Approved: February 23, 1999
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE .

The meeting was called to order by Chairperson Senator Don Steffes at 9:00 a.m. on February 18, 1999 in Room 529 S of the Capitol.

All members were present except:

Committee staff present: Dr. Bill Wolff, Research
Ken Wilke, Office of Revisor
Nikki Feuerborn, Committee Secretary

Conferees appearing before the committee: Bob Kennedy, Assistant Commissioner, Insurance Department
Kevin Glendening, Office of State Bank Commissioner
Brad Keating, Reinsurance Associations of America
Linda DeCoursey, Kansas Insurance Department
Mark Skinner, American Insurance Association
Lee Wright, Farmers Insurance Group
Bill Sneed, State Farm
Pat Morris, Kansas Association of Insurance Agents

Others attending: See Attached

Action on SB 79 - Municipal investment pools

Bob Kennedy, Assistant Commissioner of the Kansas Insurance Department, presented amendments which had been agreed upon between the Department and the League of Municipalities (Attachment 1).

Senator Feleciano moved for the adoption of the presented amendments and that the bill reported favorably as amended. Motion was seconded by Senator Praeger. Motion carried.

Action on SB 241 - Mortgage banking

The committee acknowledged that realistically there could be no regulation of web sites or the Internet but such language might be helpful in the future if an investigation of fraudulent mortgage brokers was being conducted. The key to the balloon amendments as presented was the word "solicitation." (Attachment 2).

Senator Biggs moved for the adoption of the balloon amendments as presented and that the bill be reported favorably as amended. Motion was seconded by Senator Feleciano. Motion carried.

Hearing on SB 48 - Reinsurance

Brad Keating, representing the Reinsurance Associations of America, presented testimony in favor of the bill which would update the "archaic reinsurance laws" of Kansas (Attachment 3):

- repeal a provision which mandates a specific procedure to terminate a reinsurance contract
- clarify existing provisions with regard to recognition of cut-through clauses (guarantees that reimbursement will directly pay contractee if company being reinsured becomes insolvent)
- codify standard provisions of insolvency clauses in the credit for reinsurance and liquidation codes (current law requires reinsurer to pay total amount to contractee even if the company is able to pay a percentage of the claim)

Linda DeCoursey, Kansas Insurance Department, appeared in opposition to the bill which would substantially change the law dealing with insolvencies and liquidation proceedings (Attachment 4). She explained that the requested changes could mean lower reinsurance recoveries by the liquidator, higher costs to the companies that are members of the Kansas Guaranty Association, and lower revenue to the State of Kansas because insurers are allowed premium tax offsets from assessments to the Guaranty Association.

Hearing on SB 121 - File and use

Bob Kennedy, Assistant Commissioner of the Kansas Insurance Department, explained that this bill would complete the modernization of the Department's rate making process for commercial lines of insurance and begins the same process for rates in personal lines insurance (Attachment 5). This bill eliminates the30 day waiting period for commercial lines and recommends moving the personal lines insurance into the file and use rate making with a 30-day waiting period before rates would be effective. Rates for workers compensation loss costs and policies in the assigned risk plans would continue to be subject to prior approval of rates. Large risks would not fall under rate and form regulation. The Commissioner still retains authority to disapprove a rate or form when the rate is excessive, inadequate or unfairly discriminatory.

Mark Skinner, American Insurance Association, explained their role in the reinsurance market and pointed out the different aspects of the bill (Attachment 6). He pointed out that deregulation allows the Commissioner to focus scarce resources on the essential consumer protection functions–unfair claims settlement practices, effective solvency regulation, rehabilitation or liquidation of troubled companies, market conduct exams and consumer complaints. Deregulation tears down the walls and artificial barriers to true competition.

Lee Wright, Farmers Insurance Group, explained that through the practice of file and use, it would allow the flexibility of competitive pricing which enables insured to grow and expand their services to meet the rapidly increasing needs of the insurance buying public (Attachment 7).

Bill Sneed, spoke in support of the bill for State Farm which would expand file and use and assist the KID's flexibility in adapting to the changing insurance markets (Attachment 8). He requested a balloon amendment with technical changes.

Patrick J. Morris, Kansas Association of Insurance Agents, expressed strong support for the majority of the bill with the following exceptions (Attachment 9):

- oppose the "large risk" experiment language in bill which would provide for no rate filing nor form approval for defined "large risks" and request removal of said language
- oppose moving form filings away from prior approval system due to complications, variations in potential coverage, and liability associated with the agent's errors and omissions policy
- oppose "large risks" being exempt from any rate filing with the Kansas Insurance Department

Mr. Morris urged the Committee and the Insurance Department to "slow down" in their efforts to deregulate the insurance industry. He pointed out the inherent danger for large risks in that companies will reduce or restrict coverage on insurance forms. He requested that the Insurance Department continue to review the forms before the agents use such forms as the independent agents feel very vulnerable and liable in such situations.

Chairman Steffes closed the hearing on **SB 121**.

The meeting was adjourned and the next meeting is scheduled for Monday, February 22.

SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE GUEST LIST

DATE: 2/18/99

NAME	REPRESENTING
Kevin Glendening	OSBC
Sonya Allen	OSBC
MARY HAZEN	KANSAS INSURANCE DEPT.
Dick Cook	" " "
Bill Sneed	" " "
Mark Tomasic	AIA
Linda McCarthy	KS Insurance Dept
Pat Morris	KAIA
Rick Wilson	Farmers Alliance
Bill Sneed	RAA
Brad Rutter	RAA
Bill Sneed	State Farm
Harland Priddle	Priddle & Associates
Dan Callahan	KAMMCO

SENATE BILL No. 79

By Committee on Financial Institutions and Insurance

1-21

AN ACT relating to insurance; concerning municipal funded pools; amending K.S.A. 12-2618, 12-2620, 12-2622, 12-2627 and 44-586 and K.S.A. 1998 Supp. 12-2621, 44-584 and 44-585 and repealing the existing sections.

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

Section 1. K.S.A. 12-2618 is hereby amended to read as follows: 12-2618. Application for a certificate of authority to operate a pool shall be made to the commissioner of insurance not less than 30 days prior to the proposed inception date of the pool. The application shall include the following:

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

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

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

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

Senate Financial Institutions & Insurance

Date 2/18/99

Attachment # 1

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

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

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

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

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

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

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

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

(b) Whenever the commissioner shall deem it necessary the commissioner may make, or direct to be made, an examination of the affairs and the financial condition of any pool, except that once every five years

the commissioner shall conduct an examination of the affairs and the financial condition of each pool. Each pool shall submit a certified independent audited financial statement no later than 90 days after the end of the fiscal year. The financial statement shall include outstanding reserves for claims and for claims incurred but not reported. Each pool shall file reports as to income, expenses and loss data at such times and in such manner as the commissioner shall require. *Any pool which does not use rates developed by an approved rating organization shall file with the commissioner an actuarial certification that such rates are actuarially sound.* Whenever it appears to the commissioner from such examination or other satisfactory evidence that the ability to pay current and future claims of any such pool is impaired, or that it is doing business in violation of any of the laws of this state, or that its affairs are in an unsound condition so as to endanger its ability to pay or cause to be paid claims in the amount, manner and time due, the commissioner shall, before filing such report or making the same public, grant such pool upon reasonable notice a hearing, and, if on such hearing the report be confirmed, the commissioner ~~shall~~ *may require any of the actions allowed under K.S.A. 40-222b and amendments thereto or* suspend the certificate of authority for such pool until its ability to pay current and future claims shall have been fully restored and the laws of the state fully complied with. The commissioner may, if there is an unreasonable delay in restoring the ability to pay claims of such pool and in complying with the law *or if rehabilitation or corrective action taken under K.S.A. 40-222b and amendments thereto is unsuccessful*, revoke the certificate of authority of such pool to do business in this state. Upon revoking any such certificate the commissioner shall communicate the fact to the attorney general, whose duty it shall be to commence and prosecute an action in the proper court to dissolve such pool or to enjoin the same from doing or transacting business in this state. The commissioner of insurance may call a hearing under K.S.A. 40-222b, and amendments thereto, and the provisions thereof shall apply to group-funded pools.

Sec. 3. K.S.A. 1998 Supp. 12-2621 is hereby amended to read as follows: 12-2621. (a) With respect to the categories of coverage described in subparagraphs (d)(1) through (4) of K.S.A. 12-2618, and amendments thereto, premium contributions to the pool shall be based upon appropriate manual classification and rates, plus or minus applicable experience credits or debits, and minus any advance discount approved by the trustees, not to exceed 25% of manual premium. The pool shall use rules, classifications and rates as promulgated by an approved rating organization for workers compensation if the pool has been in operation for less than five years. Such rates shall either be the rates effective June 1, 1994, or the prospective loss costs, as defined in K.S.A. 40-1113c, and amend-

insert

(c) On an annual basis, or within 30 days of any change thereto, each pool shall supply to the commissioner the name and qualifications of the designated administrator of the pools and the terms of the specific and aggregate excess insurance contracts of the pool.

ments thereto, plus expenses necessary to administer the pool. For purposes of subsection (b), the prospective loss costs shall be presumed to be the 70% required to be deposited in the claims fund. If the pool has been in operation for more than five years, the board of trustees may determine such rates and discounts as approved by the commissioner. Premium contributions to the pool for all other lines of insurance shall be based on rates filed by a licensed rating organization or on rates of certain companies filing rates with the commissioner and approved by the commissioner for the pool. In lieu of the foregoing, the board of trustees may determine such classification, rates and discounts as approved by the commissioner.

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

(b) An amount equal to at least 70% of the annual premium shall be maintained in a designated depository for the purpose of paying claims in a claims fund account. *If the pool has been in operation for more than five years the commissioner may authorize allocation of a different amount to the claims fund account, if solvency of the pool would not be endangered.* The remaining annual premium shall be placed into a designated depository for the payment of taxes, fees and administrative and other operational costs in an administrative fund account.

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

Sec. 4. K.S.A. 12-2622 is hereby amended to read as follows: 12-2622. The trustees shall not utilize any of the contributions collected as premiums for any purpose unrelated to the pool. Moneys not needed for current obligations may be invested by the trustees. ~~Such investments shall be limited to bonds or other evidences of indebtedness issued, assumed or guaranteed by the United States of America, or by any agency or instrumentality thereof; in certificates of deposit in a federally insured bank located in Kansas; or in shares or savings deposits in a federally insured savings and loan association located in Kansas *Unless authorized elsewhere in this act, all funds of a pool shall be invested only in* securities or other investments permitted by Article 2a of Chapter 40 of the Kansas*

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Such investments shall be limited to investments permitted by K.S.A. 12-1677b and K.S.A. 75-4209, except that a pool which has been existence for at least five years shall be permitted to invest in any of the

Statutes Annotated, ~~or such other securities or investments as the commissioner may permit~~.

