

Approved:  
Date: 2-19-02

## MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Chairperson Sandy Praeger at 9:30 a.m. on January 29, 2002 in Room 234 N of the Capitol.

All members were present except:

Committee staff present: Dr. Bill Wolff, Kansas Legislative Research Department  
Ken Wilke, Office of the Revisor of Statutes  
JoAnn Bunten, Committee Secretary

Conferees appearing before the committee:

Patrick J. Mulvihill, Asst. Dir., Financial Surveillance Div., KID  
David Hanson, Kansas Insurance Associations  
Kathy Greenlee, General Counsel, KID

Others attending: See attached list.

### **Hearing on SB 388 - Risk-based capital requirements**

Patrick J. Mulvihill testified before the Committee in support of **SB 388** which would change the effective date of risk-based capital instructions put forth by the National Association of Insurance Commissioners from December 31, 2000, to December 31, 2001. Mr. Mulvihill noted that risk-based capital is a method that has been used by the Kansas Insurance Department for several years to evaluate the financial solvency of insurance companies doing business in this state. The risk-based capital statutes also prescribe various forms of regulatory action that may be taken, or shall be taken, in the event that a company's calculated risk-based capital meets certain thresholds. (Attachment 1)

David Hanson, representing the Kansas Insurance Associations, also testified in support of the bill. (Attachment 2) During Committee discussion it was pointed out the effective date of risk-based capital instructions are changed annually.

There were no opponents to **SB 388**.

### **Hearing on SB 389 - Information sharing between Insurance Department and certain other entities**

Kathy Greenlee, General Counsel, KID, testified in support of **SB 389** which would allow the Insurance Commissioner to enter into information sharing and exchange agreements with other functional regulatory agencies that have overlapping regulatory jurisdiction with the Insurance Department. Ms. Greenlee also requested an amendment that would delete subsection (d) of the bill. She noted that as currently drafted, subsection (d) mirrors the language of K.S.A. 40-222 (k)(7), and since section (a) of **SB 389** addresses confidentiality, subsection (d) of the bill is not necessary. (Attachment 3)

There were no opponents to **SB 389**.

### **Hearing on SB 390 -Reinsurance statute - information sharing by commissioner**

Patrick J. Mulvihill, Assistant Director, Financial Surveillance Division, KID, testified in support of **SB 390** which would make the reinsurance statute consistent in its use of the reference to "qualified United States financial institution." Mr. Mulvihill noted that the bill would also delete a provision in current law which prohibits a title insurance company from being able to take reserve credit on business ceded to an unauthorized insurer under alternatives, currently found in statute, that are presently available to other types of insurers as noted in his written testimony. (Attachment 4)

CONTINUATION SHEET

There were no opponents to **SB 390**.

**Action on SB 388 and 390.**

Senator Feleciano made a motion the Committee recommend **SB 388** favorable for passage, seconded by Senator Teichman. The motion carried.

Senator Barnett made a motion the Committee recommend **SB 390** favorable for passage, seconded by Senator Brungardt. The motion carried.

**Approval of minutes**

Senator Brungardt made a motion to approve the Committee minutes of January 22, 23 and 24, 2002, seconded by Senator Corbin. The motion carried.

**Adjournment**

The meeting was adjourned at 10:20 a.m.

# SENATE FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE GUEST LIST

DATE: 1-29-02

NAME	REPRESENTING
Bill SNEED	Am Ind Life
Brod Amoot	BCBS / AIA
<del>Dave Holthaus</del>	<del>Arthur BCBS</del>
Chuck Stones	KBK
Kathy Olsen	"
Scott Heidner	Kansas Ass of Insurance & Fin Adviser
Tiffany Cornejo	Sen. Brungardt's intern
Carolyn Muddendoy	Ks St Ds Assn
Jim Liu	DOB
<del>Ken Humphrey</del>	<del>KTIA</del>
Patrick Mulvihill	Kansas Ins. Dept.
Linda DeBorja	KS Ins Dept
Kathy Searles	KS Ins Dept
Hilary Keys	Federico Consulting
Harro Van Horn	KAAP



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

January 29, 2002

TO: Senate Committee on Financial Institutions & Insurance

FROM: Patrick J. Mulvihill  
Assistant Director, Financial Surveillance Division

RE: Senate Bill No. 388 --- RBC Instructions

Chairman and members of the Committee:

Thank you for the opportunity to discuss Senate Bill No. 388 with you. Senate Bill No. 388 is a proposal to amend K.S.A. 40-2c01(j), which is the definition of "RBC instructions" for life and property & casualty insurance companies.

