Approved: Robert Tomlinson
Date April 30, 1999

MINUTES OF THE HOUSE COMMITTEE ON INSURANCE.

The meeting was called to order by Chairperson Bob Tomlinson at 3:30 p.m. on March 16, 1999 in Room 527-S of the Capitol.

All members were present except:	Rep. Empson, Burroughs
Committee staff present:	Bill Wolff, Research Ken Wilke, Revisor Mary Best, Secretary
Conferees appearing before the committee:	Linda DeCoursey-Kansas Insurance Department Bill Sneed-Reinsurance Association of America Carolyn Middendorf-Kansas State Nurses Association
Others attending:	See Attached Guest List

The meeting came to order and the public hearings were opened. The first bill before the committee was:

SB 48: Clarification of reinsurance statutes to comply with NAIC model

Linda DeCoursey, Kansas Insurance Department, gave Proponent testimony to the committee. A copy of the testimony is (Attachment #1) attached hereto and incorporated into the Minutes by reference. Ms. DeCoursey gave an overview of the bill to the committee amending the language regarding the reinsurance laws of Kansas. The changes deal with risks of insolvencies and liquidation proceedings of Kansas insurance companies. She also offered a balloon that adds back in the phrases unintentionally excluded and takes the bill to its original intent.

Questions were asked of Ms. DeCoursey by Rep. Phelps, Showalter and Cox. Answers were given by Mr. Bill Wempe of the Insurance Department.

Bill Sneed, Reinsurance Associations of America, gave Proponent Testimony to the committee. A copy of the written testimony is (Attachment #2) attached hereto and incorporated into the Minutes by reference. Mr. Sneed offered testimony to "Modify the Mandatory Runoff Clause" Section 40-221a(c), and the reasons for the modifications. He showed the counterproductiveness of the provision as well. He also addressed Anti-Fraud Efforts, Interference, Clarifying and Codifying Insolvency Clause Requirements, The Insolvency Clause, The use of Cut-Throughs, Senate Action and Additional Amendments.

There were no further questions. Public discussions were closed.

SB 151: Insurance: Kansas Viatical Settlements Act.

Ms. Linda DeCoursey, Kansas Insurance Department, gave Proponent Testimony to the committee. A copy of the written testimony is (Attachment #3) attached hereto and incorporated into the Minutes by reference. She pointed out Kansas is one of only three states in the nation to enact laws concerning Viatical Settlements. These are transactions in which insures with AIDS, cancer patients and other terminally ill persons sell their insurance policy for a certain percentage of the face value to provide immediate cash.

The percentage depends on the time the insured has left to live. Because of movement away from the concept of the policy, fundamental changes affecting the rate structures to the detriment of the insured who intend to use the policies to protect their dependents. They are requesting updating of the Kansas laws. Ms. DeCoursey then went over sections of the Viatical Settlements Act. There was also a technical change needed to the bill on page 3 line 5, changing the word "like" to "life".

Questions were asked by: Rep. Boston, Phelps, Cox and Hummerickhouse. Answered by Mr. Marlow Mertz (spelling?).

With no further discussions or testimony the public hearing on **SB 151** were closed.

SB 162: Prior authorization for children's insurance.

Ms. Linda DeCoursey, Kansas Insurance Department, gave Proponent Testimony to the committee. A copy of the written testimony is (Attachment #4) attached hereto and incorporated into the Minutes by reference. Ms. DeCoursey stated in her testimony, "One of the key points to the bill is to establish a seamless system of coverage between Medicaid and Title XXI"

Questions were by: Rep. Jenkins

Ms. Carolyn Middendorf, Kansas State Nurses Association, gave Proponent Testimony to the committee. A copy of the written testimony is (Attachment #5) attached hereto and incorporated into the Minutes by reference. Ms. Middendorf stated in her testimony, "The bill would also apply to the Health Wave program the same prior authorization standards and requirements for health care services that are used by the Medicaid program." There would be no fiscal impact to the bill per Ms. Middendorf.

There were no questions asked and no further testimony offered. Public discussions on this and the preceding two bills. Therefore all public discussions were closed.

The Chair then called the attention of the committee to work **SB 48, SB 162 and SB 60.**

SB 48-with Amendment–Rep. Grant moved to adopt the balloon, Rep. Phelps seconded the motion. There was no debate, vote was taken and the ayes were unanimous. Rep. Grant made motion to pass out favorably as amended, Rep. Vining seconded. No discussion, vote taken and bill passed out unanimously.

SB 162- Rep. Kirk moved to pass out favorably, Rep. O'Brien seconded. There was a discussion with Rep. Cox regarding consent calendar. Rep,. Kirk with-drew her motion, and renewed her motion to pass out favorable and place on the consent calendar. Vote was taken and passed unanimously.

SB 60 (Attachment #6) is identical in every way to the"good title" bill. The intent is to use the bill to solve the problems of **HB 2517.** Two different sections service regulation funds & employee salaries. The proposal is to severe the two and put **House Substitute** to **SB 60** regarding service regulation fund.

Rep. Cox moves to adopt the bill. This will gut sections 1-8 of SB 60 and inserting language of HB 2517, section 2. Rep. Hummerickhouse seconded the motion. Motion to amend SB 60 to produce House Substitute Bill for SB 60. No further discussion, vote was taken and the ayes carried the vote. Rep. Cox moved t pass House Substitute for SB 60, Rep. Phelps seconded the motion. Vote was taken and ayes carried he motion.

