

Approved: 1-20-98
Date

MINUTES OF THE HOUSE COMMITTEE ON INSURANCE.

The meeting was called to order by Chairperson Dennis Wilson at 1:34 p.m. on January 14, 1998 in Room 527-S of the State Capitol.

All members were present except: Representative Vaughn Flora, excused
Representative Jim Garner, excused
Representative Broderick Henderson, excused

Committee staff present: Bill Wolff, Legislative Research Department
Robert Nugent, Revisor of Statutes
Beth James, Committee Secretary

Conferees appearing before the committee: Tom Wilder, Kansas Insurance Department

Others attending: See attached list

The meeting was called to order by the new Chairperson, Representative Dennis Wilson. Chairperson Wilson introduced the new committee secretary, Beth James. Ms James had been a committee secretary from 1983 through 1986 for Representative Arthur Douville, of the House Labor and Industry Committee. Representative Don Myers was then introduced. He will be taking the seat of Representative Tom Bradley, who retired.

Copies of "Rules For Conferees Appearing Before House Insurance Committee" and "Committee Rules" will be brought to the next scheduled meeting.

Chairperson Wilson introduced Representative Bob Tomilson as the new Vice-Chairperson of the Committee. He also introduced Nancy Kirk, the ranking minority leader of the committee. Chairperson Wilson praised both of these representatives on the work they did on the Kennedy /Kassebaum bill. The rest of the staff was introduced.

Chairperson Wilson summed up his welcome speech by telling the committee he is hoping for a quality session with as much unity as possible. The committee will meet most Tuesdays, Wednesdays, and Thursdays, and, later in the session on Mondays.

Chairperson Wilson then introduced Tom Wilder from the Kansas Insurance Department. Mr. Wilder brought with him a memorandum of testimony and the introduction of 6 bills. (Attachment #1)

The new bills deal with the licensing of insurance agents, health insurance, homeowners policies; specifically fire liens, financial audits of insurance carriers, the operations of the Insurance Department; specifically redomestication, and premium taxes; the oversight of a company that was left out of the bill having to do with the taxing structure for foreign and domestic companies, that was passed out of this committee last year. Mr. Wilder said that the Insurance Department is hoping the committee will pass this bill quickly so that it gets published in the register because this companies first tax payment is due March 1. Mr. Wilder touched on each bill.

**CONTINUATION SHEET
HOUSE COMMITTEE ON INSURANCE, JANUARY 14, 1998
ROOM 527 AT 1:30 P.M.**

Mr. Wilder said that there is one other bill that is not in this packet. The Health Care Reform Oversight Committee has introduced a bill having to do with HIPAA (HEALTH INSURANCE PORTABILITY & ACCOUNTABILITY ACT OF 1996). There are some technical amendments that need to be made. He is hoping the bill will be referred to this committee.

Mr. Wilder then asked if anyone had any questions. Representative Campbell asked about the uniform producers license. He wanted to know if agents would be taking one all encompassing test. Mr. Wilder said that there would still be sub-categories and agents would still have to take some specific testing depending upon the field of insurance they wanted to sell. The license would just designate them as a producer in specific sub-categories.

Representative Myers asked why Delta Dental was left out of the premium tax bill. Mr. Wilder said they did not mean to leave them out. They just got missed because they are a dental service corporation. They were in a completely separate section of the statute.

Chairperson Wilson said he would entertain a motion to introduce these bills to the committee. Representative Empson so moved. The motion was seconded by Representative Campbell. There was no discussion. The committee voted unanimously to introduce these bills.

There was no old business and there was no new business. The meeting was adjourned at 1.55 p.m. The next meeting will be January 20, 1998.



Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

MEMORANDUM

To: House Insurance Committee

From: Tom Wilder

Re: Bill Introductions

Date: January 14, 1998

I am appearing today to request the introduction of bills by this committee on behalf of the Kansas Insurance Department. The proposed legislation deals with the licensing of insurance agents, health insurance, homeowners policies, financial audits of insurance carriers, the operations of the Insurance Department and premium taxes. Copies of the bills are attached to my testimony.

(1.) Agent and Broker Licensing - The legislation was drafted at the suggestion of the Commissioner's Agents and Brokers Advisory Committee and makes a number of revisions to our licensing statutes including:

- Converting to a uniform "producer" license for all agents and brokers.
- Elimination of the requirement for a specific insurance carrier appointment in order to be licensed as an agent.
- Streamline the licensing process for companies to appoint agents.
- Expand the number of required CE hours and broaden the types of courses an agent can take including "on-line" and computer courses.
- Revise the rebate statute to permit companies to provide gifts of nominal value.
- Allow insurance agencies to appeal the decision of a carrier to drop them as an agency in certain situations.

(2.) Health Insurance - Municipal Group Funded Pools - The bill strengthens the authority of the Department to regulate municipal group funded insurance pools. The pools are required to submit actuarial information to the Department prior to any rate

filing and before the start of any plan year. In addition, the Commissioner is authorized to fine pools which do not timely provide information to the Department on their operations.

(3.) Homeowners Insurance - Fire Liens - The legislation repeals the requirement for cities and counties to file notices of fire liens with the Insurance Department.

(4.) Financial Surveillance - Credit for Reinsurance - The legislation makes a minor change to the credit for reinsurance act to bring it into compliance with the current NAIC model law.

(5.) Department Operations - "Redomestication" - The legislation allows companies which redomesticate their operations to Kansas to file restated Articles of Incorporation with the Secretary of State.

(6.) Taxation - Premium Taxes - The legislation adds Delta Dental to the premium tax changes made last session.

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AN ACT concerning insurance; excess coverage license to effect insurance or reinsurance in nonadmitted companies; gross premiums and tax thereon; penalty; creating an insurance producer license; creating an insurance consultant license; termination of agent's contracts; rebates, amending 40-246b, 40-246c, 40-246d, 40-246e, 40-2,106, 40-2,107 and 40-2404 and repealing the existing sections, and repealing K.S.A. 40-239, 40-240, 40-240f, 40-240g, 40-241, 40-241a, 40-241b, 40-241c, 40-241e, 40-241f, 40-241g, 40-241h, 40-241i, 40-241j, 40-241k, 40-242, 40-244, 40-245, 40-246, 40-246a, 40-246f, 40-247; 40-3701, 40-3702, 40-3703, 40-3704, 40-3705, 40-3706, 40-3707, 40-3708, 40-3709, 40-3710, 40-3711, 40-3712, 40-3713, and 40-3714.

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

Section 1. K.S.A. 40-246b is hereby amended to read as follows: 40-246b. The commissioner of insurance may issue to any duly licensed ~~resident agent~~ *producer* of this state, who has been licensed as a fire or casualty, or both, ~~resident agent~~ *producer* in this or any other state or combination thereof, for three consecutive years immediately prior to application for the type of license herein prescribed, upon proper application therefor, ~~a an annual excess coverage~~ *surplus lines* license to negotiate the types of contracts of fire insurance enumerated in K.S.A. 40-901, and the type of casualty insurance contracts enumerated in K.S.A. 40-1102, or reinsurance, or to place risks, or to effect insurance or reinsurance for persons or corporations other than such ~~agent~~ *producer*, with insurers not authorized to do business in this state. ~~An agent~~ *A producer*, as defined in K.S.A. 40-241e, may place the kind or kinds of business specified in this act for which such ~~agent~~ *producer* is licensed pursuant to ~~K.S.A. 40-240 and 40-241~~ *this act* with an insurer not authorized to do business in this state by placing such business with a person licensed pursuant to the provisions of this act and may share in the applicable commissions on such business. Before any such ~~annual~~ license shall be issued, the applicant shall submit proper application therefor on a form prescribed by the commissioner, which application shall be accompanied by ~~an annual~~ *the fee of \$50* required by Section 26. ~~Excess lines agents licensed by the department on the effective date of this act shall be exempt from the experience requirement.~~

The ~~agent~~ *producer* so licensed shall ~~on or before March 1 of each year,~~ file with the insurance department of this state, *every quarter*, a sworn affidavit or statement to the effect that, after diligent effort, such ~~agent~~ *producer* has been unable to secure the amount of insurance required to protect the property, person, or firm described in such ~~agent's~~ *producer's* affidavit or statement from loss or damage in regularly admitted companies during the preceding *year quarter*. Mere rate differential shall not be grounds for placing a particular risk in a nonadmitted carrier when an admitted carrier would accept such risk at a

different rate. The licensed ~~excess-coverage agent~~ *surplus lines producer* must, prior to placing insurance with an insurer not authorized to do business in this state, obtain the written consent of the prospective named insured and provide such insured the following information in a form promulgated by the commissioner:

(a) A statement that the coverage will be obtained from an insurer not authorized to do business in this state;

(b) a statement that the insurer's name appears on the lists of companies maintained by the commissioner pursuant to K.S.A. 40-246e;

(c) a notice that the insurer's financial condition, policy forms, rates and trade practices are not subject to the review or jurisdiction of the commissioner;

(d) a statement that the protection of the guaranty associations is not afforded to policyholders of the insurer; and,

(e) a statement or notice with respect to any other information deemed necessary by the commissioner pertinent to insuring with an insurer not authorized to do business in this state.

In the event the insured desires that coverage be bound with an insurer not admitted to this state and it is not possible to obtain the written consent of the insured prior to binding the coverage, the ~~excess~~ *surplus lines agent producer* may bind the coverage after advising the insured of the information set out above and shall obtain written confirmation that the insured desires that coverage be placed with an insurer not admitted to this state within 30 days after binding coverage.

When business comes to a licensed ~~excess~~ *surplus lines agent producer* for placement with an insurer not authorized to do business in this state from an ~~agent a producer~~ not licensed as an ~~excess a surplus lines agent producer~~ it shall be the responsibility of the licensed ~~excess~~ *surplus lines agent producer* to ascertain that the insured has been provided the preceding information and has consented to being insured with an insurer not authorized to do business in this state. Each ~~excess~~ *surplus lines agent producer* shall keep a separate record book in such ~~agent's producer's~~ office showing the transactions of fire and casualty insurance and reinsurance placed in companies not authorized to do business in this state, the amount of gross premiums charged thereon, the insurer in which placed, the date, term and number of the policy, the location and nature of the risk, the name of the assured and such other information as the commissioner may require and such record shall be available at all times for inspection by the commissioner of insurance or the commissioner's authorized representatives. ~~The commissioner may revoke or suspend any license issued pursuant to the provisions of this act in the same manner and for the same reasons prescribed by K.S.A. 40-242.~~

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Any policy issued under the provisions of this statute shall have stamped or endorsed in a prominent manner thereon, the following: "This policy is issued by an insurer not authorized to do business in Kansas and, as such, the form, financial condition and rates are not subject to review by the commissioner of insurance and the insured is not protected by any guaranty fund."

If business is placed with a nonadmitted company that is subsequently determined to be insolvent, the ~~excess surplus~~ *surplus lines agent producer* placing such business with such company is relieved of any responsibility to the insured as it relates to such insolvency, if the ~~excess surplus~~ *surplus lines agent producer* has satisfactorily complied with all requirements of this section pertaining to notification of the insured, has properly obtained the written consent of the insured and has used due diligence in selecting the insurer. It shall be presumed that due diligence was used in selecting the insurer if such insurer was on the list compiled pursuant to K.S.A. 40-246e at the time coverage first became effective.

Section 2. K.S.A. 40-246c is hereby amended to read as follows: 40-246c. Each licensed ~~agent surplus lines producer~~ *surplus lines producer* shall file with the commissioner ~~on or before March 1 of each year~~ *every quarter* a statement on a form prescribed by the commissioner, accounting for the gross premiums upon all policies written on risks situated in this state ~~up to January 1 in each year for the year~~ *for the quarter* next preceding and the licensee shall transmit to the commissioner, with such affidavit or statement, a sum equal to ~~6%~~ *4%* of the gross premiums upon all policies procured by such ~~agent producer~~ *agent producer* on risks situated in this state written under the provisions of this act. Any individual placing a policy with an insurer not authorized to do business in this state on a risk domiciled in a state other than this state, but also covering a risk or location in Kansas, shall file with the commissioner a statement in the form prescribed by the commissioner, describing the risk and shall pay to the commissioner a sum equal to ~~6%~~ *4%* of the portion of the premium applicable to the risk located in Kansas within 120 days after writing the risk. The individual responsible for filing the statement shall be the ~~agent producer~~ *agent producer* who signs the policy or the ~~agent producer~~ *agent producer* of record with the company. The commissioner of insurance shall collect double the amount of tax herein provided from any licensee or other responsible individual as herein described who shall fail, refuse or neglect to transmit the required affidavit or statement or shall fail to pay the tax imposed by this section, to the commissioner within the period specified.

