Approved: February 13, 2001
Date

MINUTES OF THE HOUSE COMMITTEE ON INSURANCE.

The meeting was called to order by Chairperson Rep. Robert Tomlinson at 3:30 p.m. on January 9, 2001 in Room 527-S of the Capitol.

All members were present except:	Rep. Ralph Ostmeyer Rep. Bonnie Sharp Rep. Dixie Toelkes
Committee staff present:	Bill Wolff, Research Ken Wilke, Revisor Mary Best, Committee Secretary
Conferees appearing before the committee:	Commissioner Kathleen Sebelius, Kansas Insurance Dept.
Others attending:	See Attached Guest List

Upon calling the meeting to order, Chairman Tomlinson welcomed the committee members and guests to the first meeting of the new session. Chairman Tomlinson then discussed how the bills would be moved through the committee and also covered the ethics laws in regard to gratuities. The Chair requested input from the committee. The Chair then reviewed the rules and regulations to be followed regarding cameras, cell phones, and any other communication equipment and that prior permission would be needed to bring in any audio or visual equipment into the meetings. Chairman Tomlinson then reminded the constituents to sign the roster as they come in each meeting and covered written materials when coming before the committee. With this said and done the Chair introduced Kansas Insurance Commissioner, Kathleen Sebelius.

Commissioner Sebelius came before the committee for her bill presentation. A copy of the testimony is (Attachments #1 & 2) attached hereto and incorporated into the Minutes by reference. The Commissioner informed the committee that there would be seven bills presented this session. Four of the bills would be presented to the House and three would be heard in the Senate. Of the four presented to the House Insurance Committee the subject matter dealt with:

1. Privacy of non-public Personal Health Information. This is a bill that calls for uniformity in all fifty states and D.C.
2. Viatical Law Update. This bill deals with re-sale of life insurance policies. It carries joint security regulation. It introduces the :Model Viatical Act" with new definitions, privacy, fraud, expanding licensing, conduct and behavior.
3. Elimination of data requirement on regards to malpractice screening panel form. Request deletion from statutes.
4. Risk-based capital update.

Following her presentation to the committee, Chairman Tomlinson requested comments or questions from the committee. As there were none the Chairman thanked Commissioner Sebelius and her staff for coming before the committee. He then turned to the committee for their pleasures to work the bills. The Chairman also brought forth a bill addressing privacy. The motion was brought before the committee to work the Privacy Bill of non-public Personal Health Information by Rep. Grant , the motion was seconded by Rep. Vickery and carried. Rep. Kirk made the motion to work the Viatical Law bill and was seconded by Rep. Phelps, a vote was taken and the motion carried. The next motion, addressing the Elimination of Data Requirement for Malpractice Screening, was made by Rep. Kirk and seconded by Rep. Grant. The motion carried. A final motion was made by Rep. McCreary in regard to the Risk-based Capital and was seconded by Rep. Hummerickhouse. This final motion also carried.

With all business completed and no further discussions were to take place, the meeting was adjourned.

The time was 4:02 p.m. The next meeting will be held January 16, 2001.

HOUSE INSURANCE COMMITTEE GUEST LIST

DATE: Jan 9, 2001

NAME	REPRESENTING
Ann Campbell	KMHC
Sam Sellers	KAIA
Jeff Bottenberg	Policyholders, Inc.
Kevin Baron	Heartland Christ.
Kevin Davis	Am. Family Ins
Carol McDowell	Bottenberg + Assoc's
Shirley Allen	Bottenberg + Assoc's
Anne Spiess	KAIFA
Linda McCreary	KS Insurance Dept.
Brad Smoot	BCBS
Bob Hamer	HCSF
Coleen Mullen	Kathy Damron
Tucker Poling	intern - David Huff
Lee Wright	Farmers Ins.
Jerry Slaughter	KMS
Chris Collins	KMS
Tom Bell	KHA
Kathleen Sebelius	KID
Jeremy Anderson	KID

HOUSE INSURANCE COMMITTEE GUEST LIST

DATE: Jan 9, 2001

NAME	REPRESENTING
Mike Hutfles	First Guard
David Hanson	KS Insur Assns
Larrie Anderer	KAHP
~~Tom Bell~~	~~KHA~~
~~Brad Sa~~	

Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

January 9, 2001

TO: House Committee on Insurance

FROM: Kathleen Sebelius, Insurance Commissioner

RE: Bill Introductions

Mr. Chairman and members of the Committee:

I am appearing today to request the introduction of bills by this committee on behalf of the Kansas Insurance Department. The proposed legislation deals with a variety of issues: privacy of nonpublic personal health information, malpractice screening panel forms and the annual bill to update the Risk Based Capital instructions used by carriers to file reports with the insurance department.

