

MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

The meeting was called to order by Chairperson Ruth Teichman at 9:30 a.m. on March 17<sup>th</sup>, 2004 in Room 234-N of the Capitol.

All members were present.

Committee staff present:

Bill Wolff, Legislative Research  
Ken Wilke, Office of the Revisor of Statutes  
Nancy Shaughnessy, Committee Secretary

Conferees appearing before the committee:

John Peterson

Others attending:

See Attached List.

The Chair informed the Committee that she wished to re-address **SB 558-Creating the health business partnership fund, adding duties for the business health policy committee and health partnership** and asked the Revisor, Ken Wilke to update the Committee.

Ken Wilke indicated that he had an amendment that was requested by the Insurance Commissioner's office. In page two, line 39 he has added the language regarding two years that will cap the offer of the insurance by the employer. Further, there was a line at the beginning of the bill which will clarify that there is only one fund in this bill that is being discussed.

Senator Helgerson moved to adopt the amendment and move the bill out favorably. Senator Buhler seconds. The motion passes.

The Chair opened the hearing on **HB 2597-Insurance; elimination of required errors and omissions coverage for insurance**, and stated there was an amendment to this bill. The Amendment is brought forward by Larrie Ann Lower of the Kansas Association of Health Plans. Larrie Ann had a death in her family and John Peterson agreed to present the information for her.

John Peterson referenced the Committee to the testimony (Attachment 1). Essentially the amendment would conform the continuation of benefits statutes for non-HMO insurance companies to what we already have in existence for HMO plans. Under HMO plans, Federal cobra, etc. if someone is terminated for cause then you do not have to do the six months termination coverage. Under the non-HMO statute, fraud and or misrepresentation or cause are not among the reasons you cannot offer the continuation. Therefore someone could be terminated for fraud, etc. and then they would have to be offered the six months extended coverage. Ken Wilke pointed out that the amended language is on page 15 of the attached (Attachment 2). It is inconsistent with the other statutes that are in place. That is the purpose of the amendment. The Chair closed the hearing on the amendment for **HB 2597**.

Senator Helgerson made a motion to adopt the amendment. Senator Barnett seconds. Motion passes.

Dr. Wolff continued the report on **HB 2597**. He stated that the effect of the bill is that it would remove errors and omission coverage requirement for all insurance agents.

Senator Buhler wondered if most insurance companies required errors and omission coverage for their agents and indicated he had a problem with just a blanket legislation that it was no longer necessary.

The discussion then went to **SB 392-- Authorizing the committee on surety bonds and insurance to competitively negotiate certain contracts**. The bill currently is on House general orders. This is the bill that purchasing of insurance (mostly property and casualty) that Senator Oleen had brought to the Committee. It would allow a negotiated process of bidding rather than a competitive. The bid does have to be advertised. Senator Oleen's amendment stated that they would like to take out the wording for "at

CONTINUATION SHEET

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least three” proposals. That would allow them to deal with a situation with only one bidder. Current statute would not permit that.

Senator Helgeson wondered if the bill would allow them to only take one bid. Dr. Wolff responded that they have to request bids, but if there is only one they may still proceed.

Senator Buhler moved the amendment be passed out favorably. Senator Steineger seconds. Motion passes.

**SB 340–Risk Based Capital Requirements** is the next bill for consideration as part of the omnibus. Bill Wolff stated that this is the annual bill that changes the date on the NAIC risk based capital instructions and formulas that the insurance companies must use in preparing annual statements. The House committee has amended that bill to put in the Kansas uninsurable health insurance plan act amendment. It extends coverage to federally defined eligible individuals for federal trade adjustment assistance. This bill was re-referred to the House Committee.

The last bill is **SB 311–Foreign Language; insurance policies**. Dr. Wolff stated that this bill is also on the House Calendar under GO. This bill requires the Commissioner to allow insurers to do business in this state contracts of insurance written in a language other than English.

The Chair summarized by stating that is essentially what **HB 2597** would now incorporate and indicated she would entertain a motion.

Senator Adkins made a motion to pass the bill out favorably. Senator Corbin seconds. Motion passes.

The Committee then heard a report on **HB 2545–Insurance; updating certain mortality tables used in valuation of life insurance policies**, which is the underlying bill for the other Senate bills. This bill is the Insurance Commissioner’s bill requesting the update of the mortality tables in the current laws that are used to determine the minimum reserves for credit life insurer’s in this State. It allows the Commissioner to make those changes by rules and regulations to more recent mortality tables.

The Chair asked Dr. Wolff to comment on the bills that had been consolidated into the omnibus bill. Dr. Wolff stated that **HB 2545** would include: (Attachment 3)

a) **SB 342–Technical amendment to form of certain policies**. The bill is currently on House GO. When it left the Senate it related to policies of accident and sickness insurance. It removed the word “or” and replaced it with the word “and”.

b) **HB 2852–Insurance; electronic verification of proof of auto insurance**. The bill would authorize the Commissioner of Insurance to require, through the adoption of rules and regulations, that all motor vehicle liability insurers provide verification of insurance on line or electronically to the Dept. Of Motor Vehicles (DMV).

c) **SB 546–Insurance; transfer and novation of insurance contracts and group life**, is also a part of the omnibus bill. This bill (**SB 546**)enacts a new law establishing the formal process by which one insurance carrier may transfer business to another carrier and establishes terms and conditions for transferring a group life insurance product issued through one trust to a new trust.

d) **SB 348–Conformance with Federal Law re: Health Savings Accounts**, is the legislation requested by the KID so that current Kansas law could reflect the most recent changes in federal law relative to health savings accounts.

e) **SB 508–Standard nonforfeiture law for individual deferred annuities**, is the bill requested by the KID which would update the current standards for the standard nonforfeiture law for individual deferred annuities in the State of Kansas.

CONTINUATION SHEET

MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE at 9:30 a.m. on March 17<sup>th</sup>, 2004 in Room 234-N of the Capitol.

Senator Adkins moves to pass the bill out favorably with the balloon. Senator Brungardt seconds.  
Motion passes

The meeting was adjourned at 10:40 A.M.

The next meeting is scheduled for March 18<sup>th</sup>, 2004.

SENATE FINANCIAL INSTITUTIONS & INSURANCE

Date: 3-17-04

Name:

Representing:

THURSDAY

~~Paul Jones~~

KID

Natalie Haag

Security Benefit

Bill Sneed

Amerus

John Peterson

Ky Government Consulting

Ron Conley

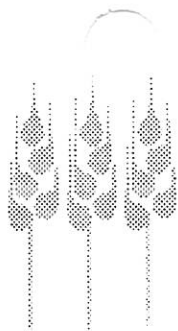
CSBA

John Beatty

KID

Brad Smith

ATA / BCBS



# Kansas Association of Health Plans

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**Offer of an amendment**  
**Senate Financial Institutions and Insurance Committee**  
**Amendment to HB 2597**  
**March 17, 2004**

Madam Chair and members of the Committee. Thank you for allowing me to appear before you today. I am Larrie Ann Lower, Executive Director of the Kansas Association of Health Plans (KAHP).

The KAHP is a nonprofit association dedicated to providing the public information on managed care health plans. Members of the KAHP are Kansas licensed health maintenance organizations, preferred provider organizations and other entities that are connected to managed care. KAHP members serve most all of the Kansans enrolled in a Kansas licensed HMO. KAHP members also serve the Kansans enrolled in HealthWave and medicaid managed care and also many of the Kansans enrolled in PPO's and self insured plans.

We appreciate the opportunity to offer an amendment for your consideration. Under the continuation of coverage statute for HMO's, KSA 40-3209a(7)(A), an HMO is not required to offer six months continued coverage to someone whose coverage has been terminated "for cause" as defined in the group contract as approved by the commissioner. However, KSA 40-2209(i) governs continuation of coverage requirements for non-HMO health insurance companies. Under this statute there are only four reasons a continuation policy may not be offered. Fraud or intentional misrepresentation or even "for cause" are not among them.

Under federal COBRA laws (applies to groups 20 and over) a plan can terminate a qualified beneficiary's COBRA coverage "for cause" if the plan would do so for similarly situated active employees. HIPAA also specifically lists fraud as an exception to the guaranteed availability and renewability requirements of an insurance policy. However, because of the Kansas statute a non-HMO health plan is required to offer six months of continued benefits under 40-2209(i) regardless of HIPAA or COBRA exemptions.

Fraud and misrepresentation are matters of increasing concern. Once the health plan suspects fraud or misrepresentation is evident (usually either through notification by the police, a provider or a member), the plan sends a notification of termination to the alleged wrongdoer. After determination that fraud has occurred and after notification of cancellation, the insurance company cancels the policy, but then because of 40-2209(i), a non-HMO insurance company must then offer a continuation policy for an additional 6 months.

We propose utilizing the language from the HMO Act (40-3209a(7)A) and inserting similar language into 40-2209(i). This will clarify that not only HMO's but also PPO's and other health insurance companies that terminate coverage "for cause" would not be required to offer continuation rights to someone who has committed fraud. This amendment would also allow the Kansas statute to be consistent with the federal HIPAA and COBRA statutes.

I'll be happy to try to answer any questions.

Senate F I & I Committee

Meeting Date: 3-07-04

Attachment No: 1

HOUSE BILL No. 2597

By Committee on Insurance

1-26

9 AN ACT concerning insurance; pertaining to the elimination of the er-  
10 rors and omissions requirement for insurance agents; amending K.S.A.  
11 40-241, 40-246b, 40-2,131 and 40-4503 and repealing the existing sec-  
12 tions; also repealing K.S.A. 40-246f

; relating to the issuance of insurance policies in a foreign  
language; relating to risk-based capital requirements; relating to the  
Kansas uninsurable health insurance plan; relating to the purchase  
of insurance by state agencies; relating to group health insurance;  
amending K.S.A. 40-216, 40-241, 40-246b, 40-2,131, 40-2118, 40-  
2122, 40-2124, 40-2209, 40-4503, 75-4105 and 75-4109 and  
K.S.A. 2003 Supp. 40-2c01 and 40-2404 and repealing the existing  
sections. Also repealing K.S.A. 40-246f.

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

From and after July 1, 2004

15 Section 1. K.S.A. 40-241 is hereby amended to read as follows: 40-  
16 241. Any applicant or prospective applicant for an agent's license, if an  
17 individual, shall be given an examination by the commissioner or the  
18 commissioner's designee to determine whether such applicant possesses  
19 the competence and knowledge of the kinds of insurance and transactions  
20 under the license applied for, or to be applied for, of the duties and  
21 responsibilities of such a license and of the pertinent provisions of the  
22 laws of this state. The applicant shall be tested on each class or subclas-  
23 sification of insurance which may be written. An examination fee pre-  
24 scribed in rules and regulations adopted by the commissioner shall be  
25 paid by the applicant and shall be required for each class of insurance for  
26 each attempt to pass the examination. Such examination fee shall be in  
27 addition to the certification fee required under K.S.A. 40-252, and  
28 amendments thereto. There shall be four classes of insurance for the  
29 purposes of this act:

- 30 (1) Life;
- 31 (2) accident and health;
- 32 (3) casualty and allied lines; and
- 33 (4) property and allied lines.

34 An insurance license may be issued as a subclassification of casualty  
35 and allied lines to any auto rental agency. An auto rental agency may offer  
36 or sell insurance only in connection with and incidental to the rental of  
37 motor vehicles, whether at the rental office, at the point of delivery of a  
38 vehicle, or by preselection of coverage in a master, corporate or group  
39 rental agreement, in any of the following general categories: (1) Personal  
40 accident insurance covering risks of travel, (2) motor vehicle liability in-  
41 surance, (3) personal effects insurance providing coverage to renters and  
42 other occupants of the motor vehicle, (4) roadside assistance and emer-  
43 gency sickness protection programs, and (5) any other travel or auto-

Senate FI & I Committee  
March 17, 2004  
Attachment 2

Senate F I & I Committee  
Meeting Date: 3-17-04  
Attachment No: 2

1 related coverage an auto rental company may offer in connection with  
2 and incidental to rental of motor vehicles. No insurance may be issued  
3 by an auto rental agency unless the rental period of the rental agreement  
4 does not exceed 90 consecutive days and brochures and other written  
5 material clearly and correctly explaining insurance coverages offered by  
6 the agency are available for prospective renters and clear and complete  
7 disclosures are provided to prospective renters that such coverage may  
8 be duplicative of other insurance owned by the renter, that purchase of  
9 insurance coverage is not a condition for renting a motor vehicle and  
10 describing the process for filing a claim.

11 Auto rental agencies employing representatives shall conduct a training  
12 program for each representative, providing instruction on the kinds of  
13 insurance coverage offered by the agency.

14 No auto rental agency shall offer or solicit any insurance other than  
15 the coverages described in this section without an insurance license. No  
16 auto rental employee or auto rental agency shall advertise or otherwise  
17 hold themselves out as licensed insurers, insurance agents or insurance  
18 brokers.