With business completed the meeting was adjourned. Time was 4:35

The next scheduled meeting is March 18, 1999.

HOUSE INSURANCE COMMITTEE GUEST LIST

DATE: March 16, 1999

NAME	REPRESENTING
Bill Sneed	RAA
Pat Morris	KAIA
Linda DeCoursey	KS Insurance Dept.
Carolyn Middendorf	Ks St Ns Assn
Kevin Davis	Am. Family Ins
Brad Smoot	BCBS
Paul Davis	Kansas Ins. Dept.
David Hanson	Ks Insur Assns
Rebecca Sanders	Kansas Insurance Dept
Marlyn Burch	Kansas Insurance Dept.
[illegible]	Kansas Insurance Department
Lee Wright	FARMERS
[illegible]	[illegible]

Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

TO: House Committee on Insurance

FROM: Linda De Coursey

RE: SB 48 – Reinsurance

DATE: March 16, 1999

Mr. Chairman and members of the Committee:

Thank you for the opportunity to discuss with you SB 48, which proposes to amend current language regarding the reinsurance laws. These specific changes to the law deal with reinsurance risks of insolvencies and liquidation proceedings of Kansas insurance companies.

After meeting and negotiating with representatives of the Reinsurance Association of American (RAA), we do feel that we can support the bill.

Kansas adopted reinsurance laws in 1965, and the laws were established for the purpose of protecting the interest of policyholders, claimants, ceding insurers, reinsurers and the public. This is accomplished by establishing appropriate oversight and regulation of ceding insurers and reinsurers.

Reinsurance is the assumption by an insurer (assuming company) of all or part of a risk originally undertaken by another insurer (ceding company). The basic purpose of reinsurance is to: reduce a company's exposure to particular risks or classes of risks; protect against accumulations of losses arising from catastrophes; and reduce total liabilities to a level appropriate to premium volumes and amounts of capital.

House Comm on Ins.
Attachment # 1
March 16, 1999 1-1
to 6

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Consumer Assistance Hotline
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SB 48 prohibits an insurance company that cedes or transfers risk to a reinsurer (company assuming the risk) from taking a credit as an asset or as a deduction from liability, unless the contract between the two companies provides that in the case of insolvency of the ceding company, the reinsurer will pay claims on the basis of liability, and approved by the liquidation court.

The bill also provides that companies in Kansas entering into reinsurance agreements and then the agreement is canceled in less than 90-days notice, to provide for a run-off of the reinsurance liability incurred by the reinsurer by the date of cancellation, unless fraud was involved, or non payment of premium.

SB 48 sets out that reinsurance payments be made directly to the ceding insurer or its liquidator, unless the contract provides for a different payee. The bill also provides that the liquidator give written notice to the assuming insurer of pending claims against the ceding insurer.

Mr. Chairman, in reviewing the bill as it passed the Senate, the representative of RAA and Insurance Department staff found that some words had been inadvertently left off. I have enclosed a balloon that adds back in the phrases unintentionally excluded and takes the bill to its original intent.

I respectfully request your favorable consideration of this bill, with the proposed amendments.

As Amended by Senate Committee

Session of 1999

SENATE BILL No. 48
By Committee on Financial Institutions and Insurance
1-14

AN ACT concerning insurance; relating to reinsurance; amending K.S.A. 40-3634 and K.S.A. 1998 Supp. 40-221a and repealing the existing sections.

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

Section 1. K.S.A. 1998 Supp. 40-221a is hereby amended to read as follows: 40-221a. (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 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 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 trusteed account representing the assuming insurer's liability attributable to business written in the United States and, in addition, the assuming insurer shall maintain a trusteed 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 trusteed account representing the group's liabilities attributable to business written in the United States and, in addition, the group shall maintain a trusteed 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 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 pur-

poses 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
(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~~ *No credit shall be allowed, as an admitted asset or deduction from liability, to any ceding insurer* 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~~ *for reinsurance, unless the reinsurance contract provides, in substance, that in the event of the insolvency of the ceding insurer, the reinsurance shall be payable under a contract reinsured by the assuming insurer on the basis of* ~~*reported claims allowed in the liquidation proceedings, subject to court approval*~~ ***approved by the liquidation court***, 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: *Such*.~~ ***Any reinsurance agreement entered into with a domestic insurer which may be canceled on less than 90 days' notice, and which cancellation would constitute a material cancellation as defined by K.S.A. 40-2,~~~~*152*~~*** ***and amendments thereto, must provide in the reinsurance agreement, in substance, for a run-off of the reinsurance in force at the date of cancellation, unless the agreement is canceled for nonpayment of premium or fraud in the inducement. Reinsurance*** *payments shall be made directly to the ceding insurer or to its domiciliary liquidator except: (1) Where the* ~~*contract or other written agreement*~~ ***reinsurance contract or policy reinsured*** *specifically provides another payee of such reinsurance in the event of the insolvency of the ceding insurer; or (2) where the assuming insurer, with the consent of the direct insured, has assumed such policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under such policies and in substitution for the obligations of the ceding insurer to such payees.*
(d) The ***reinsurance agreement may provide that the*** *domiciliary liquidator of an insolvent ceding insurer shall give written notice to the assuming insurer of the pendency of a claim against such ceding insurer on the contract reinsured within a reasonable time after such claim is filed in the liquidation proceeding. During the pendency of such claim, any assuming insurer may investigate such claim and interpose, at its own expense, in the proceeding where such claim is to be adjudicated any defenses which it deems available to the ceding insurer, or its liquidator.*

the liability of the ceding company under the contract or contracts reinsured, as

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Such expense may be filed as a claim against the insolvent ceding insurer to the extent of a proportionate share of the benefit which may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer. Where two or more assuming insurers are involved in the same claim and a majority in interest elect to interpose a defense to such claim, the expense shall be apportioned in accordance with the terms of the reinsurance agreement as though such expense had been incurred by the ceding insurer.

