Approved:_____
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 March 20, 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: Tom Wilder, Kansas Insurance Department
Robert L. Kennedy, Kansas Insurance Department
Lori Callahan, KaMMCO
Brad Smoot, American Insurance Association

Others attending: See attached list

**Hearing on HB 2045 - Removes requirement for a Kansan to serve on domestic insurance company board**

Tom Wilder, Kansas Insurance Department, explained that current statute requires Kansas domiciled stock insurers have boards of directors of 5-25 of which the majority must be residents of Kansas and stockholders of the company (Attachment 1). The proposed amendment would allow the insurers to set their own number and type of directors thus making it easier for foreign insurers to move their insurance businesses to Kansas.

Senator Feleciano moved for the favorable passage of the bill. Motion was seconded by Senator Becker. Motion carried.

**Hearing on Sub for HB 2081 - File and use rates**

Robert L. Kennedy, Kansas Insurance Department, urged the Committee to approve the bill which will change the timing involved in filing and obtaining approval of insurance rates for commercial insurers (Attachment 2) Insurers would be allowed to file their rates with the Department and use them almost immediately rather than go through the current lengthy process of approval. The Insurance Commissioner will retain the authority to review and disapprove rates which are excessive, inadequate or unfairly discriminatory. There are three exceptions to commercial lines: Workers compensation loss costs, farm owners policies and small business owners package policies (BOPP). Mr. Kennedy reviewed the balloon amendments which were included in his testimony. Legislation from Wisconsin and Ohio are being used as models.

Lori Callahan, KaMMCO, explained the position of their company as the largest provider of professional liability insurance for physicians in Kansas in supporting the amendments (Attachment 3). They are in favor of the bill as the surcharge paid by each health care provider supports the Health Care Stabilization Fund which provides excess insurance coverage for physicians. The amendment excludes the basic coverage required of each health care provider from the provisions of the bill.

Brad Smoot, American Insurance Association, told the Committee that the proposed change to file and use rates would result in Kansas consumers determining what insurance should cost as well as the provisions of such policies through competition (Attachment 4). Thirty-five other states have adopted competitive rating systems for one or more lines of insurance. The Insurance Commissioner would still have the authority to disapprove rates and the bill does not change the Department's power to review and approve insurance policy forms.

Dr. Wolff from Research and Fred Carman from the Revisor's Office recommended eliminating the word "order" from Section 5 as an "order" is not a law. Other technical and spelling changes were suggested.

MINUTES OF THE Senate Committee on Financial Institutions & Insurance, Room 529-S Statehouse, on January 20, 1997.

Senator Praeger moved to adopt the balloon amendments, strike the "order" in Section 5, and make all spelling and technical corrections. The motion was seconded by Senator Clark. Motion carried.

Senator Praeger moved to report the bill favorably as amended. The motion was seconded by Senator Feleciano. Motion carried.

Senator Feleciano moved for the approval of the minutes of March 11, 12, and 13. The motion was seconded by Senator Becker. Motion carried.

Senator Praeger discussed the educational meeting (hearing) for **SB 372-Nonprofit hospital sale act** which is scheduled for Tuesday, March 25. Through grant money, NCSL will be presenting a program on rural health care and its particular problems and needs on May 19 and 20 in Topeka at the Ramada Inn. National speakers and authorities will be present to focus on the issues that relate to Kansas and other rural states. LCC has been requested to furnish funding for attendance of legislators at this conference.

The meeting was adjourned at 9:55 a.m. The next meeting is scheduled for March 24, 1997.

# SENATE FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE GUEST LIST

DATE: 3/20

| NAME | REPRESENTING |
|---|---|
| Bill Wempe | KS Ins Dept |
| Pat Morris | ICAIA |
| Tom Wilder | KID |
| Bob Konnedy | KID |
| Stacy Moorhead | Heartland Health, Inc. |
| Lee Wright | Farmers Ins Group |
| [illegible] | Farmers Alliance |
| Don Hughes | Alliance of American Insurers |
| Dave Hanson | Ks Insur Assocs |
| Lois Callahan | KAMMCO |
| [illegible] | Nationsbank |
| [illegible] | Attorney General Stovall |
| Trish Copeland | Security Benefit |
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Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

**MEMORANDUM**

To: Senate Financial Institutions
and Insurance Committee

From: Tom Wilder

Re: H.B. 2045 (Insurance Company Directors)

Date: March 13, 1997

The Insurance Department is asking the Committee to approve House Bill 2045 which governs how the board of directors of a domestic insurance company must be set up. The current law (K.S.A. 40-305) requires Kansas domiciled stock insurers to have a board of directors that consists of between five and twenty-five directors. A majority of the directors must be residents of Kansas and must also be stockholders of the company.