19 The commissioner of insurance shall adopt rules and regulations with  
20 respect to the scope, subclassification, type and conduct of such exami-  
21 nation. Examinations shall be given to applicants at least twice a month  
22 in Topeka, Kansas, and at least quarterly in other convenient locations in  
23 the state of Kansas. The commissioner shall publish or arrange for the  
24 publication of information and material which applicants can use to pre-  
25 pare for such examination. One or more rating organizations, advisory  
26 organizations or other associations may be designated by the commis-  
27 sioner to assist in, or assume responsibility for, distribution of the study  
28 manuals to applicants and other interested parties. Persons purchasing  
29 the study manual shall be charged a reasonable fee established or ap-  
30 proved by the commissioner. In the event the publication and distribution  
31 of the study material or the development and conduct of examinations is  
32 delegated to private firms, organizations or associations and the state in-  
33 curs no expense or obligation, the provisions of K.S.A. 75-3738 to 75-  
34 3744, inclusive, and amendments thereto, shall not apply. If the commis-  
35 sioner of insurance finds that the individual applicant is trustworthy,  
36 competent and has satisfactorily completed the examination, the commis-  
37 sioner shall forthwith issue to the applicant a license as an insurance  
38 agent but the issuance of such license shall confer no authority to transact  
39 business in this state until the agent has been certified by a company  
40 pursuant to K.S.A. 40-241i, and amendments thereto ~~and submitted proof~~  
41 ~~that the agent is covered by an errors and omissions policy required by~~  
42 ~~this section.~~ If such applicant fails to satisfactorily complete the exami-  
43 nation, the examination may be retaken following a waiting period of not

1 less than seven days from the date of the last attempt. If the applicant  
 2 again fails to satisfactorily complete the examination, it may be retaken  
 3 following another waiting period of not less than seven days from the date  
 4 of the most recent attempt. Thereafter, the examination may be retaken  
 5 following a waiting period of not less than six months from the date of  
 6 the most recent attempt, except that following a waiting period of two  
 7 years from the date of the applicant's last examination attempt an appli-  
 8 cant will be treated as a new applicant and new examination and waiting  
 9 periods shall apply. ~~While licensed every agent shall be covered by an~~  
 10 ~~errors and omissions policy covering the individual agent in an amount~~  
 11 ~~of not less than \$100,000 total liability limit per occurrence, subject to~~  
 12 ~~not less than \$100,000 annual aggregate for all claims made during the~~  
 13 ~~policy period, or, covering the agent under blanket liability policy or poli-~~  
 14 ~~cies, which policy or policies can include other coverage on an excess~~  
 15 ~~basis over \$100,000 primary, insuring other insurance agents or brokers~~  
 16 ~~in an amount of not less than \$500,000 total liability limit per occurrence~~  
 17 ~~subject to not less than \$500,000 annual aggregate for all claims made~~  
 18 ~~during the policy period. Such policy shall be issued by an authorized~~  
 19 ~~insurance company or as authorized by K.S.A. 40-246b or 40-246c, and~~  
 20 ~~amendments thereto, for errors and omissions of the agent. Self-retention~~  
 21 ~~shall be permitted on liability policies covering the agent.~~

From and after July 1, 2004

22 Sec. 2. ~~K.S.A. 40-246b is hereby amended to read as follows: 40-~~  
 23 ~~246b. The commissioner of insurance may issue to any duly licensed res-~~  
 24 ~~ident agent of this state, who has been licensed as a fire or casualty, or~~  
 25 ~~both, resident agent in this or any other state or combination thereof, for~~  
 26 ~~three consecutive years immediately prior to application for the type of~~  
 27 ~~license herein prescribed, upon proper application, an excess coverage~~  
 28 ~~license to negotiate the types of contracts of fire insurance enumerated~~  
 29 ~~in K.S.A. 40-901, and amendments thereto, and the type of casualty in-~~  
 30 ~~surance contracts enumerated in K.S.A. 40-1102, and amendments~~  
 31 ~~thereto, or reinsurance, or to place risks, or to effect insurance or rein-~~  
 32 ~~surance for persons or corporations other than such agent, with insurers~~  
 33 ~~not authorized to do business in this state. An agent, as defined in K.S.A.~~  
 34 ~~40-241e, and amendments thereto, may place the kind or kinds of busi-~~  
 35 ~~ness specified in this act for which such agent is licensed pursuant to~~  
 36 ~~K.S.A. 40-240 and 40-241, and amendments thereto, with an insurer not~~  
 37 ~~authorized to do business in this state by placing such business with a~~  
 38 ~~person licensed pursuant to the provisions of this act and may share in~~  
 39 ~~the applicable commissions on such business. Before any such license~~  
 40 ~~shall be issued, the applicant shall submit proper application on a form~~  
 41 ~~prescribed by the commissioner, which application shall be accompanied~~  
 42 ~~by a fee of \$50. Such license shall be renewable each year on May 1,~~  
 43 ~~upon the payment of a \$50 fee and certification of appropriate errors and~~



1 ~~omissions coverage as required by K.S.A. 40-246f, and amendments~~  
2 ~~thereto.~~ Excess lines agents licensed by the department on the effective  
3 date of this act shall be exempt from the experience requirement.

4 The agent so licensed shall on or before March 1 of each year, file with  
5 the insurance department of this state, a sworn affidavit or statement to  
6 the effect that, after diligent effort, such agent has been unable to secure  
7 the amount of insurance required to protect the property, person, or firm  
8 described in such agent's affidavit or statement from loss or damage in  
9 regularly admitted companies during the preceding year. Mere rate dif-  
10 ferential shall not be grounds for placing a particular risk in a nonadmitted  
11 carrier when an admitted carrier would accept such risk at a different  
12 rate. The licensed excess coverage agent must, prior to placing insurance  
13 with an insurer not authorized to do business in this state, obtain the  
14 written consent of the prospective named insured and provide such in-  
15 sured the following information in a form promulgated by the  
16 commissioner:

17 (a) A statement that the coverage will be obtained from an insurer  
18 not authorized to do business in this state;

19 (b) a statement that the insurer's name appears on the list of com-  
20 panies maintained by the commissioner pursuant to K.S.A. 40-246e, and  
21 amendments thereto;

22 (c) a notice that the insurer's financial condition, policy forms, rates  
23 and trade practices are not subject to the review or jurisdiction of the  
24 commissioner;

25 (d) a statement that the protection of the guaranty associations is not  
26 afforded to policyholders of the insurer; and

27 (e) a statement or notice with respect to any other information  
28 deemed necessary by the commissioner pertinent to insuring with an  
29 insurer not authorized to do business in this state.

30 In the event the insured desires that coverage be bound with an insurer  
31 not admitted to this state and it is not possible to obtain the written  
32 consent of the insured prior to binding the coverage, the excess lines  
33 agent may bind the coverage after advising the insured of the information  
34 set out above and shall obtain written confirmation that the insured de-  
35 sires that coverage be placed with an insurer not admitted to this state  
36 within 30 days after binding coverage.

37 When business comes to a licensed excess lines agent for placement  
38 with an insurer not authorized to do business in this state from an agent  
39 not licensed as an excess lines agent, it shall be the responsibility of the  
40 licensed excess lines agent to ascertain that the insured has been provided  
41 the preceding information and has consented to being insured with an  
42 insurer not authorized to do business in this state. Each excess lines agent  
43 shall keep a separate record book in such agent's office showing the trans-

2-5

1 actions of fire and casualty insurance and reinsurance placed in companies  
 2 not authorized to do business in this state, the amount of gross premiums  
 3 charged thereon, the insurer in which placed, the date, term and number  
 4 of the policy, the location and nature of the risk, the name of the assured  
 5 and such other information as the commissioner may require and such  
 6 record shall be available at all times for inspection by the commissioner  
 7 of insurance or the commissioner's authorized representatives. The com-  
 8 missioner may revoke or suspend any license issued pursuant to the pro-  
 9 visions of this act in the same manner and for the same reasons prescribed  
 10 by K.S.A. 40-242, and amendments thereto.

11 Any policy issued under the provisions of this statute shall have  
 12 stamped or endorsed in a prominent manner thereon, the following: This  
 13 policy is issued by an insurer not authorized to do business in Kansas and,  
 14 as such, the form, financial condition and rates are not subject to review  
 15 by the commissioner of insurance and the insured is not protected by any  
 16 guaranty fund.

17 If business is placed with a nonadmitted company that is subsequently  
 18 determined to be insolvent, the excess lines agent placing such business  
 19 with such company is relieved of any responsibility to the insured as it  
 20 relates to such insolvency, if the excess lines agent has satisfactorily com-  
 21 plied with all requirements of this section pertaining to notification of the  
 22 insured, has properly obtained the written consent of the insured and has  
 23 used due diligence in selecting the insurer. It shall be presumed that due  
 24 diligence was used in selecting the insurer if such insurer was on the list  
 25 compiled pursuant to K.S.A. 40-246e, and amendments thereto, at the  
 26 time coverage first became effective.

27 Sec. 3. K.S.A. 40-2,131 is hereby amended to read as follows: 40-  
 28 2,131. (a) No person, firm, association or corporation shall act in the  
 29 capacity of an MGA with respect to risks located in this state for an insurer  
 30 licensed in this state unless such person is a licensed agent or broker in  
 31 this state.

32 (b) No person, firm, association or corporation shall act in the capac-  
 33 ity of an MGA representing an insurer domiciled in this state with respect  
 34 to risks located outside this state unless such person is licensed as an  
 35 agent or broker in this state pursuant to the provisions of K.S.A. 40-240  
 36 or 40-3701 *et seq.*, and amendments thereto.

37 (c) The commissioner may require a bond in an amount acceptable  
 38 to the commissioner for the protection of the insurer.

39 ~~(d) The commissioner may require the MGA to maintain an errors  
 40 and omissions policy.~~

41 Sec. 4. K.S.A. 40-4503 is hereby amended to read as follows: 40-  
 42 4503. (a) No person, firm, association or corporation shall act as a rein-  
 43 surance broker in this state if the reinsurance broker maintains an office

[ From and after July 1, 2004

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1 either directly or as a member or employee of a firm or association, or as  
2 an officer, director or employee of a corporation:

3 (1) In this state, unless such reinsurance broker is a licensed producer  
4 in this state; or

5 (2) in another state, unless such reinsurance broker is a licensed pro-  
6 ducer in this state or another state having a law substantially similar to  
7 this act or such reinsurance broker is licensed in this state as a nonresident  
8 reinsurance intermediary.

9 (b) No person, firm, association or corporation shall act as a reinsur-  
10 ance manager:

11 (1) For a reinsurer domiciled in this state, unless such reinsurance  
12 manager is a licensed producer in this state;

13 (2) in this state, if the reinsurance manager maintains an office either  
14 directly or as a member or employee of a firm or association, or an officer,  
15 director or employee of a corporation in this state, unless such reinsur-  
16 ance manager is a licensed producer in this state;

17 (3) in another state for a nondomestic insurer, unless such reinsur-  
18 ance manager is a licensed producer in this state or another state having  
19 a law substantially similar to this act or such person is licensed in this  
20 state as a nonresident reinsurance intermediary.

21 (c) The commissioner may require a reinsurance manager subject to  
22 subsection (b) to:

23 ~~(1) file a bond in an amount from an insurer acceptable to the com-~~  
24 ~~missioner for the protection of each reinsurer represented; and~~

25 ~~(2) maintain an errors and omissions policy in an amount acceptable~~  
26 ~~to the commissioner.~~

27 (d) (1) The commissioner may issue a reinsurance intermediary li-  
28 cense to any person, firm, association or corporation who has complied  
29 with the requirements of this act. Before any such license may be issued,  
30 the applicant shall submit proper application therefor on a form pre-  
31 scribed by the commissioner which shall be accompanied by an initial fee  
32 of \$150. Any license so issued shall remain in effect until suspended,  
33 revoked, voluntarily surrendered or otherwise terminated by the com-  
34 missioner or licensee subject to payment of an annual continuation fee  
35 of \$100 on or before May 1 of each year. Any such license issued to a  
36 firm or association will authorize all the members of such firm or asso-  
37 ciation and any designated employees to act as reinsurance intermediaries  
38 under the license, and all such persons shall be named in the application  
39 and any supplements thereto. Any such license issued to a corporation  
40 shall authorize all of the officers, and any designated employees and di-  
41 rectors thereof, to act as reinsurance intermediaries on behalf of such  
42 corporation, and all such persons shall be named in the application and  
43 any supplements thereto.

1 (2) If the applicant for a reinsurance intermediary license is a non-  
 2 resident, such applicant, as a condition precedent to receiving or holding  
 3 a license, shall designate the commissioner as agent for service of process  
 4 in the manner, and with the same legal effect, as is provided for by this  
 5 act for designation of service of process upon insurers holding a Kansas  
 6 certificate of authority. Such applicant shall furnish the commissioner  
 7 with the name and address of a resident of this state upon whom notices  
 8 or orders of the commissioner or process affecting such nonresident re-  
 9 insurance intermediary may be served. Such licensee shall promptly no-  
 10 tify the commissioner in writing of every change in its designated agent  
 11 for service of process, and such change shall not become effective until  
 12 acknowledged by the commissioner.

13 (e) The commissioner may, after a hearing conducted in accordance  
 14 with the provisions of the Kansas administrative procedure act, held on  
 15 not less than 20 days notice, refuse to issue a reinsurance intermediary  
 16 license if, in the judgment of the commissioner, the applicant, any one  
 17 named on the application, or any member, principal, officer or director  
 18 of the applicant, is not trustworthy, or any controlling person of such  
 19 applicant is not trustworthy to act as a reinsurance intermediary, or any  
 20 of the foregoing has given cause for revocation or suspension of such  
 21 license, or has failed to comply with any prerequisite for the issuance of  
 22 such license.