Risk-based capital (RBC) is a method that has been used by the Kansas Insurance Department for several years to evaluate the financial solvency of insurance companies doing business in this state. The RBC statutes also prescribe various forms of regulatory action that may be taken, or shall be taken, in the event that a company's calculated RBC meets certain thresholds.

Companies must file financial reports with the Department using RBC instructions and formulas developed by the National Association of Insurance Commissioners (NAIC). These instructions, including the formulas, are amended each year to address various matters, such as changes to line references in the annual statement blanks and to reflect any necessary modifications or adjustments to the formulas.

The current law requires companies to use the December 31, 2000 version of the "RBC instructions". Senate Bill No. 388 would reflect a change in the date of the standard so that

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Senate Financial Inst. & Insurance

Date: 1-29-02

Attachment No. 1



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companies would use the "RBC instructions", including the formulas, in effect as of December 31, 2001.

*Summary:*

The Kansas Insurance Department believes that the passage of Senate Bill No. 388 would be beneficial in our efforts to monitor and regulate the insurance industry and would, in turn, be in the best interests of policyholders.

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# KANSAS INSURANCE ASSOCIATIONS

DAVID A. HANSON, LEGISLATIVE COUNSEL  
800 S.W. JACKSON, SUITE 900  
TOPEKA, KS 66612-1259

TELEPHONE NO. (785) 232-0545  
FAX NO. (785) 232-0005

## Senate Financial Institutions and Insurance Committee Testimony on Senate Bill 388 Presented by David A. Hanson

January 29, 2002

Madam Chairperson and Members of the Committee:

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

The risk-based capital provisions referenced in Senate Bill 388 were developed by the NAIC for adoption and use by the states as a standardized method of monitoring the solvency of insurers and assessing the need for corrective action. We had requested the reference date in the statutory definition of "RBC instructions" to make sure that the adopted instructions and formula were limited to those that we had had an opportunity to review, rather than potential future revisions, which could adversely affect our companies' risk-based capital and the resulting action or control levels. While we believe our companies' remain in good standing under the previously adopted NAIC instructions and formula, we also believe any significant changes in those instructions and formula by the NAIC should be carefully considered before adoption in Kansas.

Our companies have been reviewing the proposed changes and we do not believe there will be any substantial adverse effect from the latest revisions referred to in the Bill before you. Thank you for your consideration.

Respectfully,



DAVID A. HANSON

Senate Financial Inst. & Insurance  
Date: 1-29-02  
Attachment No. 2

### Kansas Association of Property & Casualty Ins. Cos.

Member Companies:

Armed Forces Insurance  
Exchange  
Ft. Leavenworth

Bremen Farmers Mutual  
Insurance Co.  
Bremen

Columbia Insurance Group  
Salina

Farm Bureau Mutual  
Insurance Company  
Manhattan

Farmers Alliance Mutual  
Insurance Company  
McPherson

Farmers Mutual Insurance Co.  
Ellinwood

Federated Rural Electric  
Insurance Exchange  
Lenexa

Kansas Mutual Insurance Co.  
Topeka

Marysville Mutual Insurance Co.  
Marysville

Mutual Aid Association of the  
Church of the Brethren  
Abilene

Mutual Aid eXchange  
Overland Park

Upland Mutual Insurance Co.  
Chapman

### Kansas Life Insurance Association

Member Companies:

The American Home Life  
Insurance Company  
Topeka

American Investors Life  
Insurance Company  
Topeka

Employers Reassurance  
Corporation  
Overland Park

First Life America Corporation  
Topeka

Kansas Blue Cross/Blue Shield  
Topeka

Preferred Health Systems  
Wichita

The Pyramid Life Insurance  
Company  
Shawnee Mission

Security Benefit Life Insurance  
Company  
Topeka



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

TESTIMONY

TO: Senate Committee on Financial  
Institutions and Insurance

FROM: Kathy Greenlee, General Counsel

A handwritten signature in cursive script that reads "Kathy Sebelius".

RE: Senate Bill 389

DATE: January 29, 2002

I appear today in support of Senate Bill 389. The purpose of this bill is to broaden our authority to exchange information with federal regulatory agencies. Before giving you some background, I would like to propose that section (d) of this bill be eliminated, for reasons I will explain.

Gramm-Leach-Bliley Act

According to section 307(a) of GLBA, "Congress believes that the [Federal Reserve] Board and the State insurance regulators should share, on a confidential basis, information relevant to the supervision of companies that control both a depository institution and a company engaged in insurance activities."

We are in the process of signing such confidential sharing agreements with the Office of the Comptroller of Currency, the Federal Reserve and the Office of Thrift Supervision.