The amendment in H.B. 2045 will allow insurers to set the number and type of directors for their companies through the Articles of Incorporation for the company. This change is similar to insurance corporation director laws in Colorado, Oklahoma and other states. It will make it easier for a foreign insurer to move their business operations ("redomesticate") to Kansas.

The bill was approved by the House on a vote of 117-6. I would appreciate the Senate Committee taking favorable action on House Bill 2045.

Senate F I & I
Attachment 1
3/20/97

420 SW 9th Street
Topeka, Kansas 66612-1678

913 296-3071
Fax 913 296-2283



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1 800 432-2484 (Toll Free)

Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

**Testimony of**
**Robert L. Kennedy, Jr.**
**Assistant Commissioner of Insurance**

**on**

**H. B. 2081**

This bill will change the method we approve insurance rates for most commercial lines of insurance from a more time consuming process, which requires the Kansas Insurance Department to approve, in advance, any rates used by an insurance, to a more flexible, quicker process which allows an insurance company to file its rates with the Department and use them almost immediately. While it will improve our rate approval process for commercial insurance in recognition of current economic conditions, we are not giving up any authority to disapprove rates which are harmful to buyers or create noncompetitive conditions in the market.

For years, Kansas has required prior approval of almost all property and casualty insurance rates. This bill would change that for most commercial property and casualty coverages. The bill changes the rate approval process for these lines from prior approval to file and use. This is a system that is in use in most states and, increasingly, more states are moving to this method of approving rates. The bill is modeled on the file and use statutes in Ohio and Wisconsin, both of which have used this method of approving rates for years.

Based on recommendations of our staff, the Commissioner has excepted three commercial lines from this change: Workers compensation loss costs, farmowners policies and small business owners package policies. Our staff recommends these lines still be subject to prior approval of rates. The principle reasons for this are that some of these lines are under stress at the moment, i.e. we have some limited availability problems in some parts of the state [farmowners] or we think it is too soon to be sure legislative reforms have permanently improved the workers' compensation market. In addition, our staff believes the small business owners policies still require more protection, since the vast majority of small business owners in Kansas are the "Ma and Pa" type operations, without in-house risk managers or professional loss control experts.

Personal lines insurance, i.e. the types of insurance products purchased by most families, such as homeowner, renters and personal auto policies, will remain under prior approval.

We will continue to have the authority to disapprove rates which are excessive, inadequate or unfairly discriminatory. The only thing this change in the law will do is change the timing involved in filing and obtaining approval of rates with us and streamline the process.

We believe this change in the way we approve rates will benefit Kansas businesses as their insurers can o more promptly adjust their rates and respond more quickly with competitive rates in an area of insurance that is complex and usually features buyers who are more sophisticated about their insurance needs.

Senate I.D.&D
Attachment 2
3/20/97

420 SW 9th Street
Topeka, Kansas 66612-1678

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MAR. 19, 199
Bill S

**Substitute for HOUSE BILL No. 2081**

By Committee on Insurance

2-11

AN ACT relating to insurance; rate making and rating organizations; advisory organizations; rate administration and statistical plans; rebating of premium; repealing K.S.A. 40-925, 40-926, 40-927, 40-928, 40-928a, 40-929, 40-930, 40-931, 40-932, 40-933, 40-934, 40-935, 40-936, 40-937, 40-938, 40-939, 40-940, 40-941, 40-942, 40-943, 40-944, 40-945, 40-1111, 40-1111a, 40-1112, 40-1113, 40-1113a, 40-1113c, 40-1114, 40-1114a, 40-1115, 40-1116, 40-1117, 40-1118, 40-1119, 40-1120, 40-1121, 40-1122, 40-1123, 40-1124 and 40-1125.

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

Section 1. The purpose of this act is to:

(a) Protect policyholders and the public against the adverse effects of excessive, inadequate or unfairly discriminatory rates;

(b) encourage, as the most effective way to produce rates that conform to the standards of paragraph (a), independent action by and reasonable price competition among insurers;

(c) provide formal regulatory controls for use if independent action and price competition fail;

(d) authorize cooperative action among insurers in the rate making process, and to regulate such cooperation in order to prevent practices that tend to bring about monopoly or to lessen or destroy competition;

(e) encourage the most efficient and economic marketing practices; and

(f) regulate the business of insurance in a manner that will preclude application of federal antitrust laws.

Sec. 2. (a) This act applies to fire and casualty insurance, including fidelity, surety and guarantee bonds, on risks or operations in this state except reinsurance, accident and health insurance, insurance against loss of or damage to, or against liability arising out of the ownership, maintenance or use of any aircraft.

