

Approved: March 24, 1998  
Date

MINUTES OF THE Senate Committee on Financial Institutions and Insurance.

The meeting was called to order by Chairperson Don Steffes at 9:00 a.m. on March 5, 1998 in Room 529-S of the Capitol.

All members were present except:

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

Conferees appearing before the committee: David Brant, Securities Commissioner  
David Gates, BMA  
Tom Wilder, Kansas Insurance Department  
Roger Viola, SBG  
David Hanson, Kansas Life Insurance Association  
David Barrier, VALIC  
William Sneed, AmVestors  
Brad Smoot, TIAA-CREF

Others attending: See attached list

**Action on HB 2718 - Definition of Securities**

David Brant, Securities Commissioner, requested an amendment to the bill which would make it effective upon publication in the Kansas Register.

Senator Feleciano moved for the approval of the amendment and to report the bill favorably as amended. Motion was seconded by Senator Corbin. Motion carried.

**Hearing on SB 226 - Reciprocity with respect to certain insurance requirements**

David Gates, BMA, informed the Committee they were members of both Kansas and Missouri Guaranty Funds (Attachment 1). He described the funds as being a safety net which works only if it covers everyone. State guaranty funds operate only after companies fail. Problems arise when someone thinks they are covered and find out that they are not as no company is immune from bankruptcy and money problems. TIAA-CREF is operating a commercial insurance company with no guaranty fund backing and the consumers or clients of the company are unaware of this risk. TIAA-CREF has \$215 billion in assets and pays no assessment to the guaranty fund which raises the proportionate amount paid by competing companies who would be held accountable should it fail.

Tom Wilder, Kansas Insurance Department, spoke in support of the bill which would bring TIAA-CREF under the licensing and regulation of the Department (Attachment 2). This company which provides teachers in universities and colleges with retirement programs through annuities and pension plans is the only group of this type in Kansas not covered by the guaranty fund. These retirement plans cannot be moved into an investment plan. TIAA-CREF is licensed in 34 states including New York where it is domiciled. Consumers of the product lack the protection provided to Kansans who buy this type of insurance from other companies.

Roger Viola, Security Benefit Group, said their company was in the same type business as TIAA-CREF as they sell products for retirement and investment with deferred tax payments. (Attachment 3). It is not fair that TIAA-CREF is not subject to insurance regulation nor required to pay into the guaranty assessment fund. TIAA-CREF is a New York based company which is not user-friendly to foreign insurance companies wishing to do business in New York. One of their requirements is that if you do business in New York, you are required to abide by their laws in the other states in which the company does business. He reminded the Committee that size was not the only criteria for judging solvency.

## CONTINUATION SHEET

MINUTES OF THE Senate Committee on Financial Institutions & Insurance, Room 529-S Statehouse, on March 5, 1998.

David Hanson, Kansas Life Insurance Company, asserted their support for passage of the bill which would assure fair competition in the market (Attachment 4). TIAA-CREF is allowed to market their product without a certificate of authority from the Commissioner of Insurance, thereby avoiding any financial burden and regulatory compliance.

David Barrier, VALIC, reported that TIAA-CREF had benefitted from receiving their special exemption and that they are not a licensed seller of insurance (Attachment 5). Retirement needs are now one of the greatest social issues being faced. The largest seller of insurance for retirement should be required to be part of the safety net as no business is too big to fail.

William Sneed, AmVestors, asked the Committee to treat Kansas companies as fairly as they do New York companies (TIAA-CREF is domiciled in New York) doing business in the state (Attachment 6). If the reverse situation were to occur, New York would not make special allowances for Kansas companies doing business in their state. The current law is unfair for tax assessments.

Written testimony was received from the Kansas Association of Life Underwriters (Attachment 7).

Brad Smoot, TIAA-CREF, informed the Committee that the fund was established for the advancement of teaching through a grant from the Carnegie Foundation to benefit college teachers pension plans (Attachment 8). TIAA-CREF was grandfathered out in the Model Act of 1969 which allowed nonprofit insurers providing only annuity and insurance contracts for employees of educational institutions to be excluded from the Act. This is not an urgent issue as it is not in any trouble financially; is not for profit, has a unique and limited market (educational), sells limited products, and has an excellent reputation financially. There are 10,000 persons enrolled in the plan in Kansas. To force them to start paying into the guaranty assessment fund would cost \$68 per person per year. There has been a national campaign by VALIC to force this change; only Indiana has accepted the proposed legislation. Most states do not require non-profit organizations such as TIAA-CREF to pay into guaranty funds.

The hearing was closed at 10:00 a.m. The next meeting is scheduled for March 10, 1998.





A member of the Generali Group

March 5, 1998

To the Kansas Senate Committee on  
Financial Institutions and Insurance

RE: Senate Bill No. 226

Dear Chairman and Committee Members:

I am David A. Gates, Regulatory Affairs Vice President of Business Men's Assurance Company of America, -- more commonly known throughout Kansas and Missouri as "BMA" -- is a Missouri domiciled life insurance company headquartered in Kansas City. BMA sells a broad range of life insurance products, including life and disability insurance, annuities and variable products, 401(k)s and employee benefit programs throughout Kansas and Missouri and the rest of the United States. BMA is a leading life reinsurer and also owns Jones & Babson, a no-load mutual fund management company and BMA Financial Services, Inc., a full-service broker dealer.

I have been a member of the Board of the Kansas Life & Health Guaranty Association since 1995, and from my own hands-on experience first as a regulator and now as a member of the life insurance industry, appreciate fully the critical role the Kansas Guaranty Association plays in assuring the safety and soundness of insurance products sold to Kansas residents. In 1983, I joined the Nevada Insurance Division as General Counsel and Chief Assistant to the Commissioner. In 1984, I became the Commissioner of the Nevada Insurance Division and served in that capacity until 1990. During that time, I was active in many committees and capacities for the National Association of Insurance Commissioners. In 1987, I was elected Vice President of the NAIC, and in 1988 elected its President. I served as President of the NAIC through 1989. Prior to joining BMA in 1991, I served as the Special Deputy Insurance Commissioner of West Virginia for the purpose of liquidating Blue Cross & Blue Shield of West Virginia.

The NAIC Life and Guaranty Association Model Act was adopted in 1970. By 1992, life and health guaranty association legislation had been enacted in all of the states and the District of Columbia.

A unique feature of the guaranty association legislation is that funds are not built-up prior to life company insolvencies. Rather, all guaranty associations assess their

*Senate F.D.S.  
Attachment 1  
3/5/98*



member insurers after an insolvency has occurred to raise the money necessary to pay the covered claims of their state residents against the insolvent insurer. The primary responsibility of the guaranty associations is to assure payment of their residents covered claims either directly, through assets of the insolvent company supplemented by assessments levied against member insurers, or indirectly through an assumption reinsurance agreement entered into with a solvent, assuming company.

The Kansas Guaranty Association funds necessary to fulfill an insolvent life insurer's obligations are obtained by assessments levied against other life insurance companies doing business in the state. The amount that each company must pay depends upon the premiums received by that company in the three most recent years from business written by the company in the state. Assessments are capped on an annual basis to mitigate any adverse impact on a company's financial stability, with Kansas imposing an annual assessment limit of 2 percent. Assessments may be waived for a company if such payment would endanger its ability to meet its obligations, and any waived assessments are paid by the remaining insurers doing business in the state. The key element in assuring that any state guaranty association's responsibility to protect the residents of that state can be met is the degree to which companies writing business in that state pay the required assessments. In states like Kansas, where large competitors like TIAA/CREF get a free ride, the burden placed on other companies paying assessments is proportionately higher, and at the same time the state association's overall capacity to respond to insolvencies is proportionately reduced. In short, the BMA's and other competitors of TIAA/CREF must pay not only their fair share, but TIAA/CREF's as well.