Section 3. K.S.A. 40-246d is hereby amended to read as follows: 40-246d. The commissioner may, in the manner prescribed by law, revoke or suspend the license of any ~~agent producer~~ *agent producer* issued pursuant to ~~sections 40-241 and 40-246 of the Kansas Statutes Annotated~~ *this act* when such ~~agent producer~~ *agent producer* shall engage in any transaction permitted only to licensees under the provisions of K.S.A. 40-246b, without first obtaining the license as required by K.S.A. 40-246b.

Section 4. K.S.A. 40-246e is hereby amended to read as follows: 40-246e. The commissioner shall maintain a list of insurers not authorized to do business in this state for review by any interested person. Only those insurers who have filed a certified copy of their most recent annual statement with the commissioner in the form prescribed by K.S.A. 40-225 and amendments thereto or, if domiciled outside the United States, have filed their most recent annual statement with the national association of insurance commissioners may appear on the list. No ~~excess~~ *surplus* lines ~~agent~~ *producer* shall place insurance on a Kansas domiciled risk with an insurer whose name does not appear on this list. No company shall appear on the list whose capital or surplus as shown on the annual statement does not equal or exceed \$1,500,000. Individual unincorporated insurers not listed by the national association of insurance commissioners may appear on the list if they are authorized to transact an insurance business in at least one state of the United States, possess assets which are held in trust for the benefit of American policyholders in the sum of not less than \$50,000,000 and pay the filing fee required by this section. Insurance exchanges who issue contracts on behalf of their members and pay the filing fee required by this section may appear on the list if their individual members have a capital or surplus equal to or in excess of \$1,500,000 and the aggregate capital or surplus of all members of the exchange is at least \$15,000,000. A nonrefundable filing fee of \$200 shall be required of any insurer submitting its annual statement for review by the commissioner for inclusion on such list. The commissioner shall remove an insurer's name from the listing only when: (a) The insurer requests such removal; or (b) the insurer fails to file its latest annual statement and required filing fee prior to May 1 of each year as required by this section; or (c) the commissioner is notified by the insurance supervisory authority of any state of the United States that such insurer has had its authority to transact business restricted; or has been declared insolvent or placed in receivership, conservatorship, rehabilitation or any similar status wherein the business of the insurer is formally supervised by an insurance supervisory authority or (d) the commissioner is notified by the national association of insurance commissioners that any insurer domiciled outside the United States has been declared insolvent or placed in receivership, conservatorship, rehabilitation or any similar status wherein the business of the insurer is formally supervised by an insurance supervisory authority pursuant to an order by any court of competent jurisdiction; or (e) the insurer has failed to effectuate reasonably prompt, fair and equitable payment of just losses and claims in this state; or the insurer encourages, promotes or rewards an agent to violate the provisions of K.S.A. 40-246b and amendments thereto. There shall be no liability on the part of and no cause of action of any nature shall arise against the commissioner, the commissioner's employees, or the state of Kansas as a result of any insurer's name appearing or not appearing on the list required by this section if such list is constructed and maintained in good faith and without malice.

The Commissioner may establish an export list. An "export list" means a list of the types or lines of insurance the commissioner determines are not readily available in Kansas from admitted insurers. Licensed surplus line producers are not required to first survey the admitted market in lines or types of insurance on the export list before placing insurance with a surplus lines insurer.

New Section 5. This act may be cited and shall be known as the Kansas Uniform Insurance Producers License Law.

New Sec. 6. Definitions.

(a) "Agent" means and includes insurance agent, producer, surplus lines agent, and broker.

(b) "Biennial due date" means the date of birth of the licensed insurance producer, limited insurance representative or insurance consultant who renews his or her license or who is required to complete continuing education credits at the end of the biennium following initial licensure or license renewal. The biennial due date of a registered firm shall be the end of the biennium following the date of initial registration with the commissioner or renewal of that registration.

(c) "Biennium" means, for producers born in an odd-numbered year, the period starting with the producer's biennial due date in 1999 and each two year period thereafter; for those producers born in an even-numbered year, the term shall mean the period starting with the producer's biennial due date in 2000 and each two-year period thereafter. The biennium for a registered firm shall be the two year period following registration or renewal of that registration.

(d) "Continuing education credit" or "CEC" equals at least 50 minutes of each clock hour of instruction or the CEC value assigned by the commissioner or commissioner's designee.

(e) "Inactive insurance producer" means a licensed producer who presents evidence satisfactory to the commissioner which demonstrates such producer will not do any act toward transacting the business of insurance for not less than two but not more than four years from the date such evidence is received by the commissioner.

(f) "Insurance" means any of the classes of insurance found in Chapter 40 of the Kansas Statutes Annotated.

(g) "Insurance Producer" or "Producer" means an individual who solicits, negotiates, effects, procures, renews, continues or binds policies of insurance covering persons, property or risks located in Kansas, whether the individual represents the insured or the insurance company. "Insurance Producer" and "Producer" shall include surplus lines producer and insurance consultant, unless stated otherwise in this act. Wherever the term "agent" or "broker" appears in the insurance code it shall mean "insurance producer."

(h) "License" means a document authorizing an individual to act as an insurance producer, surplus lines producer, limited insurance representative, temporary insurance producer or insurance consultant, as specified in such document.

(i) "Limited Insurance Representative" means an individual appointed by an insurance company or registered firm to represent that company or firm regarding the types of insurance set forth in section 10.

(j) "Registered Firm" means a corporation, sole proprietorship or partnership which transacts the business of insurance as an insurance agency.

(k) "State" shall include the District of Columbia, U.S. territories, Canadian territories and states of foreign countries.

(l) "Surplus Lines Producer" means any producer licensed under K.S.A. 40-246b et seq. to negotiate the contracts of insurance specified under K.S.A. 40-246b.

New Section 7. (a) No person shall act as or hold himself or herself out to be an insurance producer unless duly licensed in accordance with this act for the class or classes of insurance as to which he or she acts as an insurance producer.

(b) No person shall engage in the business of offering any advice, counsel, opinion or service with respect to the benefits, advantages or disadvantages under any policy of insurance that could be issued in Kansas, unless that person is

(1) a licensed insurance producer, limited insurance representative or temporary insurance producer offering advice concerning a class of insurance as to which he is licensed to transact business;

(2) engaged or employed as an attorney licensed to practice law, except when soliciting insurance business;

(3) a trust officer of a bank performing duties incidental to his position, except when soliciting insurance business;

(4) an actuary or a certified public accountant engaged or employed in a consulting capacity, performing duties incidental to that position; or

(5) a licensed insurance consultant.

(c) In addition to any other penalty set forth in this act, any individual violating paragraph (a) or (b) is guilty of a Class A misdemeanor. Any individual violating paragraph (a) or (b) and misappropriating or converting any moneys collected in conjunction with such violation is guilty of a Class E felony.

New Section 8. All policies the solicitation of which involves an insurance producer, limited insurance representative, or registered firm shall identify the name of such producer, representative or firm. All policy applications, to include individual life or accident and health applications and master policy applications

for life or accident and health group coverages, shall bear the printed or typed name and signature of the licensee who solicited and wrote the application.

New Section 9. (a) Each application for an insurance producer license shall be made on a form specified by the commissioner, and shall be signed by the applicant declaring under penalty of refusal, suspension or revocation of the license that the statements made in the application are true, correct and complete to the best of the applicant's knowledge and belief. Before approving the application, the commissioner shall be satisfied that the applicant (1) is at least 18 years of age; (2) is competent, trustworthy and of good business reputation; (3) has, pursuant to this act, filed an E&O policy which is in force and effect or is exempt from the requirement of filing such policy; and (4) has paid the fees required by this act.

(b) Applicants for an insurance producer, limited insurance representative, surplus lines and insurance consultant license shall pass a written examination unless exempt pursuant to section 13. The examination shall reasonably test the knowledge of the applicant concerning the class or classes of insurance for which a license is applied, the duties and responsibilities of an insurance producer and the insurance laws and rules of Kansas. The examinations provided for by this section shall be conducted under rules and regulations prescribed by the commissioner. The commissioner may make arrangements, including contracting with an outside testing service, for administering such examinations and collecting the non-refundable testing fee provided for by this act.

If an applicant fails to satisfactorily complete an examination, he or she may retake the examination following a waiting period of not less than seven days from the date of the last attempt. After a second unsuccessful attempt to pass the examination, the applicant must wait until six months from the date of the last attempt to retake the examination. After the third unsuccessful attempt to take the examination, the applicant must petition the commissioner of insurance for permission to take the examination, stating those facts which would justify the conclusion any additional attempts to take the exam would be successful.

Each applicant required to take an examination shall pay the examination fee required by the commissioner and shall separately submit his or her application for license to the commissioner, together with the fees required by this act. An applicant who fails to appear for the examination as scheduled, or appears but fails to pass, shall not be entitled to any refund, and shall be required to submit a new request for examination together with all of the requisite fees before being rescheduled for another examination at a later date.

(c) Before each license renewal, an insurance producer shall satisfactorily complete at least 15 hours of continuing education in accordance with rules prescribed by the commissioner. An insurance producer

holding only a crop insurance, title insurance, bail bond agent, auto rental agent or pre-arranged funeral license shall satisfactorily complete at least five hours of continuing education in accordance with rules prescribed by the commissioner.

Licensees who hold both property or casualty and life or variable contracts or accident and health licenses, or any combination thereof, and who earn CECs from courses certified by the commissioner as qualifying for credit in any class, may apply those CECs toward either the property or casualty or life or accident and health or variable contracts continuing education requirement. However, a CEC shall not be applied to satisfy requirements for both property and casualty or life, accident and health or variable contracts requirements or any combination of those requirements.

The commissioner may not approve a course of study unless the course provides for classroom, seminar, or self-study instruction methods. Classroom study shall include courses provided by teleconferencing approved by the commissioner. A course given in a combination instruction method of classroom or seminar and self-study shall be deemed to be a self-study course unless the classroom or seminar certified hours meets or exceed two-third's of total hours certified for the course. The self-study material used in the combination course must be directly related to and complement the classroom portion of the course in order to be considered for credit. An instruction method other than classroom or seminar shall be considered as self-study methodology. Self-study credit hours require the successful completion of an examination covering the self study material, which shall not be self-evaluated. Provided, however, that if the self-study material is completed through the use of a computerized interactive format approved by the commissioner, to include appropriate validation of successful completion of the self-study material, no additional examination shall be required.

(d) If the required report showing proof of continuing education completion is not received by the commissioner by the biennial due date, the individual producer's qualification and corresponding license or licenses shall be automatically suspended for a period of 90 calendar days or until the producer satisfactorily demonstrates completion of the continuing education requirement, whichever is sooner, and the penalty required by section 26 shall be assessed for each licensee suspended. If such proof is not submitted within 90 calendar days of the biennial due date, the individual producer's license or licenses shall automatically expire. An applicant for an individual producer's license who previously held a license which was terminated for failure to complete continuing education requirements and who seeks relicensing must complete all continuing education requirements he or she would have been required to complete had his or her license not expired before an application for relicensing will be accepted, and pay the reinstatement fee required by section 26.

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(e) The holder of any license shall inform the commissioner in writing of a change in his or her residential or business address within 30 days of such change.

(f) Each provider of a continuing education course required by this section shall pay an annual registration fee and course registration fees for each course being registered as provided by this act.

(g) The commissioner shall accept compliance with continuing education requirements of this section by non-resident producers if said producers submit certification from the insurance supervisory authority in the producer's home state affirming that producer is in compliance the continuing education requirements of that jurisdiction.

(h) The commissioner, in cases of medical hardship, military service, or circumstances outside the control of the licensee, may extend the time within which to fulfill the continuing education requirements of the licensee for a period not to exceed 180 days.

(i) This section shall not apply to inactive insurance producers during the period of inactivity. Upon return to active status or expiration of the maximum inactive period, the producer shall have 180 days to comply with continuing education requirements.

New Section 10. (a) An individual who is at least 18 years of age and whom the commissioner considers to be competent, trustworthy and of good business reputation may obtain a limited insurance representative license, without obtaining an insurance producer license, for one or more of the following classes:

- (1) crop insurance;
- (2) burial or funeral pre-need contracts;
- (3) title insurance;
- (4) bail bond agents
- (5) auto rental agents; and,
- (6) travel insurance agents who act only as agents for transportation tickets of common carriers.