2-2

(b) As used herein, the term "fire insurance" shall be construed to apply to and include the classes of insurance described in K.S.A. 40-901. The term "casualty insurance" shall be construed to apply to and include the classes of insurance described in (b), (c), (d), (e), (i), (j), (k), (l) and (m) of K.S.A. 40-1102 and amendments thereto, and paragraphs (b), (d), (e), (f), (g) and (h) of K.S.A. 40-1203 and amendments thereto, and the classes of insurance governed by Article 12a, Chapter 40, Kansas Statutes Annotated. ~~"Casualty insurance" shall not include the basic coverage required by K.S.A. 40-3401, et. seq. and amendments thereto.~~ DELETE moved to 56

(c) For title insurance rate filing purposes, only those charges made in connection with the issuance, sale and servicing of title insurance policies or real estate transactions by title insurance companies, agencies and agents on property located in counties having a population of more than 10,000 shall be subject to filing requirements of this act. Charges made for the assumption of risk under title insurance policies which shall be construed as premium for the purposes of K.S.A. 40-252 and amendments thereto, shall include risk premium, underwriting expenses such as searching charges, examination charges, to include any such charges retained by agents of the title insurer, charges for determining insurability and every other charge related to the issuance of the title insurance policy. Services provided by agents which are not related to insurance, such as performance of real estate closings or extension of the abstract of title, may be charged but not included as premium. No provision of this act shall apply to the filing or regulation of title insurance rates other than the requirements imposed by this section.

Every insurance agent, agency or company authorized to transact title insurance in this state shall file with the commissioner every manual of classification, rules and rates, every rating plan, every rate card and every modification of the foregoing which may be used in connection with providing title insurance or other services in connection with real estate transactions on property located in counties having a population of 10,000 or more. No charge may be made by any title insurance agent, agency or company that has not been filed with the commissioner as required by this section. Any service customarily provided by a title insurance agent or affiliated entity that is not included in the rates shall be disclosed when the rates are filed with the commissioner.

(d) This act shall also apply to reciprocal or interinsurance exchanges organized or operating under article 16 of chapter 40 of the Kansas Statutes Annotated and amendments thereto, with respect to the classes of insurance enumerated in this section.

Sec. 3. Rates shall not be excessive, inadequate or unfairly discriminatory, nor shall an insurer charge any rate which if continued will have or tend to have the effect of destroying competition or creating a

monopoly. Rates are presumed not to be excessive if a reasonable degree of market competition exists at the consumer level with respect to the class of business to which they apply. Rates in a noncompetitive market are excessive if they are producing or are likely to produce unreasonably high profits for the insurance provided or if expenses are unreasonably high in relation to services rendered. A competitive market in a type of insurance subject to this act is presumed to exist unless the commissioner after notice of hearing determines and orders that a reasonable degree of competition does not exist in the market. Such order shall expire no later than one year after issuance unless the commissioner renews the rule after a hearing and a finding of the continued lack of a reasonable degree of competition. In determining whether a reasonable degree of market competition exists, the commissioner shall consider all relevant tests, including: (1) the number, market share, and concentration of insurers actively engaged in the class

, as measured by the 1992 Horizontal Merger Guidelines published in the Federal Register September 10, 1992 (57 FR 41552),

of business, (2) the existence of rate differentials in that class of business, (3) ease of entry into the market, and (4) whether long-run profitability for insurers in that class of business is unreasonably high in relation to its riskiness. If such competition does not exist, rates are excessive if they are likely to produce a long run profit that is unreasonably high in relation to the riskiness of the class of business, or if expenses are unreasonably high in relation to the services rendered.

Rates are inadequate if they are clearly insufficient, together with the investment income attributable to them, to sustain projected losses and expenses in the class of business to which they apply.

One rate is unfairly discriminatory in relation to another in the same class if it clearly fails to reflect equitably the differences in expected losses and expenses. Rates are not unfairly discriminatory because different premiums result for policyholders with like loss exposures but different expense factors or like expense factors but different loss exposures, so long as the rates reflect the differences with reasonable accuracy. Rates are not unfairly discriminatory if they are averaged broadly among persons insured under a group, franchise, mass marketed plan or blanket policy.

Sec. 4. In determining whether rates are not excessive or inadequate or not unfairly discriminatory:

(a) Due consideration shall be given to:

(1) past and prospective loss and expense experience within and outside the state;

(2) catastrophe hazards and contingencies;

(3) trends within and outside this state;

(4) loadings for leveling premium rates over time;

(5) dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers and the investment income of the insurer;

(6) all other relevant factors within and outside the state, including the judgment of technical personnel.

(b) The expense provisions included in the rates to be used by an insurer may reflect the operating methods of the insurer, or group of insurers, and, so far as it is credible, its own expense experience.