23 (f) Licensed attorneys at law in this state when acting in their pro-  
 24 fessional capacity as such shall be exempt from this section.

25 [Sec. 5. K.S.A. 40-241, 40-246b, 40-246f, 40-2,131 and 40-4503 are  
 26 hereby repealed.]

27 Sec. 6. This act shall take effect and be in force from and after its  
 28 publication in the statute book.]

**SENATE BILL No. 311**

By Committee on Financial Institutions and Insurance

1-16

9 AN ACT concerning insurance; relating to the issuance of insurance pol-  
 10 icies in a foreign language; amending K.S.A. 40-216 and K.S.A. 2003  
 11 Supp. 40-2404 and repealing the existing sections.  
 12

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

[ From and after July 1, 2004

14 Section ~~15~~ K.S.A. 40-216 is hereby amended to read as follows: 40-  
 15 216. (a) No insurance company shall hereafter transact business in this  
 16 state until certified copies of its charter and amendments thereto shall  
 17 have been filed with and approved by the commissioner of insurance. A  
 18 copy of the bylaws and amendments thereto of insurance companies or-  
 19 ganized under the laws of this state shall also be filed with and approved  
 20 by the commissioner of insurance. The commissioner may also require  
 21 the filing of such other documents and papers as are necessary to deter-  
 22 mine compliance with the laws of this state. No contract of insurance or  
 23 indemnity shall be issued or delivered in this state until the form of the  
 24 same has been filed with the commissioner of insurance, nor if the com-  
 25 missioner of insurance gives written notice within 30 days of such filing,  
 26 to the company proposing to issue such contract, showing wherein the  
 27 form of such contract does not comply with the requirements of the laws  
 28 of this state; but the failure of any insurance company to comply with this  
 29 section shall not constitute a defense to any action brought on its con-  
 30 tracts. An insurer may satisfy its obligation to file its contracts of insurance  
 31 or indemnity either individually or by authorizing the commissioner to  
 32 accept on its behalf the filings made by a licensed rating organization or  
 33 another insurer.

34 Under such rules and regulations as the commissioner of insurance  
 35 shall adopt, the commissioner may, by written order, suspend or modify  
 36 the requirement of filing forms of contracts of insurance or indemnity,  
 37 which cannot practicably be filed before they are used. Such orders, rules  
 38 and regulations shall be made known to insurers and rating organizations  
 39 affected thereby. The commissioner may make an examination to ascer-  
 40 tain whether any forms affected by such order meet the standards of this  
 41 code.

42 (b) ~~Prior to the 2000 legislative session, the Kansas insurance de-~~  
 43 ~~partment shall conduct a study and report to the Kansas legislature on~~

1 ~~the laws of other states governing rate filings and policy or contract forms~~  
 2 ~~for personal and commercial, including large commercial risks. The study~~  
 3 ~~shall also identify recent trends in regulation and the potential impact on~~  
 4 ~~consumers, carriers and agents. The commissioner of insurance shall allow~~  
 5 ~~any insurance company authorized to transact business in this state to~~  
 6 ~~deliver to any person in this state any contract of insurance or indemnity,~~  
 7 ~~including any explanatory materials, written in any language other than~~  
 8 ~~the English language under the following conditions:~~

9 (1) *The insured or applicant for insurance who is given a copy of the*  
 10 *same contract of insurance or indemnity or explanatory materials written*  
 11 *in the English language;*

12 (2) *the English language version of the contract for insurance or in-*  
 13 *demnity or explanatory materials delivered shall be the controlling ver-*  
 14 *sion; and*

15 (3) *any contract of insurance or indemnity or explanatory materials*  
 16 *written in any language other than English shall contain a disclosure*  
 17 *statement in 10 point boldface type, printed in both the English language*  
 18 *and the other language used, stating the English version of the contract*  
 19 *of insurance or indemnity is the official or controlling version and that*  
 20 *the version is written in any language other than English is furnished for*  
 21 *informational purposes only.*

22 (c) *All contracts of insurance or indemnity that are required to be*  
 23 *filed with the commissioner of insurance shall be accompanied by any*  
 24 *version of such contract of insurance or indemnity written in any language*  
 25 *other than the English language.*

26 (d) *Any insurance company or insurer, including any agent or em-*  
 27 *ployee thereof, who knowingly misrepresents the content of a contract of*  
 28 *insurance or indemnity or explanatory materials written in a language*  
 29 *other than the English language shall be deemed to have violated the*  
 30 *unfair trade practice law.*

31 (e) *For the purposes of this section, the term "contract of insurance*  
 32 *or indemnity" shall include any rider, endorsement or application per-*  
 33 *taining to such contract of insurance or indemnity.*

[ From and after July 1, 2004

34 Sec. ~~26~~ K.S.A. 2003 Supp. 40-2404 is hereby amended to read as  
 35 follows: 40-2404. The following are hereby defined as unfair methods of  
 36 competition and unfair or deceptive acts or practices in the business of  
 37 insurance:

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

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

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

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

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

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

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

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

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

16 (2) *False information and advertising generally.* Making, publishing,  
 17 disseminating, circulating or placing before the public, or causing, directly  
 18 or indirectly, to be made, published, disseminated, circulated or placed  
 19 before the public, in a newspaper, magazine or other publication, or in  
 20 the form of a notice, circular, pamphlet, letter or poster, or over any radio  
 21 or television station, or in any other way, an advertisement, announce-  
 22 ment or statement containing any assertion, misrepresentation or state-  
 23 ment with respect to the business of insurance or with respect to any  
 24 person in the conduct of such person's insurance business, which is un-  
 25 true, deceptive or misleading.

26 (3) *Defamation.* Making, publishing, disseminating or circulating, di-  
 27 rectly or indirectly, or aiding, abetting or encouraging the making, pub-  
 28 lishing, disseminating or circulating of any oral or written statement or  
 29 any pamphlet, circular, article or literature which is false, or maliciously  
 30 critical of or derogatory to the financial condition of any person, and which  
 31 is calculated to injure such person.

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

38 (5) *False statements and entries.* (a) Knowingly filing with any super-  
 39 visory or other public official, or knowingly making, publishing, dissemi-  
 40 nating, circulating or delivering to any person, or placing before the pub-  
 41 lic, or knowingly causing directly or indirectly, to be made, published,  
 42 disseminated, circulated, delivered to any person, or placed before the  
 43 public, any false material statement of fact as to the financial condition

1 of a person.

2 (b) Knowingly making any false entry of a material fact in any book,  
 3 report or statement of any person or knowingly omitting to make a true  
 4 entry of any material fact pertaining to the business of such person in any  
 5 book, report or statement of such person.

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

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

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

24 (c) Refusing to insure, or refusing to continue to insure, or limiting  
 25 the amount, extent or kind of coverage available to an individual, or charg-  
 26 ing an individual a different rate for the same coverage solely because of  
 27 blindness or partial blindness. With respect to all other conditions, in-  
 28 cluding the underlying cause of the blindness or partial blindness, persons  
 29 who are blind or partially blind shall be subject to the same standards of  
 30 sound actuarial principles or actual or reasonably anticipated experience  
 31 as are sighted persons. Refusal to insure includes denial by an insurer of  
 32 disability insurance coverage on the grounds that the policy defines "dis-  
 33 ability" as being presumed in the event that the insured loses such per-  
 34 son's eyesight. However, an insurer may exclude from coverage disabili-  
 35 ties consisting solely of blindness or partial blindness when such condition  
 36 existed at the time the policy was issued.

37 (d) Refusing to insure, or refusing to continue to insure, or limiting  
 38 the amount, extent or kind of coverage available for accident and health  
 39 and life insurance to an applicant who is the proposed insured or charge  
 40 a different rate for the same coverage or excluding or limiting coverage  
 41 for losses or denying a claim incurred by an insured as a result of abuse  
 42 based on the fact that the applicant who is the proposed insured is, has  
 43 been, or may be the subject of domestic abuse, except as provided in

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1 ingly permitting, offering to make or making any contract of life insur-  
 2 ance, life annuity or accident and health insurance, or agreement as to  
 3 such contract other than as plainly expressed in the insurance contract  
 4 issued thereon; paying, allowing, giving or offering to pay, allow or give,  
 5 directly or indirectly, as inducement to such insurance, or annuity, any  
 6 rebate of premiums payable on the contract, any special favor or advan-  
 7 tage in the dividends or other benefits thereon, or any valuable consid-  
 8 eration or inducement whatever not specified in the contract; or giving,  
 9 selling, purchasing or offering to give, sell or purchase as inducement to  
 10 such insurance contract or annuity or in connection therewith, any stocks,  
 11 bonds or other securities of any insurance company or other corporation,  
 12 association or partnership, or any dividends or profits accrued thereon,  
 13 or anything of value whatsoever not specified in the contract.

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

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

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

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

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

36 (a) Misrepresenting pertinent facts or insurance policy provisions re-  
 37 lating to coverages at issue;

38 (b) failing to acknowledge and act reasonably promptly upon com-  
 39 munications with respect to claims arising under insurance policies;

40 (c) failing to adopt and implement reasonable standards for the  
 41 prompt investigation of claims arising under insurance policies;

42 (d) refusing to pay claims without conducting a reasonable investi-  
 43 gation based upon all available information;

1 (e) failing to affirm or deny coverage of claims within a reasonable  
 2 time after proof of loss statements have been completed;

3 (f) not attempting in good faith to effectuate prompt, fair and equi-  
 4 table settlements of claims in which liability has become reasonably clear;

5 (g) compelling insureds to institute litigation to recover amounts due  
 6 under an insurance policy by offering substantially less than the amounts  
 7 ultimately recovered in actions brought by such insureds;

8 (h) attempting to settle a claim for less than the amount to which a  
 9 reasonable person would have believed that such person was entitled by  
 10 reference to written or printed advertising material accompanying or  
 11 made part of an application;

12 (i) attempting to settle claims on the basis of an application which  
 13 was altered without notice to, or knowledge or consent of the insured;

14 (j) making claims payments to insureds or beneficiaries not accom-  
 15 panied by a statement setting forth the coverage under which payments  
 16 are being made;

17 (k) making known to insureds or claimants a policy of appealing from  
 18 arbitration awards in favor of insureds or claimants for the purpose of  
 19 compelling them to accept settlements or compromises less than the  
 20 amount awarded in arbitration;

21 (l) delaying the investigation or payment of claims by requiring an  
 22 insured, claimant or the physician of either to submit a preliminary claim  
 23 report and then requiring the subsequent submission of formal proof of  
 24 loss forms, both of which submissions contain substantially the same  
 25 information;

26 (m) failing to promptly settle claims, where liability has become rea-  
 27 sonably clear, under one portion of the insurance policy coverage in order  
 28 to influence settlements under other portions of the insurance policy cov-  
 29 erage; or

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

33 (10) *Failure to maintain complaint handling procedures.* Failure of  
 34 any person, who is an insurer on an insurance policy, to maintain a com-  
 35 plete record of all the complaints which it has received since the date of  
 36 its last examination under K.S.A. 40-222, and amendments thereto; but  
 37 no such records shall be required for complaints received prior to the  
 38 effective date of this act. The record shall indicate the total number of  
 39 complaints, their classification by line of insurance, the nature of each  
 40 complaint, the disposition of the complaints, the date each complaint was  
 41 originally received by the insurer and the date of final disposition of each  
 42 complaint. For purposes of this subsection, "complaint" means any writ-  
 43 ten communication primarily expressing a grievance related to the acts

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1 and practices set out in this section.

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

6 (12) *Statutory violations.* Any violation of any of the provisions of  
7 K.S.A. 40-216, 40-276a, 40-2,155 and 40-1515 or K.S.A. 40-2,155 and  
8 amendments thereto.

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

13 (14) *Rebates and other inducements in title insurance.* (a) No title  
14 insurance company or title insurance agent, or any officer, employee,  
15 attorney, agent or solicitor thereof, may pay, allow or give, or offer to pay,  
16 allow or give, directly or indirectly, as an inducement to obtaining any  
17 title insurance business, any rebate, reduction or abatement of any rate  
18 or charge made incident to the issuance of such insurance, any special  
19 favor or advantage not generally available to others of the same classifi-  
20 cation, or any money, thing of value or other consideration or material  
21 inducement. The words "charge made incident to the issuance of such  
22 insurance" includes, without limitations, escrow, settlement and closing  
23 charges.

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

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

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

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

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

40 (d) Nothing in this section prohibits the division of rates and charges  
41 between or among a title insurance company and its agent, or one or  
42 more title insurance companies and one or more title insurance agents,  
43 if such division of rates and charges does not constitute an unlawful rebate

1 under the provisions of this section and is not in payment of a forwarding  
2 fee or a finder's fee.

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

11 (f) No title insurer or title agent may accept an order for title insur-  
12 ance business, issue a title insurance policy, or receive or retain any pre-  
13 mium, or charge in connection with any transaction if: (i) The title insurer  
14 or title agent knows or has reason to believe that the transaction will  
15 constitute controlled business for that title insurer or title agent, and (ii)  
16 20% or more of the gross operating revenue of that title insurer or title  
17 agent during the six full calendar months immediately preceding the  
18 month in which the transaction takes place is derived from controlled  
19 business. The prohibitions contained in this subparagraph shall not apply  
20 to transactions involving real estate located in a county that has a popu-  
21 lation, as shown by the last preceding decennial census, of 10,000 or less.