Current Insurance Law

K.S.A. 40-222 sets out the procedures that the Kansas Insurance Department must follow when conducting market conduct and financial examinations of insurers. Subsection (k)(5)

Senate Financial Inst. & Insurance

Date: 1-29-02

Attachment No. 3

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allows the commissioner to disclose “the content of an examination report, preliminary examination report or results, or any matter relating thereto” to other state and federal agencies, so long as those agencies agree to maintain the confidentiality of the information.

Please also note section (k)(7) of this statute. That subsection describes the types of exam work papers, etc. that may be disclosed to other persons and the National Association of Insurance Commissioners. As currently drafted, subsection (d) of Senate Bill 389 mirrors the language of K.S.A. 40-222(k)(7). Since section (a) of Senate Bill 389 addresses confidentiality, subsection (d) of the bill is not necessary. We do not need additional authority regarding the release of work papers beyond that contained in the current law.

#### Gap in the Law

It is clear to me that our department is authorized to share exam-related information with federal regulators. However, we maintain information that is not part of an examination report or work papers. Examples include consumer complaints, rate and form filing information, agents licensing files and legal division investigations. In the event that a federal regulator wishes to receive information from the Kansas Insurance Department, we want to be certain that we can provide access to all our regulatory files, with the understanding that all such information will remain confidential.

#### Senate Bill 389

During the 2001 legislative session, the state bank commissioner proposed House Bill 2149, which has become law. The bill before you, without subsection (d), is the insurance department equivalent of the bank commissioner’s authority. I have attached a draft balloon for the suggested amendment. I urge your adoption of this bill.



# SENATE BILL No. 389

By Committee on Financial Institutions and Insurance

1-16

9 AN ACT concerning insurance; authorizing the insurance commissioner  
10 to share information with functional regulatory agencies.  
11

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

13 Section 1. (a) The commissioner, by agreement, may establish an  
14 information sharing and exchange program with a functional regulatory  
15 agency with respect to all or part of an affiliated group that includes an  
16 insurance company or entity licensed or regulated by the Kansas insur-  
17 ance department, to reduce the potential for duplicative and burdensome  
18 filings, examinations and other regulatory activities. Each agency party to  
19 such an agreement shall agree to maintain confidentiality of information  
20 that is confidential under applicable statute or federal law and to take all  
21 reasonable steps to oppose any effort to secure disclosure of the infor-  
22 mation by such agency.

23 (b) Disclosure of information by or to the commissioner pursuant to  
24 this section shall not constitute a waiver of or otherwise affect or diminish  
25 a privilege to which the information is otherwise subject, whether or not  
26 the disclosure is governed by a confidentiality agreement.

27 (c) As used in this section: (1) "Affiliated group" means two or more  
28 persons affiliated through common ownership or a contractual common  
29 undertaking involving the sharing of customer information among such  
30 persons;

31 (2) "agency" means a department or agency of this state another state  
32 the United States or any related agency or instrumentality;

33 (3) "commissioner" shall have the meaning ascribed to it in K.S.A 40-  
34 102, and amendments thereto;

35 (4) "functional regulatory agency" means an agency that regulates  
36 and charters, licenses or registers persons engaged in activities that are  
37 financial in nature, incidental to financial activities, or complementary to  
38 financial activities, as those terms are used in the Gramm-Leach Bliley  
39 act of 1999 (P.L. 106-102), including activities related to banking, insur-  
40 ance or securities, within the jurisdiction of the agency; and

41 (5) "privilege" includes any work product, attorney client or other  
42 privilege recognized under federal or state law.

43 ~~(d) All working papers, recorded information, documents and copies~~

~~1 thereof produced by, obtained by or disclosed to the commissioner or  
2 any other person pursuant to this section must be given confidential treat-  
3 ment and are not subject to subpoena and may not be made public by  
4 the commissioner or any other person, except to the extent otherwise  
5 specifically provided in K.S.A. 45-212 et seq. and amendments thereto.  
6 Access may also be granted to the national association of insurance com-  
7 missioners. Such parties must agree in writing prior to receiving the in-  
8 formation to provide to such information the same confidential treatment  
9 as required by this section, unless the prior written consent of the com-  
10 pany to which such information pertains has been obtained.~~

11 Sec. 2. This act shall take effect and be in force from and after its  
12 publication in the statute book.

3-3

any person engaged in insurance sales or solicitations that is not affiliated with a depository institution.”