(c) Risks may be classified in any reasonable way for the establishment of rates and minimum premiums, except that no classification may be based on race, color, creed or national origin and classifications in automobile insurance may not be based on physical disability of an insured.

rating plans, schedules, except for workers compensation, individual risk premium modification plans and expense reduction plans

Rates thus produced may be modified for individual risks in accordance with ~~rating plans or schedules~~ that establish reasonable standards for measuring probable variations in experience, hazards, expenses or any combination of those factors.

Such standards shall permit recognition of expected differences in loss or expense characteristics, and shall be designed so that such plans are reasonable and equitable in their application, and are not unfairly discriminatory, violative of public policy or otherwise contrary to the best interests of the people of this state. This section shall not prevent the development of new or innovative rating methods which otherwise comply with this act.

~~Once it has been filed, use of any rating plan shall be mandatory and such plan shall be applied uniformly for eligible risks in a manner that is not unfairly discriminatory.~~

DELETE moved to (g)

(d) Rates may be modified for individual risks, upon written application of the insured, stating the insured's reasons therefore, filed with and not disapproved by the commissioner within 10 days after filings.

(e) The rates may contain provisions for contingencies and an allowance permitting a reasonable profit. In determining the reasonableness of the profit, consideration shall be given to the investment income attributable to the line of insurance.

(f) The commissioner may by rule exempt any person or class of persons, line of insurance, or any market segment from any or all of the provisions of this chapter, if and to the extent that the commissioner finds their application unnecessary to achieve the purposes of this act.

(g) Once it has been filed, use of any rating plan shall be mandatory and such plan shall be applied uniformly for eligible risks in a manner that is not unfairly discriminatory.

Sec. 5. (a) Every insurer shall file with the commissioner, except as to inland marine risks where general custom of the industry is not to use manual rates or rating plans, every manual of classifications, rules and rates, every rating plan, policy form and every modification of any of the foregoing which it proposes to use. Every such filing shall indicate the proposed effective date and the character and extent of the coverage contemplated and shall be accompanied by the information upon which the insurer supports the filings. A filing and any supporting information shall be open to public inspection after it is filed with the commissioner. An insurer may satisfy its obligations to make such filings by authorizing the commissioner to accept on its behalf the filings made by a licensed rating organization or another insurer. Nothing contained in this act shall be construed to require any insurer to become a member or subscriber of any rating organization.

, the basic coverage required by K.S.A. 40-3401 et seq and amendments thereto,

(b) Any rate filing for personal lines, small business owners insurance and loss costs filings for workers compensation shall require approval by the commissioner before its use by the insurer in this state. Policy forms shall require approval by the commissioner before use by insurers in this state, consistent with the requirements of K.S.A. 40-216 and amendments thereto. As soon as reasonably possible after such filing has been made, the commissioner shall in writing approve or disapprove the same, except that any filing shall be deemed approved unless disapproved within 30 days of receipt of the filing. The term "personal lines and small business owners insurance" shall mean insurance for noncommercial automobile, homeowners, dwelling fire, renters, farmowner's ~~package~~ and business owner's package insurance policies

DELETE

, as defined by the Commissioner by rule, ~~regulation or order.~~

(c) Any other rate filing shall be on file for a waiting period of 30 days before it becomes effective, except for inland marine rates which shall be effective on filing, subject to the commissioner disapproving the same if the rates are determined to be inadequate, excessive, unfairly discriminatory or otherwise fails to meet the requirements of this act. Upon written application by the insurer or rating

organization, the commissioner may authorize a filing to become effective before the expiration of the waiting period. A filing complies with this act unless it is disapproved by the commissioner within the waiting period or pursuant to subsection (e).

(d) Any filing with respect to fidelity, surety or guarantee bond shall be deemed approved from the date of filing.

(e) In reviewing any rate filing the commissioner may require the insurer or rating organization to provide, at the insurer's or rating organization's expense, all information necessary to evaluate the reasonableness of the filing, to include payment of the cost of an actuary selected by the commissioner to review any rate filing

, if the Department of Insurance does not have a staff actuary in its employ.

