |
| Rose Viola | SBG |
| Tom KRAMAR | " |
| Brenda Kramer | SBG |
| Trish Copeland | SBG |
| Howard Feicke | SBG |
| Sheila Frabow | Ks Assoc Comm Colleges |
| Kevin Davis | Am Family |
| Callie Jill Denton | Prudential |
| Susan Baker | Hein + Weir |
| Ardo J. McQuay | Ks Insurance Dept. |



Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

February 11, 1997

TO: Senate Committee on Financial Institutions and Insurance
FROM: Linda J. De Coursey
Assistant Director, Government & Public Affairs Division
RE: SB 56 - Payment of outside consulting services for department of insurance

Mr. Chairman and members of the Committee:

Thank you for allowing me to appear before you on SB 56. The bill would provide for payment for outside consulting services for the Insurance Department. K.S.A. 40-223 currently states that the amount paid for all outside consulting and data processing fees necessary to perform any examination; and the pro rata amount to fund the purchase of examination equipment and computer software shall not collectively total more than \$25,000 at any one company examination including examination of its subsidiaries or combination thereof.

In December, the Kansas Insurance Department received its second accreditation by the National Association of Insurance Commissioners (NAIC). To give you a bit of history about the accreditation process, in the 1980's the NAIC developed a program to accredit state insurance departments. States had to meet minimum standards in monitoring the financial condition of insurance companies, and take action to require companies, in bad financial shape, to develop financial plans to avoid bankruptcy. The program requires a state insurance department to meet or exceed a number of requirements, ranging from having strong state laws to regulate insurers,

*Senate F.D.D.
Attachment 1
2/11/97*

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to having enough well trained staff to monitor and examine companies, to having in place adequate examination systems to detect company problems.

The Kansas Insurance Department was among the first five insurance departments to meet those standards and receive accreditation in 1991. This status is reviewed every five years. The Kansas Insurance Department was reviewed and has again received accreditation for another five years, after an examination process that was even more stringent than the first review.

One of the recommendations made by the NAIC in this review, is for the Kansas Insurance Department to seek elimination of the current \$25,000 limitation on the amount the Department may bill companies for services of specialists. I have attached a copy of their letter for your review.

One of the standards that the NAIC evaluation team reviews is the Department's utilization of specialists. Currently, the Kansas Insurance Department has no actuaries or computer audit specialists on staff to perform examination functions, and if such expertise is needed on an examination, the Department must contract for such expertise. The NAIC cited two examples where difficulties arise: (1) When a large company is examined the limit may very easily constrict the amount of work the examination staff could perform; and (2) the scope of actuarial work could also be influenced by the dollar limitation.

We respectfully ask your consideration to pass SB 56 favorably out of committee and thereby allowing the Kansas Insurance Department to comply with NAIC recommendations to eliminate the current \$25,000 limitation from K.S.A. 40-223.



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National
Association
of Insurance
Commissioners

December 12, 1996

The Honorable Kathleen Sebelius
Commissioner of Insurance
Kansas Department of Insurance
420 Southwest 9th Street
Topeka, KS 66612-1678

Dear Commissioner Sebelius:

During the recent NAIC accreditation review of your Department, the NAIC accreditation team (Team) made a recommendation to your Department to have the provisions of KSA 40-223 revised to eliminate the current \$25,000 limitation on the amount the Department may bill companies for services of specialists. You have asked that I expand on the reasons the Team made this recommendation.

As you are aware, one of the Standards that the Teams evaluate as part of the accreditation review is the Department's utilization of specialists, where appropriate, on financial condition examinations. Specifically, the Teams look for utilization of three types of specialists: actuaries, computer audit specialists and reinsurance experts. The Department currently has no actuaries or computer audit specialists on staff to perform examination functions, thus, if such expertise is needed on an examination, the Department must contract for such expertise. Under the Kansas Statutes such costs may be billed directly to the insurance company but are limited to \$25,000. As the Kansas domestic insurance industry is made up of mainly small-to-medium size companies, this limit usually is of no issue. However, there are several Kansas domestics that are quite large, and this limit may very easily constrict the amount of work the examination staff could perform.

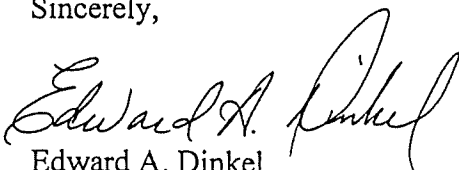
During the accreditation review, the Team selected the examination of one large company where the limitation appeared to affect the amount of work performed. The Department did contract with an actuarial firm to perform a review of the company's reserves, however, due to the dollar limitation, the Department was not able to perform a review of the company's computer systems. The Team believed that such a review was necessary for the size and complexity of this company.

The Honorable Kathleen Sebelius
December 12, 1996
Page Two

In addition to the example given above, the Team also noted that the scope of actuarial work was also influenced by the dollar limitation. In all examinations reviewed by the Team where actuarial services were utilized, the actuarial work was limited to a review of the companys' reserves and reserving policies for reasonableness. Although the Team agreed with the amount of work performed on these examinations, as you are aware, there may arise a situation where a full reserve evaluation may be necessary and, with the current dollar limitation, such evaluation may not be possible for larger companies.

I hope this letter better explains the rationale behind the comment made by the Team. If you need further explanation, or have any questions regarding the NAIC Accreditation Program, please feel free to call me at (816) 374-7125.

Sincerely,



Edward A. Dinkel
Accreditation Manager

EAD:rlb

cc: Don Gaskill, Chief Examiner

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special deposit which remain after the payment of all claims and claims' expenses of Kansas policyholders and claimants shall be returned to the insurance supervisory official of the company's state of domicile. If a Kansas domestic insurance company has made a deposit under the provisions of this section, any distribution of such deposit shall be made in accordance with the provisions of K.S.A. 40-3641 and amendments thereto.

History: L. 1972, ch. 177, § 1; L. 1986, ch. 169, § 1; L. 1988, ch. 356, § 75; L. 1991, ch. 125, § 55; July 1.

Research and Practice Aids:

Insurance ⇨ 72.2.

C.J.S. Insurance § 123 et seq.

40-222c. Same; insurance company defined. As used in this act: The term "insurance company" shall mean and include all corporations, companies, associations, societies, fraternal benefit societies, mutual nonprofit hospital service corporations, nonprofit medical service corporations, reciprocal exchanges, persons or partnerships writing contracts of insurance, indemnity or suretyship in this state upon any type of risk or loss except insurance companies transacting business pursuant to the provisions of K.S.A. 40-202.

History: L. 1972, ch. 177, § 2; July 1.

40-222d. Same; company deemed to be in hazardous financial condition, when. For the purposes of this act a company may be deemed to be in a hazardous financial condition when the commissioner has determined, after notice and hearing as provided in K.S.A. 40-222b, that the loss experience of the company, when reviewed in conjunction with the kinds and nature of risks insured, the financial condition of the company and its ownership or the ratio of the annual premium volume in proportion to the company's policyholders surplus creates a condition that would make further assumption of risks hazardous to the insuring public.

History: L. 1972, ch. 177, § 3; July 1.

40-222e. Same; suspension, revocation or refusal to renew certificate. Whenever any insurance company subject to the provisions of this act fails to comply with any requirement imposed pursuant to this act, the commissioner may suspend or revoke such company's certificate of authority to transact business in this state pursuant to the provisions of K.S.A. 40-

222 or the commissioner may refuse to renew such company's certificate of authority.

History: L. 1972, ch. 177, § 4; July 1.