**SEC. 306. CERTAIN STATE AFFILIATION LAWS PREEMPTED FOR INSURANCE COMPANIES AND AFFILIATES.** 15 USC 6715.

Except as provided in section 104(c)(2), no State may, by law, regulation, order, interpretation, or otherwise—

(1) prevent or significantly interfere with the ability of any insurer, or any affiliate of an insurer (whether such affiliate is organized as a stock company, mutual holding company, or otherwise), to become a financial holding company or to acquire control of a depository institution;

(2) limit the amount of an insurer's assets that may be invested in the voting securities of a depository institution (or any company which controls such institution), except that the laws of an insurer's State of domicile may limit the amount of such investment to an amount that is not less than 5 percent of the insurer's admitted assets; or

(3) prevent, significantly interfere with, or have the authority to review, approve, or disapprove a plan of reorganization by which an insurer proposes to reorganize from mutual form to become a stock insurer (whether as a direct or indirect subsidiary of a mutual holding company or otherwise) unless such State is the State of domicile of the insurer.

**SEC. 307. INTERAGENCY CONSULTATION.** 15 USC 6716.

(a) PURPOSE.—It is the intention of the Congress that the Board of Governors of the Federal Reserve System, as the umbrella supervisor for financial holding companies, and the State insurance regulators, as the functional regulators of companies engaged in insurance activities, coordinate efforts to supervise companies that control both a depository institution and a company engaged in insurance activities regulated under State law. In particular, Congress believes that the Board and the State insurance regulators should share, on a confidential basis, information relevant to the supervision of companies that control both a depository institution and a company engaged in insurance activities, including information regarding the financial health of the consolidated organization and information regarding transactions and relationships between insurance companies and affiliated depository institutions. The appropriate Federal banking agencies for depository institutions should also share, on a confidential basis, information with the relevant State insurance regulators regarding transactions and relationships between depository institutions and affiliated companies engaged in insurance activities. The purpose of this section is to encourage this coordination and confidential sharing of information, and to thereby improve both the efficiency and the quality of the supervision of financial holding companies and their affiliated depository institutions and companies engaged in insurance activities.

(b) EXAMINATION RESULTS AND OTHER INFORMATION.—

(1) INFORMATION OF THE BOARD.—Upon the request of the appropriate insurance regulator of any State, the Board may provide any information of the Board regarding the financial condition, risk management policies, and operations of any financial holding company that controls a company that is engaged in insurance activities and is regulated by such State

insurance regulator, and regarding any transaction or relationship between such an insurance company and any affiliated depository institution. The Board may provide any other information to the appropriate State insurance regulator that the Board believes is necessary or appropriate to permit the State insurance regulator to administer and enforce applicable State insurance laws.

(2) BANKING AGENCY INFORMATION.—Upon the request of the appropriate insurance regulator of any State, the appropriate Federal banking agency may provide any information of the agency regarding any transaction or relationship between a depository institution supervised by such Federal banking agency and any affiliated company that is engaged in insurance activities regulated by such State insurance regulator. The appropriate Federal banking agency may provide any other information to the appropriate State insurance regulator that the agency believes is necessary or appropriate to permit the State insurance regulator to administer and enforce applicable State insurance laws.

(3) STATE INSURANCE REGULATOR INFORMATION.—Upon the request of the Board or the appropriate Federal banking agency, a State insurance regulator may provide any examination or other reports, records, or other information to which such insurance regulator may have access with respect to a company which—

(A) is engaged in insurance activities and regulated by such insurance regulator; and

(B) is an affiliate of a depository institution or financial holding company.

(c) CONSULTATION.—Before making any determination relating to the initial affiliation of, or the continuing affiliation of, a depository institution or financial holding company with a company engaged in insurance activities, the appropriate Federal banking agency shall consult with the appropriate State insurance regulator of such company and take the views of such insurance regulator into account in making such determination.

(d) EFFECT ON OTHER AUTHORITY.—Nothing in this section shall limit in any respect the authority of the appropriate Federal banking agency with respect to a depository institution or bank holding company or any affiliate thereof under any provision of law.

(e) CONFIDENTIALITY AND PRIVILEGE.—

(1) CONFIDENTIALITY.—The appropriate Federal banking agency shall not provide any information or material that is entitled to confidential treatment under applicable Federal banking agency regulations, or other applicable law, to a State insurance regulator unless such regulator agrees to maintain the information or material in confidence and to take all reasonable steps to oppose any effort to secure disclosure of the information or material by the regulator. The appropriate Federal banking agency shall treat as confidential any information or material obtained from a State insurance regulator that is entitled to confidential treatment under applicable State regulations, or other applicable law, and take all reasonable steps to oppose any effort to secure disclosure of the information or material by the Federal banking agency.