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Sec. 5. K.S.A. 12-2627 is hereby amended to read as follows: 12-2627. To ensure the financial stability of the operations of each group-funded pool, the board of trustees of each pool is responsible for all operations of the pool. The board of trustees shall consist of not less than three persons selected according to the bylaws of the pool for stated terms of office to direct the administration of a pool, and whose duties include approving applications by new members of the pool. The majority of the trustees must be a member of the governing body or an officer or employee of members of the pool, but a trustee may not be an owner, officer or employee of any service agent or representative. All trustees shall be residents of this state unless the pool was formed on or before January 1, 1990, in which event the number of Kansas resident trustees of the pool must be that percentage of all trustees of the pool that equals the percentage of the number of Kansas lives covered by the pool with respect to all lives covered by the pool on the last day of the prior fiscal year of the operation of the pool. The board of trustees of each fund shall take all necessary precautions to safeguard the assets of the fund, including all of the following:

(a) Designate an administrator to administer the financial affairs of the pool who shall furnish a fidelity bond to the pool in an amount determined by the trustees to protect the pool against the misappropriation or misuse of any moneys or securities. ~~*Such administrator shall be an experienced administrator of group or self-funded pools, a licensed third party administrator or a risk manager.*~~

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The administrator shall file evidence of the bond with the commissioner. The bond shall be one of the conditions required for approval of the establishment and continued operation of a pool. Any administrator so designated shall be a resident of Kansas if an individual or shall be authorized to do business in Kansas if a corporation.

(b) Retain control of all moneys collected or disbursed from the pool and segregate all moneys into a claims fund account and an administrative fund account. All administrative costs and other disbursements shall be made from the administrative fund account. The trustees may establish a revolving fund for use by the authorized service agent which is replenished from time to time from the claims fund account. The service agent and its employees shall be covered by a fidelity bond, with the pool as obligee, in an amount sufficient to protect all moneys placed in the revolving fund.

(c) Audit the accounts and records of the pool annually or at any time as required. The commissioner shall prescribe the type of audits and a uniform accounting system for use by pool and service agents to deter-

mine the ability of the pool to pay current and future claims.

(d) The trustees shall not extend credit to individual members for any purpose.

(e) The board of trustees shall not borrow any moneys from the pool or in the name of the pool without advising the commissioner of the nature and purpose of the loan.

(f) The board of trustees may delegate authority for specific functions to the administrator of the pool. The functions which the board may delegate include such matters as contracting with a service agent, determining the premium chargeable to and refunds payable to members, investing surplus moneys and approving applications for membership. The board of trustees shall specifically define all authority it delegates in the written minutes of the trustees' meetings. Any delegation of authority shall not be effective without a formal resolution passed by the trustees.

Sec. 6. K.S.A. 1998 Supp. 44-584 is hereby amended to read as follows: 44-584. (a) The application for a new certificate shall be signed by the trustees of the trust fund created by the pool. Any application for a renewal of an existing certificate shall meet at least the standards established in subsections (f), (g), (h), (i), (j), (k), (l), (m) and (n) of K.S.A. 44-582 and amendments thereto. After evaluating the application the commissioner shall notify the applicant that the plan submitted is approved or conversely, if the plan submitted is inadequate, the commissioner shall then fully explain to the applicant what additional requirements must be met. If the application is denied, the applicant shall have 15 days to make an application for hearing by the commissioner after service of the denial notice. The hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

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

(c) Whenever the commissioner shall deem it necessary the commissioner may make, or direct to be made, an examination of the affairs and financial condition of any pool *in accordance with K.S.A. 40-222 and K.S.A. 40-223 and amendments thereto*, except that once every five years the commissioner shall conduct an examination of the affairs and financial

condition of each pool. Each pool shall submit a certified independent audited financial statement no later than 90 days after the end of the pool's fiscal year. The financial statement shall include outstanding reserves for claims and for claims incurred but not reported. Each pool shall file payroll records, accident experience and compensation reports and such other reports and statements at such times and in such manner as the commissioner shall require. Whenever it appears to the commissioner from such examination or other satisfactory evidence that the solvency of any such pool is impaired, or that it is doing business in violation of any of the laws of this state, or that its affairs are in an unsound condition so as to endanger its ability to pay or cause to be paid the compensation in the amount, manner and time due as provided for in the Kansas workers compensation act, the commissioner shall, before filing such report or making the same public, grant such pool upon reasonable notice a hearing in accordance with the provisions of the Kansas administrative procedure act, and, if on such hearing the report be confirmed, the commissioner shall suspend the certificate of authority for such pool until its solvency shall have been fully restored and the laws of the state fully complied with. The commissioner may, if there is an unreasonable delay in restoring the solvency of such pool and in complying with the law, revoke the certificate of authority of such pool to do business in this state. Upon revoking any such certificate the commissioner shall communicate the fact to the attorney general, whose duty it shall be to commence and prosecute an action in the proper court to dissolve such pool or to enjoin the same from doing or transacting business in this state. The commissioner of insurance may call a hearing under K.S.A. 40-222b, and amendments thereto, and the provisions shall apply to group workers compensation pools.

Sec. 7. K.S.A. 1998 Supp. 44-585 is hereby amended to read as follows: 44-585. (a) Premium contributions to the pool shall be based upon appropriate manual classification and rates, plus or minus applicable experience credits or debits, and minus any advance discount approved by the trustees, not to exceed 15% of manual premium. The pool must use rules, classifications and rates as promulgated by an approved rating organization and must report premium and loss data to a rating organization. Such rates shall either be the rates effective June 1, 1994, or the prospective loss costs, as defined in K.S.A. 40-1113, and amendments thereto, plus expenses necessary to administer the pool. For purposes of subsection (b) the prospective loss costs shall be presumed to be the 70% required to be deposited in the claims fund. If the pool has been in operation for more than five years, the board of trustees may determine such rates as approved by the commissioner..

(b) At least 70% of the annual premium shall be placed into a des-

ignated depository for the sole purpose of paying claims. If so approved by the commissioner of insurance, the annual premium to be designated to such depository may be determined to be the net amount of premium after all or a portion of the specific and aggregate excess insurance premium costs have been paid. This shall be called the claims fund account. The remaining annual premium shall be placed into a designated depository for the payment of taxes, fees and administrative costs. This shall be called the administrative fund account. *If a pool has been in operation for more than five years, the commissioner may authorize allocation of a different amount to the claims fund account, if solvency of the pool would not be endangered.*

(c) Any surplus moneys for a fund year in excess of the amount necessary to fulfill all obligations under the workers compensation act for that fund year may be declared to be refundable by the trustees not less than 12 months after the end of the fund year, upon the approval of the commissioner. Such approval can be obtained only upon satisfactory evidence that sufficient funds remain on deposit for the payment of all outstanding claims and expenses, including incurred but not reported claims. Any such refund shall be paid only to those employers who remained participants in the pool for an entire year. Payment of previously earned refunds shall not be contingent on continued membership in the pool.

Sec. 8. K.S.A. 44-586 is hereby amended to read as follows: 44-586. The trustees shall not utilize any of the moneys collected as premiums for any purpose unrelated to Kansas workers' compensation. Moneys not needed for current obligations may be invested by the trustees. ~~Such investments shall be limited to bonds or other evidences of indebtedness issued, assumed or guaranteed by the United States of America, or by any agency or instrumentality thereof, in certificates of deposit in a federally insured bank, or in shares or savings deposits in a federally insured savings and loan association~~ *Unless authorized elsewhere in this act, all funds of a pool shall be invested only in securities or other investments permitted by Article 2a of Chapter 40 of the Kansas Statutes Annotated, or such other securities or investments as the commissioner may permit.*

Sec. 9. K.S.A. 12-2618, 12-2620, 12-2622, 12-2627 and 44-586 and K.S.A. 1998 Supp. 12-2621, 44-584 and 44-585 are hereby repealed.

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

(f) the applicant or registrant has been the subject of any disciplinary action by this agency or any other state or federal regulatory agency; or

(g) a final judgment has been entered against the applicant or registrant in a civil action and the commissioner finds, based upon the conduct on which the judgment is based, that registration of such person would be contrary to the public interest.

Sec. 8. K.S.A. 1998 Supp. 9-2208 is hereby amended to read as follows: 9-2208. (a) Every certificate of registration shall be properly displayed in a prominent place within the registrant's place of business in a way that reasonably assures recognition by customers and members of the general public who enter the registrant's place of business.

(b) Prior to entering into any contract for the provision of services or prior to the registrant receiving any compensation or promise of compensation *for a mortgage loan* the registrant shall acquire from the customer a signed acknowledgment ~~that contains only the following items:~~

~~(1) The name and address of the mortgage business;~~

~~(2) the name and position of the individual presenting the acknowledgment to the customer for a signature;~~

~~(3) a statement in at least 10 point boldface letters which reads "[name of the registrant]is a mortgage business registered with the Kansas Office of the State Bank Commissioner in accordance with the laws of the state of Kansas. This registration does not represent an endorsement or recommendation of the registrant's products or services by the Office of the State Bank Commissioner. As a consumer, you may submit a complaint or inquiry about this mortgage business by delivering a written statement to the Office of the State Bank Commissioner, 700 Jackson, Suite 300, Topeka, Kansas 66603"; and~~

~~(4) an original signature of the customer(s) and the date such signature(s) was attached~~ *containing such information as the commissioner may prescribe by rule and regulation.*

(c) The registrant shall identify that such registrant is registered under this act in all advertising or solicitations directed to Kansas residents, including Internet solicitations. For the purpose of this subsection, "advertising" does not include business cards or promotional items.

(d) No registrant shall conduct mortgage business in this state using any name other than the name or names stated on the certificate of registration.

Sec. 9. K.S.A. 1998 Supp. 9-2209 is hereby amended to read as follows: 9-2209. The commissioner may exercise the following powers:

(a) Adopt rules and regulations as necessary to carry out the intent and purpose of this act;

(b) make investigations and examinations of the registrant's operations, books and records as the commissioner deems necessary for:

~~(1) Determining the adequacy or acceptability of any application for registration;~~

~~(2) pursuing a complaint or information which forms reasonable grounds for belief that an investigation or examination is necessary or advisable for more complete protection of the public~~ *the protection of the public*;

(c) charge reasonable costs of investigation or examination to be paid by the registrant under investigation or examination;

(d) order any registrant to cease any activity or practice which the commissioner deems to be deceptive, dishonest, violative of state or federal law or unduly harmful to the interests of the public; ~~and~~

(e) exchange any information regarding the administration of this act with any agency of the United States or any state which regulates the registrant or administers statutes, rules and regulations or programs related to mortgage loans~~.~~*; and*

(f) disclose to any person or entity that an applicant's or registrant's certificate of registration has been denied, suspended, revoked or refused renewal.