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

24 (15) *Disclosure of nonpublic personal information.* (a) No person  
25 shall disclose any nonpublic personal information contrary to the provi-  
26 sions of title V of the Gramm-Leach-Bliley act of 1999 (public law 106-  
27 102). The commissioner may adopt rules and regulations necessary to  
28 carry out this section. Such rules and regulations shall be consistent with  
29 and not more restrictive than the model regulation adopted on September  
30 26, 2000, by the national association of insurance commissioners entitled  
31 "Privacy of consumer financial and health information regulation".

32 (b) Any rules and regulations adopted by the commissioner which  
33 implement article V of the model regulation adopted on September 26,  
34 2000, by the national association of insurance commissioners entitled  
35 "Privacy of consumer financial and health information regulation" shall  
36 become effective on and after February 1, 2002.

37 (c) Nothing in this paragraph (15) shall be deemed or construed to  
38 authorize the promulgation or adoption of any regulation which preempts,  
39 supersedes or is inconsistent with any provision of Kansas law concerning  
40 requirements for notification of, or obtaining consent from, a parent,  
41 guardian or other legal custodian of a minor relating to any matter per-  
42 taining to the health and medical treatment for such minor.

43 ~~Sec. 5. K.S.A. 40-216 and K.S.A. 2003 Supp. 40-2404 are hereby~~



**SENATE BILL No. 340**

By Committee on Financial Institutions and Insurance

1-22

10 AN ACT concerning insurance; relating to risk-based capital require-  
11 ments; **relating to the Kansas uninsurable health insurance plan;**  
12 amending **K.S.A. 40-2118, 40-2122 and 40-2124** and K.S.A. 2003  
13 Supp. 40-2c01 and repealing the existing section.  
14

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

16 Section ~~7~~ **From and after July 1, 2004**, K.S.A. 2003 Supp. 40-2c01  
17 is hereby amended to read as follows: 40-2c01. As used in this act:

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

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

24 (c) "Domestic insurer" means any insurance company or risk reten-  
25 tion group which is licensed and organized in this state.

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

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

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

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

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

- 1 (i) "RBC" means risk-based capital.
- 2 (j) "RBC instructions" mean the risk-based capital instructions prom-
- 3 ulgated by the NAIC, which are in effect on December 31, ~~2002~~ 2003.
- 4 (k) "RBC level" means an insurer's company action level RBC, reg-
- 5 ulatory action level RBC, authorized control level RBC, or mandatory
- 6 control level RBC where:
  - 7 (1) "Company action level RBC" means, with respect to any insurer,
  - 8 the product of 2.0 and its authorized control level RBC;
  - 9 (2) "regulatory action level RBC" means the product of 1.5 and its
  - 10 authorized control level RBC;
  - 11 (3) "authorized control level RBC" means the number determined
  - 12 under the risk-based capital formula in accordance with the RBC instruc-
  - 13 tions; and
  - 14 (4) "mandatory control level RBC" means the product of .70 and the
  - 15 authorized control level RBC.
- 16 (l) "RBC plan" means a comprehensive financial plan containing the
- 17 elements specified in K.S.A. 40-2c06, and amendments thereto. If the
- 18 commissioner rejects the RBC plan, and it is revised by the insurer, with
- 19 or without the commissioner's recommendation, the plan shall be called
- 20 the "revised RBC plan."
- 21 (m) "RBC report" means the report required by K.S.A. 40-2c02, and
- 22 amendments thereto.
- 23 (n) "Total adjusted capital" means the sum of:
  - 24 (1) An insurer's capital and surplus or surplus only if a mutual insurer;
  - 25 and
  - 26 (2) such other items, if any, as the RBC instructions may provide.
- 27 (o) "Commissioner" means the commissioner of insurance.
- 28 ~~Sec. 2. K.S.A. 2003 Supp. 40-2c01 is hereby repealed.~~
- 29 ~~Sec. 3. This act shall take effect and be in force from and after its~~
- 30 ~~publication in the statute book. Sec. 28, K.S.A. 40-2118 is hereby~~
- 31 ~~amended to read as follows: 40-2118. As used in this act, unless the~~
- 32 ~~context otherwise requires, the following words and phrases shall~~
- 33 ~~have the meanings ascribed to them in this section:~~
  - 34 (a) "Administering carrier" means the insurer or third-party
  - 35 administrator designated in K.S.A. 40-2120, and amendments
  - 36 thereto.
  - 37 (b) "Association" means the Kansas health insurance associa-
  - 38 tion established in K.S.A. 40-2119, and amendments thereto.
  - 39 (c) "Board" means the board of directors of the association.
  - 40 (d) "Church plan" means a plan as defined under section 3(33)
  - 41 of the Employee Retirement Income Security Act of 1974.
  - 42 (e) "Commissioner" means the commissioner of insurance.
  - 43 (f) "Creditable coverage" means with respect to an individual,

From and after July 1, 2004

1 months and whose most recent prior coverage was under a group health  
 2 plan, government plan or church plan;  
 3 (2) who is not eligible for coverage under a group health plan, Part  
 4 A or B of Title XVII of the Social Security Act, or a state plan under Title  
 5 XIX of the Social Security Act, or any successor program, and who does  
 6 not have any other health insurance coverage;  
 7 (3) with respect to whom the most recent coverage was not terminated  
 8 for factors relating to nonpayment of premiums or fraud; and  
 9 (4) who had been offered the option of continuation coverage under  
 10 COBRA or under a similar program, who elected such continuation cov-  
 11 erage, and who has exhausted such continuation coverage.  
 12 (j) "Federally defined eligible individuals for FTAA" means an indi-  
 13 vidual who is:  
 14 (1) Legally domiciled in this state; and  
 15 (2) eligible for the credit for health insurance costs under section 35  
 16 of the internal revenue code of 1986.  
 17 (k) "FTAA" means federal trade adjustment assistance under the  
 18 federal trade adjustment assistance reform act of 2002, public law 107-  
 19 210.  
 20 (l) "Governmental plan" means a plan as defined under section  
 21 3(32) of the Employee Retirement Income Security Act of 1974  
 22 and any plan maintained for its employees by the government of  
 23 the United States or by any agency or instrumentality of such  
 24 government.  
 25 (m) "Group health plan" means an employee benefit plan  
 26 as defined by section 3(1) of the Employee Retirement Income  
 27 Security Act of 1974 to the extent that the plan provides any hos-  
 28 pital, surgical or medical expense benefits to employees or their  
 29 dependents (as defined under the terms of the plan) directly or  
 30 through insurance, reimbursement or otherwise.  
 31 (n) "Health insurance" means any hospital or medical ex-  
 32 pense policy, health, hospital or medical service corporation con-  
 33 tract, and a plan provided by a municipal group-funded pool, or a  
 34 health maintenance organization contract offered by an employer  
 35 or any certificate issued under any such policies, contracts or  
 36 plans. "Health insurance" does not include policies or certificates  
 37 covering only accident, credit, dental, disability income, long-term  
 38 care, hospital indemnity, medicare supplement, specified disease,  
 39 vision care, coverage issued as a supplement to liability insurance,  
 40 insurance arising out of a workers compensation or similar law,  
 41 automobile medical-payment insurance, or insurance under which  
 42 benefits are payable with or without regard to fault and which is  
 43 statutorily required to be contained in any liability insurance pol-

1 icy or equivalent self-insurance.  
 2 (o) "Health maintenance organization" means any organi-  
 3 zation granted a certificate of authority under the provisions of  
 4 the health maintenance organization act.  
 5 (p) "Insurance arrangement" means any plan, program,  
 6 contract or any other arrangement under which one or more em-  
 7 ployers, unions or other organizations provide to their employees  
 8 or members, either directly or indirectly through a group-funded  
 9 pool, trust or third-party administrator, health care services or  
 10 benefits other than through an insurer.  
 11 (q) "Insurer" means any insurance company, fraternal ben-  
 12 efit society, health maintenance organization and nonprofit hos-  
 13 pital and medical service corporation authorized to transact health  
 14 insurance business in this state.  
 15 (r) "Medicaid" means the medical assistance program op-  
 16 erated by the state under title XIX of the federal social security  
 17 act.  
 18 (s) "Medicare" means coverage under both parts A and B  
 19 of title XVIII of the federal social security act, 42 USC 1395.  
 20 (t) "Medicare supplement policy" means a group or individ-  
 21 ual policy of accident and sickness insurance or a subscriber con-  
 22 tract of hospitals and medical service associations or health main-  
 23 tenance organizations, other than a policy issued pursuant to a  
 24 contract under section 1876 of the federal social security act (42  
 25 USC 1395 et seq.) or an issued policy under a demonstration pro-  
 26 ject specified in 42 USC 1395ss(g)(1), which is advertised, mar-  
 27 keted or designed primarily as a supplement to reimbursements  
 28 under medicare for the hospital, medical or surgical expenses of  
 29 persons eligible for medicare.  
 30 (u) "Member" means all insurers and insurance arrange-  
 31 ments participating in the association.  
 32 (v) "Plan" means the Kansas uninsurable health insurance  
 33 plan created pursuant to this act.  
 34 (w) "Plan of operation" means the plan to create and op-  
 35 erate the Kansas uninsurable health insurance plan, including ar-  
 36 ticles, bylaws and operating rules, adopted by the board pursuant  
 37 to K.S.A. 40-2119, and amendments thereto.  
 38 Sec. 2.9 K.S.A. 40-2122 is hereby amended to read as follows:  
 39 40-2122. (a) The following individuals shall be eligible for plan  
 40 coverage provided they meet the criteria set forth in subsection  
 41 (b):  
 42 (1) Any person who has been a resident of this state for at least  
 43 six months;

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(2) any person who is a legal domiciliary of this state who previously was covered under the high risk pool of another state, provided they apply for coverage under the plan within 63 days of losing such other coverage for reasons other than fraud or non-payment of premiums; or

(3) any federally defined eligible individual who is a legal domiciliary of this state; or

(4) any federally defined eligible individual for FTAA.

(b) Those individuals who are eligible for plan coverage under subsection (a) must provide evidence satisfactory to the administering carrier that such person meets one of the following criteria:

(1) Such person has had health insurance coverage involuntarily terminated for any reason other than nonpayment of premium;

(2) such person has applied for health insurance and been rejected by two carriers because of health conditions;

(3) such person has applied for health insurance and has been quoted a premium rate which is in excess of the plan rate;

(4) such person has been accepted for health insurance subject to a permanent exclusion of a preexisting disease or medical condition; or

(5) such person is a federally defined eligible individual; or

(6) such person is a federally defined eligible individual for FTAA.

(c) Each resident dependent of a person who is eligible for plan coverage shall also be eligible for plan coverage.

(d) The following persons shall not be eligible for coverage under the plan:

(1) Any person who is eligible for medicare or is eligible for medicaid benefits;

(2) any person who has had coverage under the plan terminated less than 12 months prior to the date of the current application, except that this provision shall not apply with respect to an applicant who is a federally defined eligible individual;

(3) any person who has received accumulated benefits from the plan equal to or in excess of the lifetime maximum benefits under the plan prescribed by K.S.A. 40-2124 and amendments thereto;

(4) any person having access to accident and health insurance through an employer-sponsored group or self-insured plan, including coverage under the consolidated omnibus budget reconciliation act

(OBRA), except that the requirement for exhaustion of any available

BRA or state continuation is waived whenever such person:

(A) Is eligible for the credit for health care costs under section 35 of the internal revenue code of 1986; and

(B) has three months of prior creditable coverage as described in sub-

section (c) of K.S.A. 40-2124, and amendments thereto; or

(5) any person who is eligible for any other public or private program that provides or indemnifies for health services.

(e) Any person who ceases to meet the eligibility requirements of this section may be terminated at the end of a policy period.

(f) All plan members, insurers and insurance arrangements shall notify in writing persons denied health insurance coverage, for any reason, of the availability of coverage through the Kansas health insurance association.

Sec. 4.10 K.S.A. 40-2124 is hereby amended to read as follows:

40-2124. (a) Coverage under the plan shall be subject to both deductible and coinsurance provisions set by the board. On and after January 1, 1998, the plan shall offer to current participants and new enrollees no fewer than four choices of deductible and copayment options. Coverage shall contain a coinsurance provision for each service covered by the plan, and such copayment requirement shall not be subject to a stop-loss provision. Such coverage may provide for a percentage or dollar amount of coinsurance reduction at specific thresholds of copayment expenditures by the insured.

(b) Coverage under the plan shall be subject to a maximum lifetime benefit of \$1,000,000 per covered individual.

(c) On and after May 1, 1994, coverage under the plan shall exclude charges or expenses incurred during the first 90 days following the effective date of coverage as to any condition: (1) Which manifested itself during the six-month period immediately prior to the application for coverage in such manner as would cause an ordinarily prudent person to seek diagnosis, care or treatment; or (2) for which medical advice, care or treatment was recommended or received in the six-month period immediately prior to the application for coverage. In succeeding years of operation of the plan, coverage of preexisting conditions may be excluded as determined by the board, except that no such exclusion shall exceed 180 calendar days, and no exclusion shall be applied to a federally defined eligible individual provided that application for coverage is made not later than 63 days following the applicant's most recent prior creditable coverage. For any individual who is eligible for the credit for health insurance costs under section 35 of the internal revenue code of 1986, the preexisting conditions limitation will not apply whenever such individual has maintained creditable health insurance coverage for an aggregate period of three months, not counting any period prior to a 63 day break in coverage, as of the date on which such individual seeks to enroll in coverage provided by this act.