Although the history of the life and health guaranty association legislation is rich with complexities and issues -- some of which remain today -- the bottom line is that the system works and is essential to the safety and soundness of the life insurance industry. Since the seminal Baldwin-United bankruptcy in 1983, when only 34 states had enacted life and health guaranty association laws, through the unprecedented Executive Life and Mutual Benefit insolvencies in 1991, to today's crises including the recent Confederation Life insolvency, the system has responded admirably -- and much more responsibly and efficiently over time.

The success of the guaranty associations in protecting policyholders is, however, largely dependent upon the willingness of each company within the life insurance industry to step forward and commit its assets to this goal. In this respect, it is simply inconceivable that TIAA/CREF, one of the industry's largest members, would, where it can, leave this burden to others.

Senate Bill No. 226 remedies this inequity in Kansas -- and is long overdue. As the Executive Life and Mutual Benefit insolvencies demonstrated, there is no company that is too big to fail. Further, meeting the retirement needs of our country has become

one of our country's most challenging social and economic issues. It is equally important, therefore, that the companies providing these retirement products "insure" their safety and soundness. That is and must be the governing principle of our life insurance industry, and every company participating in it must pay its fair share to assure this result is achieved.

BMA strongly endures Senate Bill No. 226, and are hopeful that it receives your full and fair consideration. We thank you for the opportunity to appear before you today.

Very truly yours,

A handwritten signature in black ink, appearing to read "D. A. Gates". The signature is written in a cursive style with a large initial "D" and a stylized "A".

David A. Gates  
Regulatory Affairs Vice President



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

**MEMORANDUM**

To: Senate Financial Institutions  
and Insurance Committee

From: Tom Wilder

Re: Senate Bill 226 (Insurance Department Jurisdiction)

Date: March 5, 1998

I am appearing today in support of S.B. 226 which would subject TIAA-CREF to the licensing and regulation of the Kansas Insurance Department. This company sells annuity and insurance products to teachers and employees of educational institutions. Thirty-four states license TIAA-CREF as an insurance company and regulate their insurance products. Included on this list is the State of New York, where TIAA-CREF is domiciled.

The Insurance Department believes that any company which sells insurance policies in this state should be covered by our licensing statutes and subject to the jurisdiction of the Insurance Commissioner. Consumers who purchase insurance from TIAA-CREF should be provided the same protections which are provided to Kansans who buy insurance from other companies.

The legislation also imposes guaranty fund assessments and premium taxes on TIAA-CREF. The law should cover all insurers equally, and to the extent that premium taxes and guaranty fund assessments are mandated for life insurance carriers, the same requirements should be imposed on TIAA-CREF.

I would ask that you recommend this legislation favorably for passage.

*Senate F Is D*  
*Attachment 2*  
*3/5/98*



The Security Benefit  
Group of Companies

Security Benefit Life Insurance Company  
Security Benefit Group, Inc.  
Security Distributors, Inc.  
Security Management Company, LLC

700 SW Harrison St.,  
Topeka, Kansas 66636-0001  
(785) 431-3000

Roger K. Viola  
Senior Vice President  
General Counsel and Secretary  
(785) 431-3137

Date: March 5, 1998

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

From: Roger K. Viola  
Security Benefit Life Insurance Company

Re: Senate Bill 226

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My name is Roger Viola. I am Senior Vice President and General Counsel of Security Benefit Life Insurance Company and I am here today to speak in favor of SB 226.

The Security Benefit Group of Companies is a financial services organization specializing in the sale of service of annuity, mutual fund and life insurance products. The parent company, Security Benefit Life Insurance Company, has been in business for over 100 years. The Security Benefit Group of Companies has \$7.5 billion in assets under management and employs approximately 550 Kansans. Our home office is in Topeka.

Annuity products constitute approximately 80 percent of our sales. About 40 percent of our annuity sales are tax-sheltered annuities for employees of schools, hospitals, and charitable organizations. We also provide deferred compensation plans, mutual funds, flexible spending accounts, and other insurance and annuity products to employees of many of these organizations.

We strongly support SB 226. Passage of this bill is essential to restore a level playing field to the annuity business in Kansas by eliminating the unfair and discriminatory privileges currently enjoyed by Teacher's Insurance and Annuity Association of America ("TIAA"), the third largest life insurance company in the United States.

TIAA is a nonprofit New York stock life insurance company with its home office in New York City. Its companion organization, the College Retirement Equities Fund ("CREF"), is a nonprofit New York membership corporation with its headquarters at the same New York location. CREF is also an open-end investment company, or mutual fund. Both companies are controlled by the TIAA Board of Overseers, a nonprofit New York membership corporation.

TIAA and CREF provide annuity and life insurance products and dominate the market for retirement plans at educational and research organizations throughout the United States. They have combined assets of approximately \$200 billion.

*Senate F.D.D.*  
*Attachment 3*  
*3/5/98*



Even though Congress and the Administration have done away with TIAA-CREF's tax-exempt status with the passage of the Taxpayer Relief Act of 1997, TIAA-CREF continues to expand. It has unveiled the startup of a mutual fund family and has entered new markets since it is no longer bound by the Federal tax law restrictions.

Under current law, TIAA qualifies for the exemption found in K.S.A. 40-2702(a)(8), which allows it to transact insurance business in Kansas without obtaining a certificate of authority. Since CREF is not an insurance company, it is also exempt from obtaining a certificate of authority. As a result, TIAA is not required to pay any privilege or premium taxes to the State of Kansas or pay any assessments to the Kansas Life and Health Insurance Guaranty Association.

The Guaranty Association determines the aggregate assessment needed to cover claims of policyholders of insolvent insurance companies. All insurance companies doing business in Kansas pay their fair share except TIAA, which pays nothing. Consequently, the special privileges accorded TIAA injure Kansas life insurance companies in at least two ways: First, we must compete with a company that does not have to incur the cost of taxes and Guaranty Association assessments. Second, we have to pay a larger share of the aggregate assessment because TIAA is exempt.

In Kansas, TIAA is not licensed, pays no premium taxes and does not submit its policies for approval (only for informational purposes). TIAA retains privileges in Kansas that more than two-thirds of the states will not grant or have removed. Several thousand Kansas citizens are counting on TIAA for retirement, some of whom will be expecting an income stream 50 or more years into the future. Yet Kansans effectively waive guaranty fund protection when they choose TIAA over competing companies, a fact often unknown to them. Unlike rates of return, expenses and policy features routinely discussed during the sales process, company representatives cannot lawfully initiate a discussion of guaranty fund coverage. TIAA is not required to disclose the lack of coverage, and its competitors are not allowed to make TIAA policyholders and prospective policyholders aware of this risk.

The result of the current law is that a gigantic New York insurance company benefits from special privileges at the expense of Kansas life insurance companies. There is simply no reason for TIAA to continue to enjoy such unjust and discriminatory privileges.

Therefore, I encourage you to vote in favor of SB 226. Thank you for your time and consideration. I would be happy to address any questions you may have.

David A. Hanson  
Kansas Life Insurance Association  
Topeka, Kansas  
(785) 232-0545

**TESTIMONY ON SB226**

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

RE: Senate Bill No. 226

Mr. Chairman and Members of the Committee:

Thank you for this opportunity to present information on behalf of the Kansas Life Insurance Association, whose members are domestic insurance companies in Kansas.

Our Association supports the passage of Senate Bill 226 to assure fair competition in the market. The domestics feel that current law allows certain foreign life insurance companies an unfair competitive advantage in the market by allowing them to transact insurance business in Kansas without a certificate of authority from the Commissioner of Insurance, thereby avoiding the financial burden and regulatory compliance required of other companies. Requiring licensing and regulatory compliance like other life insurers in Kansas will not only help assure fair competition, but also afford better protection to Kansas insureds. We would therefore urge your favorable consideration of Senate Bill 226. Thank you.