(f) If a filing is not accompanied by the information required by this act, the commissioner shall promptly inform the company or organization making the filing. The fling shall be deemed to be complete when the required information is received by the commissioner or the company or organization certifies to the commissioner the information requested is not maintained by the company or organization and cannot be obtained. If within the waiting period provided in subsection (c), the commissioner finds a filing does not meet the requirements of this act, the commissioner shall send to the insurer or rating organization that made the fling written notice of disapproval of the filing specifying in what respects the fling fails to comply and stating the fling shall not become effective. If at any time after the expiration of any waiting period, the commissioner finds a filing does not comply with this act, the commissioner shall after a hearing held on not less than ten days' written notice to every insurer and rating organization that made the fling issue an order specifying in what respects the filing failed to comply with the act, and stating when, within a reasonable period thereafter, the filing shall be no longer effective. Copies of the order shall be sent to such insurer or rating organization. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

In the event an insurer or organization has no legally effective rate because of an order disapproving rates, the commissioner shall specify an interim rate at the time the order is issued. The interim rate may be modified by the commissioner on his or her own motion or upon motion of an insurer or organization. The interim rate or any modification thereof shall take effect prospectively in contracts of insurance written or renewed fifteen days after the commissioner's decision setting interim rates. When the rates are finally determined, the commissioner shall order any overcharge in the interim rates to be distributed

appropriately, except refunds to policyholders the commissioner determines are de minimis may not be required.

Any person or organization aggrieved with respect to any filing that is in effect may make written application to the commissioner for a hearing thereon, provided the insurer or rating organization that made the filing may not proceed under this subsection. The application shall specify the grounds to be relied on by the applicant. If the commissioner finds the application is made in good faith, that the applicant would be so aggrieved if the applicant's grounds are established, and that such grounds otherwise justify holding such a hearing, the commissioner shall, within 30 days after receipt of the application, hold a hearing on not less than 10 days' written notice to the applicant and every insurer and rating organization that made such filing.

Every rating organization receiving a notice of hearing or copy of an order under this section, shall promptly notify all its members or subscribers affected by the hearing or order. Notice to a rating organization of a hearing or order shall be deemed notice to its members or subscribers.

(f) No insurer shall make or issue a contract or policy except in accordance with filings which have been filed or approved for such insurer as provided in this act.

(g) The commissioner may adopt rules and regulations to allow suspension or modification of the requirement of filing and approval of rates as to any kind of insurance, subdivision or combination thereof, or as to classes of risks, the rates for which cannot practicably be filed before they are used.

Sec. 6. (a) Any corporation, association, partnership or individual whether located in or out of the state, may apply for license as a rating organization for such kinds of insurance or subdivisions thereof as are specified in its application and shall file therewith: (1) a copy of its constitution, articles of agreement or association or certificate of incorporation, and its bylaws and rules governing the conduct of its business; (2) a list of its members and subscribers; (3) the name and address of a resident of the state upon whom service of process or orders of the commissioner may be served and an irrevocable agreement to accept such service or notices; and (4) a statement of its qualification as a rating organization. Every rating organization shall notify the commissioner promptly of every change in its organizational structure, members or subscribers and the person upon whom service or notices may be made. If the commissioner finds the applicant is qualified, the commissioner shall issue a license specifying the kinds of insurance or subdivisions thereof for which the applicant is authorized to act as a rating organization. Every such application shall be granted or denied in whole or in part by the commissioner within 60 days of the date of its filing. Licenses issued pursuant to this section shall continue in force until May 1 next after their date unless suspended or revoked by the commissioner. The

fee for such license shall be $25 annually. Licenses issued pursuant to this section may be suspended or revoked by the commissioner, after hearing upon notice, in the event the rating organization ceases to meet the requirements of this section.

(b) Every rating organization shall furnish its rating services without discrimination to its members and subscribers. Subject to rules which have been approved by the commissioner as reasonable, each rating organization shall permit any insurer or group pool, not a member, to be a subscriber to its rating service for any kind of insurance or subdivision thereof for which its is authorized to act as a rating organization. The reasonableness of any rule in its application to subscribers, or the refusal of any rating organization to admit an insurer or group pool as a subscriber, at the request of any subscriber, pool or any insurer shall be 3 reviewed by the commissioner at a hearing.

(c) No rating organization shall adopt any rule, the effect of which would be to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers.

(d) The commissioner, at least once in five years, shall make or cause to be made an examination of each rating organization licensed in this state. The reasonable costs of such examination shall be paid by the rating organization examined, upon presentation to it of a detailed account of such cost. The officers, managers, agents and employees of such rating organization may be examined under oath and shall exhibit all books, records, accounts, documents or agreements governing its method of operation. The commissioner may waive such examination upon proof such rating organization has, within a reasonably recent period, been examined by the insurance supervisory official of another state, and upon filing with the commissioner a copy of the report of such examination.

(e) Cooperation among rating organizations or among rating organizations and insurers in rate making or in other matters within the scope of this act is hereby authorized, provided the filings resulting from such cooperation are subject to all the provisions of this act which are applicable to filings generally. The commissioner may review such cooperative activities and practices and if, after a hearing, the commissioner finds any such activity or practice is unfair, unreasonable or otherwise inconsistent with this act or other provision of the insurance laws of this state, the commissioner may issue a written order requiring discontinuance of such activities or practices.