40-222f. Examination of condition of company; definitions. As used in this act:

(a) "Commissioner" means the commissioner of insurance of this state;

(b) "company" means any person engaging in or proposing or attempting to engage in any transaction or kind of insurance or surety business and any person or group of persons who may otherwise be subject to the administrative, regulatory or taxing authority of the commissioner;

(c) "department" means the department of insurance of this state;

(d) "examiner" means any individual or firm having been authorized by the commissioner to conduct an examination under this act;

(e) "insurer" shall have the meaning ascribed to the term "insurance company" by K.S.A. 40-222(c)[*] and amendments thereto; and

(f) "person" means any individual, aggregation of individuals, trust, association, partnership or corporation, or any affiliate thereof.

History: L. 1991, ch. 124, § 1; Jan. 1, 1992.

* Reference should be to 40-222c.

Revisor's Note:

"This act" refers to 40-222.

40-223. Fees for examinations; compensation and expenses for examiners. Any person who makes any examination under the provisions of this act, except as provided in K.S.A. 40-110 and 40-253 and amendments thereto, may receive, as full compensation for such person's services, on a per diem basis an amount fixed by the commissioner, which shall not exceed the amount recommended by the national association of insurance commissioners, for such time necessarily and actually occupied in going to and returning from the place of such examination and for such time the examiner is necessarily and actually engaged in making such examination including any day within the regular workweek when the examiner would have been so engaged had the company or society been open for business, together with such necessary and actual expenses for traveling and subsistence as the examiner shall incur because of the performance of such services. For the purposes of this act, "nec-

essary and actual expenses" shall be limited, whether for travel within the state or travel outside the state, to those limitations expressed in K.S.A. 75-3207 and amendments thereto which pertain to official travel outside the state. The daily charge shall be calculated by dividing the amount the examiner is authorized by the commissioner of insurance to charge per week by the number of days in the regular workweek of the company or society being examined.

All of such compensation, expenses, the employer's share of the federal insurance contributions act taxes, the employer's contribution to the Kansas public employees retirement system as provided in K.S.A. 74-4920 and amendments thereto, the self-insurance assessment for the workmen's compensation act as provided in K.S.A. 44-576 and amendments thereto, the employer's cost of the state health care benefits program under K.S.A. 75-6507 and amendments thereto, a pro rata amount determined by the commissioner to provide vacation and sick leave for the examiner not to exceed the number of days allowed state officers and employees in the classified service pursuant to regulations promulgated in accordance with the Kansas civil service act, all outside consulting and data processing fees necessary to perform any examination, and a pro rata amount determined by the commissioner not to exceed an annual aggregate of \$18,000 to fund the purchase, maintenance and enhancement of examination equipment and computer software shall be paid to the commissioner of insurance by the insurance company or society so examined, on demand of the commissioner. ~~The amount paid for all outside consulting and data processing fees necessary to perform any examination, and the pro rata amount to fund the purchase of examination equipment and computer software shall not collectively total more than \$25,000 at any one company examination including examination of its subsidiaries or combination thereof.~~ Such demand shall be accompanied by the sworn statement of the person making such examination, setting forth in separate items the number of days necessarily and actually occupied in going to and returning from the place of such examination, the number of days the examiners were necessarily and actually engaged in making such examination including those days within the regular workweek while the examination was in progress and the company or society had closed for business, and the nec-

essary and actual expenses for traveling and subsistence, incurred in and on account of such services. A duplicate of every such sworn statement shall be kept on file in the office of the commissioner of insurance. All moneys so paid to the commissioner of insurance shall be remitted to the state treasurer and the state treasurer shall issue duplicate receipts therefor, one to be delivered to the commissioner of insurance and the other to be filed with the director of accounts and reports.

History: L. 1927, ch. 231, 40-223; L. 1947, ch. 272, § 1; L. 1953, ch. 225, § 1; L. 1957, ch. 273, § 1; L. 1963, ch. 259, § 1; L. 1967, ch. 251, § 1; L. 1971, ch. 156, § 1; L. 1972, ch. 172, § 1; L. 1974, ch. 156, § 1; L. 1977, ch. 158, § 1; L. 1980, ch. 123, § 1; L. 1984, ch. 329, § 13; L. 1988, ch. 149, § 1; L. 1991, ch. 126, § 1; July 1.

Source or prior law:

L. 1885, ch. 131, § 23; L. 1901, ch. 357, § 2; L. 1909, ch. 153, § 24; L. 1913, ch. 206, § 25; R.S. 1923, 40-104, 40-624.

Research and Practice Aids:

Insurance ⇨ 9.
C.J.S. Insurance § 73.

40-223a. Insurance company annual statement examination fund established; purpose. A fund, designated "insurance company annual statement examination fund" in an amount not to exceed twenty-eight thousand dollars (\$28,000) shall be set apart and maintained for the commissioner of insurance from insurance company tax and fee collections. Such fund shall be held by the state treasurer for the payment of expenses and salaries incurred in the auditing of securities deposited with the commissioner and examination of the annual statements required by K.S.A. 40-225 and shall be limited to the amount necessary to compensate and reimburse no more than five (5) examiners for a period of time not exceeding ninety (90) days in any one calendar year.

History: L. 1971, ch. 157, § 1; L. 1979, ch. 135, § 1; July 1.

Research and Practice Aids:

Insurance ⇨ 9.
C.J.S. Insurance § 73.

40-223b. Same; compensation and expenses of examiners. Any person or persons who shall conduct a securities audit or annual statement examinations under the provisions of this act shall be regularly employed examiners and shall receive as full compensation for their services the amount provided by K.S.A. 40-

David A. Hanson
Kansas Insurance Associations
Topeka, Kansas
(913) 232-0545

TESTIMONY ON SB56
February 11, 1997

TO: Senate Financial Institutions and Insurance Committee
State Capitol
Topeka, Kansas

RE: Senate Bill No. 56

Mr. Chairman and Members of the Committee:

Thank you for this opportunity to appear before the Committee. I am David Hanson and am appearing on behalf of the Kansas Association of Property and Casualty Insurance Companies and the Kansas Life Insurance Association, whose members are domestic insurance companies in Kansas.

We have several concerns with the proposed amendment in Senate Bill 56, primarily in terms of the potential financial impact on the insurance industry and the insuring public in Kansas. This industry plays a major role in the Kansas economy, providing coverage for risks, paying benefits, providing jobs and paying taxes. In the property and casualty coverages, we have suffered unusually high losses from catastrophic storms and weather related conditions during the last seven years. While there is not much that can be done about the weather, we can and should avoid any unnecessary additional financial burdens on the insurance companies that have remained in Kansas through these difficult years.

Kansas domestic companies pay about \$10 million of the roughly \$90 million in insurance taxes paid by all companies, foreign and domestic, to the State. Companies are also required to pay an assortment of additional fees, such as filing fees, to do business in Kansas. Additionally, companies are required to pay certain expenses required by statute to be reimbursed and a fee fund assessment to supplement the Insurance Department Service Regulation Fund as provided in KSA 40-112 for the purpose of maintaining the Department and paying expenses incident thereto. For fiscal year 1995, these expense reimbursements and fee fund assessments were nearly \$900,000.

We are therefore concerned with the proposed additional unlimited potential liability for outside consultants and data processing fees in an examination, which could conceivably become unfairly burdensome or oppressive to a company. Current law does not limit the extent of an examination or the amount that can be paid for outside consultants and data processing, but rather limits the amount that the examined company can be required to reimburse the Commissioner's office for those expenses. To the extent such expenses exceed \$25,000, they may be paid out of the Department Service Regulation Fund since the public derives a benefit from the Department's examination and monitoring of the companies. Removing the current limit that a company can be required to reimburse the Department would increase the cost to the company and would in turn increase the cost to the policyholders.