Respectfully,



DAVID A. HANSON

*Senate F&I  
Attachment 4  
3/5/98*

March 5, 1998

**MEMORANDUM OF VALIC IN SUPPORT OF SENATE BILL NO. 226**

The Variable Annuity Life Insurance Company ("VALIC") was founded in 1955 and was one of the first U.S. companies to specialize in providing tax-deferred annuities authorized by Congress in the Internal Revenue Code of 1954. Headquartered in Houston, Texas, VALIC pioneered the benefits of variable annuities over the next several years and helped prompt state legislatures to permit their sale. Today, VALIC is a leading provider of qualified employer-sponsored retirement programs to employees of health care, education, public employer and not-for-profit organizations. With assets of \$35 billion, it manages retirement programs for more than 25,000 organizations and services more than 1.7 million participant accounts through a nationwide network of 22 regional service centers and 39 branch offices. It is one of 9 U.S. and Canadian life insurers receiving the highest ratings from three independent insurance industry analysts -- A.M. Best, Duff & Hells and Standard & Poors. It has long been a staunch nationwide supporter of state life and health guaranty associations, as well as of the National Organization of Life and Health Guaranty Associations.

Kansas' unauthorized insurer laws are set forth in §§ 40-2701 through 40-2709, K.S.A. These uniform laws, first enacted by Kansas in 1969, generally require insurers domiciled in states other than Kansas to obtain a certificate of authority from the Kansas Commissioner of Insurance before selling their insurance products to Kansas residents. Virtually all fifty states have similar "foreign insurer" licensing requirements. The purpose of the Kansas requirement is obvious -- to subject the Kansas activities of foreign insurers to the regulatory safeguards and oversight provisions that the State of Kansas deems appropriate to protect its residents. As stated in part in § 40-2701, K.S.A.:

The legislature hereby declares that it is concerned with the protection of residents of this state against acts by insurers not authorized to do an

*Senate File D*  
*Attachment 5*  
*3/5/98*

insurance business in this state, by the maintenance of fair and honest insurance markets, by protecting authorized insurers which are subject to regulation from unfair competition by unauthorized insurers and by protecting against the evasion of the insurance regulatory laws of this state.

A further statute which protects Kansas residents who purchase insurance products from foreign insurers was enacted in 1972. This, the *Kansas Life and Health Insurance Guaranty Act*, §§ 40-3002 through 40-3018, protects Kansas policyholders from the insolvency of both Kansas domiciled and licensed foreign life insurers. In brief, when a life insurance company insolvency occurs, those Kansas residents owning policies of the failed company are protected by a guaranty fund made-up from assessments on both domestic and foreign insurers holding Kansas certificates of authority and selling policies in Kansas. The actual amount of any company's current assessment is based on that company's premiums from its Kansas policyholders during the three years immediately preceding an insolvency.

When Kansas' unauthorized insurer laws were enacted, they contained certain exemptions from the general requirement that foreign insurers be licensed by Kansas before selling their policies to Kansas residents. These exemptions included the one set forth in § 40-2702(a)(8), which was designed to preserve the then exempt status of certain "direct response" nonprofit insurers selling insurance products to Kansas educational institutions and their employees. This exemption was prompted by the then belief that because these direct product sales, typically by mail, did not involve the suspect activities of insurance agents or brokers, and because these sales were confined to the nonprofit sector, the need for Kansas insurance regulation was minimal. The

principal beneficiary of this exemption was the Teachers Insurance Annuity Association or "TIAA", a New York domiciled insurer.<sup>1</sup>

Inadvertently, however, when the Kansas guaranty fund protections were enacted in 1972, its provisions were made applicable only to "licensed" insurers. Thus, the "TIAA exemption" from foreign insurer licensing set forth in § 40-2702(a)(8) contained an additional and wholly unintended benefit for TIAA — exemption from Kansas guaranty fund participation and assessments! Today, this gratuity has both serious competitive impacts on those insurers which shoulder their guaranty fund responsibilities and significant down sides for Kansas residents owning TIAA insurance because these TIAA policy owners are not protected by the Kansas guaranty fund nor by the guaranty funds of any other state, including TIAA's state of domicile, New York.

The purpose of S.B. 226 is straightforward. It would restrict the exemption from Kansas' unauthorized insurer laws contained in § 40-2702(a)(8), and the concomitant exemption from Kansas guaranty fund participation and assessment, to only those foreign insurers which are exempted from guaranty fund participation and

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<sup>1</sup> Prior to the widespread enactment of unauthorized insurers laws in the 1960s and 1970s, a foreign insurer could generally do business in another state without a license only if it did not maintain a physical presence in that state. At that time, TIAA essentially conducted a mail-order business from its one office in New York City, seldom sending its sales personnel to visit their accounts in other states. The unauthorized insurers laws conferred state jurisdiction over foreign "direct-response" insurers for the first time. Some states, including Kansas, enacted a "TIAA exemption," such as the one set forth in § 40-2702(a)(8); some did not. In states that did not, TIAA became licensed as an insurer without any disruption to its business operations. Kansas today is in a shrinking minority of states that still exempt TIAA from the normal licensing and consumer protection requirements of such states.

assessments by their domiciliary states. The intent of S.B. 226 is to restore fundamental fairness — fundamental fairness for Kansas policyholders of TIAA who deserve the regulatory safeguards of Kansas law and the protection of the Kansas guaranty fund — fundamental fairness for those insurers who seek to compete with TIAA, yet participate in and share the assessments made by the Kansas guaranty fund.<sup>2</sup> In short, why should Kansas continue, gratuitously, to provide TIAA advantages that TIAA's own state of domicile, New York, does not.

Are there any benefits to Kansas or to TIAA's Kansas policyholders if Kansas continues TIAA's doubly-exempt status? Hardly. TIAA's prices to its Kansas policyholders are the same as those to its policyholders where it is licensed and assessed by the guaranty associations of such states. In effect, therefore, TIAA's Kansas policyholders are now paying for the protections enjoyed by TIAA's New York policyholders and those residing in other states where TIAA is licensed and assessed — protections that TIAA has asserted, and will assuredly continue to assert, that it just cannot afford for its Kansas policyholders.<sup>3</sup>

Will S.B. 226 detrimentally impact TIAA or its Kansas policyholders? Not at all. As its recent advertising claims, TIAA is the largest retirement system in the

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<sup>2</sup> These include both Kansas-domiciled companies such as Security Benefit Insurance Company, and those domiciled in other states and licensed to do business in Kansas such as our client, the Variable Annuity Life Insurance Company.

<sup>3</sup> TIAA's position is analogous to a large New York City bank opening branches throughout Kansas and suggesting that though its New York activities are regulated by the FDIC and its New York depositors are protected by FDIC insurance, its Kansas activities and depositors do not need these safeguards.

world.<sup>4</sup> In fact, TIAA is now licensed and assessed for guaranty fund purposes in 34 states. (See Attachment A) In at least one other state, Arizona, it is assessed for guaranty fund purposes even though it is not licensed there. In certain others, including Missouri and Virginia, legislation similar to S.B. 226 is pending.

The justification for S.B. 226 is demonstrated by two contemporaneous legislative developments — one Kansas, the other Federal.