Sec. 2. K.S.A. 40-3634 is hereby amended to read as follows: 40-3634. Except as provided in K.S.A. 40-3602 and amendments thereto, ~~the amount recoverable by the liquidator from reinsurers shall not be reduced as a result of the delinquency proceedings, regardless of any provision in the reinsurance contract or other agreement. Payment made directly to an insured or other creditor shall not diminish the reinsurer's obligation to the insurer's estate except when the reinsurance contract provided for direct coverage of a named insured and the payment was~~

~~made in discharge of such obligation.~~ *in the event of the insolvency of the ceding insurer, the reinsurance shall be payable under a contract reinsured by the assuming insurer on the basis of ~~reported claims allowed in the liquidation proceedings, subject to court approval~~, without diminution because of the insolvency of the ceding insurer. Such payments shall be made directly to the ceding insurer or to its domiciliary liquidator except: (a) Where the ~~contract or other written agreement~~* ***reinsurance contract or policy reinsured*** *specifically provides another payee of such reinsurance in the event of the insolvency of the ceding insurer; or (b) where the assuming insurer, with the consent of the direct insured, has assumed such policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under such policies and in substitution for the obligations of the ceding insurer to such payees.*

the liability of the ceding company under the contract or contracts reinsured, as approved by the liquidation court,

Sec. 3. K.S.A. 40-3634 and K.S.A. 1998 Supp. 40-221a are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

MEMORANDUM

TO: The Honorable Bob Tomlinson, Chairman
House Insurance Committee

FROM: Bill Sneed, Legislative Counsel
Reinsurance Association of America

DATE: March 16, 1999

RE: S.B. 48

Mr. Chairman, Members of the Committee: My name is Bill Sneed and I represent the Reinsurance Association of America. On behalf of the 27 members of the Reinsurance Association of America ("RAA"), we are pleased to be able to provide these comments regarding S.B. 48. The RAA represents property and casualty reinsurers and our members write the bulk of business ceded by U.S. insurers to U.S. reinsurers. Our membership is diverse; both broker and direct marketing companies; small and large; American owned and foreign owned companies with U.S. subsidiaries.

This legislation will update Kansas reinsurance law to make the following changes:

1. Modify a provision which mandates a specific procedure to terminate a reinsurance contract.

2. Clarify existing provisions with regard to recognition of cut-through clauses.

3. Codify standard provisions of insolvency clauses in the credit for reinsurance and liquidation codes.

Modify Mandatory Runoff Clause

Section 40-221a(c) states in part:

> . . . 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. [Emphasis added.]

This provision should be modified because it:

- May be counterproductive to the insurer;
- Restrains a reinsurer from taking action to defend itself against fraud;
- Interferes with regulatory actions taken by other state insurance regulators.

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Counterproductive: This provision is counterproductive in that it mandates a specific procedure for terminating coverage, when other alternatives may be more appropriate and beneficial to the insurer. Reinsurance relationships are typically terminated on a run-off basis (claims which are in the "pipeline" continue to be paid by the reinsurer for a specified period of time), a cut-off basis (as the name implies, claims cease to be made at a date of cut-off of the reinsurer's liability), or a commutation (a process where a bundle of reinsurance agreements between the two parties are netted out and settled on a lump sum basis.)

When the insurer and the reinsurer have a multitude of reinsurance agreements covering many years of time, t hey often choose to terminate a relationship by entering into a commutation agreement. A commutation may also be used to resolve a single agreement covering a line of business with a long tail. This process calls for an actuarial assessment of all the liabilities expected to be owed to each party. It may also include an analysis of unearned premium which may be refunded. It will reflect the time value of money. Commutation is a negotiation that allows for all the reinsurance obligations to be settled in one process. Once done, the insurer and the reinsurer are able to close their books on the transaction, thus saving administrative costs.

A cut-off approach may also be beneficial to the insurer because it may allow for a greater refund of unearned premium.

My firm has represented various state receiverships, including Kansas. We look at this from a practical approach that the law really causes more confusion, and as such, more disputes in coverage. We contend that from an overall administrative level, these changes will actually benefit the Kansas industry and consumers.

The runoff itself costs both the insurer and the reinsurer money in keeping open accounts that will no longer produce future business. A runoff may be useful in many situations, but the administrative costs of runoff can outweigh the benefits.

Anti-Fraud Efforts: It is important to note that this provision deals with cancellation and not non-renewal. Cancellation is different from non-renewal. When a contract is canceled it often means that some action is taken mid-term rather than at what normally would be viewed as the anniversary date. Cancellation may be provoked by non-payment of premium; or because of suspicions that the business ceded is materially different than that expected to be ceded; or because of allegations of fraudulent conduct with regard to the reinsurance ceded. A mandate that the reinsurer continue to pay claims on a fraudulent contract is punitive.