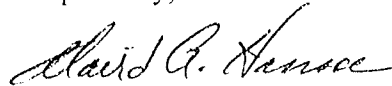
Senate F.I.S.I.
Attachment 2
2/11/97

We would also point out that under KSA 40-222, insurance companies are subject to examination whenever the Commissioner deems necessary and at least once every five years. In such an examination, the Commissioner may "retain attorneys, appraisers, independent actuaries, independent certified public accountants or other professionals and specialists as examiners, the reasonable cost of which shall be borne by the company which is the subject of the examination." In view of these other expenses and the taxes and fees companies are required to pay already, the current limitation on the amount insurance companies can be required to pay for outside consulting and data processing fees should not be removed.

It should also be noted that Kansas, like other states, imposes retaliatory taxes on companies doing business in this state and domiciled in other states, if their domiciliary state requires taxes, licenses, fees or compensation for examination of Kansas companies greater than Kansas requires. This retaliatory treatment is provided in KSA 40-253. We are concerned that removing the limit on the amount payable for examinations in Kansas under Senate Bill 56 will not only increase the fees and compensation for examinations to be paid by domestic companies in Kansas, but also to be paid as retaliatory taxes in other states, where fees and compensation for examinations may be less.

For these reasons, we feel that removing the limit on the amount companies can be required to pay for outside consulting and data processing fees would not be in the best interests of the State. Thank you for letting us present these concerns.

Respectfully,



DAVID A. HANSON

KaMMCO

KANSAS MEDICAL MUTUAL INSURANCE COMPANY

TO: Senate Financial Institutions and Insurance Committee
FROM: Lori Callahan, General Counsel
RE: S.B. 56
DATE: February 11, 1997

The Kansas Medical Mutual Insurance Company (KaMMCO) is a Kansas domestic physician - owned professional liability insurance company formed by the Kansas Medical Society. KaMMCO is the largest insurer of physicians in Kansas.

KaMMCO is neutral on S.B. 56, but has several concerns with the bill.

KaMMCO is a single state domestic insurance company. The ability to predetermine possible liabilities assists us in our financial projections and helps us to determine appropriate premium levels. Any factors in this formula which are set or capped help us to best anticipate our financial needs and to plan accordingly. Currently, there is no cap on the cost which can be incurred by the Kansas Insurance Department employees when conducting an examination of a company. These costs are fully paid by the insurance company being examined. Thus, this variable is a complete unknown.

The outside consultants which may be necessary to retain in order to adequately examine a company, however, are capped at \$25,000. This cap allows us to better determine our possible liabilities for each examination. It is this cap which is eliminated by S.B. 56.

If this cap has caused problems with the ability of the Kansas Insurance Department to adequately examine a company, such inadequacies may be remedied by the hiring of an inhouse actuary. In that situation, the necessary appropriations should be made to allow for the hiring of such necessary support personnel, rather than eliminating the cap on the amount which can be charged for the utilization of similar outside services.

*Senate F.D.D.
Attachment 3*

2/11/97

Endorsed by the Kansas Medical Society

Session of 1997

SENATE BILL No. 93

By Committee on Financial Institutions and Insurance

1-24

9 AN ACT concerning insurance; conversion of mutual insurer to stock
10 insurer; amending K.S.A. 40-4001, 40-4002, 40-4004, 40-4005, 40-
11 4006, 40-4007, 40-4008, 40-4009, 40-4010, 40-4011, 40-4012, 40-4013
12 and 40-4014 and repealing the existing sections; also repealing K.S.A.
13 40-4003.

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

15 Section 1. K.S.A. 40-4001 is hereby amended to read as follows: 40-
16 4001. A domestic mutual insurer issuing nonassessable policies may be
17 converted into a domestic stock insurer. To that end, it may provide and
18 carry out a plan for such conversion by complying with the requirements
19 of this act. *Because it is not possible to anticipate all of the circumstances*
20 *and considerations which may arise incident to a conversion from a mu-*
21 *tual insurer to a stock insurer, the commissioner has broad authority in*
22 *reviewing such conversion, and the procedures and criteria to be applied*
23 *by the commissioner are flexible within the parameters of this act. This*
24 *act shall be liberally construed to effect the legislative intent set forth in*
25 *this section and shall not be interpreted to limit the powers granted to*
26 *the commissioner by other provisions of law.*

27 Sec. 2. K.S.A. 40-4002 is hereby amended to read as follows: 40-
28 4002. (a) A resolution shall be adopted by a $\frac{2}{3}$ majority of the entire board
29 of directors of the insurer which shall state the ~~reason~~ reasons such con-
30 version would benefit the insurer and be in the best interests of its poli-
31 cyholders. Following adoption of such resolution a detailed plan of con-
32 version shall be developed and shall be approved by a $\frac{2}{3}$ majority of the
33 entire board of directors. *The plan of conversion shall not be effective*
34 *unless the plan has been so approved by the board of directors.*

35 (b) A draft of the plan of conversion may be submitted to the com-
36 missioner for preliminary examination and comment prior to or after the
37 adoption of the resolution described in subsection (a).

38 (b)(c) *After the completion of the process of preliminary examination*
39 *and comment, the plan shall be submitted to the commissioner of insur-*
40 *ance for approval in writing, subject to the provisions of K.S.A. 40-4004*
41 *and amendments thereto. The plan of conversion shall not be effective*
42 *unless the plan has been approved by the commissioner.*
43

Senate F.D.D
Attachment 4
Feb. 11, 1997

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

6 (d) (e) The board of directors by a vote of not less than $\frac{2}{3}$ of the
 7 entire board may, at any time prior to the date of the meeting called
 8 pursuant to subsection (e) issuance of the certificate of authority pursuant
 9 to K.S.A. 40-4010 and amendments thereto: No such proxy vote shall be
 effective unless the proxy specifically provides the proxyholder
 with the authority to vote on the plan of conversion, and unless the
 proxy is dated subsequent to the day on which the plan of conversion is
 initially approved by the board of directors of the mutual insurer.

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

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

19 (A) Shall order a hearing to be conducted in accordance with the
 20 provisions of the Kansas administrative procedure act before approving
 21 or disapproving such material change; and

22 (B) may require that such a change be approved by the policyholders
 23 pursuant to subsection (d).

24 (e) (f) The plan shall be filed in the office of the commissioner of
 25 insurance after having been approved as provided above by subsections
 26 (a), (d) and (e).

27 (g) As used in this act: (1) "Policyholder" means a policyholder of the
 28 mutual insurer on the day the plan of conversion is initially approved by
 29 the board of directors of the mutual insurer.

30 (2) "Commissioner" means the commissioner of insurance.

31 New Sec. 3. The plan of conversion shall comply with the terms and
 32 conditions set forth in subsection (a), (b) or (c) as follows:

33 (a) Plan of conversion in which policyholders exchange their mem-
 34 bership interests for cash, securities, policy credits, dividends, subscrip-
 35 tion rights or other consideration, or some combination thereof. A mutual
 36 insurer seeking to convert pursuant to this subsection may do so by:

37 (1) Filing a plan of conversion containing:

38 (A) A description of the structure, forms and allocation of the pro-
 39 posed consideration to the policyholders, the projected range of the num-
 40 ber of shares of capital stock, if any, to be issued by the new stock insurer
 41 or parent company of the new stock insurer, or any other company, and
 42 such other proposed conditions and provisions as determined by the mu-
 43 tual insurer not to be inconsistent with this act. As used in this act, "parent

1 company" means any company which on or after the effective date of the
2 conversion owns, directly or indirectly, 51% or more of the capital stock
3 of the new stock insurer;

4 (B) a description of any amendments to the insurer's articles of in-
5 corporation;

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

8 (D) any other additional information as the commissioner of insur-
9 ance may reasonably request.