New Sec. 10. (a) Each applicant or registrant who maintains a bona fide office shall comply with at least one of the following:

(1) Submit written evidence which establishes, to the commissioner's satisfaction, that the applicant or registrant is approved as a mortgagee by:

(A) The federal department of housing and urban development;

(B) the federal national mortgage association; or

(C) the federal home loan mortgage corporation.

(2) (A) File with the commissioner a surety bond or irrevocable letter of credit in the amount of $25,000, 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 registrant's faithful performance of all duties and obligations of a registrant meeting the following requirements:

(i) The bond or letter of credit shall be payable to the office of the state bank commissioner; or

Delete or

(ii) the terms of the bond or irrevocable letter of credit shall provide that it may not be terminated without 30 days prior written notice to the commissioner; or

Delete or add and

(iii) the bond or irrevocable letter of credit shall be available for the recovery of expenses, fines and fees levied by the commissioner under this act, and for losses or damages which are incurred by any borrower or consumer as a result of the applicant's or registrant's failure to comply with the requirements of this act; and

(B) submit evidence that establishes, to the commissioner's satisfac-

MEMORANDUM

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

FROM: Bill Sneed, Legislative Counsel
Reinsurance Association of America

DATE: February 18, 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. Repeal 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.

Eliminate 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 t he reinsurance agreement for a run-off of the reinsurance in force at the date of cancellation. [Emphasis added.]

This provision should be repealed 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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Senate Financial Institutions & Insurance
Date 2/18/99
Attachment # 3

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.

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.

Kansas Insurance Department Comments

After preparing our proposed legislation, we submitted it to the Kansas Insurance Department for their review. After their review, the Department provided us their comments regarding the proposal. I would assume that the Department will make most, if not all, of those comments when they testify on this bill; thus, in anticipation, please accept the following as our position regarding the various deletions and/or new language.

1. On page 3, lines 31 to 33, are proposed changes so that the language that is stricken and added later in the section will read consistently, and as such we believe that this language is only clarification. Assuming that we come to some agreement on the language later in the subsection, I don't believe items 1 and 2 present any real issue.

2. The stricken language on page 3, lines 33-34 is a change that would eliminate the extraterritorial application of this section. I would, however, argue that this elimination would treat domestic insurers in a manner that they would not be on the same level playing field with foreign insurers. The NAIC model law on credit for reinsurance recognizes that the insurance regulator with jurisdiction over the insurer's reinsurance credits is the regulator in the insurer's state of domicile. Currently 38 states regulate credit for reinsurance on this basis. The current Kansas approach was

adopted in 1965 and may have been appropriate at that time when most states had not adopted any type of credit for reinsurance statute, let alone the NAIC model.

With the advent of the NAIC model law on credit for reinsurance and the requirement for its adoption as part of the NAIC accreditation program, all 51 U.S. jurisdictions have now in place credit for reinsurance standards. We would argue that when you look at the total global picture, Kansas domestics would not be "losing" or being placed in a minority position as it relates to other foreign insurers. I would note that the NAIC model does include language for a "for cause" option allowing a state to subject foreign companies to its credit for reinsurance laws "for cause." Although we believe the extraterritorial provisions are outdated, in the spirit of compromise, we would be willing to include this in our bill if such a change would position the Department either or support or stay neutral on this proposal.

3. The additional stricken and new language found on page 3, lines 35-42, is, in our opinion, not changing the practical effect of current law. As you are aware, K.S.A. 40-3642 sets out the procedure for the court's approval of claims submitted by the liquidator. "Reported" is inserted to clarify that an insurer is not liable for payments of IBNR estimates as if they were claims. A reinsurer does not pay IBNR reserves to a solvent company, nor to an insolvent company. In the liquidation matters that have been held in Kansas, IBNR has not been an approvable claim. A reinsurer's obligation to a liquidator is contingent upon the IBNR reserve maturing into a specific reported known claim. At that point, the reinsurer is obligated to identify the insolvent insurer.

4. The deletions found on page 3, line 43 and page 4, lines 1 and 2 have been that area where we have spent most of our discussions. This, of course, is the deletion of the 90-day notice provision. I would again argue that this provision is antiquated and does not provide any real protection to the reinsurance company and the insureds. I have discussed this provision with the entire domestic industry and have found no one who objects to its removal. The bottom line is that such a provision is outdated and unnecessary. Second, inasmuch as the Kansas insured should be able to choose how such contracts will be terminated when the reinsurance agreement is negotiated. It is important to note that this deals only with cancellation and not non-renewal. The examples that have been discussed with me by the Department really relate to protections for people who are going to be non-renewed as opposed to being canceled. As I stated earlier, inasmuch as cancellation is generally the result of some suspected fraudulent action, it seems inappropriate in today's marketplace to require the 90-day notice.

5. On page 4, lines 2-10, the new language has been taken from the model law. As you are aware, K.S.A. 40-3634 recognizes exception to the rule of reinsurer payments being made to the party other than the liquidator under certain circumstances. The problem with the current law is that it might be construed someday not to cover all situations in which cut-throughs are used. The current statute uses the term "direct coverage" and refers to "reinsurance contracts." Option A, which you have in your flow chart noted as the first (b), we believe recognizes current Kansas law. The real change is in the second (b), which recognizes novations where the exception is added to the underlying primary policy. Obviously, you could consider this situation as a cut-through, arguably covered under our current law. We believe this language simply clarifies those situations so they are in fact specifically excluded.

RAA's Response to Kansas Insurance Department Concerns

As we perceive the Department's concerns, they are primarily predicated on the ninety-day notice and cancellation provision and the run-off that occurs thereafter. In an effort to additionally compromise this issue, I have attached a proposed amendment that my client would be willing to accept. I have prepared this amendment in a fashion as if it had already been inserted and printed as an amendment approved by the Committee, i.e., the bold type would be the new language to our already-proposed amendment. As you can see, in Section (c) we have left in the ninety-day notice and cancellation provisions, except for those cancellations that were made for nonpayment of premium or fraud in the inducement. It would be our contention that by further narrowing the cancellation provisions, i.e., nonpayment of premium or fraud in the inducement, the concerns of the Department would be stayed. We would argue that it is unfair in a cancellation situation to require an additional ninety-day run-off provision when that insurance was placed in effect by fraud or was being canceled because the insurer failed to pay its premiums.

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

Attachments: 1

(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,* without diminution because of the insolvency of the ceding company**.** ~~and any 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. 40-2,156a, 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 non-payment of premium or fraud in the inducement.** ~~*Such*~~ **Reinsurance** *payments shall be made directly to the ceding insurer or to its domiciliary liquidator except: (1) Where the contract or other written agreement 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** ~~**T**~~**t]**he *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. 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 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.

Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

TO: Senate Committee on Financial Institutions and Insurance

FROM: Linda De Coursey

RE: SB 48 – Reinsurance

DATE: February 18, 1999

Mr. Chairman and members of the Committee:

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

The Kansas Insurance Department is appearing in opposition to SB 48. We do feel that some of the proposed changes create an unlevel playing field between foreign insurers and domestic insurers. Some of the protections for the ceding insurer, assuming reinsurer and the insureds are eroded by diluting the insolvency clause. We are concerned that some of the changes could mean lower reinsurance recoveries by the liquidator, higher costs to the companies that are members of the Kansas Guaranty Association, and lower revenue to the State of Kansas because insurers are allowed premium tax offsets from assessments to the Guaranty Association.

Kansas adopted reinsurance laws in 1965, and the laws were updated as recently as 1997. These laws are established for the purpose of protecting the interest of policyholders, claimants, ceding insurers, reinsurers and the public by establishing appropriate oversight and regulation of

Senate Financial Institutions & Insurance
Date 2/18/99
Attachment # 4

420 SW 9th Street
Topeka, Kansas 66612-1678
785 296-3071
Fax 785 296-2283

ceding insurers and reinsurers. We maintain a conservative nature when it comes to seeing that insurance companies and reinsurance companies are solvent, and it bids well for us.

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.

Reinsurance contracts, in general, are contracts of indemnity and not of liability. This means that the reinsurer owes nothing to the reinsured company until such time as the reinsured company pays a claim. Under this principle, if the reinsured company becomes insolvent (bankrupt), the reinsurer owes only that portion of the claim that is actually paid in the insolvency proceeding. For example, in a 50% quota share treaty, if a claim is allowed by the liquidator to a claimant, but only 20% of the claim is actually paid by the liquidator because of inadequate funds, the reinsurer contractually owes to the liquidator only 10% of the total allowed claim. Insurance statutes or regulations will not allow credit for reinsurance ceded unless the reinsurance contract provides that the reinsurance will be payable to the liquidator of the insolvent company. Under this provision called the "insolvency clause", the reinsurer in the example cited above owes the full 50% of the allowed claim and not just 10% or one-half of what is actually paid.

There are liquidation proceedings established when a reinsured company is placed in liquidation. Recently, there is a new "party" added to liquidation proceedings: guaranty funds. Such funds, required by almost all state, receive monies from assessments on all licensed companies writing certain insurance to pay the debts of any insolvent insurance company. As

reinsurance contracts are presently constructed, and modified by the insolvency clause, the guaranty funds have no contractual right to reinsurance proceeds: the reinsurer's relationship is with the liquidator of the insolvent company and with no one else.

The proposal makes clear the "cut-through endorsement" and novation are valid exceptions to the reinsurer's obligation to an insolvent ceding company. It appears the language in the bill has the effect of reducing a reinsurer's obligation to the insolvent ceding company that may result in reduced recoveries by the liquidator. This would increase assessments to member insurers of the Kansas Insurance Guaranty Association.

The language being proposed appears to reduce the essential obligation of the insolvency clause. That would mean: lower reinsurance recoveries by the liquidator, higher costs to the companies that are members of the Kansas Guaranty Association, and lower revenue to the State of Kansas because insurers are allowed premium tax offsets from assessment to the Guaranty Association. Also, it appears that the language would not allow a liquidator's early closing plan that would call for the estimation of claims and the acceleration of payment by the assuming reinsurers. It appears the phrase "subject to court approval" is just restating what is already stated in the liquidation act. And, finally, the phrase "reported claims allowed in the liquidation proceedings" would advance the reinsurer's position in the event they would be faced with a liquidator's early closing plan that would call for claims estimation and acceleration of payments by reinsurers.

I have attached a detailed comparative summary of our concerns with SB 48. Don Gaskill, Director of the Financial Surveillance Division is here with me to answer any of your questions regarding SB 48, and our concerns with the provisions therein. And, if I may take the liberty to paraphrase and make the words of our Medieval poet Dante fit this situation (Divina Commedia,

Purgatorio, XVI,9) - "You have not knowledge of reinsurance if you only understand it--you must also remember it." Mr. Gaskill has knowledge of reinsurance. Mr. Chairman and members of the committee would respectfully ask you to not pass the bill out of committee.

Thank you.