(f) Any rating organization may provide for the examination of policies, daily reports, binders and other transaction with its members or subscribers, providing it makes reasonable rules governing those activities, which rules shall be approved by the commissioner. Such rules shall contain a provision that in the event any insurer does not within 60 days furnish satisfactory evidence to the rating organization of the correction of any error or omissions previously called to its attention by the rating organization, it

shall be the duty of the rating organization to notify the commissioner thereof. All information submitted for examination shall be confidential.

(g) Any rating organization may subscribe for or purchase actuarial, technical or other services, and such services shall be available to all members and subscribers without discrimination. Any rating organization may collect, compile and distribute past and current premiums of individual insurers.

Sec. 7. (a) Every group, association or other organizations of insurers, whether located within or outside this state, assisting insurers which make their own filings or rating organizations in rate making, by the collection and furnishing of loss or expense statistics, or by the submission of recommendations, but which does not make filings under this act, shall be known as an advisory organization.

(b) Every advisory organization shall file with the commissioner: (1) a copy of its constitution, articles of agreement or association, its certificate of incorporation and its bylaws, rules and regulations governing its activities; (2) a list of its members; (3) the name and address of a resident of this state upon whom notices or orders of the commissioner or process issued at the commissioners direction may be served, with its written agreement to accept such notices or service; and (4) an agreement the commissioner may examine such advisory organization in accordance with this act.

(c) If, after a hearing, the commissioner finds the furnishing of such information or assistance involves an act or practice which is unfair or unreasonable or otherwise inconsistent with this act or the insurance laws of this state, the commissioner may issue a written order requiring the discontinuance of the act or practice. No insurer or rating organization shall support its filings by statistics or adopt rate making recommendations furnished to it by an advisory organization which has not complied with this section or with an order of the commissioner issued under this section. If the commissioner finds such insurer or rating organization to be in violation of this subsection the commissioner may issue an order requiring the discontinuance of such violation.

Sec. 8. Every member of or subscriber to a rating organization shall adhere to the filings made on its behalf by such organization, except any such insurer may make independent filings or may deviate from the manual of classifications, rules and rates or rating plans filed by the rating organization for a kind of insurance, or a subdivision thereof, by filing notice of intent to do so with the commissioner. Those deviations shall take effect upon filing such notice, except for those lines which require prior approval of the commissioner, in which case they shall become effective on approval by the commissioner or 30 days after the notice is filed with the commissioner, whichever is sooner.

Sec. 9. Any member of or subscriber to a rating organization may appeal to the commissioner from the decision of such rating organization in approving or rejecting any proposed change in or addition to the filings of such rating organization and the commissioner, after a hearing shall issue an order approving the decision of such rating organization or directing it to give further consideration to such proposal, or, if such appeal is from the action or decision of the rating organization in rejecting a proposed addition to its filings, the commissioner may, in the event the commissioner finds such action or decision was unreasonable or unfair, issue an order directing the rating organization to make an addition to its filing, on behalf of its members and subscribers, in a manner consistent with the commissioner's findings, within a reasonable time after the issuance of such order.

Sec. 10. Every rating organization and every insurer which makes its own rates, within a reasonable time after receiving written request therefor, shall furnish to any insured affected by a rate made by it, or to the authorized representative of such insured, all pertinent information as to such rate. Every rating organization and every insurer which makes its own rates shall provide within this state reasonable means whereby any person aggrieved by the application of its rating system may be heard, in person or by authorized representative, on written request to review the manner in which such rating system has been applied in connection with the insurance afforded such person. If the rating organization or insurer fails to grant or reject such request within 30 days after it is made, the applicant may proceed in the same manner as if such application has been rejected. Any party affected by the action of such rating organization or such insurer on such request, within 30 days after written notice of such action, may appeal to the commissioner, who, after a hearing, may affirm or reverse such action.

Sec. 11. (a) The commissioner shall develop statistical plans which shall be used by each insurer in the recording and reporting of its loss and expense experience, in order that the experience of all insurers may be made available at least annually in such form and detail as may be necessary to aid the commissioner in determining whether rating systems comply with the standards set forth in this act. Such plans may also provide for the recording and reporting of expense experience items which are specially applicable to this state. In promulgating such plans, the commissioner shall give due consideration to the rating systems on file with the commissioner and, in order that such plans may be as uniform as is practicable among the several states, to the form of the plans used for such rating systems in other states. The commissioner may designate one or more rating organizations or other agencies to assist the

commissioner in gathering such experience and making compilations thereof, and such compilations shall be made available, by the commissioner to insurers and rating organizations.