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

17 (b) Plan of conversion in which policyholders exchange their mem-
18 bership interests solely for subscription rights. A mutual insurer seeking
19 to convert to a stock insurer pursuant to this subsection may do so by:

20 (1) Filing a plan of conversion containing:

21 (A) A provision that each policyholder is to receive, without payment,
22 nontransferable subscription rights to purchase a portion of the capital
23 stock of the converted stock company and that, in the aggregate, all pol-
24 icyholders shall have the right, prior to the right of any other party, to
25 purchase 100% of the capital stock of the converted company. As an
26 alternative to subscription rights in the converted stock company, the plan
27 may provide that each eligible member is to receive, without payment,
28 nontransferable subscription rights to purchase a portion of the capital
29 stock of one of the following:

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

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

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

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

41 (C) a fair and equitable means for allocating shares of capital stock
42 in the event of an oversubscription to shares by policyholders exercising
43 subscription rights received under this section;

1 (D) at the option of the converting company, a provision that any
2 shares of capital stock not subscribed to by policyholders exercising sub-
3 scription rights received under this section may be sold in a public offer-
4 ing or through a private placement or other alternative method approved
5 by the commissioner that is fair and equitable to policyholders. The of-
6 fering to others of shares not purchased by policyholders exercising such
7 subscription rights shall be at a price not less than the offering price to
8 such policyholders;

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

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

18 (G) a provision that any person or group of persons acting in concert
19 shall not acquire, in the public offering or pursuant to the exercise of
20 subscription rights, more than 5% of the capital stock of the converted
21 stock company, except with the approval of the commissioner. This lim-
22 itation does not apply to any entity that is to purchase 100% of the capital
23 stock of the converted company as part of the plan of conversion approved
24 by the commissioner; and

25 (H) a provision that the rights of a holder of a surplus note to partic-
26 ipate in the conversion, if any, shall be governed by the terms of the
27 surplus note; and

28 (2) providing subscription rights to the policyholders entitled thereto
29 in accordance with the provisions of the plan of conversion as described
30 in paragraph (1). With the approval of the commissioner, stock that will
31 be issued pursuant to such subscription rights may be provided to a trust
32 or other account or entity existing for the benefit of policyholders which
33 is established by the company for the purpose of effecting the conversion.

34 (c) Plan of conversion in which policyholders exchange their mem-
35 bership interests for membership interests in a mutual holding company.

36 (1) A plan of conversion adopted pursuant to this subsection shall
37 provide that the mutual insurer will become a stock insurer and that the
38 owners of policies of the converted insurer that are in force on the effec-
39 tive date of the plan of conversion or thereafter will become members of
40 a mutual holding company organized pursuant to paragraph (2) for as
41 long as their policies remain in force;

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

1 (A) Forming a mutual holding company and continuing the corporate
2 existence of the insurer as a stock insurance company that is a wholly-
3 owned subsidiary (except to the extent qualifying shares are required to
4 be held by directors of an insurance company admitted and authorized
5 to do business in Kansas pursuant to K.S.A. 40-305 and amendments
6 thereto) of a stock holding company of which at least 51% of the voting
7 stock is held by the mutual holding company;

8 (B) forming a mutual holding company and continuing the corporate
9 existence of the insurer as a stock insurance company of which at least
10 51% of the voting stock is held by the mutual holding company; or

11 (C) forming a mutual holding company and continuing the corporate
12 existence of the insurer as a stock insurance company with another own-
13 ership structure that is approved by the commissioner with at least 51%
14 of the voting stock of the stock insurance company is ultimately held by
15 the mutual holding company.

16 (3) a mutual holding company is not an insurer for purposes of this
17 act, but the provisions of this act with regard to corporate organization
18 and procedure of mutual insurers and the election of directors by mutual
19 insurers, and those provisions of chapter 17 of the Kansas Statutes An-
20 notated and amendments thereto that are applicable to mutual insurers,
21 shall apply to the mutual holding company;

22 (4) a mutual holding company and any stock holding company shall
23 each be deemed to be a "holding company" of the insurer within the
24 meaning of article 33 of chapter 40 of the Kansas Statutes Annotated and
25 amendments thereto. Approval of the plan of conversion by the commis-
26 sioner pursuant to this act shall constitute approval of the acquisition of
27 control by the mutual holding company and stock holding company, if
28 applicable, under K.S.A. 40-3304 and amendments thereto, without any
29 separate filings or other action;

30 (5) a mutual holding company shall not dissolve, liquidate or wind-
31 up and dissolve except through proceedings under article 36 of chapter
32 40 of the Kansas Statutes Annotated and amendments thereto for the
33 liquidation or dissolution of the converted insurer or as the commissioner
34 of insurance may otherwise approve. A mutual holding company may,
35 however, convert to a stock corporation in accordance with the terms of
36 this article and a plan of conversion approved by the commissioner of
37 insurance to be fair and equitable after a hearing upon notice to the
38 company's members;

39 (6) the charter of the mutual holding company shall be filed with the
40 commissioner and shall contain the matters required to be contained in
41 the charter of a mutual insurer by article 5 or article 12 of chapter 40 of
42 the Kansas Statutes Annotated and amendments thereto, as applicable,
43 except that the name of the mutual holding company shall contain the

1 word "mutual" and shall not contain the word "insurance" and the com-
2 pany's powers shall not include doing an insurance business;

3 (7) the commissioner of insurance may, by adoption of rules and reg-
4 ulations, require a mutual holding company to file annual statements with
5 the commissioner in such form as the commissioner prescribes;

6 (8) any subsidiaries of the company that have been reorganized pur-
7 suant to this act and amendments thereto may remain as subsidiaries of
8 such company or become subsidiaries of the mutual or stock holding
9 company provided that if such subsidiaries shall become subsidiaries of a
10 stock holding company, then the reorganized company shall be reim-
11 bursed the value of its holdings in such subsidiaries, as reflected on the
12 company's most recently filed financial statements, in the event shares of
13 the stock holding company are or have been issued to other than the
14 mutual holding company;

15 (9) with the written approval of the commissioner, and subject to
16 conditions that the commissioner may impose, a mutual holding company
17 may:

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

20 (B) together with its converted insurer subsidiary, merge or consoli-
21 date with or acquire the assets of any other insurer; or

22 (C) engage in any other merger, consolidation or acquisition trans-
23 action which may be approved by the commissioner;

24 (10) a member of a mutual holding company is not, as a member,
25 personally liable for the acts, debts, liabilities or obligations of such com-
26 pany. No assessment of any kind may be imposed upon the members of
27 a mutual holding company by the board of directors, members or credi-
28 tors of such company or because of any liability of any company owned
29 or controlled by the mutual holding company or because of any act, debt
30 or liability of the mutual holding company;

31 (11) a membership interest in a mutual holding company shall not
32 constitute a security under the laws of this state; and

33 (12) the commissioner shall retain jurisdiction over any mutual hold-
34 ing company or stock holding company organized pursuant to this section
35 to assure that policyholder interests are protected.