The Kansas legislation is S.B. 15 which, among other things, assures that the protections of the Kansas Guaranty Fund are extended to insurance products purchased to fund liabilities to Kansas employees participating in the Kansas Public Employees Deferred Compensation Program. This Program permits Kansas public employees to defer portions of their compensation until their retirement. It was established and is operated by the State, and has been administered by Aetna since 1981 when the program was started. It is operated very much like a private deferred compensation plan in that the employee is not taxed presently on the deferred amounts, and the employer, here the State, is not responsible for the investment performance of the deferred amounts. The Program and the administration of it by Aetna were reviewed in a 1996 performance audit directed by the Legislative Post Audit Committee. In the ensuing report, the Kansas Guaranty Fund coverage of amounts invested in Aetna fixed return accounts was questioned because such accounts might constitute "unallocated annuities" which are not covered by the Kansas Guaranty Fund. To assure such coverage, the Kansas Senate on February 17 of this year unanimously approved and

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<sup>4</sup> Attached as Attachment B is a copy of the TIAA advertising in the March, 1998 issue of the Smithsonian.

sent to the Governor S.B. 15, which extends the Kansas Guaranty Fund protections to Kansas employees participating in the Deferred Compensation Program. This action was taken notwithstanding the excellent standing and high performance of Aetna, and the stringent regulation of it by the Kansas Insurance Department. Indeed, Aetna supported S.B. 15.

Contrast TIAA/CREF. It is not licensed by, regulated by or even subject to scrutiny by the Kansas Insurance Department. Its products, principally deferred retirement annuities sold to the Kansas public employees of the State's higher education institutions, are not in any way covered by the Kansas Guaranty Fund. TIAA/CREF's only apparent answer — we're too big to fail!

The Federal legislative development is found in the Taxpayer Relief Act of 1997 in which the Congress revoked the tax-exempt status of TIAA/CREF effective beginning January 1, 1998.

In July, 1997, Congress determined that there is no longer any justification for extending Federal tax exemption to TIAA/CREF for pension services that are readily available in the marketplace. Many leading insurers and mutual funds in Kansas and throughout the USA can and do provide for the retirement and insurance needs of nonprofit educational institution employees and are competing for a share of TIAA/CREF's near-monopoly. VALIC, Security Benefit, Lincoln National, Aetna and others underwrite these benefits while complying with all applicable state licensing laws and regulations and contributing to insolvency-rescue efforts through every state's guaranty association.



The Congressional committee reports illustrate the salient issue which S.B. 226 raises: should Federal or state legislatures interfere in areas where competition better serves the market? Congress has said no. So should the Kansas Legislature.

The House Report on the Taxpayer Relief Act of 1997 (H. Rept. No. 105-148 at 495-96) recites:

Present law provides that an organization described in sections 501(c)(3) or (4) of the Code is exempt from tax only if no substantial part of its activities consists of providing commercial-type insurance. When this rule was enacted in 1986 . . . grandfather rules were provided in the 1986 Act relating to the provision. It was provided that the provision does not apply to that portion of the business of the Teachers Insurance Annuity Association-College Retirement Equities Fund which is attributable to pension business . . . .

#### *Reasons for Change*

The Committee is concerned that the continued tax-exempt status of certain organizations that engage in insurance activities gives such organizations an unfair competitive advantage. The Committee believes that the provision of insurance at a price sufficient to cover the costs of insurance generally constitutes an activity that is commercial. Thus, the Committee believes, it is no longer appropriate to continue the grandfather rule that permits certain organizations to retain tax-exempt status with respect to pension business that constitutes commercial-type insurance.

#### *Explanation of Provision*

The [Taxpayer Relief Act] repeals the grandfather rules, applicable to that portion of the business of the Teachers Insurance Annuity Association-College Retirement Equities Fund which is attributable to pension business and to that portion of the business of Mutual of America which is attributable to pension business. The Teachers Insurance Annuity Association and College Retirement Equities Fund and Mutual of America are to be treated for Federal tax purposes as life insurance companies.

There is real validity in the press and Congressional comments that TIAA has enjoyed an "unfair competitive advantage" in an area where there is, in fact, real competition.

A *Wall Street Journal* article (June 27, 1997), on the Congressional initiative to repeal TIAA/CREF's tax-exemption, stated:

In many ways, its [TIAA's] not-for-profit activities appear indistinguishable from those of its traditional competitors. The not-for-profit side of the company, for example, owns \$7 billion in commercial real estate, holds \$20 billion in commercial mortgages and \$80 billion in securities and business loans.

In an editorial on the same subject *Pensions & Investments* stated:

TIAA-CREF . . . is performing no special charitable work in providing pensions to professors and other educational employees now, when there are viable alternatives. There's no reason to give special tax status to an organization that provides services to a group not obviously underprivileged. TIAA-CREF is just another investment company. (Emphasis added.)

Further, the business of TIAA/CREF now goes far beyond what it did in 1969. In the almost 30 years since the Kansas Legislature enacted § 40-2702(a)(8), it has become evident that the present marketing programs employed by TIAA/CREF greatly exceed the activities permitted by § 40-2702(a)(8). This Section exempts only non-profit life insurance companies issuing "insurance and annuity contracts directly from the home office of the company . . . only to or for the benefit of [nonprofit educational] institutions and individuals engaged in the services of such institutions." (Emphasis added). In fact, TIAA is selling products to a much broader range of people than those "engaged in the services of such institutions," including:

- spouses of such individuals;
- divorced spouses of such individuals;
- other relatives of such individuals;
- anyone owning or receiving a benefit from any TIAA product; and
- anyone with any connection with an "eligible institution", even if such "eligible institution" has no TIAA/CREF product but might be eligible for such a product — this could include all sorts of institutions including schools (public as well as private), libraries, zoos, foundations.

While TIAA's activities were initially confined to providing annuities and individual life insurance to college faculties, in the 1950s, TIAA established a variable annuity company, CREF, and began expanding its product line by adding group life and disability-income insurance. "Supplemental" annuities that were not part of an employer's pension plan were added in the 1970s, long-term care in the 1980s and *non-qualified* (non-pension plan) annuities were added in the 1990s.

In the late 1980s, TIAA registered CREF with the SEC so that it could compete head-on with other investment enterprises. And, with the loss of its tax-exemption, the company has stated that it will be looking at new markets. As recently stated in the *Wall Street Journal* of February 24, 1998:

TIAA-CREF, the pension system for college and university employees, is broadening its reach, and so could become yet another big presence in the mutual-fund marketplace.

TIAA-CREF yesterday said what it had only hinted at in the past. No longer limiting its customer base to those employed in education, it will sell its "no-load" mutual funds to the general public.

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Speculation about TIAA-CREF's entry into the public mutual-fund market began in July, when a new federal tax law stripped it of its tax-exempt status.

"As we consider the implications of TIAA and CREF becoming taxable entities, we have an opportunity to re-examine many activities which previously have been foreclosed to us." John Biggs, chairman and chief executive officer of TIAA-CREF, said just before Congress and President Clinton approved the tax plan last summer. "We will explore every avenue for minimizing the negative consequences for our participants of losing the tax exemption."

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S.B. 226 would accomplish in Kansas only what the growing majority of states, and Kansas itself in S.B. 15 and the Congress have determined necessary and appropriate to the protection of and assurance of their resident policyholders. S.B. 226

would eliminate both an historical anomaly and a windfall that are simply without justification in today's world. Fundamental fairness mandates its passage.

Respectfully submitted,

THE VARIABLE ANNUITY  
LIFE INSURANCE COMPANY

By: C. David Barrier  
Lathrop & Gage L.C.

## ATTACHMENT A

TIAA is licensed and assessed for guaranty fund purposes in the following 34 jurisdictions. In all of these jurisdictions, it pays premium taxes on its insurance business. Except in those jurisdictions with an \*, it fully pays guaranty-fund assessments on all its business. In those jurisdictions with an \*, it pays assessments on its insurance business, but not its annuity business. In Florida, it pays annuity assessments on a special formula that may reduce the assessment rate.

Alabama	Mississippi
Arkansas	Montana
California*	Nebraska
Colorado	Nevada*
Connecticut	New Mexico
Delaware	New York (state of domicile)
District of Columbia	North Carolina
Florida	Ohio
Georgia	Oregon
Hawaii	South Carolina
Idaho	South Dakota
Illinois	Texas
Indiana	Utah*
Maine	Washington
Maryland*	West Virginia
Massachusetts	Wisconsin
Minnesota	Wyoming*

*Special Situations:* In Arizona, by ruling of the insurance department, it pays full guaranty assessments even though it is not licensed. In Pennsylvania, by statute, it pays assessments on its insurance business, but not annuities, even though it is not licensed.