(b) The application for a limited insurance representative license shall be submitted on a form prescribed by the commissioner.

(c) A limited insurance representative may represent more than one insurance company.

(d) An auto rental agency may offer or sell insurance only in connection with and incidental to the rental of motor vehicles, whether at the rental office or by pre-selection of coverage in a master, corporate or group rental agreement, in any of the following general categories: (1) personal accident insurance covering risks of travel, (2) motor vehicle liability insurance, (3) personal effects insurance providing coverage to renters and other occupants of the motor vehicle, (4) roadside assistance and emergency

sickness protection programs, and (5) any other travel or auto-related coverage an auto rental company may offer in connection with and incidental to rental of motor vehicles. No insurance may be issued by a limited insurance representative unless the rental period of the rental agreement does not exceed 90 consecutive days and brochures and other written material clearly and correctly explaining insurance coverages offered by the agency are available for prospective renters and clear and complete disclosures are provided to prospective renters that such coverage may be duplicative of other insurance owned by the renter, that purchase of insurance coverage is not a condition for renting a motor vehicle and describing the process for filing a claim.

Auto rental agencies employing limited insurance representatives shall conduct a training program for each representative, providing instruction on the kinds of insurance coverage offered by the agency

No auto rental agent or auto rental agency shall offer or solicit any insurance other than the coverages described in this section without an appropriate insurance producer license. No auto rental agent or auto rental agency shall advertise or otherwise hold themselves out as licensed insurers, insurance producers or insurance brokers.

New Section 11. The commissioner may issue rules and regulations governing issuance of the following licenses:

(a) Insurance producer. (1) An applicant who has met the requirements of section 9 shall be issued a biennial insurance producer license.

(2) Each insurance producer license shall remain in effect until the producer's next biennial due date. The biennial fee required by this act shall not be required of a licensed insurance producer who enters the military service of the United States. This waiver shall continue in effect until such time as the insurance producer is discharged from military service. Proof of compliance with continuing education requirements shall be waived for the first 15 months of said military service.

(3) An insurance producer who does not maintain his or her insurance producer license in effect pursuant to this section may, within 24 months from the due date of the unpaid biennial fee, make application for the same license without the necessity of passing a written examination. Payment of the fee required by section 26 and proof an E&O liability policy is in force must accompany the application. In addition, proof of compliance with continuing education requirements must accompany the application, where applicable.

(b) Limited insurance representative. (1) An applicant who has met the requirements of section 10 shall be issued a limited insurance representative license.

(2) Each limited insurance representative license shall remain in effect until the representative's next biennial due date. Failure to pay the license fee or to submit the required documents shall cause immediate termination of the limited insurance representative license. Limited insurance representatives shall report proof of continuing education compliance in accordance with section 9.

(3) Each limited insurance representative license may be terminated by the insurance company, agency or registered firm employing the representative.

(c) License content. Each license shall contain the name, residential address and personal identification number of the licensee, the date the license was issued, general conditions relative to the license's expiration or termination, the class or classes of insurance covered by the license, and any other information the commissioner considers proper.

New Section 12. (a) A nonresident may apply for an insurance producer license or limited insurance representative license, without testing, if the applicant holds a similar license from his or her state of residence, provided the public official having supervision of insurance in the applicant's state of residence certifies the applicant is qualified under that state's law to be licensed for the classes of insurance applied for. If the non-resident applicant holds no such license, he or she shall be required to complete the appropriate examinations required by section 9.

(b) A nonresident applicant shall file with the commissioner an affidavit appointing the commissioner and his or her successor in office as such applicant's agent upon whom all lawful process in any action, suit or legal proceeding against the applicant may be served, and shall agree that any such lawful process is of the same legal force and validity as personal service of process upon such applicant. The commissioner shall, within 10 days after receiving process, forward a copy of such process by registered or certified mail to the individual for whom she has received such process at the individual's address of record.

New Section 13. (a) Any individual holding a valid license issued prior to July 1, 1998, is exempt from the examination requirements regarding the classes of insurance for which his or her license is held.

(b) An applicant who becomes a resident of this state and who files with the commissioner certification by the public official having supervision of insurance in the applicant's prior state of residence affirming the applicant has an insurance license in good standing in that state during the prior 12 months shall be required by the commissioner to take only that portion of the examination pertaining to Kansas law and any classes of insurance as to which the applicant has applied for a license, which classes are not covered under the license he or she held in the other state.

New Section 14. (a) Any corporation, sole proprietorship or partnership transacting insurance business as an insurance agency shall register with the commissioner before transacting insurance business

in this state. Such registration shall remain in effect as long as the firm pays the biennial fee required by section 26 by the due date, unless the registration is revoked or suspended pursuant to this act.

(b) Each firm required to register before acting as a registered firm pursuant to this act shall appoint one or more licensed insurance producers who are owners, officers, directors, or partners in the firm to be responsible for the firm's compliance with the insurance laws of this state. Such individual or individuals shall submit to the commissioner a registration form and the fees required by section 26. The commissioner shall prescribe the registration form and may require any documents reasonably necessary to verify the information contained in the registration form. Within 30 days of a change in officers, directors, or partners who are appointed to be responsible for the firm's compliance with the insurance laws of this state, the firm shall report the change to the department.

(c) The registered firm shall inform the commissioner in writing of a change in its business address within 30 days of such change.

(d) Each registered firm shall disclose its members, officers or directors who are authorized to act as insurance producers, and report any changes in such personnel to the commissioner within 30 days of such changes.

(e) Failure to register or provide required information under this section shall subject the registered firm or producer to a monetary penalty of \$10 per day for each working day the required information or registration is late, subject to a maximum of \$50 per calendar year.

New Section 15. (a) The commissioner may grant a temporary insurance producer license to an applicant, without requiring an examination, for a period of 90 days, in the following cases: (1) to the executor or administrator of the estate of a licensed insurance producer, or the surviving next of kin of such person, if no executor or administrator has been appointed; (2) to the designee of a licensed agent who shall enter upon active service in the armed forces of the United States; or, (3) to the designee of a licensed agent who becomes disabled because of sickness or injury. The commissioner in her or his discretion may renew such licenses for an additional term or terms of 90 days each, not exceeding 15 months in the aggregate.

(b) Before any temporary insurance producer license may be approved by the commissioner, there shall be filed with the commissioner an application and the fee required by section 26.

New Section 16. A temporary insurance producer license issued under section 15 authorizes the person named therein to renew any business of the insurance producer or the registered firm whose business is being conducted thereunder which would expire during the term of such license, to collect premiums due and payable to the estate, producer or registered firm, and to perform such other acts of an insurance producer as are incidental to the continuance of any insurance business of the producer or registered firm.

No person so licensed shall, by virtue of such license, be authorized to solicit, negotiate or procure new insurance, unless they also hold a valid producer or limited insurance representative for the solicited business.

New Section 17. (a) Any insurance company or registered firm which terminates an agency contract or agreement with an insurance producer or limited insurance representative, shall, if the cause for such termination is any of the causes for revocation or suspension of a license listed in section 21, notify the commissioner of such termination within 30 days thereafter. The insurance company or registered firm shall provide the commissioner with information, documents, records or statements pertaining to the termination which may be used by the commissioner in any action taken pursuant to section 21. There shall be no liability on the part of, nor shall a cause of action of any nature arise against, the commissioner, the insurance company, registered firm or an authorized representative of them for any information, documents, records, or statements provided pursuant to these section. The commissioner shall terminate forthwith the license of a limited insurance representative whose terminated appointment has been reported by the terminating insurance company or registered firm under this section.

(b) Failure of any insurance company or registered firm to comply with the requirements of paragraph (a) results in a civil penalty of \$1,000 for each violation, in addition to such other penalties as may be provided by the insurance laws of Kansas.

New Section 18. Any individual who, while licensed as an insurance producer, limited insurance representative or temporary insurance producer, is convicted of a felony, shall report such conviction to the commissioner within 30 days of the entry date of the judgment. Within that 30 day period, the individual shall also provide the commissioner with a copy of the judgment, the probation or commitment order and any other relevant documents.

New Section 19. (1) Any person, partnership, association or corporation licensed by the commissioner who due to employment with the department is required to surrender said license pursuant to K.S.A. 40-110 shall be allowed to reapply for a license upon termination of service with the commissioner and the payment of applicable fees. Such applicants shall not be required to take an examination, except for any new class of insurance for which he or she was not previously licensed, or certify completion of continuing education requirements for the period of such service.

(2) Any licensee may apply for inactive producer status. All requests for inactive status shall be made in writing to the commissioner. After a license has been inactive for four years or more, the licensee must meet all the standards of a new applicant before the license may be restored to active status. If requests for

inactive status are not renewed as set forth above, the license will be taken off the inactive status and the license will lapse immediately.

New Section 20. An insurance producer may place insurance business for which he or she is licensed with any insurer for which he or she is not an producer, so long as a contract authorizing that producer to place business with such insurer has been signed before receipt of commission for that business.

New Section 21. License suspension, revocation or denial. (a) Any license issued under this act may be suspended or revoked, and any application for a license may be denied, if the commissioner finds the licensee or applicant has

- (1) willfully violated any provision of the insurance laws of Kansas or any rule or regulation promulgated by the commissioner;
- (2) intentionally made a material misstatement in his or her application for a license;
- (3) obtained or attempted to obtain a license through misrepresentation or fraud;
- (4) misappropriated or converted to his or her own use, or improperly withheld, money required to be held in a fiduciary capacity;
- (5) intentionally misrepresented the terms of any actual or proposed insurance policy;
- (6) in the transaction of business under his or her license, used fraudulent, coercive or dishonest practices, or has demonstrated incompetence, untrustworthiness or financial irresponsibility;
- (7) been, within the past 3 years, convicted of a felony, unless the individual demonstrates to the commissioner sufficient rehabilitation to warrant the public trust;
- (8) knowingly accepted insurance business from an individual who is not licensed;
- (9) failed to appear without reasonable cause or excuse in response to a subpoena lawfully issued by the commissioner;
- (10) had his or her license suspended or revoked or application denied in any other state, district, territory or province on grounds similar to those stated in this section;
- (11) violated any of the provisions of this act;
- (12) failed to report a felony conviction; or
- (13) knowingly employed, contracted or engaged in any insurance related capacity any person whose license as an insurance producer or limited insurance representative or insurance consultant has been revoked within the previous three years or whose request for a license has been refused or suspended pursuant to this section at the time of such employment, engaging or contracting.

(b) Suspension or revocation of a license or the denial of an application pursuant to this act shall be by written order sent to the licensee or applicant by certified or registered mail at the address specified in the

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records of the department. The licensee or applicant may in writing request a hearing within 30 days of the date of mailing. If no written request is made, such order shall be final upon the expiration of said 30 days.

(c) If the licensee or applicant requests a hearing pursuant to this section the commissioner shall issue a written notice of hearing sent to the licensee or applicant by certified or registered mail and his or her address, as specified in the records of the department, stating:

(1) the grounds, charges or conduct which justifies suspension or revocation or denial;

(2) a specific time for the hearing, which may not be less than 20 nor more than 30 days after mailing of notice of the hearing; and

(3) a specific place for the hearing.

(d) Upon the suspension or revocation of a license, the licensee or other person having possession or custody of such license shall promptly deliver it to the department in person or by mail.

(e) Any individual whose license is revoked or whose application is denied pursuant to this section shall be ineligible to apply for any license for three years. No person whose license as an insurance producer or limited representative has been revoked, suspended or denied shall be employed, contracted or engaged in any insurance related capacity during the time the revocation, suspension or denial is in effect.

(f) In addition to or instead of a denial, suspension or revocation of a license pursuant to this section, the licensee may be subjected to a civil penalty of up to \$1,000 for each cause for denial, suspension or revocation.

New Section 22. (a) The commissioner may investigate any applicant for or holder of an insurance producer license, limited insurance representative license, temporary insurance producer license or any registered firm.

(b) All persons being investigated, as well as their officers, directors, insurance producers, limited insurance representatives and temporary insurance producers, shall provide to the commissioner convenient and free access, at all reasonable hours at their offices, to all books, records, documents and other papers relating to such persons' insurance business affairs. The officers, directors, insurance producers, limited insurance representatives, temporary insurance producers and employees shall facilitate and aid the commissioner in such examinations as much as it is in their power to do so.