36 New Sec. 4. The commissioner may require that the conversion plan
37 of a mutual life insurer provide for the establishment, for policyholder
38 dividend purposes only, of a closed block. In the event that the commis-
39 sioner requires such a closed block, the closed block will consist of all of
40 the participating individual policies of life insurance of the mutual life
41 insurer in force on the effective date of the plan of conversion for which
42 the insurer has an experience-based dividend scale payable in the year in
43 which the plan is adopted. Assets of the insurer shall be allocated to any

1 such closed block in an amount that produces cash flows, together with
2 anticipated revenues from the closed block business, expected to be rea-
3 sonably sufficient: (1) To support the closed block business, including
4 payment of claims and those expenses and taxes specified in the plan, and
5 (2) to provide for continuation of dividend scales in effect on the adoption
6 date if the experience underlying the scales continues and for appropriate
7 adjustments in the scales if the experience changes. The plan may provide
8 for conditions under which the converted insurer may cease to maintain
9 the closed block and its allocated assets. Regardless of such a cessation,
10 the obligation under the policies constituting the closed block business
11 remain the obligations of the converted insurer. Dividends on those pol-
12 icies shall be apportioned by the board of directors of the converted in-
13 surer in accordance with the terms of the policies.

14 New Sec. 5. (a) All policies in force on the effective date of conver-
15 sion remain in force under the terms of the policies, except that the
16 following rights, to the extent they existed in the mutual company, shall
17 be extinguished on the effective date of the conversion:

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

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

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

23 (A) Holders of participating policies in effect on the date of conver-
24 sion continue to have a right to receive dividends as provided in the
25 participating policies, if any, unless the holders of such participating pol-
26 icies receive a nonparticipating policy as a substitute for the participating
27 policy pursuant to subparagraph (B); and

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

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

40 Sec. 6. K.S.A. 40-4004 is hereby amended to read as follows: 40-
41 4004. (a) The commissioner of insurance shall examine the plan submit-
42 ted pursuant to subsection ~~(b)~~ (c) or (d) of K.S.A. 40-4002, and amend-
43 ments thereto. As a part of ~~the~~ such examination, the commissioner of

1 insurance, within 30 days after its receipt, shall order a hearing on the
 2 plan to be conducted in accordance with the provisions of the Kansas
 3 administrative procedure act and shall give not less than 20 days' written
 4 notice of the date of hearing to the insurer and give not less than 20 days'
 5 written notice to policyholders by publication or otherwise. The commis-
 6 sioner of insurance shall approve the plan unless if the commissioner of
 7 insurance finds the plan is unfair or inequitable to policyholders, will
 8 cause the insurer to become unable to fulfill such insurer's contractual
 9 obligations or is not in accordance with the provisions of this act. that:

- 10 (1) The plan of conversion is fair and equitable to policyholders;
 11 (2) the plan of conversion complies with the provisions of this act;
 12 (3) the plan of conversion does not unjustly enrich any director, of-
 13 ficer, agent or employee of the insurer; and
 14 (4) the new stock insurer would meet minimum requirements to be
 15 issued a certificate of authority by the commissioner to transact business
 16 in this state and the continued operations of the new stock insurer would
 17 not be hazardous to existing or future policyholders or the public.

18 (b) The amount of consideration provided by the converting insurer
 19 to policyholders shall be deemed to be fair and equitable pursuant to
 20 subsection (a), if the consideration is at least the amount of statutory
 21 surplus attributable to contributions of policyholders.

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

27 Sec. 7. K.S.A. 40-4005 is hereby amended to read as follows: 40-
 28 4005. The meeting called for approval of the plan by the policyholders
 29 prescribed by K.S.A. 40-4002 and amendments thereto shall be called by
 30 a majority of the board of directors, the chairperson of the board or the
 31 president. A copy of the plan and any information the commissioner of
 32 insurance deems necessary to policyholder understanding shall accom-
 33 pany the notice.

34 Sec. 8. K.S.A. 40-4006 is hereby amended to read as follows: 40-
 35 4006. (a) For five years from the conversion date, no person (including
 36 any individual, corporation, firm or affiliated group of individuals, cor-
 37 porations or firms), other than a parent corporation, may own, directly
 38 or indirectly, more than 5% of the voting stock (including any securities
 39 that may be convertible into voting stock) of the converted insurer, unless:
 40 (1) The person is a policyholder whose allocated share of the consid-
 41 eration provided for in the plan of conversion is 5% or more of the voting
 42 stock (including any securities that may be convertible into voting stock),
 43 and such individual may not purchase stock totaling more than the in-

, including a comprehensible
 summary of the plan in a form
 approved by the commissioner,

1 individual's allocated share of such consideration; or
2 (2) the purchase is permitted by the commissioner and authorized by
3 the converted company's board of directors.

4 (b) In the event of any violation of this section, or in the event of any
5 action that, if consummated, would constitute a violation of this section,
6 all voting securities of the converted insurer (or of the person controlling
7 the converted insurer) that is acquired by any person in excess of the
8 maximum amount permitted to be acquired by the person pursuant to
9 this section shall be deemed to be nonvoting securities of the converted
10 insurer (or of the person controlling the converted insurer). The violation
11 or action may be enforced or enjoined by an appropriate proceeding com-
12 menced by the converted insurer, the person controlling the converted
13 insurer, the commissioner, any policyholder or stockholder of the con-
14 verted insurer on behalf of the converted insurer (or on behalf of the
15 person controlling the converted insurer) in the district court in which
16 the converted insurer has its home office or in any other court having
17 jurisdiction. The court may issue any order it finds necessary to cure the
18 violation or to prevent the proposed action that would constitute a vio-
19 lation.

20 (c) Nothing herein provided in this act shall be deemed to prohibit
21 the insurer's directors, officers, agents or employees from being eligible
22 to purchase stock or other securities of the insurer, subject to the provi-
23 sions of subparagraphs (A) and (B) of paragraph (10) of subsection (e) of
24 K.S.A. 40-4003 subsection (a).

25 Sec. 9. K.S.A. 40-4007 is hereby amended to read as follows: 40-
26 4007. (a) No director, officer, agent or employee of the insurer shall
27 secure any unfair advantage through a plan of conversion by reducing
28 the volume of new business written, by cancellation or by reducing or by
29 any other means seeking to reduce, limit or alter the number or identity
30 of the insurer's policyholders entitled to participate in such plan.

31 (b) No director, officer, agent or employee of the insurer shall receive
32 any fee, commission or other valuable consideration whatsoever, other
33 than regular salary and compensation, for in any manner aiding, promot-
34 ing or assisting in the conversion except as set forth in the plan approved
35 by the commissioner of insurance. This provision shall not be deemed to
36 prohibit the payment of reasonable fees and compensation to attorneys
37 at law, accountants, appraisers, actuaries, financial advisers or other sim-
38 ilar professionals for services performed in the independent practice of
39 their professions, even though they such person may also be directors of
40 the insurer.

41 Sec. 10. K.S.A. 40-4008 is hereby amended to read as follows: 40-
42 4008. Within 30 days of receipt of the filing of the approved plan in
43 accordance with subsection (e) (f) of K.S.A. 40-4002 and the amended

1 articles of incorporation, the commissioner of insurance shall issue a new
2 certificate of authority to the insurer. Notwithstanding the actions of any
3 other jurisdiction, the issuance of such certificate shall be deemed the
4 final act of conversion and the mutual insurer shall concurrently become
5 a stock insurer. *The date of the issuance of such certificate shall be the*
6 *"conversion date" of the insurer.* The stock insurer shall be a continuation
7 of the mutual insurer and deemed to have been organized at the time
8 the converted mutual insurer was organized. The conversion shall in no
9 way annul, modify or change any of such insurer's existing suits, rights,
10 contracts or liabilities except as provided in the plan. The insurer, after
11 conversion, shall exercise all the rights and powers and perform all the
12 duties conferred or imposed by law upon insurers writing the classes of
13 insurance written by it and shall retain the rights and contracts existing
14 prior to conversion, subject to the effect of the plan.