**Your grandfather did better**

**than his father.**

**Your father did better**

**than his father.**

**Are you prepared  
to carry on the tradition?**

## **ATTACHMENT B**

**TIAA-CREF.**

**Proven**

**Solutions**

**To Last**

**a Lifetime.**

Upward mobility used to be a fact of life. But life has changed. Today, more than ever, prosperity requires long range planning and innovative thinking. That's why TIAA-CREF has become the largest retirement system in the world, based on assets under management. We offer mutual funds, IRAs, pension, investment, insurance, and personal annuities that can help you build the kind of future you've always imagined—maybe even better. Call 800 226-0147 for more complete information, including charges and expenses, plus a free Personal Investing Kit. It contains our variable annuity prospectuses. Please read them carefully before you invest or send money.

TIAA-CREF. Financial services exclusively for people in education and research.

[www.tiaa-cref.org](http://www.tiaa-cref.org)

**TIAA  
CREF**

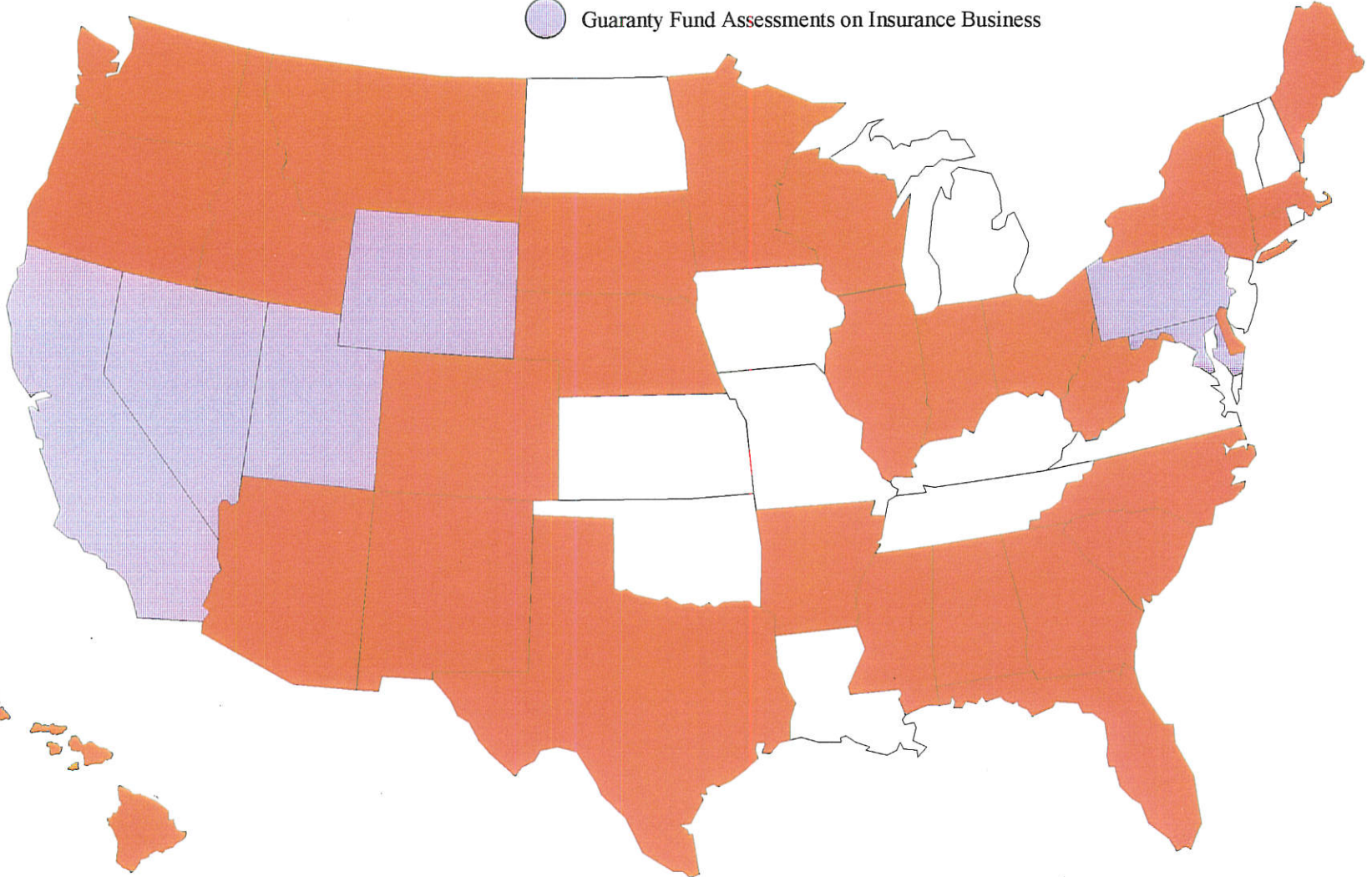
Ensuring the future  
for those who shape it.™

5-12

# TIAA/CREF

5-13

- Guaranty Fund Assessments on Insurance and Annuity Business
- Guaranty Fund Assessments on Insurance Business



5

## MEMORANDUM

TO: The Honorable Don Steffes, Chairman  
Senate Financial Institutions and Insurance Committee

FROM: William W. Sneed, Legislative Counsel  
AmVestors Financial Corporation  
American Investors Life Insurance Company

DATE: March 5, 1998

RE: S.B. 226

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Mr. Chairman, Members of the Committee: My name is Bill Sneed and I represent AmVestors Financial Corporation and its wholly-owned subsidiary, American Investors Life Insurance Company. S.B. 226 amends K.S.A. 40-2702, which requires those entities engaged in the business of insurance within this state to obtain a certificate of authority from the Commissioner of Insurance. In its present form, K.S.A. 40-2702 provides an exemption to the certification requirement for nonprofit life insurance companies operating exclusively for the benefit of those employed by education institutions. The amendment would eliminate this exemption for those companies whose state of domicile applies guaranty fund assessments.

The history of this exemption reaches several decades into the past and is inextricably bound to the history of one company -- the Teachers Insurance and Annuity Association ("TIAA"). To fully understand the exemption in our Kansas statute, the Committee must consider the nature and history of TIAA.

### **The History of TIAA**

Early in this century, when retirement plans were a relatively new concept, Andrew Carnegie, then a trustee of Cornell University, founded a pension program for college faculty.

*Senate JWD  
Attachment 6  
3/5/98*



Although started as a charity, it was restructured shortly thereafter as a legal reserve life insurance company licensed by the New York Insurance Department and run on a business-like basis.

In 1952, TIAA invented the variable annuity, a revolutionary concept in the insurance and pension arenas. TIAA isolated its variable product from its general account by creating a separate company -- under identical management -- called the College Retirement Equities Fund ("CREF"). CREF is not structured as an insurance company, but is licensed as such in a number of states.

Prior to the widespread enactment of the Model Unauthorized Insurers law in the 1960s and 1970s, an insurer could do business in a state without a license it did not maintain a physical presence within the state. At that time, TIAA conducted what was essentially a mail-order business from one office in New York City, seldom sending sales personnel to visit their accounts. The Model Law granted states jurisdiction over these "direct response" insurers for the first time. It also contained exemptions for certain lines of insurance, including an optional "TIAA exemption." Some states enacted the Model Law with the TIAA exemption, some did not. Kansas adopted the Model Law, with the TIAA exemption, in 1969. In states without the exemption, TIAA is licensed as an insurer without any disruption to its business operations.