Proposed Revisions to Statute by RAA	Concerns to Proposed Revisions
(c) ~~Any reinsurance ceded by a company~~ No credit shall be allowed, as an admitted asset or deduction from liability,	This section allows for credit to be taken as an asset or deduction from liabilities
to any ceding insurer organized under the laws of this state	This section applies to Kansas Domestic insurers
~~or ceded by any company not organized under the laws of this state and transacting business in this state~~	This section applies to foreign insurers. *RAA wants foreign insurers to be excluded from this law.* Kansas Domestic insurers would not be on a same level playing field with foreign insurers.
~~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 phrase "in substance" raises a concern. It appears that the previously strict essential obligation of the insolvency clause – that the assuming reinsurer pay the insolvent ceding insurer what it would have paid had the ceding insurer remained solvent – is somehow being reduced. That would mean 1)lower reinsurance recoveries by the liquidator 2) higher costs to the companies that are members of the Kansas Guaranty Association and 3) lower revenue to the State of Kansas because insurers are allowed premium tax offsets from assessments to the Guaranty Association. *RAA want this proposed revision added.*
the reinsurance shall be payable under a contract reinsured by the assuming insurer on the basis of reported claims allowed in the liquidation proceedings,	Stated in the above strikeout section "the liability of the ceding company" allows for both reported claims and incurred but not reported claims. The phrase stated in this section "on the basis of reported claims " in the proposed provision by RAA allows only for reported claims and does not take into consideration the incurred but not reported claims. The proposed language would not allow a liquidator's early closing plan that would call for the estimation of claims and the acceleration of payments by the assuming reinsurers. *RAA wants the proposed provision added.*

RAA = Reinsurance Association of America which comprises 29 property and casualty companies
~~Strikethrough~~ wording = language that RAA wants deleted from Kansas Law
Underlined wording = language that RAA wants added to Kansas Law

4-5

G-4

subject to court approval without diminution because of the insolvency of the ceding company	The phrase "subject to court approval" adds an element of uncertainty with regard to a assuming reinsurer's liability. *RAA wants the proposed provision added.*
~~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~~	This section allows for a ceding insurer, on the event of a contract being cancelled with less than 90 days notice, to have reinsurance and provide for a run-off of the reinsurance in-force at the date of cancellation. This allows the ceding insurer time to obtain other reinsurance coverage. This also allows the assuming reinsurer time to seek other reinsurance business. This provision protects the ceding insurer, assuming reinsurer and the insureds. *RAA wants this provision deleted.* A reinsurance contract will usually be cancelled on a "cut-off" basis, meaning the assuming reinsurer is not liable for claims occurring subsequent to the cancellation date. The assuming reinsurer would, at the same time, return the unearned premium. If the assuming reinsurer were able to cancel without the 90-day notice provision, then the assuming reinsurers' liability for claims past the cancellation date would be reduced considerably. This would leave the ceding insurer exposed to a gross liability and in effect the reinsurance would be worthless. Each reinsurance contract would operate on a day by day basis. The ceding insurer's liability exposure at any one time would be unknown. The assuming reinsurer could at a minutes notice cancel the agreement and the ceding insurer would be exposed to all the liabilities. If the assuming reinsurer noticed a trend of losses developing in particular line of business, then the assuming reinsurer could leave that line of business in a moments notice. This would leave the ceding insurer exposed to the development of all the losses. I have a real problem with our domestic insurers management skills if they were to have their companies exposed to this situation. That would mean 1) lower reinsurance recoveries by the liquidator 2) higher costs to the companies that are members of the Kansas Guaranty Association and 3) lower revenue to the State of Kansas because insurers are allowed premium tax offsets from assessments to the Guaranty Association.

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~~Such~~ Reinsurance payments shall be made directly to the ceding insurer or to its Domiciliary liquidator except:	
(1) where the contract or other written agreement specifically provides another payee of such reinsurance in the event of the insolvency of the ceding insurer,or	K.S.A 40-3634 already provides similar language that is more limited. The statute states "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." This provision allows for cut-throughs. "A cut-through stipulates that in the event of insolvency of the ceding insurer, obligations of the assuming reinsurer as respects business covered under the reinsurance agreement will be paid by the assuming reinsurer directly to the insured or claimant under the ceding insurer's original policy. The insolvency clause references are important because the basic requirement behind the insolvency clause is that the assuming reinsurer be compelled to pay to the receiver obligations which otherwise would be due to the ceding insurer "without diminution."" (decrease) Reinsurance proceeds are supposed to be part of the general funds of the insolvent ceding insurer, for the benefit of all creditors, not for the benefit of a particular creditor or insured. This proposed provision bypasses the liquidator. *RAA want this provision added.* "another payee" could mean that the agreement allows for the payment to any one and not the named insured.
(2) where the assuming insurer, with the consent of the direct insured(s), 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.	This proposed clause addresses novations. If the direct insured(s) has consented to the assumption of the insurance by an assuming reinsurer, then the assuming reinsurer has already assumed the policy and the novation is already in effect. This language is redundant.

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Underlined wording = language that RAA wants added to Kansas Law

(d) The reinsurance agreement may provide that ~~T~~the domiciliary liquidator of an insolvent ceding insurer shall give written notice to the assuming insurer of the pendency of a claim against ceding insurer on the contract reinsured within a reasonable time after claim is filed in the liquidation proceeding.	A notice provision is a standard term in a reinsurance contract. Liquidators are already obligated under these standard provisions to provide timely notice of claims. It appears the intent is to impose an additional statutory notice obligation on the receiver over and above the already existing contractual obligation. This provision could reduce the assuming reinsurer's pay-out to an insolvent ceding company. That would mean 1) lower reinsurance recoveries by the liquidator 2) higher costs to the companies that are members of the Kansas Guaranty Association and 3) lower revenue to the State of Kansas because insurers are allowed premium tax offsets from assessments to the Guaranty Association.
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.	This provision allows for the assuming reinsurer to investigate and to step in between the liquidator and the insolvent ceding insurer. This provision may allow the assuming reinsurer to interfere with the liquidator.
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.	This provision would allow the assuming reinsurer to share the benefits as a result of the assuming reinsurer interposing in the proceeding. That would mean 1) lower reinsurance recoveries by the liquidator 2) higher costs to the companies that are members of the Kansas Guaranty Association and 3) lower revenue to the State of Kansas because insurers are allowed premium tax offsets from assessments to the Guaranty Association.
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.	This provision allows for two or more assuming reinsurers to interpose in the defense of a claim. The expense shall be apportioned according to the reinsurance agreement as though the expense was incurred by the ceding insurer. This provision may allow two assuming reinsurers to interfere with the liquidator.

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Underlined wording = language that RAA wants added to Kansas Law

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 that in the event of the insolvency of the ceding insurer,	Kansas Law allows the reinsurer to pay direct coverage to a named insured and the pay must discharge the claim
the reinsurance shall be payable under a contract reinsured by the assuming insurer on the basis of reported claims allowed in the liquidation proceedings,	Stated in the above strikeout section "the liability of the ceding company" allows for both reported claims and incurred but not reported claims. The phrase stated in this section "on the basis of reported claims " in the proposed provision by RAA allows only for reported claims and does not take into consideration the incurred but not reported claims. The proposed language would not allow a liquidator's early closing plan that would call for the estimation of claims and the acceleration of payments by the assuming reinsurers. *RAA wants the proposed provision added.*
subject to court approval without diminution because of the insolvency of the ceding insurer.	The phrase "subject to court approval" adds an element of uncertainty with regard to a assuming reinsurer's liability. *RAA wants the proposed provision added.*

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Strikethrough wording = language that RAA wants deleted from Kansas Law
Underlined wording = language that RAA wants added to Kansas Law

Such payments shall be made directly to the ceding insurer or to its domiciliary liquidator except:	
(1) where the contract or other written agreement specifically provides another payee of such reinsurance in the event of the insolvency of the ceding insurer,or	K.S.A 40-3634 already provides similar language that is more limited. The statute states "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." This provision allows for cut-throughs. "A cut-through stipulates that in the event of insolvency of the ceding insurer, obligations of the assuming reinsurer as respects business covered under the reinsurance agreement will be paid by the assuming reinsurer directly to the insured or claimant under the ceding insurer's original policy. The insolvency clause references are important because the basic requirement behind the insolvency clause is that the assuming reinsurer be compelled to pay to the receiver obligations which otherwise would be due to the ceding insurer "without diminution."" (decrease) Reinsurance proceeds are supposed to be part of the general funds of the insolvent ceding insurer, for the benefit of all creditors, not for the benefit of a particular creditor or insured. This proposed provision bypasses the liquidator. *RAA want this provision added.*
(2) where the assuming insurer, with the consent of the direct insured(s), 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.	This proposed clause addresses novations. If the direct insured(s) has consented to the assumption of the insurance by an assuming reinsurer, then the assuming reinsurer has already assumed the policy and the novation is already in effect. This language is redundant.

Typical Reinsurance Transaction

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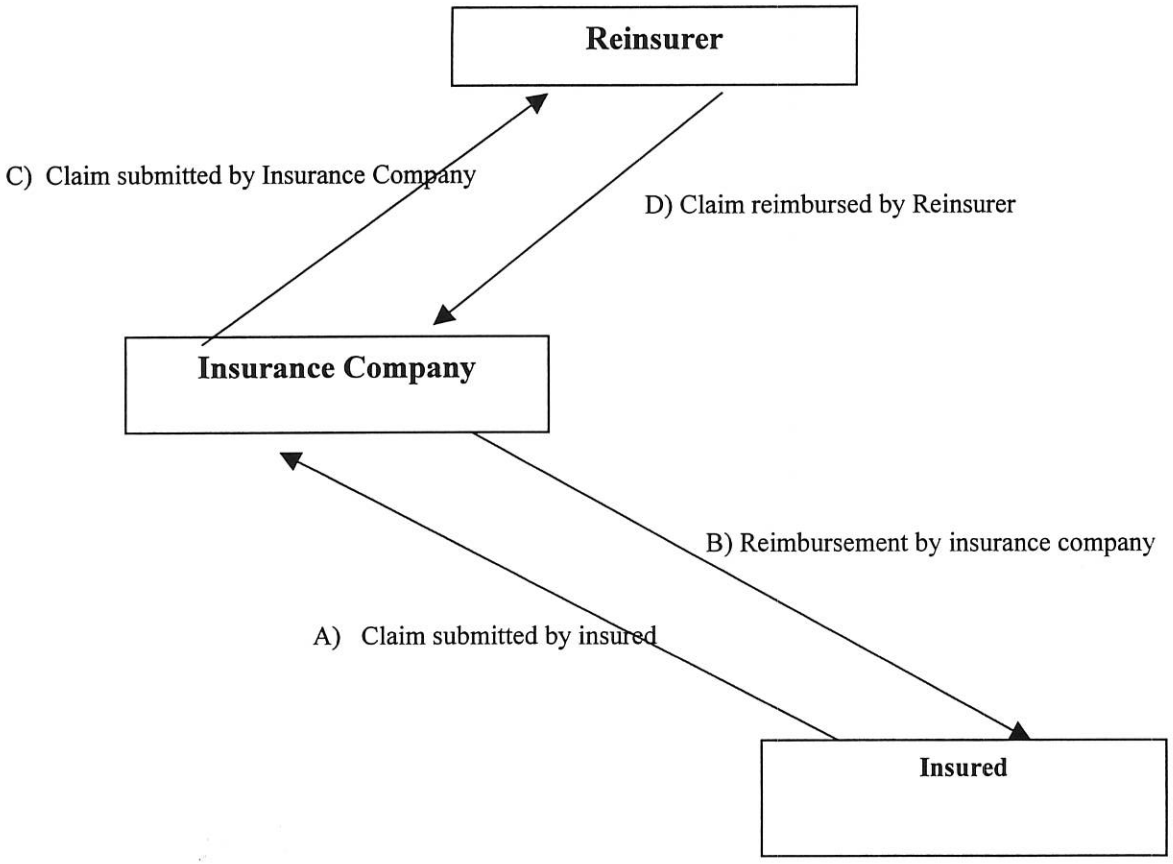
Strikethrough wording = language that RAA wants deleted from Kansas Law
Underlined wording = language that RAA wants added to Kansas Law