Interference: Reinsurance transactions are entered into by sophisticated insurance companies. They reach a beneficial bargain for a product and then live by the contract terms. Contract regulation is unnecessary. It would also interfere with international commerce, since much of the reinsurance is ceded to insurers overseas. This statute not only interferes with legitimate commercial transactions, but it also attempts to regulate contracts entered into by any insurer which has done business in Kansas. As such, this provision interferes with regulatory policy over domestic insurers established by other state insurance departments, creates confusion and at times conflicts with state regulations.

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Clarify and Codify Insolvency Clause Requirements

Existing Kansas law includes an insolvency clause requirement. Reinsurance is a contract of indemnity, meaning that the reinsurer under a contract with an insurer reimburses that insurer for certain obligations paid. In short, the insolvency clause mandates that the reinsurer pay obligations owed to the insurer even if the insurer is unable to pay the claims it owes because of its insolvency. It is a standard provision of reinsurance law necessary to make an exception to the principle of indemnification.

The Insolvency Clause: The insolvency clause reflects a bargain made by insurance regulators with reinsurers. The regulators require the reinsurer to pay the claim even though the insolvent insurer can't pay it; and in turn the regulators see to it that the contractual obligations of the now insolvent insurer to the reinsurer are fulfilled. Among these obligations are: notification of claims, ability to investigate claims, ability to defend against claims. In t urn, if the reinsurer picks up some defense costs that ultimately benefit the insolvent insurer and its receiver, the reinsurer is entitled to submit a claim for a proportionate share of these expenses to the receivership court.

The Use of Cut-Throughs Existing Kansas law (K.S.A. 40-3634) currently recognizes the usage of a cut-through. The amendment in this legislation clarifies the law to ensure that different types of contract provisions are covered. The insolvency clause requires that the reinsurance proceeds be paid to the receiver. In certain situations, however, the insurer and the reinsurer had agreed that an alternative party -- other than the insurer -- was to receive any reinsurance recoverable. These alternative beneficiary clauses need to be honored by the receiver. This language clarifies existing law to cover different types of contract language that defines the limited circumstances under which payment to another beneficiary should be recognized by the receiver.

Senate Action

After preparing our proposed legislation, we submitted it to the Kansas Insurance Department for their review. Prior to the Senate taking action on S.B. 48, we met with the Kansas Insurance Department numerous times to address issues that they raised based upon the original language that was found in S.B. 48. Prior to the Senate taking action, my client and the Insurance Department came to an agreement that would modify our proposal and thus address the concerns expressed by the Department. In essence, the Department requested that we narrow the scope of our amendments. After working on the language with the Department, we believe that the compromise language still addressed our concerns about current Kansas law, and at the same provided assurances to those issues that the Department raised in our conversations. Thus, we presented to the Senate Financial Institutions & Insurance Committee a balloon with amendments that both my client and the Insurance Department had agreed on. With that, the Senate Committee amended the bill, passed the bill out favorably, and ultimately it passed the Senate 40-0.

Additional Amendments

Unfortunately, I did a poor job of drafting the amendments we presented to the Senate Committee. Upon seeing the bill in print form, both the Department and I discovered that some

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minor language was not deleted and new language inserted in its place. The Department will submit a balloon that encompasses those changes the Department and my client had agreed upon, but that unfortunately were not encompassed in the amended version passed by the Senate Committee. After discussing the matter with the Senate Chairman, it was agreed that we would allow the bill to go through the Senate without the changes and address those changes in front of the House Insurance Committee. Thus, in addition to favorable consideration on the bill, I respectfully request that the attached balloon amendment be added to the bill.

We recognize that this is a highly technical area of the insurance code, and we appreciate the courtesy the Committee has given us in providing this vast amount of information. We believe that these changes will benefit the insurance marketplace in Kansas and bring our statutes up to par with the other states in the country. Thus, we respectfully request your favorable consideration on S.B. 48.

Thank you very much, and if you have any questions, please feel free to contact me.

Respectfully submitted,

William W. Sneed

Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

TO: House Committee on Insurance

FROM: Linda J. De Coursey, Director of Government Affairs

RE: SB 151 – Viatical Settlement Act

DATE: March 16, 1999

Mr. Chairman and members of the Committee:

I am appearing today in support of SB 151, the Viatical Settlement Act. The Kansas Insurance Department asked for introduction of the bill, and I appreciate the opportunity to discuss the bill provisions with you.

In 1992, Kansas became one of only three states in the nation to enact laws concerning Viatical Settlements. At that time and to some extent today, Viatical Settlements are transactions in which insureds with AIDS, cancer patients and other terminally ill persons sell their life insurance policy for a certain percentage of its face value to provide immediate cash. The percentage depends largely on the length of time the insured is expected to live. The viatical company may buy the policy its and pay the premiums until the death of the insured or may find an investor willing to purchase the policy.

Now, it appears that the industry has moved away from this concept and encourages those who might have beneficiaries in need of the funds to sell the protection that is the whole purpose and

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Attachment #3
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design of life insurance. Those with several years life expectancy are trading in their life insurance policies for cash, vacations, luxuries, and yes, expensive medications. There are those companies whose advertisements encourage people to buy life insurance specifically for the purpose of turning it into quick cash by immediately viaticating the policy.

The structure of the Viatical Settlements has fundamentally changed, and will affect the rating structure of insurers to the detriment of those insured who intend to use the policies for protection of their dependents. It is because of these fundamental changes, we are asking you to consider updating Kansas laws. We have used the Viatical Settlements Model Act promulgated by the National Association of Insurance Commissioners (NAIC), passed at the September, 1998 meeting.