(c) The commissioner may designate an investigator or investigators to conduct any investigation pursuant to this section. The commissioner or the commissioner's designee may administer oaths and examine under oath any individual relative to the business of the person being investigated.

(d) The investigators designated by the commissioner pursuant to this section may make reports to the commissioner. Any report alleging substantive violations of law or rules and regulations of the

commissioner shall be in writing and be based on facts ascertained from the books, records, documents, papers, statements and other evidence obtained by the examiners. The report of an investigation shall be verified by the investigators.

(e) If a report is made, the commissioner shall either deliver a duplicate thereof to the person being investigated or send such duplicate by certified or registered mail to the person's address of record. The commissioner shall afford the person an opportunity to demand a hearing pursuant to the Kansas administrative procedures act with reference to the facts and other evidence contained in the report.

(f) Any person who violates or aids and abets any violation of a written order issued under this section shall be guilty of a class A misdemeanor and his or her license may be revoked or suspended pursuant to this act.

New Section 23. No insurance company, insurance producer, limited insurance representative, insurance consultant or registered firm shall pay, directly or indirectly, any commission, service fee, brokerage or other valuable consideration to any person for services as an insurance producer, temporary insurance producer or limited insurance representative, or for such services by the person's members, officers, directors or employees, unless the person, and any member, officer, director or employee performing such service held a valid license regarding the class of insurance as to which such service was rendered, or unless the person was a properly registered firm at the time such service was performed. No person, other than a person properly licensed or registered in accordance with this act at the time he or she performs services as an insurance producer, temporary insurance producer, insurance consultant or limited insurance representative shall accept any commission, service fee, brokerage or other valuable consideration for such services. This section shall not prevent payment or receipt of renewal or other deferred commissions to or by any person entitled thereto.

Except for commissions deductible from premiums on insurance policies or contracts for insurance, no insurance producer, limited insurance representative, insurance consultant, or registered firm has any right to compensation from any insured or prospective insured for or on account of the transaction of insurance business, except for fees properly charged by an insurance consultant pursuant to this act.

New Section 24. A producer who negotiates, renews or continues a contract of insurance, including any type of annuity by an insurance company lawfully doing business in this state, and who receives any money or substitute for money as a premium for such a contract from the insured, whether the producer is entitled to any interest in the premium, shall be deemed to hold such premium in trust for the company. If such producer fails to pay the same to the company after written demand made upon such producer, less such producer's commission and any deductions permitted by contract with that company, such failure

shall be prima facie evidence such producer has used or applied the premium for a purpose other than paying the same over to the company. A producer who violates this section shall be guilty of a: (a) Severity level 7, nonperson felony if the value of the premium is \$25,000 or more; (b) Severity level 9, nonperson felony if the value of the premium is at least \$500 by less than \$25,000; or (c) class A nonperson misdemeanor if the value of the premium is less than \$500, except if the value of the premium is less than \$500 and such producer has within five years immediately preceding commission of the crime, been convicted of violating this section two or more times shall be guilty of a severity level 9, nonperson felony

New Section 25. (1) Each licensed producer, surplus line producer, limited insurance representative, insurance consultant and registered firm shall maintain in force while licensed an errors and omissions liability policy covering the individual producer or registered firm in an amount of not less than \$100,000 total liability limit per occurrence, subject to not less than \$500,000 annual aggregate for all claims made during the policy period or covering the individual or registered firm under blanket liability policy or policies, which policy or policies can include other coverage on an excess basis over \$100,000 primary insuring other insurance producers in an amount of not less than \$100,000 total liability limit per occurrence subject to not less than \$500,000 annual aggregate for all claims made during the policy period. Such policy shall be issued by an admitted insurance company or authorized surplus lines insurer for errors and omissions of the producer or registered firm. Self-retention shall be permitted on liability policies covering a producer or registered firm. This section shall not apply to limited insurance representatives, except that registered firms or insurers may include such representatives as covered persons in policies covering producers and others in the firm or company.

(2) Authorized insurance producers of a registered firm may meet the requirements of this section with a policy in the name of the registered firm.

(3) The policy required by this section shall not be required for producers who are on inactive status or for temporary licensees.

New Section 26. (a) The fees required by this act are as follows:

(1) An initial license fee of \$30 for filing an initial application for producer, limited insurance representative, or temporary insurance producer license together with the first biennial registration of \$60;

(2) A biennial registration fee of \$60 at the biennial due date of each producer or limited insurance representative

(3) A fee of \$150 for the initial issuance of an insurance consultant license;

(4) A biennial registration fee of \$50 at the biennial due date of each insurance consultant;

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(5) An initial fee \$60 for a business firm to register and a biennial registration fee of \$60 at each biennial due date for the firm;

(4) An annual registration fee of \$100 for a continuing education provider to register;

(5) an annual registration fee of \$50 for each continuing education course registered, or \$250 per year for all courses, whichever is less;

(6) A license reinstatement fee of \$100 for reinstating a license which lapsed because the applicant failed to comply with continuing education certification or because the registered firm's biennial registration fee was not received.

(b) Every domestic insurer, fraternal benefit society or health maintenance organization who contracts with an insurance producer or limited insurance representative in this state shall be required to pay an annual fee of \$2 for every such producer or representative contracted with in the state of Kansas in the year preceding their report of that contract. Every foreign or alien insurer, fraternal benefit society or health maintenance organization who contracts with an insurance producer or limited insurance representative in this state shall be required to pay an annual fee of \$5 for every such producer or representative contracted with in the state of Kansas in the year preceding their report.

(c) Foreign, domestic and alien insurers, fraternal benefit societies, and health maintenance organizations shall report the number of producers contracted with on the returns required by K.S.A. 40-252.

New Section 27. Exemptions. The provisions of sections one through 26 shall not apply to:

(a) any regularly salaried officer or employee of an insurance company who is engaged in the performance of usual and customary executive, administrative or clerical duties, other than the solicitation of insurance;

(b) salaried employees of any property and casualty insurance producer or registered firm, who devote their full time to clerical and administrative services, including the soliciting of appointments with potential insureds for licensed producers, to include asking the potential insured for the expiration dates of their current insurance, and receipt of premiums in the office of their employer, as long as such employees do not solicit insurance, provide insurance advice to insureds, receive any commissions on such applications and their compensation is not varied by the volume of applications or premium taken or received. Soliciting of appointments on behalf of licensed insurance producers is not soliciting insurance or transacting the business of insurance.

(c) persons who secure and furnish information for the purpose of group life insurance, group annuities, group or blanket accident and health insurance, or for the purpose of enrolling individuals under

such plans, issuing certificates under such plans or otherwise assisting in the administering such plans, where no commission is paid for such service;

(d) officers or employees of advisory organizations, employee trust plans or insurance companies who are engaging in the inspection, rating or classification of risks, or in the supervision of the training of insurance producers, limited insurance representatives or temporary insurance producers, and who are not individually engaged in the solicitation or negotiation of policies or contracts for insurance.

New section 28. A person who acts or holds himself or herself out as an insurance producer, limited insurance representative, surplus lines producer, insurance consultant or temporary insurance producer without holding a valid and current license under this act is engaged in the unauthorized business of insurance. An action in injunction or quo warranto may be brought by the commissioner in the name of the state of Kansas to enjoin the person from performing any such unauthorized acts. The attorney general of the state or the district or county attorney of any county, at the request of the commissioner, shall render such assistance as may be necessary in carrying out the provisions of this section.

The court, if satisfied by affidavit or otherwise that such person has been engaged in the unauthorized business of insurance, may enter a temporary restraining order without notice or bond, enjoining the defendant from further engaging in such conduct. A copy of the verified complaint shall be served on the defendant and the proceedings shall thereafter be conducted as in other civil cases. If it is established the defendant has been or is engaged in any such unlawful business, the court may enter an order of judgment perpetually enjoining the defendant from further engaging in such conduct. The court, in its discretion, may apportion the costs among the parties, including the commissioner's cost of investigating, the cost of filing the complaint, service of process, witness fees and expenses, court reporter charges, and reasonable attorney fees. The injunctive relief available under this section is in addition to and not in lieu of all other penalties and remedies provided in this code.

The authority conferred by this statute shall be in addition to, and not in lieu of, authority to prosecute criminally any person unlawfully engaged in the business of insurance.

It shall be a class A misdemeanor for any person to engage in the unauthorized business of insurance. For purposes of this act, the person shall be construed as being engaged in the unauthorized business insurance if he or she acts as or hold himself or herself out as an insurance producer, limited insurance representative, surplus lines producer, insurance consultant, temporary insurance producer, or titles of similar import, without a valid and current license to conduct the business of insurance issued by the department. The attorney general of the state or the district or county attorney of any county, at the request of the commissioner, shall initiate criminal proceedings in the county in which the prohibited acts occurred.

New section 29. "Insurance consultant" means any person who, for a fee, engages in the business of offering to the public any advice, counsel, opinion, or service with respect to insurable risks, or concerning the benefits, coverages, or provisions under any policy of insurance that could be issued in this state, or involving the advantages or disadvantages of any such policy of insurance, or any formal plan of managing pure risk or the investigation and adjustment of property and casualty losses in this state.

"Risk manager" means any person who is a full-time employee who deals with matters of insurance within the scope of his or her employment, including the supervision of employee benefits.

"Person" means any individual, corporation, partnership, limited liability company, or other entity.

"Pure risk" means any risk that involves the chance of loss or no loss only with no possibility of gain.

New Section 30. No person shall, in or on advertisements, cards, signs, circulars, letterheads, or elsewhere or in any other manner by which public announcements are made, use the title insurance consultant, risk manager, adjuster or any similar title or any title, word, combination of words, or abbreviation indicating that he or she gives or is engaged in the business of offering to the public any advice, counsel, opinion, or service with respect to insurable risks, concerning the benefits, coverages, or provisions under any policy of insurance that could be issued in this state, or involving the advantages or disadvantages of any such policy of insurance, or the investigation and adjustment of losses unless such person holds a license as an insurance consultant under this act.

No person shall act as an insurance consultant until he or she has been licensed as provided by this act. Any person violating this section shall be guilty of a Class A misdemeanor.

A person shall not be deemed to be acting as an insurance consultant under the following circumstances:

- (1) a licensed insurance producer gives advice incidental to the normal course of the producer's insurance business and does not charge a fee other than commissions received from insurance written;
- (2) any attorney, actuary, certified public accountant, teacher of insurance, or trust officer of a bank consults during the normal course of his or her usual business, and only incidental to such business;
- (3) any person adjusts a claim as a salaried employee of an insurance company, third party administrator or other entity licensed by the commissioner or who exclusively contracts with insurance companies or other entities licensed by the commissioner; or
- (4) a person employed as a risk manager consults during the normal course of his or her full-time employment to the company by which such person is employed.

New Section 31. Any person, sole proprietorship, corporation, partnership, or limited liability company engaged in the business of insurance consulting may become licensed as an insurance consultant.

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No license shall be granted to a corporation, partnership, or limited liability company unless the corporation, partnership, or limited liability company designates a licensed consultant who shall have full responsibility for all insurance consulting transactions of the corporation, partnership, or limited liability company within the state. Such designated consultant shall be an officer of the corporation or a member of the partnership or limited liability company and shall have a substantial interest in or be an active participant in the management of the corporation, partnership, or limited liability company. If a corporation, partnership, or limited liability company has more than one office, it shall designate a consultant for each office. In the event a designated consultant of a licensed corporation, partnership, or limited liability company shall either leave the corporation, partnership, or limited liability company or have his or her license terminated, the corporation, partnership, or limited liability company shall have 60 days after such termination in which to designate another qualified licensed consultant, or have its license terminated. Any individual associated with a licensed corporation, partnership, or limited liability company who acts as an insurance consultant shall be a licensed consultant.

New Section 32. A nonresident applicant may qualify for a license under this act as a nonresident consultant. A license shall be issued to a nonresident insurance consultant without examination where the applicant's resident supervisory insurance official certifies he or she is a licensed insurance consultant, or a license deemed substantially equivalent by the commissioner, in good standing for at least 12 months. The commissioner shall accept compliance with continuing education requirements of this section by nonresident insurance consultants if said producers submit certification from the insurance supervisory authority in the consultant's home state affirming he or she is in compliance the continuing education requirements of that jurisdiction.

Any nonresident applicant whose resident state does not license insurance consultants may qualify for a license as a nonresident consultant in this state only upon examination, except as provided in this act.

Obtaining a nonresident license shall constitute sufficient contact with this state for the exercise of personal jurisdiction over such a person in any action, suit, or proceeding instituted by or on behalf of any interested person arising out of the applicant's consulting business in Kansas.