(b) Reasonable plans may be developed by the commissioner for interchange of data necessary for the application of rating plans.

(c) In order to further uniform administration of rate regulatory laws, the commissioner and every insurer and rating organization may exchange information and experience data with insurance supervisory officials, insurers and rating organizations in other states and may consult with them with respect to rate making and the application of rating systems.

(d) The commissioner may make reasonable rules and regulations necessary to effect the purposes of this act.

Sec. 12. No person or organization shall willfully withhold information from, or knowingly give false or misleading information to the commissioner, any statistical agency designated by the commissioner, any rating organization or any insurer, which will affect the rates or premiums chargeable under this act.

Sec. 13. The commissioner, if the commissioner finds any person or organization has violated any provision of this act, may impose a penalty of not more than $500 for each violation, but, if the commissioner finds such violation to be willful, may impose a penalty of not more than $2,000 for each such violation. Such penalties may be in addition to any other penalty provided by law. The commissioner may suspend the license of any rating organization or insurer which fails to comply with an order of the commissioner within the time limited by such order, or any extension thereof which the commissioner may grant.

Sec. 14. Any hearing required or requested under this act shall be conducted in accordance with the Kansas administrative procedure act.

Sec. 15. The filing of a petition for review of any action of the commissioner under this act, shall act as a stay of any such action, if it provides for a change in any rating system resulting in an increase or decrease in premiums. Any insurer affected by such order may continue to charge rates which obtained prior to the commissioner's order to increase or decrease rates, on condition that the difference in premiums shall be deposited with the commissioner of insurance by the insurer and, on the final determination of the suit, shall be paid by the commissioner to the insurer if the court shall find the insurer entitled to it, or to the holders of policies written by the insurer, after the rate complained of was

ordered by the commissioner as the court may deem just and equitable. The court, at its discretion, in lieu of such deposit, may require of the insurer a bond with such sureties and in such sum as the court may approve.

Sec. 16. No broker or agent shall knowingly charge, demand or receive a premium for any policy of insurance except in accordance with the provisions of this act. No insurer or employee thereof, and no broker or agent shall pay, allow, or give, or offer to pay, allow to give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit or reduction of the premium named in a policy of insurance, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever, not specified in the policy of insurance, except to the extent provided for in an applicable filing. No insured named in a policy of insurance, or any employee of such insured shall knowingly receive or accept directly or indirectly, any such rebate, discount, abatement, credit or reduction of premium, or any such special favor or valuable consideration or inducement. Nothing in this section shall be construed as prohibiting the payment of commissions or other compensation to duly licensed agents and brokers, nor as prohibiting any insurer from allowing or returning to its participating policyholder, members or subscribers, dividends, savings or unabsorbed premium deposits. As used in this section the word "insurance" includes suretyship and the word "policy" includes bond.

Sec. 17. If any section, subsection, subdivision, paragraph, sentence or clause of this act is held invalid or unconstitutional, such decision shall not affect the remaining portions of this act.

Sec. 18. K.S.A. 40-925,40-926, 40-927, 40-928, 40-928a, 40-929, 40-930, 40-931, 40-932, 40-933, 40-934, 40-935, 40-936, 40-937, 40-938, 40-939, 40-940, 40-941, 40-942, 40-943, 40-944, 40-945, 40-1111, 40-1111a, 40-1112, 40-1113, 40-1113a, 40-1113c, 40-1114, 40-1114a, 40-1115, 40-1116, 40-1117, 40-1118, 40-1119, 40-1120, 40-1121, 40-1122, 40-1123, 40-1124 and 40-1125 are hereby repealed.

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

Sec. 20. This act shall take effect and be in force from and after its publication in the statute book.

# KaMMCO

## KANSAS MEDICAL MUTUAL INSURANCE COMPANY

TO: Senate Financial Institutions and Insurance Committee

FROM: Lori Callahan, General Counsel

RE: H.B. 2081

DATE: March 20, 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 the amendments to H.B. 2081.

Since 1976, medical malpractice insurance coverage in Kansas has been mandatory for all health care providers. As a result of this same legislation, and in order to insure sufficient coverage for the victims of medical malpractice, a patient compensation fund, called the "Health Care Stabilization Fund", was created. This fund provides excess insurance coverage over every health care provider's mandatory primary coverage of $200,000 and is solely supported by a surcharge on Kansas health care providers.

The surcharge paid by each health care provider is a percentage of the premium the health care provider pays for its primary coverage. Thus, the amount collected by the Fund is dependent upon the premium charged by the primary insurer. In order to protect the integrity of the Fund, the Insurance Department must have the authority to approve medical malpractice rates prior to their use. The proposed amendment specifically excludes the basic coverage required of each health care provider from the provisions of H.B. 2081.