- **Privacy of Nonpublic Personal Health Information** - The proposed bill amends the language passed last session to allow the insurance commissioner to adopt the September 26, 2000 NAIC model regulation. Once adopted, the regulation language will be exactly the same in all 50 states and the District of Columbia.

  To ensure uniformity from state to state, the grant of regulatory authority passed last session in Kansas must be clarified to allow the Commissioner to issue the NAIC model regulation.

  In Fall 1999, Congress passed the Gramm-Leach-Bliley Act (GLBA), which broke down many of the depression-era barriers between banks, insurance companies, and other financial institutions. The most important feature of GLBA is that it allows these institutions, for the first time, to affiliate within a financial holding company.

420 SW 9th Street
Topeka, Kansas 66612-1678

785 296-3071
Fax 785 296-2283

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

1-09-01
NSE Ins Comm
ATT. #1

Title V of GLBA establishes rules to govern the disclosure of consumers' personal information. The central feature of Title V is the "opt-out" standard, which requires financial institutions to give consumers an opportunity to opt-out of all information disclosure. If consumers fail to take the affirmative act to opt-out, their information could be shared with anyone. Even if consumers do opt-out, entities would be allowed to share consumers' personal information with affiliates. Title V requires federal regulators to issue regulations to enforce these privacy standards upon financial institutions and securities firms, and requires state insurance departments to issue regulations for insurance companies.

Last Session, the Kansas Legislature amended the unfair trade practices act granting the Insurance Commissioner authority to issue rules and regulations for the financial nonpublic personal information, but tied these regulations to the standards in the federal regulations under Title V.

On September 26, 2000, the National Association of Insurance Commissioners unanimously adopted a model regulation, which provides uniform standards for all insurance companies, including an "opt-in" standard for disclosure of health information. The goal of the model regulation is to maintain uniformity with the federal rules to ensure a level playing field between insurers and their competitors in the financial services sector, and to provide greater protection for consumers health information. The regulations make clear that insurers wishing to share, sell, market, or give away health information, except for specific business exceptions, must receive permission.

- **Viatical law update** - In 1999, the Kansas Legislature made changes to the viatical law. Because of the changing environment with these types of insurance products, the NAIC has revised the model act to improve state insurance regulation. Viatical settlements are arrangements intended to provide dying life insurance policyholders with cash for immediate use. With viatical settlements rising from a $50 million business in 1991 to $1 billion in 1998, and that the business also evolving to include "life settlements" for healthy seniors, a market worth over $100 billion, updates to the current law are needed. The proposed legislation establishes the necessary safeguards for viators' privacy, covers life

settlements, and lays out protections for investors. The proposed changes include: 1) new definitions, 2) advertising restrictions and guidelines, 3) privacy issues; 4) expands disclosure requirements; 5) adds fraud prevention and control section; 6) expands the licensing laws for agents and brokers; and 7) establishes conduct and procedures for examinations of companies.

- **Malpractice screening panel forms** - K.S.A. 60-3505 and 65-4904 require forms to be sent from the malpractice screening panels to the insurance commissioner. There is no apparent reason for this practice to be continued. The proposed legislation deletes such references requesting this action.
- **Risk Based Capital** - Annual bill to update the RBC instructions used by carriers to file data with the insurance department, reflecting that companies should use the RBC instructions effective on December 31, 2000.

Bill proposals requested by the Insurance Commissioner introduced in the Senate Committee on Financial Institutions and Insurance

- **Producer Licensing Model Act—**

With the passage of Gramm-Leach-Bliley Act (GLBA) by Congress last fall, states need to act toward uniformity in licensing, or trigger the National Association of Registered Agents and Brokers (NARAB) mandate contained in GLBA. The NAIC model act moves states beyond the requirements of NARAB to meet and exceed the requirements of GLBA, and improves state insurance regulation. The proposed legislation is the NAIC model act and will be integrated into the Kansas licensing statutes:

- Creates uniform definitions for "negotiate, sell, and solicit" and contains uniform exceptions to licensing requirements.
- Creates a uniform application process for both resident and non-resident applications by referencing the use of the NAIC Uniform Application.
- Establishes uniform definitions for the five major lines of insurance: Life, Accident and Health, Property, Casualty, and Variable Life and Variable Annuity. Also establishes a uniform definition for personal line insurance.
- Establishes uniform exemptions from completed pre-licensing education and examinations for licensed producers who apply for a non-resident license.
- Establishes uniform standards for license denials, non-renewals and revocations.
- Establishes uniform standards regarding commissions related to the sale of an insurance policy.
- Establishes uniform standards for agent appointments.
- Establishes uniform procedures as to how regulators, companies, and agents should report and administratively resolve "not for cause" and "for cause" terminations.

- **OB-GYN Access -**

Bill requires health insurers to permit a woman insured by the insurer to visit an in-network obstetrician or gynecologist for routine gynecological care at least one time each calendar year without requiring the woman to first visit a primary care provider, so long as the care is medically necessary and includes routine care, and the obstetrician or gynecologist confers with the woman's primary care provider before performing a diagnostic procedure that is not routine gynecological care rendered during the visit. This provision is made a part of and supplemental to the Patient Protection Act.

- **HIPAA**

K.S.A. 40-2254 regarding extension of payment benefits is now out of compliance with the issuance of a Health Care Financing Administration (HCFA) bulletin. Laws enacted prior to HIPAA address when an employer with a disabled employee or dependent switches its group health plan coverage from one issuer (the "prior carrier") to another (the "succeeding carrier"). The State succeeding carrier law cannot eliminate the succeeding carrier's legal obligation under federal law to enroll an individual who is disabled at the time that the original health insurance coverage is terminated.

PROPOSED BILL NO. ____

By

AN ACT concerning unfair trade practices; relating to privacy of consumer financial and health information; amending K.S.A. 40-2404 and repealing the existing section.

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

Section 1. K.S.A. 40-2404 is hereby amended to read as follows: 40-2404. The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

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

(a) Misrepresents the benefits, advantages, conditions or terms of any insurance policy;

(b) misrepresents the dividends or share of the surplus to be received on any insurance policy;

(c) makes any false or misleading statements as to the dividends or share of surplus previously paid on any insurance policy;

(d) is misleading or is a misrepresentation as to the financial condition of any person, or as to the legal reserve system upon which any life insurer operates;

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

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

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

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

(2) False information and advertising generally. Making, publishing, disseminating, circulating or placing before the

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

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

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

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

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

business of such person in any book, report or statement of such person.

(6) Stock operations and advisory board contracts. Issuing or delivering or permitting agents, officers or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance. Nothing herein shall prohibit the acts permitted by K.S.A. 40-232, and amendments thereto.

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

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

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

solely of blindness or partial blindness when such condition existed at the time the policy was issued.

(d) Refusing to insure, or refusing to continue to insure, or limiting the amount, extent or kind of coverage available for accident and health and life insurance to an applicant who is the proposed insured or charge a different rate for the same coverage or excluding or limiting coverage for losses or denying a claim incurred by an insured as a result of abuse based on the fact that the applicant who is the proposed insured is, has been, or may be the subject of domestic abuse, except as provided in subpart (v). "Abuse" as used in this subsection (7)(d) means one or more acts defined in subsection (a) or (b) of K.S.A. 60-3102 and amendments thereto between family members, current or former household members, or current or former intimate partners.

(i) An insurer may not ask an applicant for life or accident and health insurance who is the proposed insured if the individual is, has been or may be the subject of domestic abuse or seeks, has sought or had reason to seek medical or psychological treatment or counseling specifically for abuse, protection from abuse or shelter from abuse.

(ii) Nothing in this section shall be construed to prohibit a person from declining to issue an insurance policy insuring the life of an individual who is, has been or has the potential to be the subject of abuse if the perpetrator of the abuse is the applicant or would be the owner of the insurance policy.

(iii) No insurer that issues a life or accident and health policy to an individual who is, has been or may be the subject of domestic abuse shall be subject to civil or criminal liability for the death or any injuries suffered by that individual as a result of domestic abuse.

(iv) No person shall refuse to insure, refuse to continue to insure, limit the amount, extent or kind of coverage available to an individual or charge a different rate for the same coverage solely because of physical or mental condition, except where the refusal, limitation or rate differential is based on sound

actuarial principles.