New Section 33. Every individual applicant for a license under this act shall have attained the age of 18, shall be competent, trustworthy, financially responsible, and of good personal and business reputation, and shall have been licensed as an agent, broker, producer or consultant in this state or another state for the three years immediately preceding the date of application or have successfully completed a specific program of insurance study which has a broad national or regional recognition as determined by the commissioner. Application shall be made to the commissioner on forms prescribed by the commissioner

and shall be accompanied by the license fee required by section 26. If the applicant is an individual, the application shall include the applicant's social security number. The commissioner may issue an insurance consultant's license in the following areas: Property and casualty insurance; claims adjusting; and life, health, and annuities. A person may become licensed in one or more of such areas.

All individual applicants for licensure under this act shall be examined by the commissioner in such manner and form as the commissioner prescribes. The applicant shall pass the examination with a grade determined by the commissioner to indicate satisfactory knowledge and understanding of the area of insurance for which the applicant seeks qualification as a consultant.

An applicant for a license under this act shall pay or cause to be paid an examination fee as established by the commissioner in advance of such examination. The fee shall cover all of the examinations given to the applicant at the same time and place. The fee shall not be refunded to the applicant. Examination fees collected under this act shall be remitted to the commissioner, unless the commissioner contracts with an independent testing organization, in which case the applicant shall pay the examination fee directly to such independent testing organization and the fee shall be the amount charged by the testing organization.

The commissioner may require a consultant, after notice and hearing and a finding that the consultant lacks competency, to submit to reexamination if the commissioner has reason to believe the consultant lacks competence.

New Section 34. The commissioner may refuse to issue a consultant's license to an applicant if such applicant has failed to comply with any prerequisite for the issuance of such license, has made a material misstatement in the application for license, or has demonstrated untrustworthiness, financial irresponsibility, or incompetency.

New Section 35. Every insurance consultant who is an individual shall biennially complete a minimum of 10 continuing education credits in courses certified by the commissioner to contain educational material relevant to the business of an insurance consultant. Said CECs shall be in addition to any CECs the insurance consultant may be required to complete by virtue of an insurance producer license, except insurance consultant licensees who hold both insurance consultant and producer licenses may apply up five hours of CECs toward satisfying both producer and insurance consultant continuing education requirements. Such compliance shall be reported as required for producers' licenses under this act and rules and regulations promulgated by the commissioner.

New Section 36. The license shall state the name and resident address of the licensee, date of issuance, whether the licensee is qualified to consult in property and casualty, claims adjusting, life, health, and

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annuities and such other information as the commissioner considers proper. All sole proprietor, corporate, partnership, and limited liability company licenses shall expire two years after their issuance or renewal, and all individual licenses shall expire on the biennial due date of the applicant or licensee. Such individual licenses may be reissued within the ninety-day period before their expiration dates. The department shall establish procedures for the reissuance of licenses. Every licensed consultant shall notify the department within thirty days of any change in his or her residential or business address.

New Section 37. A person holding a license issued under this act shall biennially pay to the department the required license fee as prescribed by this act. The department shall not issue a license to any person who fails to pay the required license fee when it becomes due.

New Section 38. A consultant is obligated, under his or her license, to serve with objectivity and complete loyalty the interests of his or her client and to render his or her client such information, counsel, and service as within the knowledge, understanding, and opinion, in good faith of the licensee, best serves the client's insurance needs and interest.

No contract or agreement with an insurance consultant shall be enforceable by such consultant unless it is in writing and executed in duplicate by the person to be charged or by the authorized representative of such person. The agreement shall define the subject matter of the consulting services, outline the nature of the work to be performed by the consultant, and state the fee for the work. One copy of the executed agreement shall be provided to the customer and the consultant shall retain the other copy of the agreement for not less than five years after completion of the services.

It shall be unlawful for any consultant, or any agency or sales organization with which he or she is connected, to receive any part of any commission or compensation paid by an insurer or agent of an insurer in connection with the sale or writing of any insurance which is within the subject matter of any consulting service performed prior to the sale of insurance and for which such consultant has contracted to receive a fee. For purposes of this section, a renewal of insurance shall not be considered a sale of insurance.

It shall be unlawful to charge a fee for consulting services for services that are already or shall be compensated for by an insurance commission or other compensation for procuring or servicing any insurance or annuity contract.

It shall be unlawful for any consultant, or any agency or sales organization with which he or she is connected, to charge a contingency fee.

Any person may request the commissioner to review the provisions of any insurance consultant agreement to determine whether it complies with this act. The insurance consultant shall provide the

commissioner with a copy of that agreement and any other papers or records pertaining to that agreement, if requested.

New Section 39. The commissioner may revoke, suspend, fine, or place on probation, for such period as he or she may determine, the license of any consultant if, after notice and hearing, he or she determines the licensee has:

- (1) Violated any of the provisions of this act, any insurance laws, or any lawful rule, regulation, or order of the commissioner or the laws of another state or province;
- (2) Recommended the purchase of insurance, annuities, or securities from any authorized insurer in which the consultant or any member of his or her immediate family holds an executive position or holds a substantial interest;
- (3) Received compensation in any form from any agency or other insurance organization for recommending such agency or organization to the consultant's client or entered into any contingency fee contract;
- (4) Knowingly and willfully misrepresented the terms of any actual or proposed insurance contract;
- (5) Been found guilty of any unfair trade practice or of fraud;
- (6) Been convicted of any felony, or convicted of a Class A or B misdemeanor evidencing such licensee is not worthy of the public trust;
- (7) Had a consultant's, producer's or agent's license suspended, revoked, or placed on probation in any other state;
- (8) Failed to submit to a reexamination for competence or failed to pass such examination;
- (9) Demonstrated incompetency, untrustworthiness, or failure to comply with the provisions of his or her insurance consultant's contract; or
- (10) Obtained the license through misrepresentation, fraud, or any cause for which issuance could have been refused had it been known to the commissioner at the time of issuance.

Section 40. K.S.A. 40-2,106 is hereby amended to read as follows: 40-2,106. Definitions. For the purposes of this act: (1) "Independent insurance ~~agent~~ producer" means any licensed ~~agent~~ *producer* representing an insurance company on an independent contractor basis and not as an employee. This term shall include only those producers not obligated by contract to place insurance accounts with any insurance company or group of companies.

(2) "Insurance company" means any property or casualty insurance company admitted to the state of Kansas, except the term shall not include any company which requires membership in the company, as

contained in the articles of incorporation or bylaws of such company, as a prerequisite to insuring that member.

(3) "Commissioner" means the commissioner of insurance.

(4) *"Exclusive insurance producer" means any licensed producer obligated by contract to produce insurance business exclusively for one insurance company or group of companies.*

Section 41. K.S.A. 40-2,107 is hereby amended to read as follows: 40-2,107 (a) Insurance companies may contract with independent insurance producers *or exclusive insurance producers* as to binding authority, policy services, adjusting services, commissions and other subjects of interest between producer and company. Such contracts which have been effective for more than one year shall not be terminated or amended by the company except by mutual agreement or unless 180 days' prior notice has been tendered to the producer, except that this shall not apply to termination's for fraud, material misrepresentation or failure to pay such producer's account less the producer's commission and any disputed items within 10 days after written demand by the company. During such notice period all contractual conditions existing prior to such notice shall continue.

(b) Any independent insurance producer *or exclusive insurance producer* whose contract with an insurance company has been terminated under the provisions of subsection (a) shall have until the policy renewal date, but not more than one year, to place the business written under such terminated contract with another insurance company.

(c) *After an agency contractual relationship has been in effect for a period of three years, an insurance company writing property and casualty loss insurance in this state may not terminate the agency contractual relationship with any producer unless the company has attempted to rehabilitate the producer as provided in subdivision (i). The insurer shall provide written notice of intent to rehabilitate.*

(d) *If the producer and company are not able to reach a mutually acceptable plan of rehabilitation, the company may terminate the agency contractual relationship after providing written notice of termination to the producer at least 90 days in advance.*

(e) *The notice of termination must include the reasons for termination and a copy of the notice of intent to rehabilitate.*

(f) *An insurance company may not terminate an agency contract based upon any of the following:*

(1) *an adverse loss experience for a single year;*

(2) *the geographic location of the producer's auto and homeowners insurance business; or*

(3) *the performance of obligations required of an insurer or producer under Kansas statutes.*

(g) The company shall at the request of the producer renew any insurance contract written by the producer for the company for not more than one year for property and casualty loss insurance during a period of nine months after the effective date of the termination, but in the event any risk does not meet current underwriting standards of the company, the company may decline its renewal, provided that the company shall give the producer not less than 60 days notice of its intention not to renew the contract of insurance.

(h) No new insurance or bond contract shall be written by the producer for the company after the effective date of the termination without the written approval of the company. The producer may increase liability on renewal or in force business for not more than one year for the insured after the effective date of the termination if the increased liability meets the current underwriting standards of the company.

(i) Before notice of termination of the agency contract, the company shall negotiate in good faith in an effort to reach mutual agreement with the producer on a written plan for rehabilitation. The rehabilitation plan must be in writing and must contain the following elements:

(1) identification by the company of the problem areas which need rehabilitation;

(2) what the producer must do to avoid termination;

(3) how the company intends to assist the producer to avoid termination;

(4) the mutually agreed upon corrective action to be undertaken by the producer and the specific target dates for accomplishment;

(5) periodic meeting dates at which the status of rehabilitation will be reviewed; and

(6) the term of the written plan which must extend for at least one year.

(j) All agency contracts in existence on July 1, 1998, are subject to the rehabilitation requirement under subdivision (i). The rehabilitation plan need not be incorporated into the agency contract.

(k) Nothing contained in this section prohibits the earlier termination of an amendment or addendum subsequent to the inception date of the original agency agreement provided the subsequent amendment or addendum provides for termination on shorter notice and the producer agrees in writing to the earlier termination.

(l) During the term of the contract the company shall not refuse to renew such business from the producer as would be in accordance with the company's current underwriting standards.

(m) The provisions of this section do not apply to the termination of an producer's contract for insolvency, abandonment, gross and willful misconduct, or failure to pay over to the company money due to the company after receipt by the producer of a written demand therefor, or after revocation of the producer's license by the commissioner.

(n) All future and presently existing agency contractual relationships between an producer and a company writing property and casualty loss insurance in this state are subject to the provisions of this section.

(o) If it is found, after notice and an opportunity to be heard as determined by the commissioner, that an insurance company has violated this section, the insurance company shall be subject to a civil action by the producer for actual damages suffered because of the premature termination of the contract by the company. The commissioner shall employ the department's investigative and enforcement authority if the commissioner has a reason to believe that an insurer has violated this section. An insurer found in violation of this section is subject to a civil penalty imposed by the commissioner not to exceed \$10,000 per violation.

(p) In the event that a company's compliance with this section is demonstrated to the satisfaction of the commissioner to represent a hazard or potential hazard to the financial integrity of the company, the commissioner may, after a hearing, issue an order relieving the company from its obligation to provide the renewal policies otherwise required by this section.

(q) Upon termination of an agency, a company is prohibited from soliciting business in the notice of nonrenewal required by K.S.A. 40-276a, 40-277, 40-2,112, 40-2,121, and 40-2,122 .

(r) For purposes of this section, a cancellation or termination of an producer's contract is considered to have occurred if the company cancels a line of insurance business or a volume of insurance business that equals or exceeds 75 percent of the insurance business placed by that producer with the company.

Section 42. K.S.A. 40-2404 is amended to read as follows: 40-2404. The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

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

- (a) Misrepresents the benefits, advantages, conditions or terms of any insurance policy;**
- (b) misrepresents the dividends or share of the surplus to be received on any insurance policy;**
- (c) makes any false or misleading statements as to the dividends or share of surplus previously paid on any insurance policy;**
- (d) is misleading or is a misrepresentation as to the financial condition of any person, or as to the legal reserve system upon which any life insurer operates;**

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(e) uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof;

(f) is a misrepresentation for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion or surrender of any insurance policy;

(g) is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy; or

(h) misrepresents any insurance policy as being shares of stock.

(2) *False information and advertising generally.* Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, misrepresentation or statement with respect to the business of insurance or with respect to any person in the conduct of such person's insurance business, which is untrue, deceptive or misleading.

(3) *Defamation.* Making, publishing, disseminating or circulating, directly or indirectly, or aiding, abetting or encouraging the making, publishing, disseminating or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of any person, and which is calculated to injure such persons.