Typical Reinsurance Transaction

Example A



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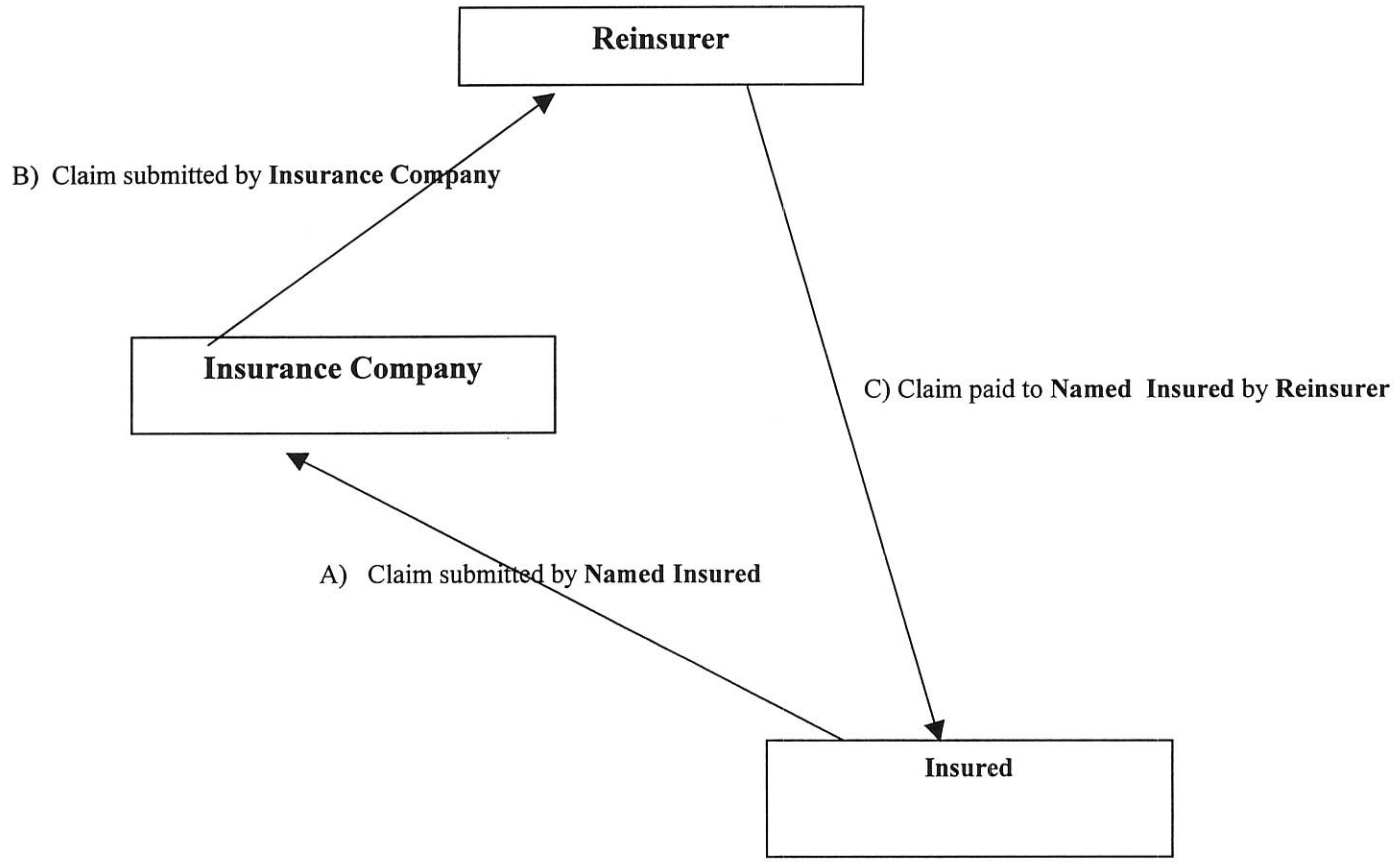
Underlined wording = language that RAA wants added to Kansas Law

"Cut-Through" Transaction

Example B



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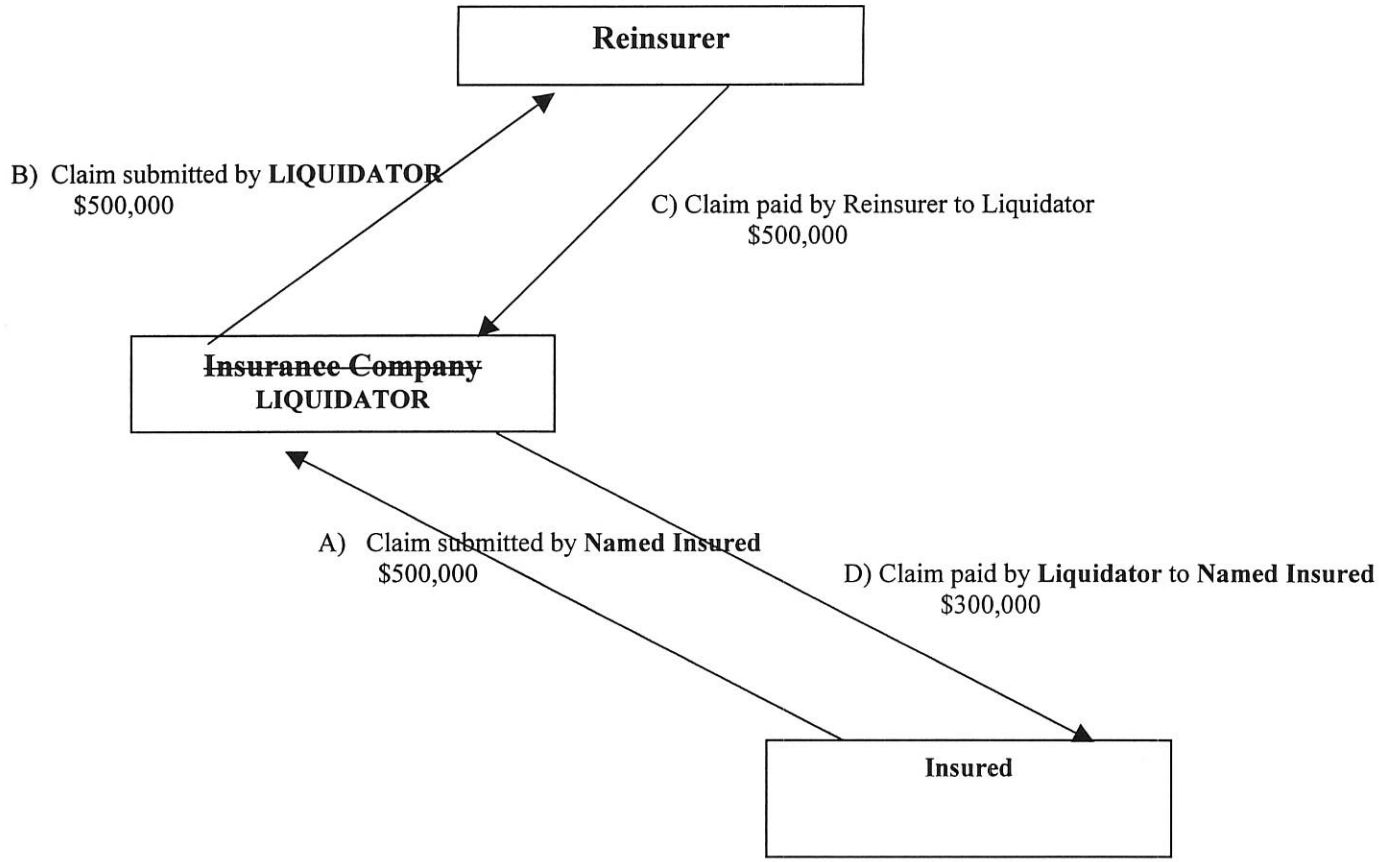
Underlined wording = language that RAA wants added to Kansas Law

Reinsurance Payable without Diminution

Example C



RAA = Reinsurance Association of America which comprises 29 property and casualty companies
~~Strikethrough~~ wording = language that RAA wants deleted from Kansas Law
Underlined wording = language that RAA wants added to Kansas Law

Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

February 18. 1999

Testimony before Senate
Financial Institutions and Insurance Committee
on
Senate Bill 121

Mr. Chairman and members of the Committee:

Thank you for the opportunity to discuss Senate Bill 121. This bill completes the modernization of our ratemaking process for commercial lines of insurance and begins the same process for rates in personal lines insurance.

Two legislative sessions ago we proposed converting the process of approving rates for commercial insurance from a "prior approval" system to the "file and use" system increasing used by states to review rates used by insurers. You enacted those proposed changes into law. In that law, we retained some safeguards recommended by our staff: (1) keeping some lines in prior approval (small business owner, workers compensation and farmowner's); and, (2) required a waiting period of 30 days after filing before rates became effective. The waiting period gave our staff some time to do a quick review of the rates before they became effective.

Senate Bill 121 fully completes the process by eliminating the 30 day waiting period and moving the last commercial lines into file and use. [Section 2(b)] In addition, we recommend a similar, two-phased process of modernizing personal lines insurance, i.e. the insurance purchased by individuals and families for personal protection, such as personal automobile and homeowners. Senate Bill 121 moves these lines of insurance into file and use ratemaking, with a 30-day waiting period before rates would be effective. [Section 2(c)] Rates for workers compensation loss costs and policies in the assigned risk plans would continue to be subject to prior approval of rates. [Section 2b]

Senate Financial Institutions & Insurance
Date 2/18/99
Attachment # 5

420 SW 9th Street
Topeka, Kansas 66612-1678

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Consumer Assistance Hotline
1 800 432-2484 (Toll Free)

Senate Bill 121 also exempts certain unique commercial insurance policies from prior approval or file and use rate regulation. [Section 2(h)] These are generally policies sold to large insureds and are often custom tailored by an insurer for a specific insured with unique insurance exposures.