### **TIAA Today**

During the first four decades of its existence, TIAA confined its activities to providing annuities and individual life insurance policies to college faculties. In the 1950s, TIAA expanded its product line to include group life, medical and disability income insurances. (The medical lines was later dropped.) In the 1970s, the company began issuing "supplemental" 403(b) annuities that were not part of an employer's pension plan. In the 1980s, TIAA added a long-term

care plan. Today, TIAA sells non-qualified annuities as well as its other insurance products.

A few years ago, TIAA registered CREF with the Securities and Exchange Commission so that it could compete head-one with other investment enterprises. While it still uses direct-mail marketing, most of TIAA-CREF's sales efforts are conducted by marketing personnel from its home office, two regional offices, and eleven branch offices nationwide. Today, TIAA-CREF currently provides retirement plans and insurance coverage to approximately 1.8 million individual policyholders and 6,100 colleges, universities and non-profit research institutions. TIAA-CREF assets under management total approximately \$213 billion dollars. It is the largest retirement system and the third largest life insurer in the United States. TIAA-CREF's statutory after-tax earnings during 1996 advanced to a remarkable level of \$938 million dollars.

#### **What the TIAA Exemption Does**

K.S.A. 40-2702(a)(8), the Kansas TIAA exemption, frees TIAA from all licensing regulation, taxation, and guaranty fund participation in this state. TIAA's freedom saves the company millions of dollars per year in premium taxes and guaranty fund assessments alone. This obviously puts TIAA at a huge competitive advantage over other providers of similar products who can only attempt to compete in this atmosphere of special treatment.

Most importantly, TIAA-CREF shifts its fair share of the guaranty fund assessment burden onto other Kansas insurance companies. Not only does TIAA not contribute its share when an insurer becomes insolvent, TIAA forces all other Kansas-Domiciled and licensed companies to pay more than their true share to cover TIAA's failure to participate. I have attached a chart showing the guaranty fund assessments made since 1993. The chart shows the total assessment for each insolvency, what American Investors Life Insurance Company paid in assessments, and what TIAA-

CREF would have paid had it been required to participate in the guaranty fund. As you can see, TIAA-CREF has escaped more than \$1.04 million dollars in guaranty fund assessments since 1993 alone. Further, TIAA-CREF, in the same amount of time, has shifted this \$1.04 million dollars onto the backs of other Kansas insurance companies. Notwithstanding that guaranty fund assessments may be credited against the Kansas premium tax due, requiring Kansas domestic insurers to front the cost of assessments continues to place Kansas companies in a potentially noncompetitive position. We recognize the change in taxation from last year, but that change has not stopped guaranty fund assessments.

American Investors Life Insurance Company does not compete directly with TIAA. However, Kansas-domiciled and licensed insurers vying against TIAA for market share must provide competitive returns while shouldering regulatory, tax and guaranty fund obligations that TIAA avoids.

The most alarming aspect of TIAA-CREF's exemption is that plan participants do not have guaranty fund protection when they choose TIAA products. Potential purchasers may be totally unaware that they are giving up the protection of the guaranty fund when they select TIAA products. This sort of consumer exposure -- especially unknowing exposure -- is completely unacceptable and puts TIAA customers in this state at huge financial risk.

#### **Recent Kansas Action**

This legislature has recently spoken on its view on guaranty funds, pension plans and insurance companies. S.B. 15, recently passed by this legislature and signed into law by Governor Graves, specifically changes Kansas law so that KPERs participants who purchase deferred compensation via annuities will be provided guaranty fund protection and those premiums will be

allocated in the assessment formula. Surely, if the legislature believes that the State's employee retirement program needs guaranty fund protection, the State would want the same protection for its teachers. What is even more incredible is that because of the exemption that TIAA-CREF enjoys, it is not even required to inform its policyholders that they are not covered by the guaranty fund. At the very least, TIAA-CREF should be required to inform all of its Kansas policyholders that they are not covered by the guaranty fund.

### **Eliminating the TIAA Exemption**

TIAA is licensed in 35 jurisdictions. (See Exhibit A.) In a few states where TIAA enjoys the privilege of the TIAA exemption, it is still required to participate in the guaranty association. This is not the case in Kansas. TIAA is seeking to perpetuate privileges in Kansas that more than half the states will not grant or have removed. Note that TIAA is subject to regulation even in its home state of New York.

This begs the question: why does Kansas continue to allow TIAA to escape licensing, regulation, taxation, and guaranty fund participation in our state? We submit that the TIAA exemption must be eliminated to abolish the disparate treatment of TIAA-CREF in relation to similarly situated insurance companies, and to protect TIAA's Kansas customers. Thus, we respectfully request your favorable action on S.B. 226.

We appreciate the opportunity to present our testimony. Please feel free to contact me if you have any questions.

Respectfully submitted,

  
William W. Sneed

**TIAA IS LICENSED IN THE FOLLOWING 35 JURISDICTIONS. IN ALL OF THESE JURISDICTIONS, IT PAYS PREMIUM TAXES ON ITS INSURANCE BUSINESS. IN ALMOST ALL OF THESE JURISDICTIONS, IT FULLY PARTICIPATES IN THE GUARANTY ASSOCIATION.**

<b>Alabama</b>	<b>Montana</b>
<b>Arkansas</b>	<b>Nebraska</b>
<b>California</b>	<b>Nevada</b>
<b>Colorado</b>	<b>New Mexico</b>
<b>Connecticut</b>	<b>New York</b>
<b>Delaware</b>	<b>North Carolina</b>
<b>District of Columbia</b>	<b>Ohio</b>
<b>Florida</b>	<b>Oregon</b>
<b>Georgia</b>	<b>South Carolina</b>
<b>Hawaii</b>	<b>South Dakota</b>
<b>Idaho</b>	<b>Texas</b>
<b>Illinois</b>	<b>Utah</b>
<b>Indiana</b>	<b>Washington</b>
<b>Kentucky</b>	<b>West Virginia</b>
<b>Maine</b>	<b>Wisconsin</b>
<b>Maryland</b>	<b>Wyoming</b>
<b>Massachusetts</b>	
<b>Minnesota</b>	
<b>Mississippi</b>	