- Section 1. Establishes a short title as Viatical Settlements Act.
- Section 2. Sets out definitions of financing entity; financing transaction; person; viatical settlement representative, and who is not a representative; viatical settlement broker; viatical settlement contract; viatical settlement provider, and who is not a provider; viator; and viaticated policy.
- Section 3. Establishes annual licenses for the viatical settlement provider, representative or broker, an application fee, and information required by the insurance commissioner to grant the application.
- Section 4. Establishes the right of the insurance commissioner to deny, suspend, revoke, or refuse to renew licenses, including if the provider demonstrates a pattern of unreasonable payments to viators.

- Section 5. Establishes that the insurance commissioner must approve the viatical settlement contract or disclosure statement form.
- Section 6. Viatical settlement companies must file an annual statement with the insurance commissioner.
- Section 7. Establishes a confidentiality requirement whereby companies may not disclose the identity as a viator to any other person except for the actual settlement; response to an investigation by the commissioner or other governmental entity; transfer of viatical policy;
- Section 8. Commissioner may examine the business and affairs of the viatical company. The company is to maintain records of each viatical settlement until five years after the death of the insured.
- Section 9. Requires viatical settlement providers, representatives, or broker to make full disclosure to potential viators of possible alternatives to viaticating such as accelerated death benefits received from life insurance policy, income tax information, proceeds could be subject to claims of creditors; may affect viator's eligibility for medicaid; viators right to rescind a settlement; and may cause other benefits under the policy to be forfeited.
- Section 10. Sets out the requirements of the provider, representative, or broker must obtain when entering into a settlement contract, such as statement from the licensed attending physician that the viator is of sound mind and acknowledges life threatening or chronic illness; medical information subject to state law relating to privacy of medical information, and right to rescind the contract. This section also establishes the settlement procedure.
- Section 11. Establishes authority of insurance commissioner to promulgate rules and regulations to implement the act, including fees for licensing, standards for bonds, or mechanism for financial accountability.

- Section 12. Violation of this act is to be considered an unfair or deceptive act or practice.
- Section 13. Current providers, representatives, or brokers may continue conducting business pending approval of the providers, representatives or brokers application for license provided that the required application is filed by July 1, 1999.

Mr. Chairman, we do have an amendment. A million (exaggerated) eyes looked at this bill, and Dr. Wolff questioned it earlier in the Senate. The final determination is that the word "like" on page three of the bill, line five is really supposed to be the word "life".

S. B. 151 is meant to strengthen and expand the regulation of Viatical settlements in Kansas, because of the growth and changes to the structure of the Viatical settlements industry. Thank you for your consideration of this bill. We respectfully ask your favorable consideration of SB 151 – Viatical Settlements Act.

(2) the ~~issues~~ ***issuer*** of a life insurance policy providing accelerated benefits under K.S.A. 40-401, and amendments thereto, and pursuant to the contract; or

(3) a natural person who enters into no more than one agreement in a calendar year for the transfer of ~~like~~ life insurance policies for any value less than the expected death benefits.

(i) ``Viator'' means the owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a catastrophic, life threatening or chronic illness or condition who enters or seeks to enter into a viatical settlement contract.

(j) ``Viaticated policy'' means a life insurance policy or certificate that has been acquired by a viatical settlement provider pursuant to a viatical settlement contract.

Sec. 3. (a) A person shall not operate as a viatical settlement provider, viatical settlement representative or a viatical settlement broker without first having obtained a license from the commissioner.

(b) Application for a viatical settlement provider, viatical settlement representative or viatical settlement broker license shall be made to the commissioner by the applicant on a form prescribed by the commissioner. Each application shall be accompanied by a nonrefundable fee of $1,000.

(c) Any license issued pursuant to this section shall expire on the anniversary of its date of issuance unless the licensee pays the renewal fee. Any license issued pursuant to this section may be renewed from year to year on the anniversary of the date of issuance upon payment of the annual renewal fee of $500. Failure to pay the fee by the renewal date results in expiration of the license.

(d) The applicant shall provide information on forms required by the commissioner. The commissioner shall have the authority, at any time, to require the applicant to fully disclose the identity of all stockholders, partners, officers, members and employees, and the commissioner, in the exercise of the commissioner's discretion, may refuse to issue a license in the name of a legal entity if not satisfied that any officer, employee, stockholder, partner or member thereof who may materially influence the applicant's conduct meets the standards of this act.

(e) A license issued to a legal entity authorizes all members, officers and designated employees to act as viatical settlement providers, viatical settlement brokers or viatical settlement representatives, as applicable, under the license, and all those persons shall be named in the application and any supplements to the application.

(f) Upon the filing of an application and the payment of the license fee, the commissioner shall make an investigation of each applicant and issue a license if the commissioner finds that the applicant:

(1) Has provided a detailed plan of operation;

Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

TO: House Committee on Insurance

FROM: Linda J. De Coursey, Director of Government Affairs

RE: SB 162 – Kansas Insurance Coverage for Children

DATE: March 16, 1999

Mr. Chairman and members of the Committee:

Thank you for the opportunity to discuss with you SB 162, which relates to the very important topic of children's health insurance plan.

As you are aware, Commissioner Sebelius was very involved in the development of the insurance plan for children. SB 424 which was passed last year outlined the program and included many of the recommendations made by two task forces which studied this issue – SRS Kansas Insurance Coverage for Kids committee chaired by Senator Praeger, and the Children's Health Insurance Action Group, formed by Commissioner Sebelius.