(v) Nothing in this section shall be construed to prohibit a person from underwriting or rating a risk on the basis of a preexisting physical or mental condition, even if such condition has been caused by abuse, provided that:

(A) The person routinely underwrites or rates such condition in the same manner with respect to an insured or an applicant who is not a victim of abuse;

(B) the fact that an individual is, has been or may be the subject of abuse may not be considered a physical or mental condition; and

(C) such underwriting or rating is not used to evade the intent of this section or any other provision of the Kansas insurance code.

(vi) Any person who underwrites or rates a risk on the basis of preexisting physical or mental condition as set forth in subsection (7)(d)(v), shall treat such underwriting or rating as an adverse underwriting decision pursuant to K.S.A. 40-2,112, and amendments thereto.

(vii) The provisions of subsection (d) shall apply to all policies of life and accident and health insurance issued in this state after the effective date of this act and all existing contracts which are renewed on or after the effective date of this act.

(8) Rebates. (a) Except as otherwise expressly provided by law, knowingly permitting, offering to make or making any contract of life insurance, life annuity or accident and health insurance, or agreement as to such contract other than as plainly expressed in the insurance contract issued thereon; paying, allowing, giving or offering to pay, allow or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or giving, selling, purchasing or offering to give,

sell or purchase as inducement to such insurance contract or annuity or in connection therewith, any stocks, bonds or other securities of any insurance company or other corporation, association or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract.

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

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

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

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

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

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

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

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

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

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

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

(12) Statutory violations. Any violation of any of the provisions of K.S.A. 40-276a, 40-1515, and amendments thereto, or K.S.A. 40-2,155 and amendments thereto.

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

(14) Rebates and other inducements in title insurance. (a)

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

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

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

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

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

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

(d) Nothing in this section prohibits the division of rates and charges between or among a title insurance company and its agent, or one or more title insurance companies and one or more title insurance agents, if such division of rates and charges

does not constitute an unlawful rebate under the provisions of this section and is not in payment of a forwarding fee or a finder's fee.

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

(f) No title insurer or title agent may accept an order for title insurance business, issue a title insurance policy, or receive or retain any premium, or charge in connection with any transaction if: (i) The title insurer or title agent knows or has reason to believe that the transaction will constitute controlled business for that title insurer or title agent, and (ii) 20% or more of the gross operating revenue of that title insurer or title agent during the six full calendar months immediately preceding the month in which the transaction takes place is derived from controlled business. The prohibitions contained in this subparagraph shall not apply to transactions involving real estate located in a county that has a population, as shown by the last preceding decennial census, of 10,000 or less.

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

(15) Disclosure of nonpublic personal information. No person shall disclose any nonpublic personal information ~~to--a nonaffiliated-third-party~~ contrary to the provisions of title V of the Gramm-Leach-Bliley act of 1999 (public law 106-102). The commissioner may adopt rules and regulations necessary to carry out this section. Such rules and regulations shall be consistent with and not more restrictive than ~~standards--contained--in~~

~~regulations promulgated under title V of the Gramm Leach Bliley act of 1999 (public law 106 102) by federal regulatory agencies governing financial institutions doing business in Kansas~~ the model regulation adopted on September 26, 2000, by the national association of insurance commissioners entitled "Privacy of consumer financial and health information regulation".

Sec. 2. K.S.A. 40-2404 is hereby repealed.

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

2001 1rs0056

PROPOSED BILL NO. ____

By

AN ACT concerning professional malpractice liability screening panels; relating to providing copies of opinions to the insurance commissioner; amending K.S.A. 2000 Supp. 60-3505 and 65-4904 and repealing the existing sections.

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

Section 1. K.S.A. 2000 Supp. 60-3505 is hereby amended to read as follows: 60-3505. (a) Within 90 days after the screening panel is commenced, such panel shall make written recommendations on the issue of whether the professional licensee departed from the standard of conduct in a way which caused the plaintiff or claimant damage. A concurring or dissenting member of the screening panel may file a written concurring or dissenting opinion. All written opinions shall be supported by corroborating references to published literature and other relevant documents.

(b) The screening panel shall notify all parties when its determination is to be handed down, and, within seven days of its decision, shall provide a copy of its opinion and any concurring or dissenting opinion to each party and each attorney of record and to the judge of the district court or the chief judge of such court. ~~The screening panel shall also provide a copy of its opinion and any concurring or dissenting opinions, and the reasons therefor, to the commissioner of insurance.~~

(c) The written report of the screening panel shall be admissible in any subsequent legal proceeding, and either party may subpoena any and all members of the panel as witnesses for examination relating to the issues at trial.