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Insolvency	Base Years	Assessment Date	Average Kansas Premium	Average AILIC Premium	Average TIAA Premium	Total Assessment	Actual AILIC Assessment	Adjusted AILIC Assessment	Pro-forma TIAA Assessment
Executive Life - Annuity	88 - 90	10/29/93	\$443,727,995	\$10,947,251	\$25,430,194	\$4,000,000	\$98,684	\$93,335	\$216,816
	88 - 90	11/02/94	428,152,508	10,947,251	25,430,194	1,000,000	25,569	24,135	56,065
	88 - 90	09/02/97	434,631,601	10,947,251	25,430,194	3,525,000	88,786	83,878	194,847
Guarantee Security - Annuity	89 - 91	12/27/93	450,099,208	8,913,098	27,171,216	1,000,000	19,803	18,675	56,930
	89 - 91	04/22/94	450,099,208	8,913,098	27,171,216	800,000	15,842	14,940	45,544
	89 - 91	11/02/94	449,490,783	8,913,098	27,171,216	1,150,000	22,804	21,504	65,554
Inter-American - Annuity	88 - 90	11/12/93	450,447,815	10,947,251	25,430,194	300,000	7,291	6,901	16,032
Midwest Life - Annuity	88 - 90	11/19/93	443,727,995	10,947,251	25,430,194	1,700,000	41,941	39,667	92,147
Mutual Benefit - Annuity	88 - 90	11/08/94	433,589,239	10,947,251	25,430,194	50,000	1,262	1,192	2,770
Mutual Security - Annuity	88 - 90	11/19/93	443,727,995	10,947,251	25,430,194	1,000,000	24,671	23,334	54,204
	88 - 90	11/24/93	443,727,995	10,947,251	25,430,194	1,300,000	32,072	30,334	70,465
National Heritage - Annuity	92 - 94	09/02/97	549,910,860	10,382,909	26,877,121	1,150,000	21,713	20,701	53,588
Old Colony - Annuity	91 - 93	09/02/97	516,733,410	6,246,976	26,686,274	250,000	3,022	2,874	12,277
Unison International - Annuity	89 - 91	12/27/93	450,099,208	8,913,098	27,171,216	1,500,000	29,704	28,013	85,396
American Woodman's - Life	90 - 92	10/27/94	677,746,943	273,067	1,130,505	575,000	232	231	958
Executive Life - Life	88 - 90	11/02/94	606,512,288	841,008	921,763	4,000,000	5,547	5,538	6,070
	88 - 90	12/18/95	607,186,899	841,008	921,763	4,000,000	5,540	5,532	6,063
Guarantee Security - Life	89 - 91	12/29/93	625,794,938	345,542	1,013,931	225,000	124	124	364
	89 - 91	04/19/94	625,750,637	345,542	1,013,931	200,000	110	110	324
	89 - 91	11/08/94	622,749,639	345,542	1,013,931	250,000	139	138	406
Inter-American - Life	88 - 90	11/01/93	633,000,612	841,008	921,763	450,000	598	597	654
Missouri National - Life	86 - 88	04/12/94	643,470,041	3,523,541	754,217	495,000	2,711	2,707	580
Mutual Benefit - Life	88 - 90	11/08/94	606,062,184	841,008	921,763	184,000	255	255	279
New Jersey Life - Life	90 - 92	10/14/94	677,665,857	273,067	1,130,505	442,000	178	178	736
Summit National - Life	91 - 93	09/02/97	741,530,383	200,224	1,220,677	175,000	47	47	288
Unison International - Life	89 - 91	12/27/93	626,098,545	345,542	1,013,931	500,000	276	276	808
						<u>\$30,221,000</u>	<u>\$448,921</u>	<u>\$425,216</u>	<u>\$1,040,165</u>
						Savings for AILIC		<u>(\$23,705)</u>	

Teachers Insurance and Annuity Association of America  
 Premiums and Annuity Considerations  
 State of Kansas  
 1986 - 1994

03/04/98  
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Year	Life Insurance	Annuity Considerations	Accident & Health	Deposit - Type Funds	Totals
1994	\$1,225,665	26,211,584	225,843	1,814,002	\$29,477,094
1993	1,278,137	26,191,934	187,636	945,279	28,602,986
1992	1,279,964	25,468,563	174,826	0	26,923,353
1991	1,103,931	27,453,045	167,519	0	28,724,495
1990	1,007,620	26,016,384	174,410	0	27,198,414
1989	930,243	28,044,219	130,999	0	29,105,461
1988	827,427	22,229,979	109,865	0	23,167,271
1987	750,890	28,417,761	78,571	0	29,247,222
1986	684,335	25,700,784	111,847	0	26,496,966
	<u>\$9,088,212</u>	<u>\$235,734,253</u>	<u>\$1,361,516</u>	<u>\$2,759,281</u>	<u>\$248,943,262</u>

Base Years	Average Life Insurance	Average Annuity Considerations	Average Accident & Health	Average Deposit - Type Funds	Totals
92 - 94	\$1,261,255	\$25,957,360	\$196,102	\$919,760	\$28,334,478
91 - 93	1,220,677	26,371,181	176,660	315,093	28,083,611
90 - 92	1,130,505	26,312,664	172,252	0	27,615,421
89 - 91	1,013,931	27,171,216	157,643	0	28,342,790
88 - 90	921,763	25,430,194	138,425	0	26,490,382
87 - 89	836,187	26,230,653	106,478	0	27,173,318
86 - 88	754,217	25,449,508	100,094	0	26,303,820

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R. David Wentz, J.D., CLU  
Legislation Committee Chairman  
Kansas Association of Life Underwriters

Written Testimony To The Senate Insurance Committee  
Senate Bill 226  
March 5, 1998

Mr. Chairman and Committee Members:

I appreciate the opportunity to provide you with this written testimony on behalf of the many members of the Kansas Association of Life Underwriters.

Our membership consists of more than 2,000 Kansans located in all Kansas counties who are actively engaged as insurance producers and agents.

We are strongly supportive of this bill because it creates a level playing field for all life insurance companies selling life insurance and annuities in Kansas and it protects Kansas consumers.

All such companies should be subject to guaranty fund assessment, and to not require this, provides an unfair advantage to certain companies and hurts the consumer.

Thank you for your consideration of our position.

Sincerely,



R. David Wentz, J.D., CLU

RDW/rfg

*Senate I.D.D.  
Attachment 7  
3/5/98*



**BRAD SMOOT**  
ATTORNEY AT LAW

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Statement of Brad Smoot, Legislative Counsel  
Teachers Insurance and Annuity Association (TIAA)

Kansas Senate  
Financial Institutions and Insurance Committee  
Senate Bill 226  
March 5, 1998

Teachers Insurance and Annuity Association (TIAA) is a non-profit life insurer created by the Carnegie Foundation for the Advancement of Teaching. For ninety years, TIAA has provided low cost pension annuities for employees of public and private institutions of education and research. Together with its companion company, the College Retirement Equities Fund (CREF), TIAA-CREF is the largest pension plan in the world. Close to 10,000 Kansans are TIAA participants. Attached is a list of institutions in which TIAA currently operates employee retirement programs. Exhibit A. We are pleased to have this opportunity to confer with the Committee and express our concern and opposition to Senate Bill 226.

The Uniform Unauthorized Insurers Act, "the Act," regulates out-of-state insurers doing business in Kansas. See K.S.A. 40-2702, et seq. When the law was enacted in 1969, nonprofit insurers providing only annuity and insurance contracts for employees of educational institutions were excluded. A similar provision was contained in the Model Act and TIAA was "grandfathered" out of licensing laws in this and most other states.

The relevant provisions of 1969 Senate Bill 126 were offered by the Insurance Department at the urging of state educational institutions who felt strongly that their pension plans should not be saddled with the obligations and costs associated with the Act. The exemption language was taken from the 1961 KPERS law which also recognized the unique status of the Regents' pension system. Legislators of that era might have considered the non-profit status of TIAA; its unique and limited market (education); its limited products (pension annuities); its superior financial integrity or its historical presence as the first retirement plan for colleges and universities. In

*Senate F D S D*  
*Attachment 8*  
*3/5/98*

any event, they determined that TIAA and its products were different from those companies and policies which should be part of the guaranty association. The issue you discuss today was, in fact, raised and rejected by the Kansas Legislature 19 years ago and the current law passed the Legislature unanimously.

While the Act required nonprofit educational retirement plans to register, pay a fee and file policy forms with the Insurance Department, such exempt insurers were not required to participate in the Kansas life and health insurance guaranty association. See K.S.A. 40-3001, et seq. This law establishes a mechanism to pay claims for failed life, annuity and health insurers. The guaranty association is a private non-profit corporation which assesses its member companies (based on premium volume) when a member company fails. Association members are, in most instances, reimbursed by the State of Kansas through an offset against premium taxes. K.S.A. 40-3016.

Proponents of Senate Bill 226 hope to force TIAA into the guaranty association so that assessments of current association members will be reduced somewhat as the costs are spread across a larger membership. Although presented in terms of "leveling the playing field," this effort is also about "deep pockets" and shifting costs from Kansas pensioners of a not-for-profit company to the shareholders of a for profit competitor.

Currently, twenty two (22) states exempt TIAA annuities from their guaranty funds and seven (7) additional states exempt 403(b) pension annuities (the type of products we provide) from the premium base in calculating guaranty association assessments. Three other states exempt optional retirement plan annuities. Thus, nearly two-thirds of the states do not subject retirement plans of educational institutions to guaranty fund assessments as proposed by Senate Bill 226. See Exhibit B.