One of the key points of the bill is to establish a seamless system of coverage between Medicaid and Title XXI. In testimony this summer before the Children's Oversight Committee, SRS representatives consistently presented plans for this to occur.

We support the concept of SB 162 as a way to "stay the course" to accomplish that important component of the children's insurance plan: *to establish the goal of seamlessness of coverage between the two programs.*

House Commerce
Attachment # 4
March 16, 1999

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Debbie Folkerts, A.R.N.P.--C.
President

Terri Roberts, J.D., R.N.
Executive Director

March 16, 1999

S.B. 162: KANSAS INSURANCE COVERAGE FOR CHILDREN, PRIOR AUTHORIZATION

Testimony

Representative Tomlinson , and members of the House Insurance Committee, the KANSAS STATE NURSES ASSOCIATION supports S.B. 162 which amends the statutes which create the Children's Health Insurance Program. My name is Carolyn Middendorf I am the legislative chairperson of KSNA This program services those families whose income is less than 200% of the federal poverty level. This language would apply to the Health Wave program the same prior authorization standards and requirements for health care services that are used by the Medicaid program.

One of the major goals for the Children's Health Insurance Program has been to create a seamless system for children's health–that is, eliminating the "welfare" nature of the Medicaid entitlement program. This would achieve much to attaining that outcome for the programs. There is no fiscal impact to S.B. 162.

The KSNA appreciates your past effort in the implementation of the Health Wave Program and the continuing support for the program that will benefit so many Kansas children and their families, and we ask your favorable consideration of this amendment to the statutes.

House Comm on Ins
Attachment # 5
March 16, 1999

As Amended by Senate Committee

Session of 1999

SENATE BILL No. 60

By Senators Feleciano, Donovan, Downey, Gooch, Harrington, Lawrence and Ranson

1-15

AN ACT concerning [title insurance and escrow accounts];

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

Section 1. [The purpose of this act is to provide the state of Kansas with a comprehensive body of law for the effective regulation and supervision of title insurance agencies engaged in settlement and closing of the sale of an interest in real estate.

Sec. 2. As used in this act, unless the context otherwise requires:

(a) "Commissioner" means the commissioner of insurance of the state of Kansas.

(b) "Escrow" means written instruments, money or other items deposited by one party with a depository, escrow agent or escrow for delivery to another party upon the performance of a specified condition or the happening of a certain event.

(c) "Person" means a natural person, partnership, association, cooperative, corporation, trust or other legal entity.

(d) "Qualified financial institution" means an institution that is:

(1) 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 and has been granted authority to operate with fiduciary powers;

(2) regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies;

(3) insured by the appropriate federal entity; and

(4) qualified under any additional rules established by the commissioner.

(e) "Title insurance agent" or "agent" means an authorized person, other than a bona fide employee of the title insurer who, on behalf of the title insurer, performs the following acts, in conjunction with the issuance of a title insurance report or policy:

(1) Determines insurability and issues title insurance reports or policies, or both, based upon the performance or review of a search, or an abstract of title;

[redacted] the insurance department; insurance department service regulation fund; concerning employees of the department of insurance; salaries; amending K.S.A. 1998 Supp. [redacted] 40-112 and repealing the existing sections; also repealing K.S.A. 1998 Supp. 40-112a.

Senate Comm. on Gov. Attachment # 4 March 4, 1999

(2) collects or disburses premiums, escrow or security deposits or other funds;

(3) handles escrow, settlements or closings;

(4) solicits or negotiates title insurance business; or

(5) records closing documents.

(f) "Title insurer" or "insurer" means a company organized under laws of this state for the purpose of transacting the business of title insurance and any foreign or non-U.S. title insurer licensed in this state to transact the business of title insurance.

(g) "Title insurance policy" or "policy" means a contract insuring or indemnifying owners of, or other persons lawfully interested in, real or personal property or any interest in real property, against loss or damage arising from any or all of the following conditions existing on or before the policy date and not excepted or excluded:

(1) Defects in or liens or encumbrances on the insured title;

(2) unmarketability of the insured title;

(3) invalidity, lack of priority, or unenforceability of liens or encumbrances on the stated property;

(4) lack of legal right of access to the land; or

(5) unenforceability of rights in title to the land.

Sec. 3. A title insurance agent may operate as an escrow, settlement or closing agent, provided that:

(a) All funds deposited with the title insurance agent in connection with an escrow, settlement or closing shall be submitted for collection to, invested in or deposited in a separate fiduciary trust account or accounts in a qualified financial institution no later than the close of the next business day, in accordance with the following requirements:

(1) The funds shall be the property of the person or persons entitled to them under the provisions of the escrow, settlement or closing agreement and shall be segregated for each depository by escrow, settlement or closing in the records of the title insurance agent in a manner that permits the funds to be identified on an individual basis;

(2) the funds shall be applied only in accordance with the terms of the individual instructions or agreements under which the funds were accepted; and

(3) an agent shall not retain any interest on any money held in an interest-bearing account without the written consent of all parties to the transaction.

(b) Funds held in an escrow account shall be disbursed only:

(1) Pursuant to written authorization of buyer and seller;

(2) pursuant to a court order; or

(3) when a transaction is closed according to the agreement of the parties.