(d) (i) Benefits otherwise payable under plan coverage shall be reduced by all amounts paid or payable through any other health insurance, or insurance arrangement, and by all hospital and medical expense benefits paid or payable under any workers compensation coverage, automobile medical payment or liability insurance whether provided on the basis of fault or nonfault, and by any hospital or medical benefits paid or payable under or provided pursuant to any state or federal law or program.

(2) The association shall have a cause of action against an eligible person for the recovery of the amount of benefits paid which are not covered expenses. Benefits due from the plan may be reduced or refused as a set-off against any amount recoverable under this section.

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Section 11. See attached.

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As Amended by Senate Committee

Session of 2001

SENATE BILL No. 392

By Committee on Financial Institutions and Insurance

1-29

10 AN ACT relating to the committee on surety bonds and insurance; au-  
11 thORIZING competitive negotiation for certain contracts; **amending**  
12 **K.S.A. 75-4105 and 75-4109 and repealing the existing sections.**

13  
14 *Be it enacted by the Legislature of the State of Kansas:*

From and after July 1, 2004

15 **New Section 12** (a) The committee on surety bonds and insurance  
16 is hereby authorized to negotiate and enter into contracts with qualified  
17 insurers and sureties for the purpose of purchasing insurance, surety cov-  
18 erage and similar coverages, **including the purchase of insurance, sur-**  
19 **ety coverage and similar coverage for any state agency authorized**  
20 **by law to make such purchase**, and the acquisition of consulting and  
21 other services necessary therefor. The committee shall advertise for pro-  
22 posals, shall negotiate with ~~not less than three firms or other~~ parties sub-  
23 mitting proposals, and shall select from among those submitting proposals  
24 the firm or other contracting party to contract with for the purpose of  
25 entering into contracts. The division of purchases shall: (1) Maintain re-  
26 cords of the requests for proposals; (2) handle the receipt of proposals;  
27 and (3) assist the committee in negotiating procedures and the award of  
28 contracts.

29 (b) The provisions of K.S.A. 75-4317 through 75-4320a. and amend-  
30 ments thereto, shall not apply to meetings of the committee when the  
31 committee meets solely for the purpose of discussing and preparing strat-  
32 egies for negotiations for such contracts.

33 (c) Contracts entered into pursuant to this section, shall not be sub-  
34 ject to the provisions of K.S.A. 75-3738 to 75-3740, inclusive, and amend-  
35 ments thereto. Such contracts may be for terms of not more than three  
36 years and may be renegotiated and renewed. All such contracts shall be  
37 subject to the limits of appropriations made or available therefor and  
38 subject to the provisions of appropriations acts relating thereto.

39 (d) The provisions of this section shall be a complete alternative to  
40 other procurement procedures available to the committee pursuant to  
41 law.

From and after July 1, 2004

42 **Sec. 2.** **K.S.A. 75-4105 is hereby amended to read as follows:**  
43 **75-4105. All Except as provided in section 1 and amendments thereto,**

1 *all surety bonds and insurance contracts purchased pursuant to this*  
 2 *act shall be purchased by the committee in the manner prescribed*  
 3 *for the purchase of supplies, materials, equipment or contractual*  
 4 *services under K.S.A. 75-3738 to 75-3744, inclusive, and amend-*  
 5 *ments thereto. The director of accounts and reports shall not pay*  
 6 *any premium or rate on any surety bond or insurance contract until*  
 7 *the purchase of such surety bond or contract shall have been ap-*  
 8 *proved by the secretary of the committee. Surety bonds or insurance*  
 9 *contracts having a premium or rate in excess of \$500 purchased*  
 10 *hereunder shall be purchased on sealed bids as provided by law for*  
 11 *the purchase of other materials, equipment or contractual services.*  
 12 *Where more than one state agency is covered by any bond or in-*  
 13 *surance contract, the committee shall prorate the cost of premiums*  
 14 *or rates on any and all such bonds or contracts, except as provided*  
 15 *in K.S.A. 75-4114, and amendments thereto, purchased as charges*  
 16 *upon the funds of the state agency wherein any covered state offi-*  
 17 *cers or employees are employed or covered property is located or*  
 18 *controlled. Such prorated charges shall constitute a lawful charge*  
 19 *by the committee upon the funds available to any such state agency*  
 20 *and shall be paid by each such state agency to the committee, or to*  
 21 *the surety or insurance carrier if the committee requires it, in the*  
 22 *manner provided by law for the payment of other obligations of*  
 23 *such state agency.*

24 *Sec. 3. K.S.A. 75-4109 is hereby amended to read as follows:*  
 25 *75-4109. (a) The committee, at least once every three years, shall*  
 26 *approve the property and casualty insurance coverages that shall*  
 27 *be purchased by each state agency.*

28 *(b) The committee shall require that each state agency purchase*  
 29 *the insurance coverages prescribed by K.S.A. 74-4703, 74-4705, 74-*  
 30 *4707, 75-712e, 75-2728, 76-218, 76-391, 76-394, 76-747 and 76-*  
 31 *491, and amendments to these sections, and shall prescribe the*  
 32 *terms, conditions and amounts of such coverage giving due regard*  
 33 *to the operations and requirements of the agencies involved.*

34 *(c) The committee shall, in addition to the coverages specified*  
 35 *in subsection (b), designate the insurance coverages to be purchased*  
 36 *by each state agency that are deemed by the committee to be nec-*  
 37 *essary to protect the state for property of others that may be in the*  
 38 *possession or control of such state agencies.*

39 *(d) Such coverages as are specified in subsections (b) and (c)*  
 40 *may also include coverages on property of the state that are deemed*  
 41 *by the committee to be incidental to the basic coverages herein re-*  
 42 *quired, and the committee shall prescribe the terms, conditions and*  
 43 *amounts of all insurance coverages purchased pursuant to this sec-*

From and after July 1, 2004

1 *tion. Property of the state board of regents of any university or*  
 2 *college which is referred to in subsection (b) may be self-insured as*  
 3 *provided under this act.*

4 *(e) No property insurance coverage may be purchased by the*  
 5 *committee, except as provided herein or by section 1, and amendments*  
 6 *thereto, or specifically required by other Kansas statutes or*  
 7 *appropriations.*

8 ~~Sec. 4. K.S.A. 75-4105 and 75-4109 are hereby repealed.~~

9 ~~Sec. 2-5. This act shall take effect and be in force from and after its~~  
 10 ~~publication in the statute book.~~

Sec. <sup>15</sup>~~16~~ K.S.A. 40-2118, 40-2122 and 40-2124 are hereby repealed.

Sec. <sup>16</sup> From and after July 1, 2004, K.S.A. 40-216, 40-241, 40-246b, 40-246f, 40-2,131, 40-2209, 40-4503, 75-4105 and 75-4109 and K.S.A. 2003 Supp. 40-2c01 and 40-2404 are hereby repealed.

Sec. <sup>17</sup> This act shall take effect and be in force from and after its publication in the Kansas register.

From and after July 1, 2004

Sec. 11. K.S.A. 40-2209 is hereby amended to read as follows: 40-2209. (a) (1) Group sickness and accident insurance is declared to be that form of sickness and accident insurance covering groups of persons, with or without one or more members of their families or one or more dependents. Except at the option of the employee or member and except employees or members enrolling in a group policy after the close of an open enrollment opportunity, no individual employee or member of an insured group and no individual dependent or family member may be excluded from eligibility or coverage under a policy providing hospital, medical or surgical expense benefits both with respect to policies issued or renewed within this state and with respect to policies issued or renewed outside this state covering persons residing in this state. For purposes of this section, an open enrollment opportunity shall be deemed to be a period no less favorable than a period beginning on the employee's or member's date of initial eligibility and ending 31 days thereafter.

(2) An eligible employee, member or dependent who requests enrollment following the open enrollment opportunity or any special enrollment period for dependents as specified in subsection (3) shall be considered a late enrollee. An accident and sickness insurer may exclude a late enrollee, except during an open enrollment period. However, an eligible employee, member or dependent shall not be considered a late enrollee if:

(A) The individual:

(i) Was covered under another group policy which provided hospital, medical or surgical expense benefits or was covered under section 607(1) of the employee retirement income security act of 1974 (ERISA) at the time the individual was eligible to enroll;



Sec. 1. K.S.A. 40-2209 is hereby amended to read as follows: 40-2209. (a) (1) Group sickness and accident insurance is declared to be that form of sickness and accident insurance covering groups of persons, with or without one or more members of their families or one or more dependents. Except at the option of the employee or member and except employees or members enrolling in a group policy after the close of an open enrollment opportunity, no individual employee or member of an insured group and no individual dependent or family member may be excluded from eligibility or coverage under a policy providing hospital, medical or surgical expense benefits both with respect to policies issued or renewed within this state and with respect to policies issued or renewed outside this state covering persons residing in this state. For purposes of this section, an open enrollment opportunity shall be deemed to be a period no less favorable than a period beginning on the employee's or member's date of initial eligibility and ending 31 days thereafter.

(2) An eligible employee, member or dependent who requests enrollment following the open enrollment opportunity or any special enrollment period for dependents as specified in subsection (3) shall be considered a late enrollee. An accident and sickness insurer may exclude a late enrollee, except during an open enrollment period. However, an eligible employee, member or dependent shall not be considered a late enrollee if:

(A) The individual:

(i) Was covered under another group policy which provided hospital, medical or surgical expense benefits or was covered under section 607(1) of the employee retirement income security act of 1974 (ERISA) at the time the individual was eligible to enroll;

(ii) states in writing, at the time of the open enrollment period, that coverage under another group policy which provided hospital, medical or surgical expense benefits was the reason for declining enrollment, but only if the group policyholder or the accident and sickness insurer required such a written statement and provided the individual with notice of the requirement for a written statement and the consequences of such written statement;

(iii) has lost coverage under another group policy providing hospital, medical or surgical expense benefits or under section 607(1) of the employee retirement income security act of 1974 (ERISA) as a result of the termination of employment, reduction in the number of hours of employment, termination of employer contributions toward such coverage, the termination of the other policy's coverage, death of a spouse or divorce or legal separation or was under a COBRA continuation provision and the coverage under such provision was exhausted; and

(iv) requests enrollment within 30 days after the termination of coverage under the other policy; or

(B) a court has ordered coverage to be provided for a spouse or minor child under a covered employee's or member's policy.

(3) (A) If an accident and sickness insurer issues a group policy providing hospital, medical or surgical expenses and makes coverage available to a dependent of an eligible employee or member and such dependent becomes a dependent of the employee or member through marriage, birth, adoption or placement for adoption, then such group policy shall provide for a dependent special enrollment period as described in subsection (3) (B) of this section during which the dependent may be

enrolled under the policy and in the case of the birth or adoption of a child, the spouse of an eligible employee or member may be enrolled if otherwise eligible for coverage.

(B) A dependent special enrollment period under this subsection shall be a period of not less than 30 days and shall begin on the later of (i) the date such dependent coverage is made available, or (ii) the date of the marriage, birth or adoption or placement for adoption.

(C) If an eligible employee or member seeks to enroll a dependent during the first 30 days of such a dependent special enrollment period, the coverage of the dependent shall become effective: (i) in the case of marriage, not later than the first day of the first month beginning after the date the completed request for enrollment is received; (ii) in the case of the birth of a dependent, as of the date of such birth; or (iii) in the case of a dependent's adoption or placement for adoption, the date of such adoption or placement for adoption.

(4) (A) No group policy providing hospital, medical or surgical expense benefits issued or renewed within this state or issued or renewed outside this state covering residents within this state shall limit or exclude benefits for specific conditions existing at or prior to the effective date of coverage thereunder. Such policy may impose a preexisting conditions exclusion, not to exceed 90 days following the date of enrollment for benefits for conditions whether mental or physical, regardless of the cause of the condition for which medical advice, diagnosis, care or treatment was recommended or received in the 90 days prior to the effective date of enrollment. Any preexisting conditions exclusion shall run concurrently with any waiting period.

(B) Such policy may impose a waiting period after full-time employment starts before an employee is first eligible to enroll in any applicable group policy.

(C) A health maintenance organization which offers such policy which does not impose any preexisting conditions exclusion may impose an affiliation period for such coverage, provided that: (i) such application period is applied uniformly without regard to any health status related factors and (ii) such affiliation period does not exceed two months. The affiliation period shall run concurrently with any waiting period under the plan.

(D) A health maintenance organization may use alternative methods from those described in this subsection to address adverse selection if approved by the commissioner.

(E) For the purposes of this section, the term "preexisting conditions exclusion" shall mean, with respect to coverage, a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the date of enrollment for such coverage whether or not any medical advice, diagnosis, care or treatment was recommended or received before such date.

(F) For the purposes of this section, the term "date of enrollment" means the date the individual is enrolled under the group policy or, if earlier, the first day of the waiting period for such enrollment.

(G) For the purposes of this section, the term "waiting period" means with respect to a group policy the period which must pass before the individual is eligible to be covered for benefits under the terms of the policy.

(5) Genetic information shall not be treated as a preexisting condition in the absence of a diagnosis of the condition related to such information.

(6) A group policy providing hospital, medical or surgical expense benefits may not impose any preexisting condition exclusion relating to pregnancy as a preexisting condition.