(2) PRIVILEGE.—The provision pursuant to this section of information or material by a Federal banking agency or State insurance regulator shall not constitute a waiver of, or otherwise affect, any privilege to which the information or material is otherwise subject.

(f) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) APPROPRIATE FEDERAL BANKING AGENCY; DEPOSITORY INSTITUTION.—The terms “appropriate Federal banking agency” and “depository institution” have the same meanings as in section 3 of the Federal Deposit Insurance Act.

(2) BOARD AND FINANCIAL HOLDING COMPANY.—The terms “Board” and “financial holding company” have the same meanings as in section 2 of the Bank Holding Company Act of 1956.

**SEC. 308. DEFINITION OF STATE.**

15 USC 6717.

For purposes of this subtitle, the term “State” means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

## Subtitle B—Redomestication of Mutual Insurers

**SEC. 311. GENERAL APPLICATION.**

15 USC 6731.

This subtitle shall only apply to a mutual insurance company in a State which has not enacted a law which expressly establishes reasonable terms and conditions for a mutual insurance company domiciled in such State to reorganize into a mutual holding company.

**SEC. 312. REDOMESTICATION OF MUTUAL INSURERS.**

15 USC 6732.

(a) REDOMESTICATION.—A mutual insurer organized under the laws of any State may transfer its domicile to a transferee domicile as a step in a reorganization in which, pursuant to the laws of the transferee domicile and consistent with the standards in subsection (f), the mutual insurer becomes a stock insurer that is a direct or indirect subsidiary of a mutual holding company.

(b) RESULTING DOMICILE.—Upon complying with the applicable law of the transferee domicile governing transfers of domicile and completion of a transfer pursuant to this section, the mutual insurer shall cease to be a domestic insurer in the transferor domicile and, as a continuation of its corporate existence, shall be a domestic insurer of the transferee domicile.

(c) LICENSES PRESERVED.—The certificate of authority, agents' appointments and licenses, rates, approvals and other items that a licensed State allows and that are in existence immediately prior to the date that a redomesticating insurer transfers its domicile pursuant to this subtitle shall continue in full force and effect upon transfer, if the insurer remains duly qualified to transact the business of insurance in such licensed State.

(d) EFFECTIVENESS OF OUTSTANDING POLICIES AND CONTRACTS.—



surer organized under the laws of this state 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 the liability of the ceding company under the contract or contracts reinsured, as approved by the liquidation court, without diminution because of the insolvency of the ceding company. 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 and amendments thereto, must provide in the reinsurance agreement, in substance, for a run-off of the reinsurance in force at the date of cancellation, unless the agreement is canceled for non-payment of premium or fraud in the inducement. Reinsurance payments shall be made directly to the ceding insurer or to its domiciliary liquidator except: (1) Where the reinsurance contract or policy reinsured specifically provides another payee of such reinsurance in the event of the insolvency of the ceding insurer; or (2) where the assuming insurer, with the consent of the direct insured, has assumed such policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under such policies and in substitution for the obligations of the ceding insurer to such payees.

(d) The reinsurance agreement may provide that the domiciliary liquidator of an insolvent ceding insurer shall give written notice to the assuming insurer of the pendency of a claim against such ceding insurer on the contract reinsured within a reasonable time after such claim is filed in the liquidation proceeding. During the pendency of such claim, any assuming insurer may investigate such claim and interpose, at its own expense, in the proceeding where such claim is to be adjudicated any defenses which it deems available to the ceding insurer, or its liquidator. 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 rein-

surance agreement as though such expense had been incurred by the ceding insurer.

**History:** L. 1965, ch. 296, § 2; L. 1967, ch. 249, § 1; L. 1970, ch. 175, § 1; L. 1974, ch. 185, § 1; L. 1985, ch. 157, § 1; L. 1995, ch. 155, § 1; L. 1996, ch. 78, § 1; L. 1998, ch. 174, § 29; L. 1999, ch. 66, § 1; July 1.

**Research and Practice Aids:**

Insurance = 676.

C.J.S. Insurance §§ 1221, 1222.

**40-222. Examination of condition of company, when; suspension or revocation of certificate; notice and hearing.**

(a) Whenever the commissioner of insurance deems it necessary but at least once every five years, the commissioner may make, or direct to be made, an examination of the affairs and financial condition of any insurance company in the process of organization, or applying for admission or doing business in this state.

(b) In scheduling and determining the nature, scope and frequency of examinations of financial condition, the commissioner shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants and other criteria as set forth in the examiner's handbook adopted by the national association of insurance commissioners and in effect when the commissioner exercises discretion under this subsection.