In addition, Senate Bill 121 creates an oasis from rate and form regulation for "large risks." These are defined as insureds who: (1) insure property valued more than $5 million; (2) have annual revenues exceeding $10 million; or (3) paid premium exceeding $25,000 ($50,000 for multiple-lines policies) in the preceding year. This exemption from rate and form regulation would not be available for workers compensation insurance, insurance purchasing groups or the medical malpractice insurance required in K.S.A. 40-3401 et seq. [Section 1(b) and 2(h)]

As we pointed out two sessions ago, the Commissioner still retains existing statutory authority to take action to "disapprove" a rate or form used by any insurer, subject to a hearing, where the Commissioner finds the rate is "excessive, inadequate or unfairly discriminatory." [Section 2(e)]

Robert L. Kennedy, Jr.
Assistant Commissioner

American Insurance Association

Southwest Regional Office

Testimony of Mark W. Skinner
before the Senate Financial Institutions and Insurance Committee
on Senate Bill 121
February 18, 1999

Mr. Chairman and members of the committee, my name is Mark Skinner, Assistant Vice President of the American Insurance Association for the Southwest Region. The American Insurance Association is a trade association representing more than 300 major insurance companies which provide all lines of property and casualty insurance. It is always great to come home to Kansas, particularly to endorse a message of opportunity for growth and benefits for your constituents.

I am here today to voice our members' strong support for Senate Bill 121. The members of this committee, the legislature and Commissioner Sebelius are to be applauded for the leadership and commitment to moving Kansas insurance regulation forward with the rest of the nation. As you are well aware, the proposal before you is another incremental step in the multi-year effort to modernize Kansas's insurance regulation – and indeed to make Kansas an attractive market for insurance carriers to do business and locate. AIA is extremely pleased to include among our members Universal Underwriters Insurance Company, now the largest domestic property and casualty carrier in the state. Based on the commitment to modernization made by the legislature's interim committee on the insurance industry and the Commissioner's reform agenda, Universal made the decision to redomesticate to Kansas.

After the proven success of the 1997 commercial lines reforms, the legislature charged the Commissioner with developing a package of additional reforms. In keeping with that commitment, before you is a proposal which contains four essential reforms to allow Kansas to keep pace in a dynamic and ever changing global insurance climate. Although insurance is regulated at the state level, one cannot ignore the changes occurring across the nation and even around the world. As carriers look for a market in which to commit capital and resources, they will look first to the regulatory climate of that jurisdiction. The evolution of the Kansas market has been remarkable. However, as would be expected, as Kansas was moving forward so were other states. For Kansas to continue to keep pace, it is essential to not rest on past success. If the legislature were to stop now, it would send the wrong message to insurance community. The proposal before you is modest in keeping with the spirit of Kansas' conservatism. However, it will send the message that your commitment is real.

Senate Financial Institutions & Insurance

Date 2/18/99

Attachment # 6

100 Congress Avenue, Suite 1950 ▼ Austin, TX 78701 ▼ Phone: 512/322-3111

SB 121 addresses additional commercial rate deregulation, personal lines rate deregulation and would enact a large commercial rate and separate form-filing exemption. The proposals were first discussed in Kansas more than 2 years ago. Each of these proposals has been tested elsewhere in the country and proven to be beneficial for not only the carriers and agents, but most importantly the individual consumers and commercial policyholders.

In other jurisdictions, consumers have seen the benefits of regulatory reform with more companies entering the market, producing greater availability, lowering prices and increasing product innovation. Interstate data comparisons reveal that there generally are more companies and less market concentration in states with more open regulatory environments for commercial insurance. Without regulatory delays, new coverages can be brought to the market more quickly. We have no reason to believe the experience in Kansas would be any different. When the government controls prices, product options dry up. Why should the government control the price of an auto insurance policy, or a homeowner's policy, or business owners insurance when the government does not control the price of an auto, a home or the products the business sells? The record is clear. It is time to allow Kansans to enjoy the benefits of competition. Increasing competition now through greater regulatory freedom will help prevent Kansas from returning to the "hard markets" of the early 80's – a time when it was difficult to find insurers willing to write some policies.

Currently, thirty-five jurisdictions have less restrictive commercial rate regulation. Twenty-nine jurisdictions have less restrictive regulation for personal lines – homeowners and private passenger auto. Twenty states provide greater flexibility in regulation of insurance policy forms. Kansas is surrounded by states whose citizens enjoy such benefits. These include Colorado, Wyoming, Oklahoma, Missouri, Texas and Illinois.

As we sit here, two states neighboring Kansas have taken steps to modernize their systems. Yesterday, the Arkansas House Insurance Committee favorably recommended a proposal which would eliminate rate filing requirements for virtually all commercial lines and at the same time enact a large commercial exemption for filing forms. The day before that, the House Insurance Committee in Oklahoma recommended favorably a proposal which would move commercial lines to a system of file and use similar to that contained in the Kansas proposal, in addition, they recommended an exemption from rate filing for commercial risks with an aggregate premium over $10,000. Both of these proposals had the full endorsement of the state agents association, business community and insurance departments. Clearly, the country is moving ahead, Kansas cannot afford to be left behind as an island surrounded by states that have reformed their systems.

Additionally, proposals more ambitious than SB 121 are also pending in Nebraska and Missouri. Although Missouri already enjoys considerably more rate freedom than Kansas, next week the legislature will consider a proposal to enact a large commercial form exemption and to exempt rate filings for commercial policyholders above an

aggregate premium of $25,000. Again, each of these proposals enjoys the broad-based support of the agent and business communities.

Nationally, AIA is working with a broad based ad-hoc industry coalition which includes the national agents association, as well as, other insurers and trade associations to develop a common model. The working proposal before the group contains thresholds similar to SB121. The agents association has voiced no objection to this draft.

Although the Kansas proposal is a significant step forward, it is still modest and conservative when put in context of developments and trends across the country.

Specifically, Senate Bill 121 would:

- Move all commercial lines, but for workers' compensation, medical malpractice and assigned risk plans to a system of file and use. What this means is insurers would be allowed to use a new rate the day it is filed with the Department. Currently, rates must be on file for a waiting period of 30-days. Without going into greater detail, attached is a one-page document which highlights the compelling reasons for such rate freedom.

- Second, the proposal would begin to reform personal lines markets. To date, the legislature has not addressed the needs of the personal lines – homeowners and private passenger auto. The bill would take the first incremental step, similar to what Kansas did with Commercial lines in 1997. Personal lines rates would move from a system of strict prior approval to a system of file and use with a 30-day waiting period. If the rate was not disapproved within the waiting period, it would be deemed approved and allowed to be used in the market.

- Third, the proposal would enact a large commercial rate exemption. Rates for those commercial policyholders who have at least $25,000 in property or general liability insurance premium, or a multi-lines policy with at least $50,000 in premium would be exempt from the rate filing requirements. Based on a survey of AIA members' books of business in Kansas, AIA estimates less than 5% of the commercial policyholders would be eligible. Again, a very modest first step for Kansas, but highly significant nonetheless. In addition to the impending action on proposals in the neighboring states of Arkansas and Oklahoma, since December four additional states have adopted such proposals including Pennsylvania, Arizona, Georgia and New Hampshire. At least a dozen proposals are under consideration across the country this year.

- Finally, the proposal would create an exemption for policy forms for large commercial risks. Also attached is a fact sheet which details the advantages of form freedom for sophisticated commercial buyers. Again, the Kansas proposal is modest. The Kansas proposal is closely patterned after Texas law which has been on the books for four years and enjoyed a record of success. In fact, the Texas law was so successful, just two years after enactment, the legislature returned to cut the threshold

limits in half which is the proposal before you today. As with reforms in other states, the Texas law was enacted and improved with the support of the Texas agents and business community.

The "one size fits all" approach to regulation may be appropriate for homeowners or small businesses, but such regulation ignores the interests of large business enterprises, which do not want or need various regulatory "protections" such as rate controls and form requirements.

large commercial risk areas

One point discussed in the attachments does merit special attention. Under each of the separate proposals, the Insurance Commissioner retains existing regulatory authority to regulate rates for excessive, inadequate or unfairly discriminatory practices. Forms and rates would still be subject to public policy considerations and the law of the state. All rates and forms would be available and subject to review by the Commissioner. In fact, the law specifically provides authority for the Commissioner to return rates and forms to closer regulation should they become non-competitive. The impact on the Department is that deregulation allows the Commissioner to focus scarce resources on the essential consumer protection functions – unfair claims settlement practices, effective solvency regulation, rehabilitation or liquidation of troubled companies, market conduct exams and consumer complaints.

In conclusion, quite simply, you are faced with a critical decision, to continue the commitment made by this legislature to modernize and reform the insurance regulatory system or pause while Kansas falls farther behind the nation. To us the decision is clear, our members would like the opportunity to bring to Kansans the inherit benefits of competition. As you can tell from my comments, once states take the step toward deregulation they do not go back, in fact they continue to tear down the walls and artificial barriers to true competition. We encourage your favorable consideration.

Thank you for the opportunity to appear today. I would be happy to respond to questions now or at the conclusion of the testimony, as well as provide copies of any of the legislative proposals I have discussed.

6-4

American Insurance Association

Southwest Regional Office

Why Competitive Insurance Rating Is Good for KANSAS

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

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

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

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

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

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

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

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

6-5

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American Insurance Association

Southwest Regional Office

Why Deregulation of Forms for "Large Commercial Risks" Is Good for Kansas

- **Kansas would benefit form forms deregulation for large commercial risks.** The current regulatory system of "prior approval" creates additional costs, inefficiencies and delays for insurers. These costs ultimately impact the premiums paid by policyholders. An environment free from unnecessary and costly regulatory restrictions allows businesses to react quickly to a changing market.

- **Kansas' large commercial policyholders are sophisticated buyers of insurance products.** Often they employ or retain professional risk managers and others to procure insurance and to engage in arms-length negotiations with insurers. They require and, indeed, demand coverage individually tailored to their needs and available without undue delay.

- **Kansas' large commercial policyholders do not need traditional regulatory intervention.** Because of their sophistication, they have no need for a regulator to serve as an intermediary in negotiations with their insurers. In fact, they are not well served by forms regulation that fails to distinguish between their particularized needs and those of other policyholders – instead lumping all together.

- **Large commercial policyholders which operate regionally, nationally and globally are hindered by the current system.** Currently, policyholders must negotiate the terms and price of insurance coverage subject to a wide variety of conflicting requirements that exist among the Nation's 51 insurance regulatory jurisdictions. When favorable market conditions worsen, regulatory restrictions tighten or prices start to escalate, large buyers of insurance find traditional markets do not meet their needs. Instead, they turn to unregulated alternatives, such as foreign or other unlicensed carriers, or self-insurance.