(7) A group policy providing hospital, medical or surgical expense benefits may not impose any preexisting condition waiting period in the case of a child who is adopted or placed for adoption before attaining 18 years of age and who, as of the last day of a 30-day period beginning on the date of the adoption or placement for adoption, is covered by a policy specified in subsection (a). This subsection shall not apply to coverage before the date of such adoption or placement for adoption.

(8) Such policy shall waive such a preexisting conditions exclusion to the extent the employee or member or individual dependent or family member was covered by (A) a group or individual sickness and accident policy, (B) coverage under section 607(1) of the employees retirement income security act of 1974 (ERISA), (C) a group specified in K.S.A. 40-2222 and amendments thereto, (D) part A or part B of title XVIII of the social security act, (E) title XIX of the social security act, other than coverage consisting solely of benefits under section 1928, (F) a state children's health insurance program established pursuant to title XXI of the social security act, (G) chapter 55 of title 10 United States code, (H) a medical care program of the indian health service or of a tribal organization, (I) the Kansas uninsurable health plan act pursuant to K.S.A. 40-2217 et seq. and amendments thereto or a similar health benefits risk pool of another state, (J) a health plan offered under chapter 89 of title 5, United States code, (K) a health benefit plan under section 5(e) of the peace corps act (22 U.S.C. 2504(e), or (L) a

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group subject to K.S.A. 12-2616 et seq. and amendments thereto which provided hospital, medical and surgical expense benefits within 63 days prior to the effective date of coverage with no gap in coverage. A group policy shall credit the periods of prior coverage specified in subsection (a)(7) without regard to the specific benefits covered during the period of prior coverage. Any period that the employee or member is in a waiting period for any coverage under a group health plan or is in an affiliation period shall not be taken into account in determining the continuous period under this subsection.

(b) (1) An accident and sickness insurer which offers group policies providing hospital, medical or surgical expense benefits shall provide a certification as described in subsection (b)(2): (A) At the time an eligible employee, member or dependent ceases to be covered under such policy or otherwise becomes covered under a COBRA continuation provision; (B) in the case of an eligible employee, member or dependent being covered under a COBRA continuation provision, at the time such eligible employee, member or dependent ceases to be covered under a COBRA continuation provision; and (C) on the request on behalf of such eligible employee, member or dependent made not later than 24 months after the date of the cessation of the coverage described in subsection (b)(1) (A) or (b)(1) (B), whichever is later.

(2) The certification described in this subsection is a written certification of (A) the period of coverage under a policy specified in subsection (a) and any coverage under such COBRA continuation provision, and (B) any waiting period imposed with respect to the eligible employee, member or dependent for any coverage under such policy.

(c) Any group policy may impose participation requirements, define full-time employees or members and otherwise be designed for the group as a whole through negotiations between the group sponsor and the insurer to the extent such design is not contrary to or inconsistent with this act.

(d) (1) An accident and sickness insurer offering a group policy providing hospital, medical or surgical expense benefits must renew or continue in force such coverage at the option of the policyholder or certificateholder except as provided in paragraph (2) below.

(2) An accident and sickness insurer may nonrenew or discontinue coverage under a group policy providing hospital, medical or surgical expense benefits based only on one or more of the following circumstances:

(A) If the policyholder or certificateholder has failed to pay any premium or contributions in accordance with the terms of the group policy providing hospital, medical or surgical expense benefits or the accident and sickness insurer has not received timely premium payments;

(B) if the policyholder or certificateholder has performed an act or practice that constitutes fraud or made an intentional misrepresentation of material fact under the terms of such coverage;

(C) if the policyholder or certificateholder has failed to comply with a material plan provision relating to employer contribution or group participation rules;

(D) if the accident and sickness insurer is ceasing to offer coverage in such group market in accordance with subsections (d)(3) or (d)(4);

(E) in the case of accident and sickness insurer that offers coverage under a policy providing hospital, medical or surgical expense

benefits through an enrollment area, there is no longer any eligible employee, member or dependent in connection with such policy who lives, resides or works in the medical service enrollment area of the accident and sickness insurer or in the area for which the accident and sickness insurer is authorized to do business; or

(F) in the case of a group policy providing hospital, medical or surgical expense benefits which is offered through an association or trust pursuant to subsections (f)(3) or (f)(5), the membership of the employer in such association or trust ceases but only if such coverage is terminated uniformly without regard to any health status related factor relating to any eligible employee, member or dependent.

(3) In any case in which an accident and sickness insurer which offers a group policy providing hospital, medical or surgical expense benefits decides to discontinue offering such type of group policy, such coverage may be discontinued only if:

(A) The accident and sickness insurer notifies all policyholders and certificateholders and all eligible employees or members of such discontinuation at least 90 days prior to the date of the discontinuation of such coverage;

(B) the accident and sickness insurer offers to each policyholder who is provided such group policy providing hospital, medical or surgical expense benefits which is being discontinued the option to purchase any other group policy providing hospital, medical or surgical expense benefits currently being offered by such accident and sickness insurer; and

(C) in exercising the option to discontinue coverage and in offering the option



of coverage under subparagraph (B), the accident and sickness insurer acts uniformly without regard to the claims experience of those policyholders or certificateholders or any health status related factors relating to any eligible employee, member or dependent covered by such group policy or new employees or members who may become eligible for such coverage.

(4) If the accident and sickness insurer elects to discontinue offering group policies providing hospital, medical or surgical expense benefits or group coverage to a small employer pursuant to K.S.A. 40-2209f and amendments thereto, such coverage may be discontinued only if:

(A) The accident and sickness insurer provides notice to the insurance commissioner, to all policyholders or certificateholders and to all eligible employees and members covered by such group policy providing hospital, medical or surgical expense benefits at least 180 days prior to the date of the discontinuation of such coverage;

(B) all group policies providing hospital, medical or surgical expense benefits offered by such accident and sickness insurer are discontinued and coverage under such policies are not renewed; and

(C) the accident and sickness insurer may not provide for the issuance of any group policies providing hospital, medical or surgical expense benefits in the discontinued market during a five year period beginning on the date of the discontinuation of the last such group policy which is nonrenewed.

(e) An accident and sickness insurer offering a group policy providing hospital, medical or surgical expense benefits may not establish rules for eligibility (including continued eligibility) of any employee, member

or dependent to enroll under the terms of the group policy based on any of the following factors in relation to the eligible employee, member or dependent: (A) Health status, (B) medical condition, including both physical and mental illness, (C) claims experience, (D) receipt of health care, (E) medical history, (F) genetic information, (G) evidence of insurability, including conditions arising out of acts of domestic violence, or (H) disability. This subsection shall not be construed to require a policy providing hospital, medical or surgical expense benefits to provide particular benefits other than those provided under the terms of such group policy or to prevent a group policy providing hospital, medical or surgical expense benefits from establishing limitations or restrictions on the amount, level, extent or nature of the benefits or coverage for similarly situated individuals enrolled under the group policy.

(f) Group accident and health insurance may be offered to a group under the following basis:

(1) Under a policy issued to an employer or trustees of a fund established by an employer, who is the policyholder, insuring at least two employees of such employer, for the benefit of persons other than the employer. The term "employees" shall include the officers, managers, employees and retired employees of the employer, the partners, if the employer is a partnership, the proprietor, if the employer is an individual proprietorship, the officers, managers and employees and retired employees of subsidiary or affiliated corporations of a corporation employer, and the individual proprietors, partners, employees and retired employees of individuals and firms, the business of which and of the insured employer is under common control through stock ownership

contract, or otherwise. The policy may provide that the term "employees" may include the trustees or their employees, or both, if their duties are principally connected with such trusteeship. A policy issued to insure the employees of a public body may provide that the term "employees" shall include elected or appointed officials.

(2) Under a policy issued to a labor union which shall have a constitution and bylaws insuring at least 25 members of such union.

(3) Under a policy issued to the trustees of a fund established by two or more employers or business associations or by one or more labor unions or by one or more employers and one or more labor unions, which trustees shall be the policyholder, to insure employees of the employers or members of the union or members of the association for the benefit of persons other than the employers or the unions or the associations. The term "employees" shall include the officers, managers, employees and retired employees of the employer and the individual proprietor or partners if the employer is an individual proprietor or partnership. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship.

(4) A policy issued to a creditor, who shall be deemed the policyholder, to insure debtors of the creditor, subject to the following requirements: (a) The debtors eligible for insurance under the policy shall be all of the debtors of the creditor whose indebtedness is repayable in installments, or all of any class or classes determined by conditions pertaining to the indebtedness or to the purchase giving rise to the indebtedness. (b) The premium for the policy shall be paid by the policyholder, either from the creditor's

funds or from charges collected from the insured debtors, or from both.

(5) A policy issued to an association which has been organized and is maintained for the purposes other than that of obtaining insurance, insuring at least 25 members, employees, or employees of members of the association for the benefit of persons other than the association or its officers. The term "employees" shall include retired employees. The premiums for the policies shall be paid by the policyholder, either wholly from association funds, or funds contributed by the members of such association or by employees of such members or any combination thereof.

(6) Under a policy issued to any other type of group which the commissioner of insurance may find is properly subject to the issuance of a group sickness and accident policy or contract.

(g) Each such policy shall contain in substance: (1) A provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued, that all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties, and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person or the insured's beneficiary.

(2) A provision setting forth the conditions under which an individual's coverage terminates under the policy, including the age, if any, to which an individual's coverage under the policy shall be limited, or, the age, if any, at which any additional limitations or restrictions are placed upon an individual's coverage under the policy.

(3) Provisions setting forth the notice of

claim, proofs of loss and claim forms, physical examination and autopsy, time of payment of claims, to whom benefits are payable, payment of claims, change of beneficiary, and legal action requirements. Such provisions shall not be less favorable to the individual insured or the insured's beneficiary than those corresponding policy provisions required to be contained in individual accident and sickness policies.

(4) A provision that the insurer will furnish to the policyholder, for the delivery to each employee or member of the insured group, an individual certificate approved by the commissioner of insurance setting forth in summary form a statement of the essential features of the insurance coverage of such employee or member, the procedure to be followed in making claim under the policy and to whom benefits are payable. Such certificate shall also contain a summary of those provisions required under paragraphs (2) and (3) of this subsection (g) in addition to the other essential features of the insurance coverage. If dependents are included in the coverage, only one certificate need be issued for each family unit.

(h) No group disability income policy which integrates benefits with social security benefits, shall provide that the amount of any disability benefit actually being paid to the disabled person shall be reduced by changes in the level of social security benefits resulting either from changes in the social security law or due to cost of living adjustments which become effective after the first day for which disability benefits become payable.

(i) A group policy of insurance delivered or issued for delivery or renewed which provides hospital, surgical or major medical expense insurance, or any combination of these

coverages, on an expense incurred basis, shall provide that an employee or member or such employee's or member's covered dependents whose insurance under the group policy has been terminated for any reason, including discontinuance of the group policy in its entirety or with respect to an insured class, and who has been continuously insured under the group policy or under any group policy providing similar benefits which it replaces for at least three months immediately prior to termination, shall be entitled to have such coverage nonetheless continued under the group policy for a period of six months and have issued to the employee or member or such employee's or member's covered dependents by the insurer, at the end of such six-month period of continuation, a policy of health insurance which conforms to the applicable requirements specified in this subsection. This requirement shall not apply to a group policy which provides benefits for specific diseases or for accidental injuries only or a group policy issued to an employer subject to the continuation and conversion obligations set forth at title I, subtitle B, part 6 of the employee retirement income security act of 1974 or at title XXII of the public health service act, as each act was in effect on January 1, 1987 to the extent federal law provides the employee or member or such employee's or member's covered dependents with equal or greater continuation or conversion rights; or an employee or member or such employee's or member's covered dependents shall not be entitled to have such coverage continued or a converted policy issued to the employee or member or such employee's or member's covered dependents if termination of the insurance under the group policy occurred because:

- (1) The employee or member or such

employee's or member's covered dependents failed to pay any required contribution after receiving reasonable notice of such required contribution from the insurer in accordance with rules and regulations adopted by the commissioner of insurance; (2) any discontinued group coverage was replaced by similar group coverage within 31 days; (3) the employee or member is or could be covered by medicare (title XVIII of the United States social security act as added by the social security amendments of 1965 or as later amended or superseded); ~~or~~ (4) the employee or member is or could be covered to the same extent by any other insured or lawful self-insured arrangement which provides expense incurred hospital, surgical or medical coverage and benefits for individuals in a group under which the person was not covered prior to such termination. In the event the group policy is terminated and not replaced the insurer may issue an individual policy or certificate in lieu of a conversion policy or the continuation of group coverage required herein if the individual policy or certificate provides substantially similar coverage for the same or less premium as the group policy. In any event, the employee or member shall have the option to be issued a conversion policy which meets the requirements set forth in this subsection in lieu of the right to continue group coverage.

(j) The continued coverage and the issuance of a converted policy shall be subject to the following conditions:

(1) Written application for the converted policy shall be made and the first premium paid to the insurer not later than 31 days after termination of coverage under the group policy or not later than 31 days after notice is received pursuant to paragraph 20 of this subsection.

*coverage for*  
; or (5) the employee or member,  
or any covered dependant thereof, was  
terminated for cause as permitted by  
the group ~~policy~~ policy or certificate  
of coverage approved by the commissioner

(2) The converted policy shall be issued without evidence of insurability.