15 Sec. 11. K.S.A. 40-4009 is hereby amended to read as follows: 40-
16 4009. The directors and officers of the mutual insurer shall serve until
17 new directors and officers have been duly elected and qualified pursuant
18 to the plan and articles of incorporation or bylaws of the ~~insurer~~ *converted*
19 *insurer or of the affiliates of the converted insurer, if applicable, unless*
20 *otherwise determined by the board of directors of the converting insurer.*

21 Sec. 12. K.S.A. 40-4010 is hereby amended to read as follows: 40-
22 4010. The offer or sale of securities issued pursuant to ~~under~~ the plan
23 developed and approved in accordance with the provisions of this act shall
24 be exempt from the Kansas securities laws.

25 Sec. 13. K.S.A. 40-4011 is hereby amended to read as follows: 40-
26 4011. No action challenging the validity of a conversion, or any aspect of
27 such conversion under this act, may be commenced more than 30 days
28 after the final act of conversion.

29 In any action challenging the plan of conversion or charging that the
30 directors of the ~~insurer or converted insurer~~ *converting insurer, the con-*
31 *verted insurer, the mutual holding company or the stock holding com-*
32 *pany, as applicable* or any other person or persons have acted improperly
33 in connection with any aspect of the conversion, the insurer or converted
34 insurer in whose right such action is brought or the defendant or defen-
35 dants shall be entitled at any *state stage* of the proceedings before final
36 judgment to require the plaintiff or plaintiffs to give security for the rea-
37 sonable expenses including attorney fees, which may be incurred by the
38 *converting insurer, converted insurer or any other parties* defendant in
39 connection with such action. Thereafter, the amount of such security,
40 from time to time, may be increased or decreased in the discretion of the
41 court having jurisdiction of such action upon a showing that the security
42 provided has or may become inadequate or excessive.

43 Sec. 14. K.S.A. 40-4012 is hereby amended to read as follows: 40-

1 4012. The commissioner of insurance shall have the authority to may
2 adopt such rules and regulations as may be necessary to carry out the
3 provisions of this act.

4 Sec. 15. K.S.A. 40-4013 is hereby amended to read as follows: 40-
5 4013. The commissioner of insurance shall also have the authority to
6 *retain experts and may* charge and collect from the insurer the actual
7 amount of expenses, *including the expenses of retaining experts*, reason-
8 ably incurred by the state in discharge of the commissioner's duties here-
9 under.

10 Sec. 16. K.S.A. 40-4014 is hereby amended to read as follows: 40-
11 4014. ~~Within~~ *Not later than 24 hours of after* issuance of the certificate
12 of authority to the converted stock insurer, a certified copy of the
13 amended articles of incorporation of the insurer shall be filed with the
14 secretary of state.

15 Sec. 17. K.S.A. 40-4001, 40-4002, 40-4003, 40-4004, 40-4005, 40-
16 4006, 40-4007, 40-4008, 40-4009, 40-4010, 40-4011, 40-4012, 40-4013
17 and 40-4014 are hereby repealed.

18 Sec. 18. This act shall take effect and be in force from and after its
19 publication in the statute book.

Technical Cleanup on SB 93

On page 2, in line 1, by striking "If approved by the commissioner,"; in line 26, after "(a)," by striking "(d) and (e)" and inserting "(c) and (d)";

On page 7, in line 42, by striking "(c) or (d)" and inserting "(b) or (c)";

*Senator Steffes -
If you want to run SB 93 out of
committee today, these technical amendments
are needed*

Fred C

*Senate FD+D
Attachment 5
Feb 11, 1997*

KaMMCO

KANSAS MEDICAL MUTUAL INSURANCE COMPANY

TO: Senate Financial Institutions and Insurance Committee

FROM: Lori Callahan, General Counsel

RE: S.B. 93

DATE: February 6, 1997

The Kansas Medical Mutual Insurance Company (KaMMCO) is a Kansas domestic physician-owned professional liability insurance company formed by the Kansas Medical Society. KaMMCO is the largest insurer of physicians in Kansas.

KaMMCO supports S.B. 93.

When KaMMCO was formed in 1988, a special statute was enacted which allowed the Kansas Medical Society to form a liability insurance company which could restrict coverage to only its members. This legislation is now codified at K.S.A. 40-12a01 *et seq.*

At the time of KaMMCO's formation, the medical malpractice market was in crisis both as to the affordability and availability of liability insurance. Several health care provider groups in addition to the Kansas Medical Society were exploring creating their own liability insurance companies.

In 1988, the other health care provider groups were not sure they wanted a fully funded insurance company, or just the availability of an insurance mechanism. As a result, K.S.A. 40-12a01 provides that companies formed under that article must be assessable mutual companies. KaMMCO, however, was fully licensed and funded as an insurance company and specifically limits its assessment capability to \$100.00 per year pursuant to its bylaws.

Since the 1980's, the availability crisis of medical malpractice liability insurance has eased. Affordability, however, continues to be a problem with Kansas continuing to be one of the most expensive states for medical malpractice insurance. As a result of the increased access to liability insurance, however, no other health care provider group ultimately chose to avail themselves of K.S.A. 40-12a01 and form their own insurance company.

S.B. 93 relates only to the demutualization of "nonassessable" mutual companies. Thus, it would not apply to KaMMCO. KaMMCO had never desired to be an assessable company. Further, the assessable form for an insurance company is an archaic mechanism which is rarely used and virtually no longer in use for medical malpractice companies. This hinders KaMMCO as it seeks licensure in other states, which do not recognize this form of insurance company.

Accordingly, KaMMCO would request the committee to amend S.B. 93 by adding the revisions to K.S.A. 40-12a01 *et seq.* which would eliminate the requirement that health care provider membership mutual companies be assessable, thus allowing S.B. 93 to also apply to KaMMCO should it ever choose to demutualize. A balloon which reflects these revisions is attached.

Endorsed by the Kansas Medical Society

623 W. TENTH ST. - STE. 200 • TOPEKA, KANSAS 66612
913-232-2224 / 800-232-2259 / 913-232-4704 (FAX)

Senate FDSJ
Attachment 6
2/11/97

In case the award and costs, or both, as aforesaid, shall not be so paid within thirty (30) days after the said award shall have been confirmed by said court, the award and costs, or both, so found and confirmed, shall be a judgment against the party named by the court, and may be collected as other judgments in said court are by law recoverable.

History: L. 1957, ch. 289, § 8; L. 1970, ch. 180, § 2; L. 1972, ch. 53, § 9; July 1.

Research and Practice Aids:

Corporations ⇐ 584.

C.J.S. Corporations § 1612 et seq.

40-1224. Same; fees of officers or directors, prohibited unless disclosed; penalty. (1) No director or officer of any company party to a merger or consolidation, except as fully expressed in the agreement of merger or consolidation, shall receive any fee, commission, other compensation or valuable consideration, whatever, directly or indirectly, for in any manner aiding, promoting or assisting in such merger or consolidation.

(2) Any person violating the provisions of the preceding section shall be fined not less than one thousand dollars (\$1,000), and not more than five thousand dollars (\$5,000) or imprisoned in the county jail for not more than one (1) year, or both, and shall forfeit any office he holds in the merged or consolidated company.

History: L. 1957, ch. 289, § 9; June 29.