- **No one benefits when large commercial buyers turn to unregulated markets.** Insurance premiums flow out of state and to foreign entities, thus, state revenue from premium taxes decline. Moreover, injured claimants would no longer be able to look to a licensed insurer who is subject to regulatory oversight. In a deregulated environment, the Kansas Department of Insurance would retain essential regulatory oversight including the ability to respond to unfair claims settlement practices, solvency concerns and discriminatory practices.

- **Many states have recognized the importance of form deregulation for large commercial risks.** Kansas' legislative proposal is based on a Texas' statute which has been so successful that the state recently cut the large risk criteria threshold in half. In November 1998, Pennsylvania enacted HB 366 creating a similar rate and form filing exemption.

- **The Kansas forms deregulation proposal would impact only a small segment of the market.** The proposal would create an exemption for large commercial forms when an insured has a premium greater than $50,000 for multi-peril insurance or $25,000 for general liability or property coverages. Based on a survey of leading commercial insurers, 95% of commercial policyholders have a total aggregate premium of $25,000 or less.

6-6

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FARMERS

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Senate Bill 121
Testimony by Lee Wright
Feb. 18, 1999

Thank you Mr. Chairman and members of the committee. My name is Lee Wright and I am representing the farmers insurance Group of Companies. Thank you for this opportunity to appear today in support of SB 121.

We are the second largest insurer of automobiles in Kansas and the third largest insurer of homeowners. We welcome the Kansas Insurance Department's decision to recommend a file and use rating procedure for our personal lines business.

The flexibility of competitive pricing in a file and use system enables insureds to grow and expand their services to meet the rapidly increasing needs of the insurance buying public.

In addition, insurers should be more willing to write insurance because they become less fearful of their future ability to implement price changes, up or down, in accordance with changing experience.

We would appreciate the Committee's support of Senate Bill 121 and respectfully request it be found favorable for passage.

Thank you, that concludes my remarks. I would be happy to answer questions.

Senate Financial Institutions & Insurance
Date 2/18/99
Attachment # 7

MEMORANDUM

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

FROM: Bill Sneed, Legislative Counsel
The State Farm Insurance Companies

DATE: February 17, 1999

RE: S.B. 121

Mr. Chairman, Members of the Committee: My name is Bill Sneed and I represent the State Farm Insurance Companies. We appreciate the opportunity to voice our support of S.B. 121.

As you are aware, S.B. 121 will provide the expansion of file and use within the State of Kansas. We believe that this expansion provides the Kansas Insurance Department much more flexibility so that they in turn can adapt to the changing insurance markets.

Having reviewed the bill, we would offer some minor language changes which we believe are nothing more than technical. Attached to my remarks is a balloon amendment, and we respectfully request that this balloon be added to the bill.

Again, we respectfully request your favorable consideration of this bill, and if you have any questions, please feel free to contact me.

Respectfully submitted,

William W. Sneed

Attachments: 1

POLSINELLI, WHITE, VARDEMAN & SHALTON
555 South Kansas Avenue, Suite 301
Topeka, Kansas 66603-3443
(785) 233-1446
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Senate Financial Institutions & Insurance
Date 2/18/99
Attachment # 8

Session of 1999

SENATE BILL No. 121

By Committee on Financial Institutions and Insurance

1-25

AN ACT relating to insurance; concerning rate filings; amending K.S.A. 40-216 and K.S.A. 1998 Supp. 40-955 and repealing the existing sections.

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

Section 1. K.S.A. 40-216 is hereby amended to read as follows: 40-216. *(a)* No insurance company shall hereafter transact business in this state until certified copies of its charter and amendments thereto shall have been filed with and approved by the commissioner of insurance. A copy of the bylaws and amendments thereto of insurance companies organized under the laws of this state shall also be filed with and approved by the commissioner of insurance. The commissioner may also require the filing of such other documents and papers as are necessary to determine compliance with the laws of this state. No contract of insurance or indemnity shall be issued or delivered in this state until the form of the same has been filed with the commissioner of insurance, nor if the commissioner of insurance gives written notice within ~~thirty (30)~~ *30* days of such filing, to the company proposing to issue such contract, showing wherein the form of such contract does not comply with the requirements of the laws of this state; but the failure of any insurance company to comply with this section shall not constitute a defense to any action brought on its contracts. An insurer may satisfy its obligation to file its contracts of insurance or indemnity either individually or by authorizing the commissioner to accept on its behalf the filings made by a licensed rating organization or another insurer.

Under such rules and regulations as ~~he or she~~ *the commissioner of insurance* shall adopt, the commissioner may, by written order, suspend or modify the requirement of filing forms of contracts of insurance or indemnity, which cannot practicably be filed before they are used. Such orders, rules and regulations shall be made known to insurers and rating organizations affected thereby. The commissioner may make an examination to ascertain whether any forms affected by such order meet the standards of this code.

(b) This section shall not apply to any policy or contract form for large risks. For the purposes of this subsection, "large risk" means: (1) An

insured that has total insured property values of $5,000,000 or more; (2) an insured that has total annual gross revenues of $10,000,000 or more; or (3) an insured that has in the preceding calendar year a total paid premium of $25,000 or more for property insurance, $25,000 or more for general liability insurance, or $50,000 or more for multiple lines policies.

(c) The exemption for any large risk policy or contract form contained in subsection (b) shall not apply to workers compensation and employer's liability insurance, insurance purchasing groups, and the basic coverage required by K.S.A. 40-3401 et seq. and amendments thereto.

Sec. 2. K.S.A. 1998 Supp. 40-955 is hereby amended to read as follows: 40-955. (a) Every insurer shall file with the commissioner, except as to inland marine risks where general custom of the industry is not to use manual rates or rating plans, every manual of classifications, rules and rates, every rating plan, policy form and every modification of any of the foregoing which it proposes to use. Every such filing shall indicate the proposed effective date and the character and extent of the coverage contemplated and shall be accompanied by the information upon which the insurer supports the filings. A filing and any supporting information shall be open to public inspection after it is filed with the commissioner. An insurer may satisfy its obligations to make such filings by authorizing the commissioner to accept on its behalf the filings made by a licensed rating organization or another insurer. Nothing contained in this act shall be construed to require any insurer to become a member or subscriber of any rating organization.

(b) Any rate filing for ~~personal lines, small business owners insurance,~~ the basic coverage required by K.S.A. 40-3401 *et seq.* and amendments thereto ~~and~~, loss costs filings for workers compensation, *and rates for assigned risk plans established by article 21 of chapter 40 of the Kansas Statutes Annotated or rules and regulations established by the commissioner* shall require approval by the commissioner before its use by the insurer in this state. Policy forms shall require approval by the commissioner before use by insurers in this state, consistent with the requirements of K.S.A. 40-216 and amendments thereto. As soon as reasonably possible after such filing has been made, the commissioner shall in writing approve or disapprove the same, except that any filing shall be deemed approved unless disapproved within 30 days of receipt of the filing. ~~The term "personal lines and small business owners insurance" shall mean insurance for noncommercial automobile, homeowners, dwelling fire, and renters, farmowner's and business owner's package insurance policies, as defined by the commissioner by rules and regulations.~~

(c) Any other rate filing, *except personal lines filings,* shall ~~be on file for a waiting period of 30 days before it becomes effective, except for inland marine rates which shall be~~ *become* effective on filing *or any pro-*

(1)

or (2) those risks enumerated in subsection (h),

Delete line 36 starting at "The and all of lines 37 thru 40

spective date selected by the insurer, subject to the commissioner disapproving the same if the rates are determined to be inadequate, excessive, unfairly discriminatory or otherwise fails to meet the requirements of this act. ~~Upon written application by the insurer or rating organization, the commissioner may authorize a filing to become effective before the expiration of the waiting period.~~ *Personal lines rate filings shall be on file for a waiting period of 30 days before becoming effective, subject to the commissioner disapproving the same if the rates are determined to be inadequate, excessive, unfairly discriminatory or otherwise fail to meet requirements of this act.* A filing complies with this act unless it is disapproved by the commissioner within the waiting period or pursuant to subsection (e).

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

~~(e)~~ In reviewing any rate filing the commissioner may require the insurer or rating organization to provide, at the insurer's or rating organization's expense, all information necessary to evaluate the reasonableness of the filing, to include payment of the cost of an actuary selected by the commissioner to review any rate filing, if the department of insurance does not have a staff actuary in its employ.

~~(f)~~ *(e)* If a filing is not accompanied by the information required by this act, the commissioner shall promptly inform the company or organization making the filing. The filing shall be deemed to be complete when the required information is received by the commissioner or the company or organization certifies to the commissioner the information requested is not maintained by the company or organization and cannot be obtained. If ~~within the waiting period provided in subsection (e),~~ the commissioner finds a filing does not meet the requirements of this act, the commissioner shall send to the insurer or rating organization that made the filing, written notice of disapproval of the filing, specifying in what respects the filing fails to comply and stating the filing shall not become effective. If at any time ~~after the expiration of any waiting period~~ *after a filing becomes effective*, the commissioner finds a filing does not comply with this act, the commissioner shall after a hearing held on not less than ~~ten~~ *10* days' written notice to every insurer and rating organization that made the filing issue an order specifying in what respects the filing failed to comply with the act, and stating when, within a reasonable period thereafter, the filing shall be no longer effective. Copies of the order shall be sent to such insurer or rating organization. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

In the event an insurer or organization has no legally effective rate because of an order disapproving rates, the commissioner shall specify an

The term "personal lines" shall mean insurance for noncomercial automobile, homeowners, dwelling fire and renters insurance policies, as defines by the commissioner by rule and regulation.

8-4

interim rate at the time the order is issued. The interim rate may be modified by the commissioner on ~~his or her~~ *the commissioner's* own motion or upon motion of an insurer or organization. The interim rate or any modification thereof shall take effect prospectively in contracts of insurance written or renewed ~~fifteen~~ *15* days after the commissioner's decision setting interim rates. When the rates are finally determined, the commissioner shall order any overcharge in the interim rates to be distributed appropriately, except refunds to policyholders the commissioner determines are de minimis may not be required.

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

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

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

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

(h) Except for workers compensation and employer's liability line, the following categories of commercial lines risks are considered special risks which are exempt from the filing requirements in this section: (1) Risks that are written on an excess or umbrella basis; (2) commercial risks, or portions thereof, that are not rated according to manuals, rating plans, or schedules including "a" rates; (3) large risks as defined in K.S.A. 40-216 and amendments thereto; and (4) special risks designated by the commissioner, including but not limited to risks insured under highly protected risks rating plans, commercial aviation, credit insurance, boiler and machinery, inland marine, fidelity, surety and guarantee bond insurance

risks.

(i) Underwriting files, premium, loss and expense statistics, financial and other records pertaining to special risks written by any insurer shall be maintained by the insurer and shall be subject to examination by the commissioner.