(3) The terminated employee or member shall pay to the insurer the premium for the six-month continuation of coverage and such premium shall be the same as that applicable to members or employees remaining in the group. Failure to pay such premium shall terminate coverage under the group policy at the end of the period for which the premium has been paid. The premium rate charged for converted policies issued subsequent to the period of continued coverage shall be such that can be expected to produce an anticipated loss ratio of not less than 80% based upon conversion, morbidity and reasonable assumptions for expected trends in medical care costs. In the event the group policy is terminated and is not replaced, converted policies may be issued at self-sustaining rates that are not unreasonable in relation to the coverage provided based on conversion, morbidity and reasonable assumptions for expected trends in medical care costs. The frequency of premium payment shall be the frequency customarily required by the insurer for the policy form and plan selected, provided that the insurer shall not require premium payments less frequently than quarterly.

(4) The effective date of the converted policy shall be the day following the termination of insurance under the group policy.

(5) The converted policy shall cover the employee or member and the employee's or member's dependents who were covered by the group policy on the date of termination of insurance. At the option of the insurer, a separate converted policy may be issued to cover any dependent.

(6) The insurer shall not be required to



issue a converted policy covering any person if such person is or could be covered by medicare (title XVIII of the United States social security act as added by the social security amendments of 1965 or as later amended or superseded). Furthermore, the insurer shall not be required to issue a converted policy covering any person if:

(A) (i) Such person is covered for similar benefits by another hospital, surgical, medical or major medical expense insurance policy or hospital or medical service subscriber contract or medical practice or other prepayment plan or by any other plan or program, or

(ii) such person is eligible for similar benefits (whether or not covered therefor) under any arrangement of coverage for individuals in a group, whether on an insured or uninsured basis, or

(iii) similar benefits are provided for or available to such person, pursuant to or in accordance with the requirements of any state or federal law, and

(B) the benefits provided under the sources referred to in clause (A) (i) above for such person or benefits provided or available under the sources referred to in clauses (A) (ii) and (A) (iii) above for such person, together with the benefits provided by the converted policy, would result in over-insurance according to the insurer's standards. The insurer's standards must bear some reasonable relationship to actual health care costs in the area in which the insured lives at the time of conversion and must be filed with the commissioner of insurance prior to their use in denying coverage.

(7) A converted policy may include a provision whereby the insurer may request information in advance of any premium due date of such policy of any person covered as to

whether:

(A) Such person is covered for similar benefits by another hospital, surgical, medical or major medical expense insurance policy or hospital or medical service subscriber contract or medical practice or other prepayment plan or by any other plan or program;

(B) such person is covered for similar benefits under any arrangement of coverage for individuals in a group, whether on an insured or uninsured basis; or

(C) similar benefits are provided for or available to such person, pursuant to or in accordance with the requirements of any state or federal law.

(8) The converted policy may provide that the insurer may refuse to renew the policy and the coverage of any person insured for the following reasons only:

(A) Either the benefits provided under the sources referred to in clauses (A) (i) and (A) (ii) of paragraph 6 for such person or benefits provided or available under the sources referred to in clause (A) (iii) of paragraph 6 for such person, together with the benefits provided by the converted policy, would result in over-insurance according to the insurer's standards on file with the commissioner of insurance, or the converted policyholder fails to provide the requested information;

(B) fraud or material misrepresentation in applying for any benefits under the converted policy; or

(C) other reasons approved by the commissioner of insurance.

(9) An insurer shall not be required to issue a converted policy which provides coverage and benefits in excess of those provided under the group policy from which conversion is made.

(10) If the converted policy provides that

any hospital, surgical or medical benefits payable may be reduced by the amount of any such benefits payable under the group policy after the termination of the individual's insurance or the converted policy includes provisions so that during the first policy year the benefits payable under the converted policy, together with the benefits payable under the group policy, shall not exceed those that would have been payable had the individual's insurance under the group policy remained in force and effect, the converted policy shall provide credit for deductibles, copayments and other conditions satisfied under the group policy.

(11) Subject to the provisions and conditions of this act, if the group insurance policy from which conversion is made insures the employee or member for major medical expense insurance, the employee or member shall be entitled to obtain a converted policy providing catastrophic or major medical coverage under a plan meeting the following requirements:

(A) A maximum benefit at least equal to either, at the option of the insurer, paragraphs (i) or (ii) below:

(i) The smaller of the following amounts:

The maximum benefit provided under the group policy or a maximum payment of \$250,000 per covered person for all covered medical expenses incurred during the covered person's lifetime.

(ii) The smaller of the following amounts:

The maximum benefit provided under the group policy or a maximum payment of \$250,000 for each unrelated injury or sickness.

(B) Payment of benefits at the rate of 80% of covered medical expenses which are in excess of the deductible, until 20% of such expenses in a benefit period reaches \$1,000, after which

benefits will be paid at the rate of 100% during the remainder of such benefit period. Payment of benefits for outpatient treatment of mental illness, if provided in the converted policy, may be at a lesser rate but not less than 50%.

(C) A deductible for each benefit period which, at the option of the insurer, shall be (i) the sum of the benefits deductible and \$100, or (ii) the corresponding deductible in the group policy. The term "benefits deductible," as used herein, means the value of any benefits provided on an expense incurred basis which are provided with respect to covered medical expenses by any other hospital, surgical, or medical insurance policy or hospital or medical service subscriber contract or medical practice or other prepayment plan, or any other plan or program whether on an insured or uninsured basis, or in accordance with the requirements of any state or federal law and, if pursuant to the conditions of paragraph (13), the converted policy provides both basic hospital or surgical coverage and major medical coverage, the value of such basic benefits.

If the maximum benefit is determined by clause (a)(ii) of this paragraph, the insurer may require that the deductible be satisfied during a period of not less than three months if the deductible is \$100 or less, and not less than six months if the deductible exceeds \$100.

(D) The benefit period shall be each calendar year when the maximum benefit is determined by clause (A)(i) of this paragraph or 24 months when the maximum benefit is determined by clause (A)(ii) of this paragraph.

(E) The term "covered medical expenses," as used above, shall include at least, in the case of hospital room and board charges 80% of the average semiprivate room and board rate for

the hospital in which the individual is confined and twice such amount for charges in an intensive care unit. Any surgical schedule shall be consistent with those customarily offered by the insurer under group or individual health insurance policies and must provide at least a \$1,200 maximum benefit.

(12) The conversion privilege required by this act shall, if the group insurance policy insures the employee or member for basic hospital or surgical expense insurance as well as major medical expense insurance, make available the plans of benefits set forth in paragraph 11. At the option of the insurer, such plans of benefits may be provided under one policy.

The insurer may also, in lieu of the plans of benefits set forth in paragraph (11), provide a policy of comprehensive medical expense benefits without first dollar coverage. The policy shall conform to the requirements of paragraph (11). An insurer electing to provide such a policy shall make available a low deductible option, not to exceed \$100, a high deductible option between \$500 and \$1,000, and a third deductible option midway between the high and low deductible options.

(13) The insurer, at its option, may also offer alternative plans for group health conversion in addition to those required by this act.

(14) In the event coverage would be continued under the group policy on an employee following the employee's retirement prior to the time the employee is or could be covered by medicare, the employee may elect, in lieu of such continuation of group insurance, to have the same conversion rights as would apply had such person's insurance terminated at retirement by reason of termination of employment or membership.

2-41

(15) The converted policy may provide for reduction of coverage on any person upon such person's eligibility for coverage under medicare (title XVIII of the United States social security act as added by the social security amendments of 1965 or as later amended or superseded) or under any other state or federal law providing for benefits similar to those provided by the converted policy.

(16) Subject to the conditions set forth above, the continuation and conversion privileges shall also be available:

(A) To the surviving spouse, if any, at the death of the employee or member, with respect to the spouse and such children whose coverage under the group policy terminates by reason of such death, otherwise to each surviving child whose coverage under the group policy terminates by reason of such death, or, if the group policy provides for continuation of dependents' coverage following the employee's or member's death, at the end of such continuation;

(B) to the spouse of the employee or member upon termination of coverage of the spouse, while the employee or member remains insured under the group policy, by reason of ceasing to be a qualified family member under the group policy, with respect to the spouse and such children whose coverage under the group policy terminates at the same time; or

(C) to a child solely with respect to such child upon termination of such coverage by reason of ceasing to be a qualified family member under the group policy, if a conversion privilege is not otherwise provided above with respect to such termination.

(17) The insurer may elect to provide group insurance coverage which complies with this act in lieu of the issuance of a converted individual policy.

HOUSE BILL No. 2545

By Committee on Insurance

1-21

9 AN ACT concerning insurance; pertaining to the use of mortality tables;  
10 [amending K.S.A. 40-409 and repealing the existing section]

11  
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. K.S.A. 40-409 is hereby amended to read as follows: 40-

14 409. (a) Every life insurance company transacting business in this state  
15 shall annually file, on or before March 1 of each year, with the commis-  
16 sioner of insurance a certified valuation of its policies in force as of De-  
17 cember 31 of the preceding year, and it shall be the duty of the commis-  
18 sioner of insurance to annually make or cause to be made net valuations  
19 of all the outstanding policies and additions thereto of every life insurance  
20 company transacting business in this state, except that in the case of an  
21 alien company such valuation shall be limited to its insurance transactions  
22 in the United States. In making the valuations of life insurance companies  
23 organized under the laws of this state, the valuation shall include unpaid  
24 dividends, and all other policy obligations. Whenever the laws of any other  
25 state of the United States shall authorize the valuation of life insurance  
26 policies by some designated state officer according to the same standard  
27 as herein provided, or some other standard which will require a reserve  
28 not less than the standard herein provided, the valuation made according  
29 to the standard by such officer of the policies and other obligations of any  
30 life insurance company not organized under the laws of this state, and  
31 certified by such officer, may be received as true and correct, and no  
32 further valuation of the same shall be required of such company by the  
33 commissioner of insurance. It shall be the duty of the commissioner of  
34 insurance, whenever requested so to do by any life insurance company  
35 organized under the laws of this state, to make annual valuations of all  
36 the outstanding policies and additions thereto of every such company and  
37 deliver to such company certificates of such valuation, specifying the  
38 amount of the company's reserve on policies thus valued. And for the  
39 performance of the duties prescribed by this section the commissioner of  
40 insurance shall be authorized to employ an actuary, whose compensation  
41 shall be paid by the company whose policies, additions, unpaid dividends  
42 or other outstanding policy obligations are valued, upon a certificate by  
43 the commissioner of insurance showing the compensation due therefor.

; relating to the assumption reinsurance agreements; relating to group life insurance; relating to motor vehicle insurance; relating to contracts of stock insurance companies; relating to required provisions of certain accident and health policies; relating to the effect of health savings accounts on certain types of coverage; amending K.S.A. 8-173, 40-306, 40-409, 40-433, 40-2202 and K.S.A. 2003 Supp. 40-2,105 and repealing the existing sections. Also repealing K.S.A. 2003 Supp. 40-428a.

From and after July 1, 2004

Senate F I & I Committee

Meeting Date: 03-17-04

Attachment No: 03

1 Any such company which at any time shall have adopted any standards  
2 of valuation producing greater aggregate reserves than those calculated  
3 according to the minimum standards hereinafter provided may, with the  
4 approval of the commissioner of insurance, adopt any lower standard of  
5 valuation, but not lower than the minimum herein provided.

6 (b) This subsection shall become operative for the year ending De-  
7 cember 31, 1995, and each subsequent calendar year.

8 (1) Every life insurance company doing business in this state shall  
9 annually submit the opinion of a qualified actuary as to whether the re-  
10 serves and related actuarial items held in support of the policies and  
11 contracts specified by the commissioner by regulation are computed ap-  
12 propriately, are based on assumptions which satisfy contractual provisions,  
13 are consistent with prior reported amounts and comply with applicable  
14 laws of this state. The commissioner shall adopt an administrative regu-  
15 lation defining the specific application, scope and content of this opinion.

16 (2) Except as otherwise provided by law or rules and regulations of  
17 the commissioner, every life insurance company shall also annually in-  
18 clude in the opinion required by subsection (1), an opinion of the same  
19 qualified actuary as to whether the reserves and related actuarial items  
20 held in support of the policies and contracts specified by the commis-  
21 sioner, when considered in light of the assets held by the company with  
22 respect to the reserves and related actuarial items, including but not lim-  
23 ited to the investment earnings on the assets and the considerations an-  
24 ticipated to be received and retained under the policies and contracts,  
25 making adequate provision for the company's obligations under the pol-  
26 icies and contracts, including but not limited to the benefits under and  
27 expenses associated with the policies and contracts.

28 (3) The commissioner may provide for a transition period for estab-  
29 lishing any higher reserves which the qualified actuary deems necessary  
30 in order to render the opinion required by this section.

31 (4) Each opinion required by subsection (2) shall comply with the  
32 following provisions:

33 (A) A memorandum, in form and substance acceptable to or pre-  
34 scribed by the commissioner shall be prepared to support each actuarial  
35 opinion.

36 (B) If the insurance company fails to provide a supporting memoran-  
37 dum within a period specified or the commissioner determines that the  
38 supporting memorandum provided by the insurance company fails to  
39 meet the prescribed standards or is otherwise unacceptable to the com-  
40 missioner, the commissioner is authorized to employ an actuary whose  
41 compensation and expenses shall be paid by the company whose policies,  
42 additions, unpaid dividends or other outstanding policy or contractual  
43 obligations are valued upon a certificate by the commissioner showing

1 the compensation and expenses due therefor.