KaMMCO would urge your adoption of this amendment.

Senate F.I. & I.
Attachment 3
3/20/97

*Endorsed by the Kansas Medical Society*

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**Statement of Brad Smoot, Legislative Counsel**
**The American Insurance Association**
**Senate Financial Institutions & Insurance Committee**
**Regarding 1997 House Bill 2081**
**March 20, 1997**

The American Insurance Association (AIA) is a trade group of more than 270 property and casualty insurers whose members provide various lines of insurance including workers compensation, homeowners, auto and general liability in Kansas and across the nation. Our member companies directly employ more than 4,000 Kansans. We are pleased to have an opportunity to comment on 1997 House Bill 2081.

AIA and its member companies support insurance regulation that permits and even encourages competition. Kansas already has insurance companies eager to compete. Our information suggests that more than 200 insurers write various kinds of general liability insurance, more than 150 write fire and allied lines and 120 or more write multi-peril coverages.

Kansas law has long required insurers to file premium rates and changes to those rates with the Insurance Department for approval prior to using those rates in the state. The Department was obliged to determine, through exhaustive, expensive and time consuming analysis, whether the rates were too high, too low or unfair to particular classes of buyers. As a result, Kansas consumers do not determine what insurance should cost or what policy provisions should be available. AIA believes that buyers should influence the marketplace just as they now do in the sale of other products and services we all use.

Most states recognize the desirability of open and competitive insurance markets. 35 other states have adopted competitive rating systems for one or more lines of insurance including nearby states of Colorado, Missouri, Iowa, Texas and Wyoming. We applaud the Commissioner's willingness to join other states in opening the insurance market to price and product competition.

Senate FI&I
Attachment 4
3/20/97

Please understand that the changes proposed in HB 2081 do not diminish the importance or authority of the Kansas Insurance Department. The Department still maintains the authority to disapprove rates which violate traditional standards (excessive, inadequate or discriminatory) at any time -- either before the rate is used or afterward. In addition, the bill does not change the Department's power to review and approve insurance policy forms.

In summary, the Kansas Insurance Commissioner and her department are proposing a concept whose time has come. We believe insurers and Kansas consumers will all benefit from open competition and a more efficient filing process. A more extensive bullet point summary on competitive insurance rating is attached to my testimony for your additional review. Thank you for the opportunity to comment.

AMERICAN INSURANCE ASSOCIATION
SOUTHWEST REGIONAL OFFICE

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# Why Competitive Insurance Rating Is Good for KANSAS

- Kansas would benefit greatly from a competitive insurance rating system. The state's current prior approval rating system treats insurance markets the same as public utility markets. Utilities are monopolies, and utility regulators must try to approximate rates that would be produced by a competitive marketplace. But no such guesswork is necessary in a truly competitive industry like insurance, where companies compete in the types of policies they sell as well as their prices.

- Kansas is a very competitive insurance market; 208 insurers write various kinds of general liability insurance, 155 insurers write fire and allied lines, and 124 seek business in commercial multi-peril coverages. A competitive rating system in Kansas would produce prices that reflect the true underlying cost of the product without imposing the additional costs upon consumers that result from prior approval rating.

- As of the end of 1995, 35 states have established competitive rating systems for one or more lines of insurance, including five states close to Kansas -- Colorado, Iowa, Texas, Wyoming and Missouri. As competition among insurers has increased across the country, states have displayed a clear trend of moving to competitive rating.

- A competitive rating system in Kansas would enhance the business climate and encourage more insurance companies to enter the market. The result: greater availability of coverages, lower prices, faster product introduction.

- Regulators would still be needed In Kansas under a competitive rating system to exercise oversight and perform other worthwhile functions, such as licensing requirements, solvency regulation and market conduct examinations. Competitive rating would actually free up regulators' resources to better pursue these other activities, which protect Kansas policyholders.

- Under competitive rating, Kansas regulators could still disapprove a rate if it violates statutorily established rate standards -- usually that rates will not be excessive, inadequate, or unfairly discriminatory. And almost every competitive rating law in existence authorizes regulators to implement more rigid rate regulation if insufficient competition is found in particular insurance markets.

- Instead of conducting time-consuming reviews of historical cost data and future cost projections, Kansas regulators could focus principally on the nature and extent of competition in the insurance marketplace.

- Competitive rating would eliminate costly and time-consuming double-approval. Prior approval requires insurers to file rates before the rates take effect, while most competitive rating laws require insurers to file new rates within a specified number of days after they take effect or allow them to charge new rates immediately upon filing. Kansas insurers currently face a "double prior-approval" system -- first for loss costs and then for rates based on the loss cost filing.

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