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

(5) *False statements and entries.* (a) Knowingly filing with any supervisory or other public official, or knowingly making, publishing, disseminating, circulating or delivering to any person, or placing before the public, or knowingly causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false material statement of fact as to the financial condition of a person.

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

(6) *Stock operations and advisory board contracts.* Issuing or delivering or permitting agents, officers or employees to issue or deliver, agency company stock or other capital stock, or benefit

certificates or shares in any common-law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance. Nothing herein shall prohibit the acts permitted by K.S.A. 40-232 and amendments thereto.

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

(b) Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees or rates charged for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever.

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

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

"Valuable consideration or inducement" shall not include marketing or promotional items of nominal value. Items with a market value of \$25 or less shall be presumed to be nominal in value.

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

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

(ii) in the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses; or

(iii) readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year.

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

(a) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;

(b) failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

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

(d) refusing to pay claims without conducting a reasonable investigation based upon all available information;

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

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

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

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

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

(j) making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made;

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

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

(m) failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; or

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

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

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

(12) *Statutory violations.* Any violation of any of the provisions of K.S.A. 40-276a or 40-1515 and amendments thereto.

(13) *Disclosure of information relating to adverse underwriting decisions and refund of premium.* Failing to comply with the provisions of K.S.A. 40-2,112 and amendments thereto within the time prescribed in such section.

(14) Rebates and other inducements in title insurance. (a) No title insurance company or title insurance agent, or any officer, employees attorney, agent or solicitor thereof, may pay, allow or give, or offer to pay, allow or give, directly or indirectly, as an inducement to obtaining any title insurance business, any rebate, reduction or abatement of any rate or charge made incident to the issuance of such insurance, any special favor or advantage not generally available to others of the same classification, or any money, thing of value or other consideration or material inducement. The words "charge made incident to the issuance of such insurance" includes, without limitations, escrow, settlement and closing charges.

(b) No insured named in a title insurance policy or contract nor any other person directly or indirectly connected with the transaction involving the issuance of the policy or contract, including, but not limited to mortgage lender, real estate broker, builder, attorney or any officer, employee, agent representative or solicitor thereof, or any other person may knowingly receive or accept, directly or indirectly, any rebate, reduction or abatement of any charge, or any special favor or advantage or any monetary consideration or inducement referred to in (14)(a).

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

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

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

(iii) the payment of reasonable entertainment and advertising expenses.

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

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

(f) No title insurer or title agent may accept an order for title insurance business, issue a title insurance policy, or receive or retain any premium, or charge in connection with any transaction if: (i) The title insurer or title agent knows or has reason to believe that the transaction will constitute controlled business

for that title insurer or title agent, and (ii) 20% or more of the gross operating revenue of that title insurer or title agent during the six full calendar months immediately preceding the month in which the transaction takes place is derived from controlled business. The prohibitions contained in this subparagraph shall not apply to transactions involving real estate located in a county that has a population, as shown by the last preceding decennial census, of 10,000 or less.

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

New Section 43. The commissioner is hereby authorized to adopt such rules and regulations as may be necessary to carry out the provisions of this act, to include outsourcing agent licensing examinations, continuing education requirements, licensing and administration of any of these functions.

DRAFT (1/8/98) Municipal Group Funded Pools

_____ Bill No. _____

AN ACT concerning Kansas group-funded municipal pools, relating to solvency requirements, amending K.S.A. 12-2618, 12-2620 and 44-582 and K.S.A. 1997 Supp. 12-2621 and 44-584 and repealing the existing sections.

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

Section 1. K.S.A. 12-2618 is hereby amended to read as follows: 12-2218.

Application for a certificate of authority to operate a pool shall be made to the commissioner of insurance not less than 30 days prior to the proposed inception date of the pool. The application shall include the following:

(a) A copy of the bylaws of the proposed pool, a copy of the articles of incorporation, if any, and a copy of all agreements and rules of the proposed pool. If any of the bylaws, articles of incorporation, agreements or rules are changed, the pool shall notify the commissioner within 30 days after such change.

(b) Designation of the initial board of trustees and administrator. When there is a change in the membership of the board of trustees or change of administrator, the pool shall notify the commissioner within 30 days after such change.

(c) The address where the books and records of the pool will be maintained at all times. If this address is changed, the pool shall notify the commissioner within 30 days after such change.

(d) Evidence that the annual Kansas gross premium of the pool will be not less than \$250,000 for each of the categories described in subparagraphs (1) through (4) of this subsection: (1) All property insurance under article 9 of chapter 40 of the Kansas Statutes Annotated except motor vehicle physical damage; (2) motor vehicle liability and physical damage insurance; (3) workers compensation and employers' liability insurance; (4) all casualty insurance under article 11 of chapter 40 of the Kansas Statutes Annotated except insurance under categories (2) and (3) above; (5) group sickness and accident insurance if at the date of issue the annual gross premium for such coverage will be not less than \$1,000,000; and (6) group life insurance if at the date of issue the coverage will insure at least 60% of the eligible participants or the total number of persons covered will exceed

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600. The pool shall notify the commissioner within 30 days if the minimum premium qualification or participation requirement is less than that specified in this subsection for any of the above categories of insurance.

(e) An agreement binding the group and each member thereof to comply with the provisions of the workers compensation act if such coverage is to be provided by the pool. For all lines of coverage, all members of the pool shall be jointly liable for the payment of claims to the extent of the assets of the pool.

(f) A copy of the procedures adopted by the pool to provide services with respect to underwriting matters and, with respect to the categories identified in subsection (d)(1) through (4), safety engineering.

(g) A copy of the procedures adopted by the pool to provide claims adjusting and accumulation of income and expense and loss data.

(h) A confirmation that specific and aggregate excess insurance provided by an insurance company holding a Kansas certificate of authority is or will be in effect concurrent with the assumption of risk by the pool, as selected by the board of trustees of the pool, ~~or adequate surplus funds in an amount and form~~ as approved by the commissioner, ~~in the pool.~~ In addition, each pool shall maintain adequate surplus funds in the pool in an amount and form as approved by the commissioner. The pool shall notify the commissioner within 30 days of any change in the specific or aggregate excess insurance carried by the pool. For the purposes hereof, "surplus funds" shall mean retained earnings of the pool after reserves have been established for all known and incurred but not reported losses of the pool and after all other liabilities of the pool, including unearned premium reserves, have been deducted from total assets. The term "adequate surplus funds" shall mean the amount necessary for the pool to fund its self-insured obligations.

(i) After evaluating the application the commissioner shall notify the applicant if the plan submitted is inadequate, fully explaining to the applicant what additional requirements must be met. If the application is denied, the applicant shall have 10 days to make an application for hearing by the commissioner after the denial notice is received. A record shall be made of such hearing, and the cost thereof shall be assessed against the applicant requesting the hearing.

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(j) If any pool fails to file any report or other documentation or information with the commissioner as required by this act or fails to respond to any proper inquiry of the commissioner, the commissioner, after notice and opportunity for hearing, may impose a penalty of up to \$500 for each violation or act, along with an additional penalty of up to \$100 for each week thereafter that such report or other information is not provided to the commissioner.

Section 2. K.S.A. 12-2620 is hereby amended to read as follows: 12-2620. (a) All certificates granted hereunder shall be perpetual unless sooner suspended or revoked by the commissioner or the attorney general.

(b) Whenever the commissioner shall deem it necessary the commissioner may make, or direct to be made, an examination of the affairs and the financial condition of any pool, except that once every five years the commissioner shall conduct an examination of the affairs and the financial condition of each pool. Each pool shall submit a certified independent audited financial statement no later than 90 days after the end of the fiscal year. The financial statement shall include outstanding reserves for claims and for claims incurred but not reported. Each pool shall file reports as to income, expenses and loss data at such times and in such manner as the commissioner shall require. Whenever it appears to the commissioner from such examination or other satisfactory evidence that the ability to pay current and future claims of any such pool is impaired, or that it is doing business in violation of any of the laws of this state, or that its affairs are in an unsound condition so as to endanger its ability to pay or cause to be paid claims in the amount, manner and time due, the commissioner shall, before filing such report or making the same public, grant such pool upon reasonable notice a hearing, and, if on such hearing the report be confirmed, the commissioner shall suspend the certificate of authority for such pool until its ability to pay current and future claims shall have been fully restored and the laws of the state fully complied with. The commissioner may, if there is an unreasonable delay in restoring the ability to pay claims of such pool and in complying with the law, revoke the certificate of authority of such pool to do business in this state. Upon revoking any such certificate the commissioner shall communicate the fact to the attorney general, whose duty it shall be to commence and prosecute an action in the proper court to dissolve such

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pool or to enjoin the same from doing or transacting business in this state. The commissioner of insurance may call a hearing under K.S.A. 40-222B, and amendments thereto, and the provisions thereof shall apply to group-funded pools.

(c) In the event of an insolvency of any municipal group-funded pool, such insolvency shall be handled in the same manner as that of an insolvent insurance company as provided in K.S.A. 40-3605 et seq. and any amendments thereto.

Section 3. K.S.A. 1997 Supp 12-2621 is hereby amended to read as follows: 12-2621. (a) With respect to the categories of coverage described in subparagraphs (d)(1) through (4) of K.S.A. 12-2618, and amendments thereto, premium contributions to the pool shall be based upon appropriate manual classification and rates, plus or minus applicable experience credits or debits, and minus any advance discount approved by the trustees, not to exceed 25% of manual premium. The pool shall use rules, classifications and rates as promulgated by the national council on compensation insurance for workers compensation if the pool has been in operation for less than five years. Such rates shall either be the rates effective June 1, 1994, or the prospective loss costs, as defined in K.S.A. 40-1113C, and amendments thereto, plus expenses necessary to administer the pool. For purposes of subsection (b), the prospective loss costs shall be presumed to be the 70% required to be deposited in the claims fund. If the pool has been in operation for more than five years, the board of trustees may determine such rates and discounts as approved by the commissioner. Premium contributions to the pool for all other lines of insurance shall be based on rates filed by a licensed rating organization or on rates of certain companies filing rates with the commissioner and approved by the commissioner for the pool. In lieu of the foregoing, the board of trustees may determine such classification, rates and discounts as approved by the commissioner.

Premium contributions to any pool providing life insurance or any pool providing group sickness and accident insurance as described in K.S.A. 12-2617, and amendments thereto, shall be based on sound actuarial principles.

Not less than thirty days prior to any rate adjustment and not less than thirty days prior to the end of each plan year, all municipal group-funded pools which provide accident and sickness coverage shall file an actuarial certification with the commissioner which states:

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(1) that the underwriting and rating methods of the pool comply with accepted actuarial principles;

(2) that the premiums charged by the pool are adequate to fund the plan year; and

(3) the projections of earned premiums and incurred claims for the entire period for which the rates were calculated.

(b) An amount equal to at least 70% of the annual premium shall be maintained in a designated depository for the purpose of paying claims in a claims fund account. The remaining annual premium shall be placed into a designated depository for the payment of taxes, fees and administrative and other operational costs in an administrative fund account.

(c) Any moneys for a fund year in excess of the amount necessary to fulfill all obligations of the pool for that fund year, including any obligation to retain adequate surplus funds, as defined by subsection (h) of K.S.A. 12-2618, and amendments thereto, in lieu of specific and aggregate excess insurance, may be declared to be refundable by the trustees not less than 12 months after the end of the fund year upon the approval of the commissioner. Any such refund shall be paid only to those members who remained participants in the pool for an entire year. Payment of previously earned refunds shall not be contingent on continued membership in the pool.

Section 4. K.S.A. 44-582 is hereby amended to read as follows: 44-582. Application for a certificate of authority to operate a group-funded workers compensation pool shall be made to the commissioner of insurance not less than 60 days prior to the proposed inception date of the pool. The application shall include the following:

(a) A copy of the bylaws of the proposed pool, a copy of the articles of incorporation, if any, and a copy of all agreements and rules of the proposed pool. If any of the bylaws, articles of incorporation, agreements or rules are changed, the pool shall notify the commissioner within 30 days after such change.

(b) A copy of the trust agreement securing the payment of workers compensation benefits. If the trust agreement is changed, the pool shall notify the commissioner within 30 days after such change.

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(c) Designation of the initial board of trustees and administrator. When there is a change in the membership of the board of trustees or change of administrator, the pool shall notify the commissioner within 30 days after such change.

(d) The address where the books and records of the pool will be maintained at all times. If this address is changed, the pool shall notify the commissioner within 30 days after such change.