(c) For the purpose of such examination, the commissioner of insurance or the persons appointed by the commissioner, for the purpose of making such examination shall have free access to the books and papers of any such company that relate to its business and to the books and papers kept by any of its agents and may examine under oath, which the commissioner or the persons appointed by the commissioner are empowered to administer, the directors, officers, agents or employees of any such company in relation to its affairs, transactions and condition.

(d) The commissioner may also examine or investigate any person, or the business of any person, in so far as such examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the company, but such examination or investigation shall not infringe upon or extend to any communications or information accorded privileged or confidential status under any other laws of this state.

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(e) In lieu of examining a foreign or alien insurance company, the commissioner of insurance may accept the report of the examination made by or upon the authority of the company's state of domicile or port-of-entry state until January 1, 1994. Thereafter, such reports as they relate to financial condition may only be accepted if:

(1) The insurance department conducting the examination was at the time of the examination accredited under the national association of insurance commissioners' financial regulation standards and accreditation program; or

(2) the examination is performed under the supervision of an accredited insurance department, or with the participation of one or more examiners who are employed by such an accredited insurance department and who after a review of the examination work papers and report state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department.

(f) Upon determining that an examination should be conducted, the commissioner or the commissioner's designee shall appoint one or more examiners to perform the examination and instruct them as to the scope of the examination. In conducting an examination of financial condition, the examiner shall observe those guidelines and procedures set forth in the examiners' handbook adopted by the national association of insurance commissioners. The commissioner may also employ such other guidelines or procedures as the commissioner may deem appropriate.

(g) The refusal of any company, by its officers, directors, employees or agents, to submit to examination or to comply with any reasonable written request of the examiners shall be grounds for suspension or refusal of, or nonrenewal of any license or authority held by the company to engage in an insurance or other business subject to the commissioner's jurisdiction. Any such proceedings for suspension, revocation or refusal of any license or authority shall be conducted in accordance with the provisions of the Kansas administrative procedures act.

(h) When making an examination under this act, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants or other professionals and specialists as examiners, the reasonable cost of which shall be borne by the company which is the subject of the examination.

(i) Nothing contained in this act shall be construed to limit the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state.

(j) Nothing contained in this act shall be construed to limit the commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report in the furtherance of any legal or regulatory action which the commissioner may, in the commissioner's sole discretion, deem appropriate.

(k) (1) No later than 30 days following completion of the examination or at such earlier time as the commissioner shall prescribe, the examiner in charge shall file with the department a verified written report of examination under oath. No later than 30 days following receipt of the verified report, the department shall transmit the report to the company examined, together with a notice which shall afford such company examined a reasonable opportunity of not more than 30 days to make a written submission or rebuttal with respect to any matters contained in the examination report.

(2) Within 30 days of the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiners workpapers and enter an order:

(A) Adopting the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, regulation or prior order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure such violations; or

(B) rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation or information, and refiling pursuant to subsection (k); or

(C) call and conduct a fact-finding hearing in accordance with K.S.A. 40-281 and amendments thereto for purposes of obtaining additional documentation, data, information and testimony.

(3) All orders entered as a result of revelations contained in the examination report shall be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner



workpapers and any written submissions or rebuttals. Within 30 days of the issuance of the adopted report, the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.

(4) Upon the adoption of the examination report, the commissioner shall hold the content of the examination report as private and confidential information for a period of 30 days except to the extent provided in paragraph (5). Thereafter, the commissioner may open the report for public inspection so long as no court of competent jurisdiction has stayed its publication.

→ (5) Nothing contained in this act shall prevent or be construed as prohibiting the commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the insurance department of this or any other state or country, or to law enforcement officials of this or any other state or agency of the federal government at any time, so long as such agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this act.

(6) In the event the commissioner determines that regulatory action is appropriate as a result of any examination, the commissioner may initiate any proceedings or actions as provided by law.

(7) All working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the commissioner or any other person in the course of an examination made under this act must be given confidential treatment and are not subject to subpoena and may not be made public by the commissioner or any other person, except to the extent otherwise specifically provided in K.S.A. 45-215 et seq. and amendments thereto. Access may also be granted to the national association of insurance commissioners. Such parties must agree in writing prior to receiving the information to provide to it the same confidential treatment as required by this section, unless the prior written consent of the company to which it pertains has been obtained.

Whenever it appears to the commissioner of insurance from such examination or other satisfactory evidence that the solvency of any such insurance company 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 policyholders, the commissioner

of insurance shall give the company a notice and an opportunity for a hearing in accordance with the provisions of the Kansas administrative procedure act. If the hearing confirms the report of the examination, the commissioner shall suspend the certificate of authority of such company 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 company and in complying with the law, revoke the certificate of authority of such company to do business in this state. Upon revoking any such certificate the commissioner shall commence an action to dissolve such company or to enjoin the same from doing or transacting business in this state.