(c) A title insurance agent shall not commingle the escrow agent's personal funds or other moneys with escrow funds. In addition, the escrow agent shall not use escrow funds to pay or to indemnify against the debts of the escrow agent or of any other party. The escrow funds shall be used only to fulfill the terms of the individual escrow and none of the funds shall be utilized until the necessary conditions of the escrow have been met.

(d) Each title insurance agent shall have an audit made of its escrow, settlement and closing deposit accounts, conducted by a certified public accountant or by a title insurer for which the title insurance agent has a licensing agreement, according to the following schedule. Audits shall be considered current if dated within the 12 months prior to submission of the audit as required herein. The title insurance agent shall provide a copy of the audit report to the commissioner and to each title insurance company which it represents within 160 days after the close of the calendar year for which an audit is required. Title insurance agents who are attorneys and who issue title insurance policies as part of their legal representation of clients are exempt from the requirements of this subsection. However, the title insurer, at its expense, may conduct or cause to be conducted an annual audit of the escrow, settlement and closing accounts of the attorney. Attorneys who are exclusively in the business of title insurance are not exempt from the requirements of this subsection. Audits shall be required as follows:

(1) Annual audit required in counties having a population of 40,001 and over;

(2) biennial audit required in counties having a population of 20,001-40,000; and

(3) triennial audit required in counties having a population of 20,000 or under.

(e) The commissioner may promulgate rules and regulations setting forth the standards of the audit and the form of audit report required.

(f) If the title insurance agent is appointed by two or more title insurers and maintains fiduciary trust accounts in connection with providing escrow and closing settlement services, the title insurance agent shall allow each title insurer reasonable access to the accounts and any or all of the supporting account information in order to ascertain the safety and security of the funds held by the title insurance agent.

(g) Nothing in this section is intended to amend, alter or supersede other laws of this state or the United States, regarding an escrow holder's duties and obligations.

Sec. 4. (a) The title insurance agent shall maintain sufficient records of its escrow operations and escrow trust accounts so that the commissioner may adequately ensure that the title insurance agent is in compli-

ance with all provisions of this act. The commissioner may prescribe the specific record entries and documents to be kept and the length of time for which the records must be maintained.

(b) The title insurance agent shall make available for inspection by the commissioner, or the commissioner's representatives, all records relating to the title insurance agent's escrow, settlement and closing business, and any other fiduciary trust accounts required to be kept by the title insurance agent. Such availability for inspection shall include any records to which subsection (f) of section 3 applies.

Sec. 5. (a) The title insurance agent who handles escrow, settlement or closing accounts shall file with the commissioner a surety bond or irrevocable letter of credit in a form acceptable to the commissioner, issued by an insurance company or financial institution authorized to conduct business in this state, securing the applicant's or the title insurance agent's faithful performance of all duties and obligations set out in this act.

(b) The terms of the bond or irrevocable letter of credit shall be:

(1) The surety bond shall provide that such bond may not be terminated without 30 days prior written notice to the commissioner.

(2) An irrevocable letter of credit shall be 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 written notice of intention not to renew is given to the commissioner of insurance.

(c) The amount of the surety bond or irrevocable letter of credit for those agents servicing real estate transactions on property located in counties having a certain population shall be required as follows:

(1) $100,000 surety bond or irrevocable letter of credit in counties having a population of 40,001 and over;

(2) $50,000 surety bond or irrevocable letter of credit in counties having a population of 20,001 to 40,000; and

(3) $25,000 surety bond or irrevocable letter of credit in counties having a population of 20,000 or under.

(d) The surety bond or irrevocable letter of credit shall be for the benefit of any person suffering a loss if the title insurance agent converts or misappropriates money received or held in escrow, deposit or trust accounts while acting as a title insurance agent providing any escrow or settlement services.

Sec. 6. All funds deposited for real estate closings, including refinances of existing mortgage loans, which exceed $2,500, shall be in one of the following forms:

(1) Lawful money of the United States;

(2) wire transfers such that the funds are unconditionally received by the title insurance agent or the agent's depository;

(3) cashier's checks, certified checks or bank money orders issued by a federally insured financial institution and unconditionally held by the title insurance agent;

(4) funds received from governmental entities or drawn on an escrow account of a real estate broker licensed in the state of Kansas or drawn on an escrow account of a title insurer or title insurance agency licensed to do business in Kansas; or

(5) other negotiable instruments which have been on deposit in the escrow account for at least 10 days.

Sec. ~~5.~~ ***7.*** The commissioner may issue rules, regulations and orders necessary to carry out the provisions of this act.

Sec. ~~6.~~ ***8.*** If the commissioner determines that the title insurance agent or any other person has violated this act, or any rules and regulation or order promulgated thereunder, after notice and opportunity to be heard, the commissioner may order that such person be subject to the penalties provided in K.S.A. 40-2406 *et seq* and amendments thereto.

[redacted]. K.S.A. 1998 Supp. 40-112 is hereby amended to read as follows: 40-112. (a) For the purpose of maintaining the insurance department and the payment of expenses incident thereto, there is hereby established the insurance department service regulation fund in the state treasury which shall be administered by the commissioner of insurance. All expenditures from the insurance department service regulation fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the commissioner of insurance or by a person or persons designated by the commissioner.

(b) On and after the effective date of this act, all fees received by the commissioner of insurance pursuant to any statute and 1% of taxes received pursuant to K.S.A. 40-252 and amendments thereto shall be remitted to the state treasurer for deposit in the state treasury and credited to the insurance department service regulation fund.