, as enumerated in subsection (h),

Sec. 3. K.S.A. 40-216 and K.S.A. 1998 Supp. 40-955 are hereby repealed.

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

Testimony on Senate Bill 121

Presented by Patrick J. Morris
Kansas Association of Insurance Agents
February 18, 1999 - Senate Financial Institutions & Insurance Committee

Thank you Mister Chairman and members of the committee for the opportunity to appear at today's hearing concerning Senate Bill 121. I am Pat Morris, the Executive Vice President of the Kansas Association of Insurance Agents. Our association represents over 600 independent agency members across Kansas whose agencies employ nearly 3,500 people, most of whom are licensed agents.

Mr. Chairman, the KAIA comes before your committee today to express our strong support for the majority of this bill and to ask that you consider one change which I have included as a balloon with this testimony. Mr. Chairman, as you are well aware, our association has been in constant discussions with the proponents of this bill since it was first introduced, and almost daily discussions since the bill was scheduled for today's hearing. All parties have worked together in good faith, and I would like to believe that we have come very close to having an agreement that is acceptable to everyone involved. Our government affairs committee and Board of Directors have spend a considerable amount of time debating the merits of this measure throughout this last month; and we believe that the ball has been moved a long way from where we began two and four years ago. With the change that we are requesting, this bill will in all aspects be a major deregulation bill, and continues the progress that Kansas has been steadily making over the past three years in this area.

Senate Financial Institutions & Insurance
Date 2/18/99
Attachment # 9

We support the movement of commercial lines rate filings to a true "file and use" system, and the conversion of personal lines to a "file and wait" system. These are significant changes in the area of rate deregulation, and changes we vigorously support. We do, however, oppose the "large risk" experiment language that is proposed in this bill that would provide for no rate filing nor form approval for defined "large risks." Our association has been consistently opposed to moving form filings away from a prior approval system due to the complications, variations in potential coverages, and the liability associated with the agent's errors & omissions policy. While our Board had a vigorous discussion about these potential changes, they remain firmly opposed to this change. Similarly, they are steadfastly opposed to "large risks" being exempt from any rate filing with the Kansas Insurance Department. For these reasons, we request that you remove the "large risk" language from this measure before passing the remainder of the bill.

Mr. Chairman, our association believes that 2 of the 3 proposals in this bill are reasonable and measured steps in the right direction; and that with our requested deletion of the third proposal, the bill will be a major rate deregulation measure that can attract the support of the Department, the companies, and the agent forces.. Thank you, and I will attempt to answer any questions that you may have.

SENATE BILL No. 121

By Committee on Financial Institutions and Insurance

1-25

9-3

AN ACT relating to insurance; concerning rate filings; amending K.S.A. 40-216 and K.S.A. 1998 Supp. 40-955 and repealing the existing sections.

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

Section 1. K.S.A. 40-216 is hereby amended to read as follows: 40-216. (a) No insurance company shall hereafter transact business in this state until certified copies of its charter and amendments thereto shall have been filed with and approved by the commissioner of insurance. A copy of the bylaws and amendments thereto of insurance companies organized under the laws of this state shall also be filed with and approved by the commissioner of insurance. The commissioner may also require the filing of such other documents and papers as are necessary to determine compliance with the laws of this state. No contract of insurance or indemnity shall be issued or delivered in this state until the form of the same has been filed with the commissioner of insurance, nor if the commissioner of insurance gives written notice within ~~thirty (30)~~ *30* days of such filing, to the company proposing to issue such contract, showing wherein the form of such contract does not comply with the requirements of the laws of this state; but the failure of any insurance company to comply with this section shall not constitute a defense to any action brought on its contracts. An insurer may satisfy its obligation to file its contracts of insurance or indemnity either individually or by authorizing the commissioner to accept on its behalf the filings made by a licensed rating organization or another insurer.

Under such rules and regulations as ~~he or she~~ *the commissioner of insurance* shall adopt, the commissioner may, by written order, suspend or modify the requirement of filing forms of contracts of insurance or indemnity, which cannot practicably be filed before they are used. Such orders, rules and regulations shall be made known to insurers and rating organizations affected thereby. The commissioner may make an examination to ascertain whether any forms affected by such order meet the standards of this code.

(b) This section shall not apply to any policy or contract form for large risks. For the purposes of this subsection, ``large risk'' means: (1) An

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insured that has total insured property values of $5,000,000 or more; (2) an insured that has total annual gross revenues of $10,000,000 or more; or (3) an insured that has in the preceding calendar year a total paid premium of $25,000 or more for property insurance, $25,000 or more for general liability insurance, or $50,000 or more for multiple lines policies.

(c) The exemption for any large risk policy or contract form contained in subsection (b) shall not apply to workers compensation and employer's liability insurance, insurance purchasing groups, and the basic coverage required by K.S.A. 40-3401 et seq. and amendments thereto.

Sec. 2. K.S.A. 1998 Supp. 40-955 is hereby amended to read as follows: 40-955. (a) Every insurer shall file with the commissioner, except as to inland marine risks where general custom of the industry is not to use manual rates or rating plans, every manual of classifications, rules and rates, every rating plan, policy form and every modification of any of the foregoing which it proposes to use. Every such filing shall indicate the proposed effective date and the character and extent of the coverage contemplated and shall be accompanied by the information upon which the insurer supports the filings. A filing and any supporting information shall be open to public inspection after it is filed with the commissioner. An insurer may satisfy its obligations to make such filings by authorizing the commissioner to accept on its behalf the filings made by a licensed rating organization or another insurer. Nothing contained in this act shall be construed to require any insurer to become a member or subscriber of any rating organization.

(b) Any rate filing for ~~personal lines, small business owners insurance~~, the basic coverage required by K.S.A. 40-3401 *et seq.* and amendments thereto ~~and~~, loss costs filings for workers compensation, *and rates for assigned risk plans established by article 21 of chapter 40 of the Kansas Statutes Annotated or rules and regulations established by the commissioner* shall require approval by the commissioner before its use by the insurer in this state. Policy forms shall require approval by the commissioner before use by insurers in this state, consistent with the requirements of K.S.A. 40-216 and amendments thereto. As soon as reasonably possible after such filing has been made, the commissioner shall in writing approve or disapprove the same, except that any filing shall be deemed approved unless disapproved within 30 days of receipt of the filing. The term ``personal lines ~~and small business owners insurance"~~ shall mean insurance for noncommercial automobile, homeowners, dwelling fire, *and* renters, ~~farmowner's and business owner's package~~ insurance policies, as defined by the commissioner by rules and regulations.

(c) Any other rate filing, *except personal lines filings*, shall ~~be on file for a waiting period of 30 days before it becomes effective, except for inland marine rates which shall be~~ *become* effective on filing *or any pro-*

~~*insured that has total insured property values of $5,000,000 or more; (2) an insured that has total annual gross revenues of $10,000,000 or more; or (3) an insured that has in the preceding calendar year a total paid premium of $25,000 or more for property insurance, $25,000 or more for general liability insurance, or $50,000 or more for multiple lines policies.*~~

~~*(c) The exemption for any large risk policy or contract form contained in subsection (b) shall not apply to workers compensation and employer's liability insurance, insurance purchasing groups, and the basic coverage required by K.S.A. 40-3401 et seq. and amendments thereto.*~~

9-4

spective date selected by the insurer, subject to the commissioner disapproving the same if the rates are determined to be inadequate, excessive, unfairly discriminatory or otherwise fails to meet the requirements of this act. ~~Upon written application by the insurer or rating organization, the commissioner may authorize a filing to become effective before the expiration of the waiting period~~. *Personal lines rate filings shall be on file for a waiting period of 30 days before becoming effective, subject to the commissioner disapproving the same if the rates are determined to be inadequate, excessive, unfairly discriminatory or otherwise fail to meet requirements of this act.* A filing complies with this act unless it is disapproved by the commissioner within the waiting period or pursuant to subsection (e).

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

~~(e)~~ In reviewing any rate filing the commissioner may require the insurer or rating organization to provide, at the insurer's or rating organization's expense, all information necessary to evaluate the reasonableness of the filing, to include payment of the cost of an actuary selected by the commissioner to review any rate filing, if the department of insurance does not have a staff actuary in its employ.

~~(f)~~ *(e)* If a filing is not accompanied by the information required by this act, the commissioner shall promptly inform the company or organization making the filing. The filing shall be deemed to be complete when the required information is received by the commissioner or the company or organization certifies to the commissioner the information requested is not maintained by the company or organization and cannot be obtained. If ~~within the waiting period provided in subsection (e)~~, the commissioner finds a filing does not meet the requirements of this act, the commissioner shall send to the insurer or rating organization that made the filing, written notice of disapproval of the filing, specifying in what respects the filing fails to comply and stating the filing shall not become effective. If at any time ~~after the expiration of any waiting period~~ *after a filing becomes effective*, the commissioner finds a filing does not comply with this act, the commissioner shall after a hearing held on not less than ~~ten~~ *10* days' written notice to every insurer and rating organization that made the filing issue an order specifying in what respects the filing failed to comply with the act, and stating when, within a reasonable period thereafter, the filing shall be no longer effective. Copies of the order shall be sent to such insurer or rating organization. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

In the event an insurer or organization has no legally effective rate because of an order disapproving rates, the commissioner shall specify an

9-5

9-6

interim rate at the time the order is issued. The interim rate may be modified by the commissioner on ~~his or her~~ *the commissioner's* own motion or upon motion of an insurer or organization. The interim rate or any modification thereof shall take effect prospectively in contracts of insurance written or renewed ~~fifteen~~ *15* days after the commissioner's decision setting interim rates. When the rates are finally determined, the commissioner shall order any overcharge in the interim rates to be distributed appropriately, except refunds to policyholders the commissioner determines are de minimis may not be required.

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

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

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

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

(h) Except for workers compensation and employer's liability line, the following categories of commercial lines risks are considered special risks which are exempt from the filing requirements in this section: (1) Risks that are written on an excess or umbrella basis; (2) commercial risks, or portions thereof, that are not rated according to manuals, rating plans, or schedules including ``a'' rates; (3) large risks as defined in K.S.A. 40-216 and amendments thereto; and (4) special risks designated by the commissioner, including but not limited to risks insured under highly protected risks rating plans, commercial aviation, credit insurance, boiler and machinery, inland marine, fidelity, surety and guarantee bond insurance

or schedules including ``a'' rates; (3) ~~large risks as defined in K.S.A. 40-216 and amendments thereto;~~ and (4) special risks designated by the commissioner, including but not limited to risks insured under highly pro-

9-7

risks.

(i) Underwriting files, premium, loss and expense statistics, financial and other records pertaining to special risks written by any insurer shall be maintained by the insurer and shall be subject to examination by the commissioner.

Sec. 3. K.S.A. 40-216 and K.S.A. 1998 Supp. 40-955 are hereby repealed.

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