40-1225. Same; construction of act; invalidity of part. (1) Nothing contained in this act shall be construed to enlarge the charter powers of any insurance company except in conformity with the provisions of the proposed articles of incorporation of the merged or consolidated company as provided in this act, nor to authorize any insurance company to do any kind of insurance business not authorized by its charter or articles of incorporation, nor to authorize any insurance company to do any kind of insurance business in this state not authorized by its license or certificate of authority to do business in this state.

(2) This act shall be construed as a part of and supplementary to the insurance code of the state of Kansas.

(3) If any provision of this act, or the application of such provision to any person or circumstances, shall be held invalid the remainder of the act, and the application of such provision to persons and circumstances other

than those as to which it is held invalid, shall not be affected thereby.

History: L. 1957, ch. 289, § 10; June 29.

Article 12a.—MUTUAL INSURANCE COMPANIES ORGANIZED TO PROVIDE HEALTH CARE PROVIDER LIABILITY INSURANCE

40-12a01. Definitions. As used in this act: (a) "Health care provider" means any person licensed to practice any healing art by the board of healing arts or any hospital licensed under the provisions of K.S.A. 65-425 *et seq.*, and amendments thereto, or a private psychiatric hospital authorized under K.S.A. 75-3307b and amendments thereto;

(b) "person" means an individual, corporation, partnership, association, joint stock company, trust, unincorporated organization or any similar entity;

(c) "affiliate" means a person that directly or indirectly, through one or more intermediaries, employs, controls or is controlled by, or is under common control with a health care provider;

(d) "commissioner" means the commissioner of insurance; and

(e) "association" means any organization whose income is exempt from taxation pursuant to section 501(a) of the internal revenue code of 1986, and amendments thereto, as in effect on the effective date of this act, due to such association's compliance with section 501(c)(6) of such code, and amendments thereto, as in effect on the effective date of this act.

History: L. 1988, ch. 147, § 1; April 28.

Research and Practice Aids:

Insurance ⇐ 52.

C.J.S. Insurance § 104 et seq.

40-12a02. Formation and operation; purpose; assessment plan. (a) Except as otherwise provided in this act, the provisions of article 12 of chapter 40 of the Kansas Statutes Annotated shall control the formation and operation of companies organized under this act.

(b) Any association of health care providers domiciled within the state of Kansas which has been in existence for three years or more, may, as provided in this act, form an insurance company for the purpose of issuing contracts of insurance providing liability insurance for health care providers which are members of the association, the member's employees, di-

40-12a03**INSURANCE**

rectors, professional associations and affiliates ~~upon the assessment plan.~~

(c) Any two or more such associations of health care providers, may form an insurance company for the purpose of issuing contracts of insurance providing liability insurance for such association's respective members, the member's employees, directors, professional associations and affiliates ~~upon the assessment plan.~~

History: L. 1988, ch. 147, § 2; April 28.

40-12a03. Board of directors; selection; officers. The affairs of the company shall be managed by a board of directors of not less than five nor more than 25 persons selected by the association or associations forming the company. Directors shall not be required to be policyholders. The persons named as directors in the charter shall constitute the directors for the first year, and, at their first meeting, they shall select a president, secretary and treasurer and such other officers as may be necessary. Thereafter, directors shall be selected in accordance with the bylaws.

History: L. 1988, ch. 147, § 3; April 28.

40-12a04. Articles of incorporation. The persons proposing to form any such company shall subscribe, acknowledge and file with the commissioner articles of incorporation specifying:

(a) The name, which shall contain the word "mutual," the names of persons initially associated, the method by which other persons may be admitted to the company as members, the purposes for which the company is organized, ~~the amount of the initial assessment which has been paid into the company, the method of assessment thereafter~~ and the location of such company's principal or home office, which shall be within this state. The articles of incorporation shall provide for bylaws and for the amendment of the articles of incorporation and the bylaws.

(b) The names and addresses of those persons composing the board.

(c) The names and addresses of the incorporators.

History: L. 1988, ch. 147, § 4; April 28.

40-12a05. Bylaws. The bylaws shall provide for a governing body for the company, the manner of election thereof, and the specific kinds of insurance or indemnification which will be offered ~~and may provide that assessments, in such amounts as determined by the~~

~~board to be fair and equitable, may be made.~~ The bylaws may provide for the transfer of risks to other insurance companies or for reinsurance.

History: L. 1988, ch. 147, § 5; April 28.

40-12a06. Insurance authorized to be written; authority to contract with joint underwriting authority and write insurance under plan. (a) Any company organized under the provisions of this act shall be empowered to make contracts of insurance as provided herein and to cede to any insurer or accept from any insurer reinsurance on any portion of any such risk for the following kinds of insurance:

(1) Against loss or liability arising out of the performance of professional services rendered or which should have been rendered by an insured.

(2) Against loss or liability to persons or property for which the insured may be liable or have assumed liability, including but not limited to liability of any person who is a director or officer of a health care provider arising out of acts performed or which should have been performed by such director or officer.

(3) Against loss or liability to persons or property resulting from the ownership, maintenance or use of any ambulance, aircraft or other vehicle used by an insured in connection with rendering professional services.

(b) Any company organized under the provisions of this act shall be empowered to contract with the governing board of any plan created pursuant to K.S.A. 40-3413 and amendments thereto to issue policies to any applicant for liability insurance under the provisions of any such plan, to service and manage such policies and in all respects to administer and carry out the functions of any plan as the same may be authorized by the contract. Policies may be issued to persons and corporations under the provisions of such contract even though the insured is not a member of the association of health care providers forming the insurance company. No provision of this act or of article 12 of chapter 40 of the Kansas Statutes Annotated regarding the ~~issuance of assessable policies,~~ voting rights of members or the payment of dividends shall apply to policies issued under this subsection.

History: L. 1988, ch. 147, § 6; L. 1990, ch. 166, § 1; March 29.

40-12a07. Certificate of authority; issuance; conditions; limitation on amount of risk;

surplus; deposit of securities. The commissioner shall issue a certificate of authority when any company, organized under this act, has fully complied with the following conditions:

(a) The company holds bona fide applications for insurance upon which it shall issue at least 20 policies to at least 20 members. If the company is in compliance with all other provisions of this act, the commissioner shall not revoke or refuse to renew the certificate of authority because membership has declined to less than 20 members.

(b) No insurance company organized pursuant to this act shall expose itself to loss on any one risk or hazard to an amount exceeding 20% of its surplus unless the excess is reinsured.

(c) It shall have collected, in accordance with the method provided in the articles of incorporation or the bylaws, the full consideration according to its filed rate on each contract for which application has been made. The total of such consideration shall be held in cash or securities in which such insurance companies are authorized to invest, or one or more clean and irrevocable letters of credit, and it shall possess and thereafter maintain a surplus of lawful assets or letters of credit over and above liabilities in an amount not less than the capital and surplus required of a domestic stock insurance company transacting the same kinds of insurance. The company shall deposit with the state treasurer and commissioner, as joint custodians, securities in which such insurance companies are authorized to invest, or one or more clean and irrevocable letters of credit, for the benefit of the state treasurer and commissioner, in an amount not less than the minimum capital stock required of a domestic stock insurance company. For the purpose of this act, letters of credit shall be in the form allowed by K.S.A. 40-221a(b)(2), and amendments thereto, drawn on the account of a health care provider for the benefit of the company, or for the benefit of the state treasurer and commissioner if the letter of credit is on deposit in accordance with this section.

History: L. 1988, ch. 147, § 7; April 28.