**History:** L. 1927, ch. 231, 40-222; L. 1978, ch. 164, § 1; L. 1984, ch. 162, § 1; L. 1984, ch. 313, § 73; L. 1991, ch. 124, § 2; Jan. 1, 1992.

**Source or prior law:**

L. 1871, ch. 93, §§ 9, 10, 17; L. 1875, ch. 112, § 3; L. 1885, ch. 131, § 26; L. 1885, ch. 132, § 24; L. 1889, ch. 159, § 1; L. 1895, ch. 363, § 5; L. 1898, ch. 23, § 3; L. 1898, ch. 25, § 4; L. 1901, ch. 230, § 8; L. 1901, ch. 357, § 1; L. 1903, ch. 334, § 2; L. 1907, ch. 228, §§ 2, 8, 11; L. 1909, ch. 153, §§ 14, 24; L. 1913, ch. 206, §§ 16, 25; L. 1917, ch. 127, § 4; R.S. 1923, 17-1805, 40-103, 40-106, 40-107, 40-114, 40-384, 40-445, 40-505, 40-615, 40-624, 40-706, 40-802, 40-808, 40-811, 40-1204.

**Research and Practice Aids:**

Insurance — 9.

C.J.S. Insurance § 73.

**CASE ANNOTATIONS**

1. Superintendent's power to grant, refuse or revoke license is discretionary; not controllable by mandamus. *Insurance Co. v. Wilder*, 40 K. 561, 569, 20 P. 265.
2. Revocation of authority is controllable by courts. *Insurance Co. v. Wilder*, 43 K. 731, 23 P. 1061.
3. Attorney general may bring ouster proceedings upon complaint of superintendent. *State, ex rel., v. National Industrial Insurance Co.*, 125 K. 119, 122, 263 P. 1060.
4. Stockholders cannot maintain action for receivership of failing company. *Wright v. Federal Reserve Life Ins. Co.*, 131 K. 601, 606, 293 P. 945.
5. Attorney general cannot maintain quo warranto on own initiative without recognition of commissioner. *State, ex rel., v. Kansas Life Ins. Co.*, 140 K. 267, 268, 36 P.2d 88.
6. Attorney general can bring receivership action without complying with procedure required herein, when. *State, ex rel., Bank Savings Life Ins. Co.*, 142 K. 899, 904, 52 P.2d 639.
7. Notification of hearing hereunder to determine whether 40-209a violated. *Bankers Service Life Ins. Co. v. Sullivan*, 188 K. 783, 785, 366 P.2d 264.

**40-222a. Examination of corporations organizing domestic insurance companies.** The commissioner may, whenever he deems it necessary, examine the affairs of any corporation organized under any law of this state, or having an



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

Approved March 21, 2001.

CHAPTER 35

HOUSE BILL No. 2149

AN ACT relating to the state bank commissioner; providing for the sharing of certain information with agencies; amending K.S.A. 2000 Supp. 9-1303 and repealing the existing section.

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

Section 1. K.S.A. 2000 Supp. 9-1303 is hereby amended to read as follows: 9-1303. (a) The state bank commissioner is hereby authorized to accept any report of examination of a state bank or trust company made within a reasonable period by the federal deposit insurance corporation or its successor, by the federal reserve bank or by the certified public accountant or independent auditor auditing the accounts of any bank or trust company insured by a private insurer, as authorized under the provisions of this act, but only one such report of examination shall be accepted in lieu of any examination required by this act in any one calendar year. The commissioner also may accept any report obtained by the insurance corporation, the federal reserve bank or private insurer within a reasonable time relative to the condition of any bank or trust company in lieu of any report required by this act.

(b) The commissioner shall furnish to the insurance corporation or private insurer, or to any officer or examiner thereof, a copy of any or all examination reports made by the commissioner, or the commissioner's examiners, of any bank or trust company insured by the corporation or insurer, and any or all reports made to the commissioner by any bank or trust company insured by such corporation or insurer. The commissioner may disclose to the insurance corporation or private insurer, or any official or examiner thereof, any and all information contained in the commissioner's office concerning the condition of affairs of any bank or trust company insured by such corporation or insurer.