(e) An individual application for each initial member of the pool. Each individual application shall include a current certified financial statement on a form approved by the commissioner.

(f) A current certified financial statement on a form approved by the commissioner showing that (1) the combined net worth of all members applying for coverage on the inception date of the pool is in an amount not less than \$1,000,000 in the case of a pool meeting the requirements of subsection (a) of K.S.A. 44-581 and amendments thereto, or (2) the combined net worth of all members applying for coverage on the inception date of the pool is in an amount of \$1,250,000 in the case of a pool meeting the requirements of subsection (b) of K.S.A. 44-581 and amendments thereto.

(g) A current certified financial statement on a form approved by the commissioner showing the financial ability of the pool to meet its obligations under the workers compensation act.

(h) Evidence that the annual Kansas gross premium of the pool will be (1) not less than \$250,000 in the case of a pool meeting the requirements of subsection (a) of K.S.A. 44-581 and amendments thereto, or (2) not less than \$500,000 in the case of a pool meeting the requirements of subsection (b) of K.S.A. 44-581 and amendments thereto. The annual Kansas gross premium shall be based upon the authorized rates as filed by the national council of compensation insurance.

(i) An indemnity agreement jointly and severally binding the group and each member thereof to comply with the provisions of the workers compensation act. The indemnity agreement shall be in a form acceptable to the commissioner.

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(j)(1) Proof of payment by each member of a pool, which meets the requirements of subsection (a) of K.S.A. 44-581 and amendments thereto, of not less than 25% of the estimated annual premium into a designated depository; and

(2) proof of payment by each member of a pool, which meets the requirements of subsection (b) of K.S.A. 44-581 and amendments thereto, of not less than 35% of the estimated annual premium into a designated depository.

(k) A copy of the procedures adopted by the pool to provide services with respect to underwriting matters and safety engineering.

(l) A copy of the procedures adopted by the pool to provide claims adjusting and reporting of loss data.

(m) A confirmation of specific and aggregate excess insurance, except that, in the case of a pool authorized under subsection (b) of K.S.A. 44-581 and amendments thereto, such pool shall maintain an aggregate excess policy with a limit of not less than \$2,000,000 which attaches at no more than 125% of standard premium.

(n) Any other relevant factors the commissioner may deem necessary.

(p) If any pool fails to file any report or other documentation or information with the commissioner as required by this act or fails to respond to any proper inquiry of the commissioner, the commissioner, after notice and opportunity for hearing, may impose a penalty of up to \$500 for each violation or act, along with an additional penalty of up to \$100 for each week thereafter that such report or other information is not provided to the commissioner.

Section 5. K.S.A. 1997 Supp. 44-584 is hereby amended to read as follows: 44-584.

(a) The application for a new certificate shall be signed by the trustees of the trust fund created by the pool. Any application for a renewal of an existing certificate shall meet at least the standards established in subsections (f), (g), (h), (i), (j), (k), (l), (m) and (n) of K.S.A. 44-582 and amendments thereto. After evaluating the application the commissioner shall notify the applicant that the plan submitted is approved or conversely, if the plan submitted is inadequate, the commissioner shall then fully explain to the applicant what additional requirements must be met. If the application is denied, the applicant shall have 15 days to make an application for hearing by the commissioner after service of the denial

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notice. The hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(b) An approved certificate of authority shall remain in full force and effect until such certificate is suspended or revoked by the commissioner. An existing pool operating under an approved certificate of authority must file with the commissioner, within 120 days following the close of the pool's fiscal year, a current financial statement on a form approved by the commissioner showing the financial ability of the pool to meet its obligations under the workers compensation act and confirmation of specific and aggregate excess insurance as required by law for the pool. If an existing pool's certificate of authority is suspended or revoked, such pool shall have the same rights to a hearing by the commissioner as for applicants for new certificates of authority as set forth in subsection (a) above.

(c) Whenever the commissioner shall deem it necessary the commissioner may make, or direct to be made, an examination of the affairs and financial condition of any pool, except that once every five years the commissioner shall conduct an examination of the affairs and financial condition of each pool. Each pool shall submit a certified independent audited financial statement no later than 90 days after the end of the pool's fiscal year. The financial statement shall include outstanding reserves for claims and for claims incurred but not reported. Each pool shall file payroll records, accident experience and compensation reports and such other reports and statements at such times and in such manner as the commissioner shall require. Whenever it appears to the commissioner from such examination or other satisfactory evidence that the solvency of any such pool is impaired, or that it is doing business in violation of any of the laws of this state, or that its affairs are in an unsound condition so as to endanger its ability to pay or cause to be paid the compensation in the amount, manner and time due as provided for in the Kansas workers compensation act, the commissioner shall, before filing such report or making the same public, grant such pool upon reasonable notice a hearing in accordance with the provisions of the Kansas administrative procedure act, and, if on such hearing the report be confirmed, the commissioner shall suspend the certificate of authority for such pool until its solvency shall have been fully restored and the laws of the state fully complied with.

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The commissioner may, if there is an unreasonable delay in restoring the solvency of such pool and in complying with the law, revoke the certificate of authority of such pool to do business in this state. Upon revoking any such certificate the commissioner shall communicate the fact to the attorney general, whose duty it shall be to commence and prosecute an action in the proper court to dissolve such pool or to enjoin the same from doing or transacting business in this state. The commissioner of insurance may call a hearing under K.S.A. 40-222B, and amendments thereto, and the provisions shall apply to group workers compensation pools.

(d) In the event of an insolvency of any pool, such insolvency shall be handled in the same manner as that of an insolvent insurance company as provided in K.S.A. 40-3605 et seq. and any amendments thereto.

Section 6. K.S.A. 12-2618, 12-2620 and 44-582 and K.S.A. 1997 Supp. 12-2621 and 44-584 are hereby repealed.

Section 7. This act shall take effect and be in force from and after its publication in the Kansas Register.

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DRAFT (11/26/97) Fire Liens

_____ **Bill No.** _____

AN ACT concerning cities and counties, regarding the filing of fire liens, amending K.S.A. 40-3905 and repealing the existing section.

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

Section 1. K.S.A. 40-3905 is hereby amended to read as follows: ~~Every city or county which adopts an ordinance or resolution under the provisions of K.S.A. 40-3901 to 40-3904, inclusive, shall notify the commissioner of insurance within 14 days after the adoption of such ordinance. The commissioner shall notify insurance~~ Insurance companies which issue policies insuring buildings and other structures against loss by fire or explosion ~~within 14 days after notification from cities or counties adopting an ordinance or resolution under~~ are presumed to know the provisions of K.S.A. 40-3901 to 40-3904, inclusive, ~~and unless an insurance company has obtained a certificate issued pursuant to K.S.A. 40-3906 and amendments thereto or has other proof that it has complied with this act, it shall be required to pay to the city or county the amounts covered by liens established by K.S.A. 40-3901 to 40-3904 inclusive, notwithstanding its prior payment to its insured and even if such payment exceeds policy limits. Insurance companies shall have 60 days after the commissioner notifies them of the adoption of such ordinance or resolution to establish procedures within such cities or counties to carry out the provision of this act.~~

Section 2. K.S.A. 40-3905 is hereby repealed.

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

DRAFT (11/26/97) Credit For Reinsurance

_____ **Bill No.** _____

AN ACT concerning reinsurance, amending K.S.A. 1997 Supp. 40-221a and repealing the existing section.

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

Section 1. K.S.A. 1997 Supp. 40-221a is hereby amended to read as follows:

(a) Any insurance company organized under the laws of this state may

(1) with the consent of the commissioner of insurance, cede all of its risks to any other solvent insurance company authorized to transact business in this state or accept all of the risks of any other company,

(2) accept all or any part of an individual risk or all or any part of a particular class of risks which it is authorized to insure, and (3) cede all or any part of an individual risk or all or any part of a particular class of risks to another solvent insurer or insurers having the power to accept such reinsurance.

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

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

(2) The amount of a clean and irrevocable letter of credit issued by a bank which is insured by the federal deposit insurance corporation or its successor if such letter of credit is initially issued for a term of at least one year and by its terms is automatically renewed at each expiration date for at least an additional one-year term unless at least 30 days prior

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written notice of intention not to renew is given to the ceding company by the issuing bank or the assuming company and provided that such letter of credit is issued under arrangements satisfactory to the commissioner of insurance as constituting security to the ceding insurer substantially equal to that of a deposit under paragraph (1) of this subsection; or

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

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

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ceding insurers, their assigns and successors in interest. The trust and the assuming group or insurer shall be subject to examination as determined by the commissioner. The trust, described herein, must remain in effect for as long as the assuming group or insurer shall have outstanding obligations due under the reinsurance agreements subject to the trust.

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

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

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

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

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

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

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

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

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

(c) Any reinsurance ceded by a company organized under the laws of this state or ceded by any company not organized under the laws of this state and transacting business in this state must, pursuant to express provisions contained in the reinsurance agreement, be payable by the assuming insurer on the basis of the liability of the ceding company under the contract or contracts reinsured without diminution because of the insolvency of the ceding company and any such reinsurance agreement which may be canceled on less than 90 days' notice must provide in the reinsurance agreement for a run-off of the reinsurance in force at the date of cancellation.

Section 2. K.S.A. 1997 Supp. 40-221a is hereby repealed.

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

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DRAFT (1/8/98) Redomestication

_____ **Bill No.** _____

AN ACT concerning the changing of the domicile of foreign insurance companies, amending Chapter 25, 1997 Session Laws of Kansas and repealing the existing section.

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

Section 1. Chapter 25, 1997 Session Laws of Kansas is hereby amended to read as follows: Chapter 25, 1997 Session Laws. (a) An insurer organized under the laws of any other state and admitted to do business in this state for the purpose of writing insurance may become a domestic insurer by complying with all of the requirements of law relative to the organization and licensing of a domestic insurer of the same type and by designating the insurer's principal

place of business at a place in this state. The domestic insurer will be entitled to like certificates and licenses to transact business in this state, and shall be subject to the authority and jurisdiction of this state.

(b) A domestic insurer, upon the approval of the commissioner of insurance, may transfer the insurer's domicile to any other state in which it is admitted to transact the business of insurance, and upon such a transfer shall cease to be a domestic insurer, and shall be admitted to this state if qualified as a foreign insurer. The commissioner of insurance shall approve the proposed transfer unless the commissioner determines the transfer is not in the interest of the policyholders of this state.

(c) The certificate of authority, agents' appointments and licenses, rates and other items which the commissioner allows, in the commissioner's discretion, that are in existence at the time an insurer licensed to transact the business of insurance in this state transfers the insurer's corporate domicile to this or any other state by merger, consolidation or any other lawful method shall continue in full force and effect upon transfer if the insurer remains duly qualified to transact the business of insurance in this state. For purposes of existing authorizations and all other corporate purposes, the insurer is deemed the same entity as it was prior to the transfer of its domicile. All outstanding policies of a transferring insurer shall remain in full force and effect and need not be endorsed as to the new name of the company or the company's new location unless so

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ordered by the commissioner. A transferring insurer shall file new policy forms with the commissioner on or before the effective date of the transfer, but may use existing policy forms with appropriate endorsements if allowed by, and under such conditions as approved by, the commissioner. However, every transferring insurer shall notify the commissioner of the details of the proposed transfer and shall file promptly any resulting amendments to corporate documents filed or required to be filed with the commissioner.

(d) The commissioner may promulgate rules and regulations to carry out the purposes of this act.

Section 2. A foreign insurer shall file restated articles of incorporation and a certificate of domestication with the Secretary of State in a form prescribed by the Secretary of State and approved by the Insurance Commissioner, to transfer to this state. A domestic insurer shall file with the Secretary of State a certificate or order issued by the Insurance Commissioner approving the transfer to another state.

Section 3. Chapter 25, 1997 Session Laws of Kansas is hereby repealed.

Section 4. This act shall take effect and be in force from and after its publication in the Kansas register.

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DRAFT 8/7/97 Premium Taxes (Delta Dental)

_____ **Bill No.** _____

AN ACT concerning insurance; schedule of fees and taxes for insurance companies and fraternal benefit societies; amending K.S.A. 1997 Supp. 40-252 and amending the existing section.

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

Sec. 1. K.S.A. 40-252 is hereby amended to read as follows: 40-252.