Sec. 2. K.S.A. 2000 Supp. 65-4904 is hereby amended to read as follows: 65-4904. (a) Within 90 days after the screening panel is commenced, such panel shall make written recommendations on the issue of whether the health care provider departed from the standard of care in a way which caused the plaintiff or claimant damage. A concurring or dissenting member of the screening panel may file a written concurring or dissenting opinion. All written opinions shall be supported by corroborating references to published literature and other relevant documents.

(b) The screening panel shall notify all parties when its determination is to be handed down, and, within seven days of its decision, shall provide a copy of its opinion and any concurring or dissenting opinion to each party and each attorney of record and to the judge of the district court or, if the district court has more than one division, the chief judge of such court. ~~The screening--panel-shall-also-provide-a-copy-of-its-opinion-and-any concurring-or-dissenting-opinions,-and-the-reasons--therefor,--to the-commissioner-of-insurance.~~

(c) The written report of the screening panel shall be admissible in any subsequent legal proceeding, and either party may subpoena any and all members of the panel as witnesses for examination relating to the issues at trial.

Sec. 3. K.S.A. 2000 Supp. 60-3505 and 65-4904 are hereby repealed.

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

2001 lrs0054

PROPOSED BILL NO. ____

By

AN ACT concerning insurance; relating to risk-based capital requirements; amending K.S.A. 40-2c01 and repealing the existing section.

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

Section 1. K.S.A. 40-2c01 is hereby amended to read as follows: 40-2c01. As used in this act:

(a) "Adjusted RBC report" means an RBC report which has been adjusted by the commissioner in accordance with K.S.A. 40-2c04, and amendments thereto.

(b) "Corrective order" means an order issued by the commissioner specifying corrective actions which the commissioner has determined are required to address a RBC level event.

(c) "Domestic insurer" means any insurance company or risk retention group which is licensed and organized in this state.

(d) "Foreign insurer" means any insurance company or risk retention group not domiciled in this state which is licensed or registered to do business in this state pursuant to article 41 of chapter 40 of the Kansas Statutes Annotated or K.S.A. 40-209, and amendments thereto.

(e) "NAIC" means the national association of insurance commissioners.

(f) "Life and health insurer" means any insurance company licensed under article 4 or 5 of chapter 40 of the Kansas Statutes Annotated or a licensed property and casualty insurer writing only accident and health insurance.

(g) "Property and casualty insurer" means any insurance company licensed under articles 9, 10, 11, 12, 12a, 15 or 16 of chapter 40 of the Kansas Statutes Annotated, but shall not include monoline mortgage guaranty insurers, financial guaranty insurers and title insurers.

(h) "Negative trend" means, with respect to a life and health insurer, a negative trend over a period of time, as determined in accordance with the "trend test calculation" included in the RBC instructions defined in subsection (j).

(i) "RBC" means risk-based capital.

(j) "RBC instructions" mean the risk-based capital instructions promulgated by the NAIC, which are in effect on December 31, ~~1999~~ 2000.

(k) "RBC level" means an insurer's company action level RBC, regulatory action level RBC, authorized control level RBC, or mandatory control level RBC where:

(1) "Company action level RBC" means, with respect to any insurer, the product of 2.0 and its authorized control level RBC;

(2) "regulatory action level RBC" means the product of 1.5 and its authorized control level RBC;

(3) "authorized control level RBC" means the number determined under the risk-based capital formula in accordance with the RBC instructions; and

(4) "mandatory control level RBC" means the product of .70 and the authorized control level RBC.

(l) "RBC plan" means a comprehensive financial plan containing the elements specified in K.S.A. 40-2c06, and amendments thereto. If the commissioner rejects the RBC plan, and it is revised by the insurer, with or without the commissioner's recommendation, the plan shall be called the "revised RBC plan."

(m) "RBC report" means the report required by K.S.A. 40-2c02, and amendments thereto.

(n) "Total adjusted capital" means the sum of:

(1) An insurer's capital and surplus or surplus only if a mutual insurer; and

(2) such other items, if any, as the RBC instructions may provide.

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

Sec. 2. K.S.A. 40-2c01 is hereby repealed.

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