40-12a08. Liability of insureds; certain distributions precluded. No insured shall be liable for any amounts other than the annual premium and all assessments as provided in the articles of incorporation or bylaws. The business of the company shall be conducted so as to preclude any distribution of income,

profit or property of the company to the individual members thereof except in payment of dividends, debts, claims or indemnities or upon the final dissolution of the company.

History: L. 1988, ch. 147, § 8; April 28.

40-12a09. Annual statement; accounting procedures. Each company organized pursuant to this act shall file an annual statement each year in accordance with the requirements for domestic insurers writing the same kind of insurance. Any company organized pursuant to this act may state its liabilities for losses and loss adjustment expenses on a present value basis in any statement or report which the company is required to file so long as the company's surplus as reported upon such basis remains above \$1 million, unless the commissioner determines the method used by the company to arrive at the present value of its liabilities for losses and loss adjustment expense is based upon unreasonable assumptions.

History: L. 1988, ch. 147, § 9; April 28.

Article 13.—MUTUAL INDEMNITY ASSOCIATIONS

40-1301.

History: L. 1927, ch. 231, 40-1301; Repealed, L. 1961, ch. 237, § 2; June 30.

Source or prior law:

L. 1911, ch. 208, § 1; R.S. 1923, 40-901.

CASE ANNOTATIONS

1. Section cited in considering validity of cancellation order of insurance superintendent. *Olson v. Automobile Insurance Co.*, 115 K. 227, 228, 222 P. 104.

40-1302.

History: L. 1927, ch. 231, 40-1302; Repealed, L. 1961, ch. 237, § 2; June 30.

Source or prior law:

L. 1917, ch. 209, § 1; R.S. 1923, 40-905.

40-1303.

History: L. 1927, ch. 231, 40-1303; Repealed, L. 1961, ch. 237, § 2; June 30.

Source or prior law:

L. 1921, ch. 204, § 1; R.S. 1923, 40-906.

40-1304.

History: L. 1927, ch. 231, 40-1304; Repealed, L. 1961, ch. 237, § 2; June 30.

Source or prior law:

L. 1913, ch. 208, § 3; R.S. 1923, 40-909.

40-1305 to 40-1311.

History: L. 1927, ch. 231, 40-1305 to 40-1311; Repealed, L. 1961, ch. 237, § 2; June 30.

David A. Hanson
Kansas Life Insurance Association
Topeka, Kansas
(913) 232-0545

TESTIMONY ON SB93
February 6, 1997

TO: Senate Financial Institutions and Insurance Committee
State Capitol
Topeka, Kansas

RE: Senate Bill No. 93

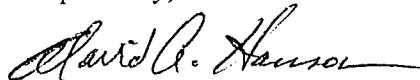
Mr. Chairman and Members of the Committee:

Thank you for this opportunity to appear before the Committee. I am David Hanson and am appearing on behalf of the Kansas Life Insurance Association, whose members are domestic life insurance companies in Kansas, including the Security Benefit Group. We appreciate the considerable time and resources that have been devoted to this proposal and believe the provisions will significantly improve our existing conversion law. We support Senate Bill 93 and would urge your favorable consideration of its provisions.

Steven Lobell, Executive Vice President of the American Home Life Insurance Company, also a member of our Association, was not able to be here today and asked me to submit the attached letter to you in support of the bill.

Thank you for your consideration.

Respectfully,



DAVID A. HANSON

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*Senate Filed
Attachment 7
February 11, 1997*



THE AMERICAN HOME LIFE INSURANCE COMPANY

February 5, 1997

Senator Don Steffes, Chairman
The Senate Financial Institutions & Insurance Committee
State House
Topeka, Kansas 66612

Re: SB93 - Demutualization of Life Insurance Companies

Dear Senator Steffes:

Thank you for the opportunity to submit written remarks to the Committee in support of SB93, the proposed life insurance company demutualization bill. I am employed by The American Home Life Insurance which is a Kansas domestic mutual life insurance company that has been in operation since 1909. We are a small regional life insurance company with \$78 million in assets and 25 home office employees.

We support the passage of SB93, however, we have no immediate interest in becoming a stock life insurance company. For the foreseeable future, we believe we can fulfill our strategic goals while continuing to operate as a mutual life insurance company. However, having made this statement, we obviously realize that any number of events could occur in the future which could cause this outlook to change or otherwise require that we modify our long term strategic objectives. In such circumstances, the availability of a workable demutualization statute could prove essential to preserving and enhancing American Home Life's long term viability.

The process of demutualization is an extremely arduous one and will not be lightly undertaken by any organization, large or small. Should the proposed bill become law there would be no rush on our part to demutualize and I'm quite certain this would be the case with the other Kansas mutual life insurance companies.

The proposed bill would provide mutual life insurance companies with an option that could enhance their prospects for growth and continuity, albeit within the framework of a different corporate structure.

Thank you for considering our opinions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Steven S. Lobell".

Steven S. Lobell
Executive Vice President

SSL/sdw



Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

MEMORANDUM

To: Senate Financial Institutions
Insurance Committee

From: Tom Wilder

Re: Senate Bill 93 ("Demutualization" of Insurance Companies)

Date: January 29, 1997

Senate Bill 93 is intended to change how Kansas mutual insurance companies, which are owned by the insurance policyholders, can convert into a stock company. The current Kansas law is fairly restrictive and the legislation gives companies more flexibility in how they can change corporate form. The legislation is similar to recent legislative amendments to "demutualization" laws in a number of other states.

The Insurance Commissioner, in general, supports the provisions of S.B. 93. The Department does have concerns about several sections which we ask the Committee to consider amending. The sponsors of the bill, Security Benefit Group, did work with the Insurance Department over the last several months to incorporate revisions to the original bill draft which resolved a number of policy questions raised by the Commissioner. The Department appreciates the efforts of Security Benefit to make those changes to the bill.

The Committee should consider the following policy issues when reviewing Senate Bill 93:

What "form" should the new company take? - Under the current statute, a mutual insurance company can only convert into a stock entity. The legislation allows companies to convert into a stock insurer, stock holding company, or mutual holding company.

What type of consideration should the policyholders receive? - The Kansas statute requires mutual policyholders to receive subscription (stock) rights in the new company.

*Senate FWD
Attachment 8*

2/11/97

The provisions in S.B. 93 give the policyholders the right to, “cash, stock, policy credits, dividends, subscription rights, a combination thereof or such other valuable consideration as the commissioner may approve”

Who gets paid in a conversion? - The proposed bill gives the right to be compensated in the conversion to policyholders who hold a policy in the company as of the date of the approval of the plan of conversion by the board of directors. Current law gives the right to payment to any policyholder who owned a policy two out of the last three years.

How much do they get paid? - Under S.B. 93, policyholders who receive cash or other consideration are to be paid a “fair and equitable” return. This is assumed to be at least the amount of policyholders surplus which they contributed to the company. The existing Kansas law says that all of the policyholders surplus is distributed to the policyholders.

Who values the company? - It is important that the value of the company be established as part of the plan of conversion. In Section 3 of Senate Bill 93, the company will decide how much the company is worth. If there is a public stock offering as part of the conversion, the price will be based on, “an independent evaluation by one or more qualified experts.”

The Kansas Insurance Department would ask that the bill be amended to clarify how much consideration policyholders are entitled to as part of the conversion. In addition, the valuation of the company should be established by outside experts without any direct ties to the mutual insurance company. The Committee should also consider who should be a “policyholder” who takes part in the conversion process.

There are other “technical” amendments which the Department will ask the bill sponsor to consider.

With changes as outlined in my testimony, the Insurance Department supports passage of Senate Bill 93.