Every insurance company or fraternal benefit society organized under the laws of this state or doing business in this state shall pay to the commissioner of insurance fees and taxes specified in the following schedule:

A

Insurance companies organized under
the laws of this state:

1. Capital stock insurance companies and mutual legal reserve life insurance companies:

Filing application for sale of stock or certificates of
indebtedness \$25

Admission fees:

Examination of charter and other documents 500
Filing annual statement 100
Certificate of authority 10

Annual fees:

Filing annual statement 100
Continuation of certificate of authority 10

2. Mutual life, accident and health associations:

Admission fees:

Examination of charter and other documents \$500
Filing annual statement 100
Certificate of authority 10

Annual fees:

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Filing annual statement	100
Continuation of certificate of authority	10

3. Mutual fire, hail, casualty and multiple line insurers and reciprocal or interinsurance exchanges:

Admission fees:

Examination of charter and other documents	\$500
Filing annual statement	100
Certificate of authority	10

Annual fees:

Filing annual statement	100
Continuation of certificate of authority	10

In addition to the above fees and as a condition precedent to the continuation of the certificate of authority provided in this code, all such companies shall pay a fee of \$2 for each agent certified by the company and shall also pay a tax annually upon all premiums received on risk located in this state at the rate of 1% for tax year 1997, and 2% for all tax years thereafter per annum less (1) for tax years prior to 1984, any taxes paid on business in this state pursuant to the provisions of K.S.A. 40-1701 to 40-1707, inclusive, and 75-1508 and amendments thereto and (2) for tax years 1984 and thereafter, any taxes paid on business in this state pursuant to the provisions of K.S.A. 75-1508 and amendments thereto and the amount of the firefighters relief tax credit determined by the commissioner of insurance. The amount of the firefighters relief tax credit for a company for the current tax year shall be determined by the commissioner of insurance by dividing

(A) the total amount of credits against the tax imposed by this section for taxes paid by all such companies on business in this state under K.S.A. 40-1701 to 40-1707, inclusive, and amendments thereto for tax year 1983, by (B) the total amount of taxes paid by all such companies on business in this state under K.S.A. 40-1703 and amendments thereto for the tax year immediately preceding the current tax year, and by multiplying the result so obtained by (C) the amount of taxes paid by the company on business in this state under K.S.A. 40-1703 and amendments thereto for the current tax year.

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In the computation of the gross premiums all such companies shall be entitled to deduct any premiums returned on account of cancellations, including funds accepted before January 1, 1997, and declared and taxed as annuity premiums which, on or after January 1, 1997, are withdrawn before application to the purchase of annuities, all premiums received for reinsurance from any other company authorized to do business in this state, dividends returned to policyholders and premiums received in connection with the funding of a pension, deferred compensation, annuity or profit-sharing plan qualified or exempt under sections 401, 403, 404, 408, 457 or 501 of the United States internal revenue code of 1986. Funds received by life insurers for the purchase of annuity contracts and funds applied by life insurers to the purchase of annuities shall not be deemed taxable premiums or be subject to tax under this section for tax years commencing on or after January 1, 1997.

B

Fraternal benefit societies organized under the laws of this state:

Admission fees:

Examination of charter and other documents	\$500
Filing annual statement	100
Certificate of authority	10

Annual fees:

Filing annual statement	100
Continuation of certificate of authority	10

C

Mutual nonprofit hospital service corporations, nonprofit medical service corporations, nonprofit dental service corporations, nonprofit optometric service corporations and nonprofit pharmacy service corporations organized under the laws of this state:

1. Mutual nonprofit hospital service corporations:

Admission fees:

Examination of charter and other documents	\$500
Filing annual statement	100
Certificate of authority	10

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Annual fees:

Filing annual statement 100
Continuation of certificate of authority 10

2. Nonprofit medical service corporations:

Admission fees:

Examination of charter and other documents \$500
Filing annual statement 100
Certificate of authority 10

Annual fees:

Filing annual statement 100
Continuation of certificate of authority 10

3. Nonprofit dental service corporations:

Admission fees:

Examination of charter and other documents \$500
Filing annual statement 100
Certificate of authority 10

Annual fees:

Filing annual statement 100
Continuation of certificate of authority 10

4. Nonprofit optometric service corporations:

Admission fees:

Examination of charter and other documents \$500
Filing annual statement 100
Certificate of authority 10

Annual fees:

Filing annual statement 100
Continuation of certificate of authority 10

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5. Nonprofit pharmacy service corporations:

Admission fees:

Examination of charter and other documents	\$500
Filing annual statement	100
Certificate of authority	10

Annual fees:

Filing annual statement	100
Continuation of certificate of authority	10

In addition to the above fees and as a condition precedent to the continuation of the certificate of authority, provided in this code, every corporation or association shall pay annually to the commissioner of insurance a tax in an amount equal to ~~2%~~ 1% for tax year 1997, and 2% for all tax years thereafter per annum of the total of all premiums, subscription charges, or any other term which may be used to describe the charges made by such corporation or association to subscribers for hospital, medical or other health services or indemnity received during the preceding year. In such computations all such corporations or associations shall be entitled to deduct any premiums or subscription charges returned on account of cancellations and dividends returned to members or subscribers.

D

Insurance companies organized under the laws of any other state, territory or country:

1. Capital stock insurance companies and mutual legal reserve life insurance companies:

Filing application for sale of stock or certificates of indebtedness	\$25
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Admission fees:

Examination of charter and other documents	500
Filing annual statement	100
Certificate of authority	10

Annual fees:

Filing annual statement	100
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Continuation of certificate of authority 10

In addition to the above fees all such companies shall pay \$5 for each agent certified by the company, except as otherwise provided by law.

As a condition precedent to the continuation of the certificate of authority, provided in this code, every company organized under the laws of any other state of the United States or of any foreign country shall pay a tax upon all premiums received during the preceding year at the rate of 2% per annum.

In the computation of the gross premiums all such companies shall be entitled to deduct any premiums returned on account of cancellations, including funds accepted before January 1, 1997, and declared and taxed as annuity premiums which, on or after January 1, 1997, are withdrawn before application to the purchase of annuities, dividends returned to policyholders and all premiums received for reinsurance from any other company authorized to do business in this state and premiums received in connection with the funding of a pension, deferred compensation, annuity or profit-sharing plan qualified or exempt under sections 401, 403, 404, 408, 457 or 501 of the United States internal revenue code of 1986. Funds received by life insurers for the purchase of annuity contracts and funds applied by life insurers to the purchase of annuities shall not be deemed taxable premiums or be subject to tax under this section for tax years commencing on or after January 1, 1997.

2. Mutual life, accident and health associations:

Admission fees:

Examination of charter and other documents \$500
Filing annual statement 100
Certificate of authority 10

Annual fees:

Filing annual statement 100
Continuation of certificate of authority 10

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In addition to the above fees, every such company organized under the laws of any other state of the United States shall pay \$5 for each agent certified by the company, and shall pay a tax annually upon all premiums received at the rate of 2% per annum.

In the computation of the gross premiums all such companies shall be entitled to deduct any premiums returned on account of cancellations, including funds accepted before January 1, 1997, and declared and taxed as annuity premiums which, on or after January 1, 1997, are withdrawn before application to the purchase of annuities, dividends returned to policyholders and all premiums received for reinsurance from any other company authorized to do business in this state and premiums received in connection with the funding of a pension, deferred compensation, annuity or profit-sharing plan qualified or exempt under sections 401, 403, 404, 408, 457 or 501 of the United States internal revenue code of 1986. Funds received by life insurers for the purchase of annuity contracts and funds applied by life insurers to the purchase of annuities shall not be deemed taxable premiums or be subject to tax under this section for tax years commencing on or after January 1, 1997.

3. Mutual fire, casualty and multiple line insurers and reciprocal or interinsurance exchanges:

Admission fees:

Examination of charter and other documents and issuance of certificate of authority	\$500
Filing annual statement	100
Certificate of authority	10

Annual fees:

Filing annual statement	100
Continuation of certificate of authority	10

In addition to the above fees, every such company or association organized under the laws of any other state of the United States shall pay a fee of \$5 for each agent certified by the company and shall also pay a tax annually upon all premiums received at the rate of 2% per annum.

For tax years 1998 and thereafter, the annual tax shall be reduced by the "applicable percentage" of (1) any taxes paid on business in this state pursuant to the provisions of K.S.A. 75-1508 and amendments thereto and (2) the amount of the firefighters relief tax credit determined

by the commissioner of insurance. The amount of the firefighters relief tax credit for a company taxable under this subsection for the current tax year shall be determined by the commissioner of insurance by dividing (A) the total amount of taxes paid by all such companies on business in this state under K.S.A. 40-1701 to 40-1707 and amendments thereto for tax year 1983 as then in effect, by (B) the total amount of taxes paid by all such companies on business in this state under K.S.A. 40-1703 and amendments thereto for the tax year immediately preceding the current tax year, and by multiplying the result so obtained by (C) the amount of taxes paid by the company on business in this state under K.S.A. 40-1703 and amendments thereto for the current tax year. The "applicable percentage" shall be as follows:

Tax Year	Applicable Percentage
1998	10%
1999	20%
2000	30%
2001	40%
2002	50%
2003	60%
2004	70%
2005	80%
2006	90%
2007 and thereafter	100%

In the computation of the gross premiums all such companies shall be entitled to deduct any premiums returned on account of cancellations, all premiums received for reinsurance from any other company authorized to do business in this state, and dividends returned to policyholders.

E

Fraternal benefit societies organized under the laws
of any other state, territory or country:

Admission fees:

Examination of charter and other documents \$500
 Filing annual statement 100
 Certificate of authority 10

Annual fees:

Filing annual statement 100

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Continuation of certificate of authority 10

F

Mutual nonprofit hospital service corporations, nonprofit medical service corporations, nonprofit dental service corporations, nonprofit optometric service corporations and nonprofit pharmacy service corporations organized under the laws of any other state, territory or country:

1. Mutual nonprofit hospital service corporations:

Admission fees:

Examination of charter and other documents \$500
Filing annual statement 100
Certificate of authority 10

Annual fees:

Filing annual statement 100
Continuation of certificate of authority 10

2. Nonprofit medical service corporations, nonprofit dental service corporations, nonprofit optometric service corporations and nonprofit pharmacy service corporations:

Admission fees:

Examination of charter and other documents \$500
Filing annual statement 100
Certificate of authority 10

Annual fees:

Filing annual statement 100
Continuation of certificate of authority 10

In addition to the above fees and as a condition precedent to the continuation of the certificate of authority, provided in this code, every corporation or association shall pay annually to the commissioner of insurance a tax in an amount equal to 2% per annum of the total of all premiums, subscription charges, or any other term which may be used to describe the charges made by such corporation or association to subscribers in this state for hospital, medical or other health services

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or indemnity received during the preceding year. In such computations all such corporations or associations shall be entitled to deduct any premiums or subscription charges returned on account of cancellations and dividends returned to members or subscribers.

G

Payment of Taxes

For the purpose of insuring the collection of the tax upon premiums, assessments and charges as set out in subsection A, C, D or F, every insurance company, corporation or association shall at the time it files its annual statement, as required by the provisions of K.S.A. 40-225, and amendments thereto, make a return, verified by affidavits of its president and secretary or other chief officers, to the commissioner of insurance, stating the amount of all premiums, assessments and charges received by the companies or corporations in this state, whether in cash or notes, during the year ending on the December 31 next preceding.

Commencing in 1985 and annually thereafter the estimated taxes shall be paid as follows: On or before June 15 and December 15 of such year an amount equal to 50% of the full amount of the prior year's taxes as reported by the company shall be remitted to the commissioner of insurance. As used in this paragraph, "prior year's taxes" includes (1) taxes assessed pursuant to this section for the prior calendar year, (2) fees and taxes assessed pursuant to K.S.A. 40-253, and amendments thereto, for the prior calendar year, and (3) taxes paid for maintenance of the department of the state fire marshal pursuant to K.S.A. 75-1508, and amendments thereto, for the prior calendar year.

Upon the receipt of such returns the commissioner of insurance shall verify the same and assess the taxes upon such companies, corporations or associations on the basis and at the rate provided herein and the balance of such taxes shall thereupon become due and payable giving credit for amounts paid pursuant to the preceding paragraph, or the commissioner shall make a refund if the taxes paid in the prior June and December are in excess of the taxes assessed.

H

The fee prescribed for the examination of charters and other documents shall apply to each company's initial application for admission and shall not be refundable for any reason.

Sec. 2. K.S.A. 1997 Supp. 40-252 is hereby repealed.

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Sec. 3. This act shall take effect and be in force from and after its publication in the Kansas Register.

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