The commissioner may furnish to the federal reserve bank, office of the comptroller of currency, the federal home loan bank, and other state bank regulatory agencies and savings and loan regulatory agencies or any officer or examiner thereof, a copy of any or all examination reports made by the commissioner, or the commissioner's examiners of any bank or trust company which is a member or nonmember of the federal reserve system and any or all reports made to the commissioner by any bank or trust company which is a member of the federal reserve system.

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(c) The commissioner may disclose to the federal reserve bank, office of the comptroller of currency, the federal home loan bank, and other state bank regulatory agencies and savings and loan regulatory agencies or any officer or examiner thereof, any and all information contained in the commissioner's office concerning the condition of affairs of any bank or trust company which is a member or nonmember of the federal reserve system.

(d) The commissioner may furnish to the state treasurer a copy of any or all examination information relating specifically to apparent violations of the uniform unclaimed property act, K.S.A. 58-3934 through 58-3978, and amendments thereto.

→ (e) *The commissioner, by agreement, may establish an information sharing and exchange program with a functional regulatory agency that has overlapping regulatory jurisdiction with the department, with respect to all or part of an affiliated group that includes a financial institution, to reduce the potential for duplicative and burdensome filings, examinations and other regulatory activities. Each agency party to such an agreement shall agree to maintain confidentiality of information that is confidential under applicable statute or federal law and to take all reasonable steps to oppose any effort to secure disclosure of the information by such agency.*

(f) *Disclosure of information by or to the commissioner pursuant to this section shall not constitute a waiver of or otherwise affect or diminish a privilege to which the information is otherwise subject, whether or not the disclosure is governed by a confidentiality agreement.*

(g) *As used in this section: (1) "Affiliated group" means two or more persons affiliated through common ownership or a contractual common undertaking involving the sharing of customer information among such persons;*

(2) *"agency" means a department or agency of this state, another state, the United States or any related agency or instrumentality;*

(3) *"functional regulatory agency" means an agency that regulates and charters, licenses or registers persons engaged in activities that are financial in nature, incidental to financial activities, or complementary to financial activities, as those terms are used in the Gramm-Leach Bliley act of 1999 (P.L. 106-102), including activities related to banking, insurance or securities, within the jurisdiction of the agency;*

(4) *"privilege" includes any work product, attorney client or other privilege recognized under federal or state law.*

(h) *Nothing in this act shall be construed to limit the powers of the commissioner with reference to examinations and reports required by this act.*

Sec. 2. K.S.A. 2000 Supp. 9-1303 is hereby repealed.

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

January 29, 2002

TO: Senate Committee on Financial Institutions & Insurance  
FROM: Patrick J. Mulvihill  
Assistant Director, Financial Surveillance Division  
RE: Senate Bill No. 390 --- Reinsurance

Chairman and members of the Committee:

Thank you for the opportunity to discuss Senate Bill No. 390 with you. Senate Bill No. 390 is a proposal to amend K.S.A. 40-221a, which is our primary statute pertaining to reinsurance.

K.S.A. 40-221a presently includes references to both a "bank" and a "qualified United States financial institution". Senate Bill No. 390 amends K.S.A. 40-221a in order to consistently use the term "qualified United States financial institution" throughout this statute, as that term is defined in the National Association of Insurance Commissioners (NAIC) Credit for Reinsurance Model Law. Please note that we are currently amending a reinsurance regulation (K.A.R. 40-1-43) to incorporate some additional language from the NAIC Credit for Reinsurance Model Regulation. The Model Regulation contemplates that the use of the term "qualified United States financial institution" is as defined in the NAIC Credit for Reinsurance Model Law.

K.S.A. 40-221a currently provides that a Kansas domestic insurer may take reserve credit on business ceded to an unauthorized insurer in an amount not exceeding the amount of a letter of credit or the amount of funds that are held in a trust arrangement. The definition of the term "qualified United States financial institution" is defined differently within the NAIC Credit for Reinsurance Model Law regarding an institution that issues a letter of credit as compared to an

institution that holds funds under a trust arrangement. Therefore, both definitions are incorporated into the proposed amendment to K.S.A. 40-221a.

Senate Bill No. 390 also deletes a provision in K.S.A. 40-221a which presently prohibits a title insurance company from being able to take reserve credit on business ceded to an unauthorized insurer under alternatives, set forth in K.S.A. 40-221a, that are presently available to other types of insurance companies. The proposal to delete this provision would be beneficial to title insurance companies because it would provide them with the same alternatives and safeguards, for taking reserve credit on business ceded to unauthorized insurers, that are presently available to other types of insurance companies.

**Summary:**

The Kansas Insurance Department believes that the passage of Senate Bill No. 390 would be beneficial in our efforts to monitor and regulate the insurance industry and would, in turn, be in the best interests of policyholders.