(c) Except as otherwise provided by this section, the commissioner of insurance shall make an annual assessment on each group of affiliated insurers whose certificates of authority to do business in this state are in good standing at the time of the assessment. The total amount of all such assessments for a fiscal year shall be equal to the amount sufficient which, when combined with the total amount to be credited to the insurance department service regulation fund pursuant to subsection (b) is equal to the amount approved by the legislature to fund the insurance company regulation program. With respect to each group of affiliated insurers, such assessment shall be in proportion to the amount of total assets of the group of affiliated insurers as reported to the commissioner of insurance pursuant to K.S.A. 40-225 and amendments thereto for the immediately preceding calendar year, shall not be less than $500 and shall not be more than the amount equal to .0000015 of the amount of total assets of the group of affiliated insurers or $25,000, whichever is less. The total assessment for any fiscal year shall not increase by any amount greater than 15% of the total budget approved by the legislature to fund the insurance company regulation program for the fiscal year immediately preceding the fiscal year for which the assessment is made. In the event the total amount of the assessment would be less than the aggregate amount resulting by assessing the $500 minimum on each insurer, the commissioner may establish a lower minimum to be assessed equally on each insurer.

(d) If, by the laws of any state other than Kansas or by the retaliatory laws of any state other than Kansas, any insurer domiciled in Kansas shall be required to pay any fee or tax in such other state of licensure, and the fee or tax is due and payable either because the insurance department service regulation fee imposed by this section on insurers licensed in Kansas and organized or domiciled in such other state is greater than the comparable fee or tax assessed in such other state, or such other state has no comparable fee or tax but requires payment on a retaliatory basis, then to the extent such fee or tax amounts are legally due and are paid in such other state, any insurer domiciled in Kansas may claim a dollar-for-dollar

credit for such fees paid against insurer's annual premium taxes due the state of Kansas under K.S.A. 40-252 and amendments thereto or privilege fee due the state of Kansas under K.S.A. 40-3213 and amendments thereto, but such credit shall only be calculated on the amount which would not have been required to be paid in such other state of licensure in the absence of the existence of the insurance department service regulation fee imposed by this section, and in no event shall the credit permitted by this section exceed 90% of the insurer's annual premium tax or privilege fee due the state of Kansas. The insurance commissioner shall prescribe the forms for reporting such credits.

~~(d)~~ *(e)* Assessments payable under this section shall be past due if not paid to the insurance department within 45 days of the billing date of such assessment. A penalty equal to 10% of the amount assessed shall be imposed upon any past due payment and the total amount of the assessment and penalty shall bear interest at the rate of 1.5% per month or any portion thereof.

~~(e)~~ *(f)* When there exists in the insurance department service regulation fund a deficiency which would render such fund temporarily insufficient during any fiscal year to meet the insurance department's funding requirements, the commissioner of insurance shall certify the amount of the insufficiency. Upon receipt of any such certification, the director of accounts and reports shall transfer an amount of moneys equal to the amount so certified from the state general fund to the insurance department service regulation fund. On June 30 of any fiscal year during which an amount or amounts are certified and transferred under this subsection, the director of accounts and reports shall provide for the repayment of the amounts so transferred and shall transfer the amount equal to the total of all such amounts transferred during the fiscal year from the insurance department service regulation fund to the state general fund.

~~(f)~~ *(g)* Any unexpended balance in the insurance department service regulation fund at the close of a fiscal year shall remain credited to the insurance department service regulation fund for use in the succeeding fiscal year and shall be used to reduce future assessments or to accommodate cash flow demands on the fund.

~~(g)~~ *(h)* The commissioner of insurance shall exempt the assessment of any insurer which, as of December 31 of the calendar year preceding the assessment, has a surplus of less than two times the minimum amount of surplus required for a certificate of authority on and after May 1, 1994, and which is subject to the premium tax *or privilege fee* liability imposed on insurers organized under the laws of this state. The commissioner of insurance may also exempt or defer, in whole or in part, the assessment of any other insurer if, in the opinion of the commissioner of insurance, immediate payment of the total assessment would be detrimental to the solvency of the insurer.

~~(h)~~ *(i)* As used in this section:

(1) "Affiliates" or "affiliated" has the meaning ascribed by K.S.A. 40-3302 and amendments thereto;

Part of insert continued

(2) "group" or "group of affiliated insurers" means the affiliated insurers of a group and also includes an individual, unaffiliated insurer; and

(3) "insurer" means any insurance company, as defined by K.S.A. 40-201 and amendments thereto, any fraternal benefit society, as defined by K.S.A. 40-738 and amendments thereto, any reciprocal or interinsurance exchange under K.S.A. 40-1601 through 40-1614 and amendments thereto, any mutual insurance company organized to provide health care provider liability insurance under K.S.A. 40-12a01 through 40-12a09 and amendments thereto, any nonprofit dental service corporation under K.S.A. 40-19a01 through 40-19a14 and amendments thereto, any nonprofit medical and hospital service corporation under K.S.A. 40-19c01 through 40-19c11 and amendments thereto, any health maintenance organization, as defined by K.S.A. 40-3202 and amendments thereto, or any captive insurance company, as defined by K.S.A. 40-4301 and amendments thereto, which is authorized to do business in Kansas.

Sec. 9. K.S.A. 1998 Supp. [redacted] 40-112 and 40-112a are hereby repealed.

Sec. 7 10. This act shall take effect and be in force from and after its publication in the statute book.