If enacted, Senate Bill 226 would assess against the premiums which fund tax qualified pension plans of Kansas teachers. This upsets the symmetry that now exists in the guaranty fund law. Pension plans of Kansans who work in private for-profit industries are not similarly burdened, since 401(k) and 401(a) trust annuities are considered unallocated and thus not included in the fund assessment base. See K.S.A. 40-3005(j).

At this point it is important to note the distinctions between tax qualified annuities offered as part of an employers' retirement plan and non qualified annuities sold to individuals as an investment: 1) Pension plans are controlled by the employer as to contributions, payout (TIAA annuities have a 10 year payout), eligible investments and other features; 2) because of such limitations, pension annuities are tax qualified under the Internal Revenue Code; 3) pension plans ordinarily contain employer contributions and 4) investment by the individual is limited to a percentage of earnings. Individual non-qualified investment annuities have none of these features. Yet, precisely because of these safeguards, employer-based retirement plans are different and unlikely to generate the failures which require a guaranty fund.

TIAA 403(b) retirement annuities are the heart of pension plans for public and non-profit educational institutions across Kansas. We were here before the state had a pension plan (KPERS) and before others got into this business. TIAA is financially sound. Its pensioners do not need the guaranty fund. KPERS and private employer-based pension plans do not participate in the guaranty fund and neither should Kansas not-for-profit or public employers. In short, TIAA is not a participant in the guaranty association for good and historic reasons.

In addition, assessments made by the guaranty fund will add costs to pensioners of Kansas educational and research institutions. Since qualified pension plans are not subject to premium taxes, TIAA could recover only a small portion of such assessments through the premium tax offset mechanism. More diversified commercial life insurers, on the other hand, are able to recover most or all such assessments. Senate Bill 226 would create anything but a "level playing field."

TIAA is not unsympathetic to proponents' pleas. We think guaranty fund rules which allow most insurers to offset assessments against premium taxes while a few companies with limited products must absorb thousands of dollars in assessments is unfair. But we believe Senate Bill 226 creates neither a satisfactory remedy for proponents nor a fair solution for TIAA pensioners.

As you can see, this is a complicated matter and it is difficult to fix a problem for one party without creating problems for other parties. Since the exemption has been in the law for more than a

quarter of a century; since there is no crises or shortage of funds; since we operate like a majority of other states and since tax qualified annuities funded by employer pension plans are materially different from individual non qualified investment annuities, there is little reason for the Legislature to rush into a reversal of policy.

We urge the Legislature to maintain current policy or exclude tax qualified retirement annuities under the state guaranty association law. Consequently, we must oppose Senate Bill 226, as currently written.

**TIAA-CREF Pension Plans for Kansas Public and Non-Profit Employers**

Allen County Community College  
Alumni Association of the University of Kansas  
American Cancer Society - Kansas Division, Inc.  
American Heart Association - Kansas  
American Heart Association - Kansas Affiliate, Inc.  
Association of Collegiate Business Schools & Programs  
Baker University  
Barclay College  
Barton County Community College  
Benedictine College  
Berean Academy  
Bethany College  
Bethel College  
Bishop Miege High School  
Butler County Community College  
Central College  
Cloud County Community College  
Colby Community College  
College of Emporia  
Cowley County Community College  
Cross-Lines Cooperative Council  
Dodge City Community College  
Donnelly College  
Ellinwood Public Schools  
Emporia State University  
Fort Hays State University  
Friends University  
Garden City Community College  
Geary County Unified Schools District No. 475  
Heartspring  
Hesston College  
Hesston Unified School District  
Highland Community College  
Hutchinson County Community College  
Hyman Brand Hebrew Academy  
Independent School  
International Association of Jazz Educators  
International Institute for Christian Studies

Johnson County Community College  
Kansas Association of Community Colleges  
Kansas Board of Regents  
Kansas City Regional Council for Higher Education  
Kansas College of Technology  
Kansas Foundation for Private Colleges  
Kansas Independent College Fund  
Kansas Medical Education Foundation  
Kansas Newman College  
Kansas School for the Deaf  
Kansas State High School Activities Association  
Kansas State University  
Kansas University Physicians, Inc.  
Kansas University Rehabilitation Medicine Association  
Kansas Wesleyan University  
Kansas, University of  
Kansas, University of, Medical Center  
Labette Community College  
Lawrence Unified School District  
Logos Research Institute, Inc.  
Manhattan Christian College  
McPherson College  
Menninger Foundation  
Midamerica Nazarene University  
National Collegiate Athletic Association  
Neosho Basin Development Co.  
Neosho County Community College  
Newton Bible Christian School  
North Central Flint Hills Agency on Aging  
Old Cowtown Museum  
Ottawa University  
Oxford Park Academy, Inc.  
Pittsburg State University  
Radiation Therapy Foundation  
Renovare/aka Mid-America Yearly Meeting of Friends  
Rockhurst College  
Saint Mary College  
Salina Health Education Foundation  
Smoky Valley Unified School District  
Southwestern College

St. Francis Regional Medical Center  
Sterling College  
Student Union Corporation of the University of Kansas Medical Center  
Sumner County Education Services  
Tabor College  
Tech-Industry Consultants, Inc.  
The Science Center, Inc.  
Three Lakes Education Cooperative  
Topeka Collegiate School  
Unified School District # 493  
United Methodist Youthville  
United States Army Command & General Staff College  
University of Kansas Athletic Corporation  
University of Kansas Center for Research, Inc.  
University of Kansas Endowment Association  
University of Kansas Medical Research Institute  
University of Kansas Memorial Corporation  
Washburn Endowment Association  
Washburn University of Topeka  
Western Kansas Community Services Consortium  
Wharton Manor  
Wichita Catholic Secondary Schools  
Wichita Center for the Arts, Inc.  
Wichita Collegiate School  
Wichita State University  
Wichita State University Auxiliary Enterprises  
Wichita State University Union Corporation

**TIAA STATE INSURANCE COMPANY LICENSING AND  
GUARANTY FUND EXEMPTIONS**

**STATES IN WHICH TIAA IS EXEMPT FROM LICENSING**

Arizona <sup>1</sup>	Maryland <sup>3</sup>	Oklahoma
Alaska	Michigan	Pennsylvania <sup>4</sup>
California <sup>2</sup>	Missouri	Rhode Island
Iowa	New Hampshire	Tennessee
Kansas	New Jersey	Vermont
Kentucky	North Dakota	Virginia
Louisiana		

<sup>1</sup> Although exempt from licensing, TIAA is in the guaranty fund.

<sup>2</sup> TIAA is licensed for non-annuity business, but is a Grants and Annuities Society for purposes of its annuity business. This exempts TIAA's annuity business from most of the provisions of the insurance code, including participation in the guaranty fund.

<sup>3</sup> TIAA is exempt from licensing for annuities only.

<sup>4</sup> TIAA's non-annuity business is in the guaranty fund, but is still exempt from the remainder of the insurance code.

**STATES IN WHICH TIAA'S ANNUITIES ARE EXEMPT FROM GUARANTY FUND  
REQUIREMENTS**

Colorado	Florida <sup>5</sup>	Utah	Wyoming
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<sup>5</sup> TIAA's guaranty fund assessments are capped at 0.1%, as opposed to 1.0% for other life insurance companies.

**STATES IN WHICH ORP ANNUITIES ARE EXEMPT FROM GUARANTY FUND  
REQUIREMENTS**

Montana	Nevada	New Mexico
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**STATES IN WHICH IRC SEC. 403(B) ANNUITIES ARE TREATED AS  
"UNALLOCATED" ANNUITIES**

Arkansas	Georgia	Mississippi	Utah
Connecticut	Illinois	Ohio	Washington