2 (5) Every opinion of the actuary shall comply with the following  
3 provisions:

4 (A) The opinion shall be submitted with the annual statement re-  
5 quired by K.S.A. 40-225 and amendments thereto reflecting the valuation  
6 of such reserve liabilities for each year ending on or after December 31,  
7 1995.

8 (B) The opinion shall apply to all business in force including individ-  
9 ual and group health insurance plans.

10 (C) The opinion shall be based on standards adopted from time to  
11 time by the actuarial standards board of the American academy of actu-  
12 aries and on such additional standards as the commissioner prescribes.

13 (D) In the case of an opinion required to be submitted by an insur-  
14 ance company not domiciled in this state, the commissioner may accept  
15 the opinion filed by that company with the insurance supervisory official  
16 of another state if the commissioner determines that the opinion reason-  
17 ably meets the requirements applicable to a company domiciled in this  
18 state.

19 (E) For the purposes of this section, "qualified actuary" means a  
20 member in good standing of the American academy of actuaries.

21 (F) Except in cases of fraud or willful misconduct, the qualified ac-  
22 tuary shall not be liable for damages to any person, other than the insur-  
23 ance company and the commissioner, for any act, error, omission, decision  
24 or conduct with respect to the actuary's opinion required by this act.

25 (G) Any memorandum in support of the opinion, and any other ma-  
26 terial provided by the company to the commissioner in connection with  
27 the opinion, shall be kept confidential by the commissioner and shall not  
28 be made public and shall not be subject to subpoena, other than for the  
29 purpose of defending an action seeking damages from any person by  
30 reason of any action required by this section or by rules and regulations  
31 adopted pursuant to this section. Notwithstanding the provisions of this  
32 subpart (G), the memorandum or other material may be released by the  
33 commissioner: (i) With the written consent of the company, or (ii) to the  
34 American academy of actuaries upon request stating that the memoran-  
35 dum or other material is required for the purpose of professional disci-  
36 plinary proceedings and setting forth procedures satisfactory to the com-  
37 missioner for preserving the confidentiality of the memorandum or other  
38 material. Once any portion of the confidential memorandum is cited by  
39 the company in its marketing or is cited before any governmental agency  
40 other than a state insurance department or is released by the company  
41 to the news media, all portions of the confidential memorandum shall be  
42 no longer confidential.

43 (c) This subsection shall apply to only those policies and contracts



1 issued prior to the-operative date of K.S.A. 40-428, and amendments  
2 thereto, (the standard nonforfeiture law), except as provided in subsection  
3 (d) of this section.

4 For the purpose of such valuations and for making special examinations  
5 of the condition of life insurance companies, as provided by the laws of  
6 this state, and for valuing all outstanding policies of every life insurance  
7 company, the method and basis of valuation shall be the same as pre-  
8 scribed by the insurance code of this state in the valuation of such con-  
9 tracts before June 1, 1927. The legal minimum standard for the valuation  
10 of life insurance contracts issued on or after June 1, 1927, shall be the  
11 one-year preliminary-term method of valuation, except as hereinafter  
12 modified, on the basis of the American experience table of mortality with  
13 interest at 4% per annum. If the premium charged for term insurance  
14 under limited-payment life preliminary-term policy providing for the pay-  
15 ment of all premiums thereon in less than 20 years from the date of policy,  
16 or under an endowment preliminary-term policy, exceeds that charged  
17 for life insurance under twenty-payment life preliminary-term policy of  
18 the same company, the reserve thereon at the end of any year, including  
19 the first, shall not be less than the reserve on a twenty-payment life pre-  
20 liminary-term policy issued in the same year and at the same age, together  
21 with an amount which shall be equivalent to the accumulation of a net  
22 level premium sufficient to provide for a pure endowment at the end of  
23 the premium-payment period, equal to the difference between the value  
24 at the end of such period of such a twenty-payment life preliminary-term  
25 policy and the full net level premium reserve at such time of such a  
26 limited-payment life or endowment policy. The premium-payment period  
27 is the period during which premiums are concurrently payable, under  
28 such twenty-payment life preliminary-term policy and such limited-pay-  
29 ment life or endowment policy. Policies issued on the preliminary-term  
30 method shall contain a clause specifying that the reserve thereof shall be  
31 computed in accordance with the modified preliminary-term method of  
32 valuation provided therein. Except as otherwise provided for group an-  
33 nuity and pure endowment contracts in paragraphs (1-a) and (1-b) of  
34 subsection (d) of this section, the legal minimum standard for the valu-  
35 ation of annuities shall be McClintock's "table of mortality among an-  
36 nuitants," with interest at 4% per annum, but annuities deferred 10 or  
37 more years and written in connection with life insurance shall be valued  
38 on the same basis as that used in computing the consideration or premi-  
39 ums therefor, or upon any higher standard at the option of the com-  
40 pany. The commissioner of insurance may, in the commissioner's discre-  
41 tion, vary the above standard of interest and mortality in cases of  
42 companies organized under the laws of a foreign country and in particular  
43 cases of invalid lives or other extra hazards.

1 Reserves for all such policies and contracts may be calculated, at the  
2 option of the company, according to any standards which produce greater  
3 aggregate reserves for all such policies and contracts than the minimum  
4 reserves required by this subsection.

5 (d) *Standard valuation law.* This subsection shall apply to only those  
6 policies and contracts issued on or after the operative date of K.S.A. 40-  
7 428, and amendments thereto, (the standard nonforfeiture law), except  
8 as otherwise provided in paragraphs (1-a) and (1-b) of this subsection for  
9 group annuity and pure endowment contracts issued prior to such oper-  
10 ative date, and except as provided in subsection (e) of this section.

11 (1) Except as otherwise provided in paragraphs (1-a) and (1-b) of this  
12 subsection, the minimum standard for the valuation of all such policies  
13 and contracts shall be the commissioners' reserve valuation methods de-  
14 fined in paragraphs (2), (2-a) and (5) of this subsection, 3½% interest or  
15 in the case of policies and contracts, other than annuity and pure endow-  
16 ment contracts, issued on or after July 1, 1973, 4% interest for such  
17 policies issued prior to July 1, 1978, 5½% interest for single premium life  
18 insurance policies and 4½% interest for all other such policies issued on  
19 or after July 1, 1978, and the following specified tables:

20 (i) For all ordinary policies of life insurance issued on the standard  
21 basis, excluding any disability and accidental death benefits in such poli-  
22 cies—the commissioners' 1941 standard ordinary mortality table for such  
23 policies issued prior to the operative date of K.S.A. 40-428 (d-1), and  
24 amendments thereto, the commissioners' 1958 standard ordinary mor-  
25 tality table and the commissioners' 1958 extended term insurance table,  
26 as applicable, for such policies issued on or after the operative date of  
27 K.S.A. 40-428 (d-1), and amendments thereto, and prior to the operative  
28 date of K.S.A. 40-428 (d-3), and amendments thereto, provided that for  
29 any category of such policies issued on female risks, the modified net  
30 premiums and present values, referred to in subsection (d)(2) of this  
31 section, may be calculated, according to an age not more than six years  
32 younger than the actual age of the insured; and for such policies issued  
33 on or after the operative date of K.S.A. 40-428 (d-3), and amendments  
34 thereto: (i) The commissioners' 1980 standard ordinary mortality table;  
35 or (ii) at the election of the company for any one or more specified plans  
36 of life insurance, the commissioners' 1980 standard ordinary mortality  
37 table with ten-year select mortality factors; or (iii) any ordinary mortality  
38 table, adopted after 1980 by the national association of insurance com-  
39 missioners, that is approved by regulation promulgated by the commis-  
40 sioner for use in determining the minimum standard of valuation for such  
41 policies.

42 (ii) For all industrial life insurance policies issued on the standard  
43 basis, excluding any disability and accidental death benefits in such poli-

1 cies—the 1941 standard industrial mortality table for such policies issued  
 2 prior to the operative date of K.S.A. 40-428 (d-2), and amendments  
 3 thereto, and for such policies issued on or after such operative date the  
 4 commissioners' 1961 standard industrial mortality table or any industrial  
 5 mortality table, adopted after 1980 by the national association of insur-  
 6 ance commissioners, that is approved by regulation promulgated by the  
 7 commissioner for use in determining the minimum standard of valuation  
 8 for such policies.

9 (iii) For individual annuity and pure endowment contracts, excluding  
 10 any disability and accidental death benefits in such policies, and excluding  
 11 annuities involving life contingencies provided or available under optional  
 12 modes of settlement in life insurance policies or annuity contracts—the  
 13 1937 standard annuity mortality table, or, at the option of the company,  
 14 the annuity mortality table for 1949, ultimate, or any modification of ei-  
 15 ther of these tables approved by the commissioner.

16 (iv) For group annuity and pure endowment contracts, excluding any  
 17 disability and accidental death benefits in such policies—the group an-  
 18 nuity mortality table for 1951, any modification of such table approved  
 19 by the commissioner, or at the option of the company, any of the tables  
 20 or modifications of tables specified for individual annuity and pure en-  
 21 dowment contracts.

22 (v) For total and permanent disability benefits in or supplementary  
 23 to ordinary policies or contracts—for policies or contracts issued on or  
 24 after January 1, 1961, either the tables of period 2 disablement rates and  
 25 the 1930 to 1950 termination rates of the 1952 disability study of the  
 26 society of actuaries, with due regard to the type of benefit, any tables of  
 27 disablement rates and termination rates, adopted after 1980 by the na-  
 28 tional association of insurance commissioners, that are approved by reg-  
 29 ulation promulgated by the commissioner for use in determining the min-  
 30 imum standard of valuation for such policies, or, at the option of the  
 31 company, the class (3) disability table (1926); and for policies issued prior  
 32 to January 1, 1961, the class (3) disability table (1926). Any such table  
 33 shall, for active lives, be combined with a mortality table permitted for  
 34 calculating the reserve for life insurance policies.

35 (vi) For accidental death benefits in or supplementary to policies—  
 36 for policies issued on or after January 1, 1961, either the 1959 accidental  
 37 death benefits table, any accidental death benefits table, adopted after  
 38 1980 by the national association of insurance commissioners, that is ap-  
 39 proved by regulation promulgated by the commissioner for use in deter-  
 40 mining the minimum standard of valuation for such policies, or, at the  
 41 option of the company, the inter-company double indemnity mortality  
 42 table; and for policies issued prior to January 1, 1961, the inter-company  
 43 double indemnity mortality table. Either table shall be combined with a

1 mortality table permitted for calculating the reserves for life insurance  
 2 policies.

3 (vii) For group life insurance, life insurance issued on the substan-  
 4 dard basis, annuities involving life contingencies provided or available  
 5 under optional modes of settlement in life insurance policies or annuity  
 6 contracts and other special benefits—such tables as may be approved by  
 7 the commissioner of insurance.

8 (viii) For all credit life insurance having initial terms of 10 years or  
 9 less, excluding any disability and accidental death benefits in such policies,  
 10 the ~~1958~~ 1980 commissioners' extended term *mortality table or any later*  
 11 *version as established in rules and regulations adopted by the commis-*  
 12 *sioner of insurance.*

13 (1-a) Except as provided in paragraph (1-b), the minimum standard  
 14 for the valuation of all individual annuity and pure endowment contracts  
 15 issued on or after the operative date of this paragraph (1-a), as defined  
 16 herein, and for all annuities and pure endowments purchased on or after  
 17 such operative date under group annuity and pure endowment contracts,  
 18 shall be the commissioners' reserve valuation methods defined in para-  
 19 graphs (2) and (2-a) and the following tables and interest rates:

20 (i) For individual annuity and pure endowment contracts issued prior  
 21 to July 1, 1978, excluding any disability and accidental death benefits in  
 22 such contracts—the 1971 individual annuity mortality table, or any mod-  
 23 ification of this table approved by the commissioner of insurance, and 6%  
 24 interest for single premium immediate annuity contracts, and 4% interest  
 25 for all other individual annuity and pure endowment contracts.

26 (ii) For individual single premium immediate annuity contracts is-  
 27 sued on or after July 1, 1978, excluding any disability and accidental death  
 28 benefits in such contracts—the 1971 individual annuity mortality table,  
 29 or any individual annuity mortality table, adopted after 1980 by the na-  
 30 tional association of insurance commissioners, that is approved by regu-  
 31 lation promulgated by the commissioner for use in determining the min-  
 32 imum standard of valuation for such contracts, or any modification of  
 33 these tables approved by the commissioner, and 7½% interest.

34 (iii) For individual annuity and pure endowment contracts issued on  
 35 or after July 1, 1978, other than single premium immediate annuity con-  
 36 tracts, excluding any disability and accidental death benefits in such con-  
 37 tracts—the 1971 individual annuity mortality table, or any individual an-  
 38 nuity mortality table, adopted after 1980 by the national association of  
 39 insurance commissioners, that is approved by regulation promulgated by  
 40 the commissioner for use in determining the minimum standard of val-  
 41 uation for such contracts, or any modification of these tables approved  
 42 by the commissioner, and 5½% interest for single premium deferred  
 43 annuity and pure endowment contracts and 4½% interest for all other

1 such individual annuity and pure endowment contracts.  
 2 (iv) For all annuities and pure endowments purchased prior to July  
 3 1, 1978, under group annuity and pure endowment contracts, excluding  
 4 any disability and accidental death benefits purchased under such con-  
 5 tracts—the 1971 group annuity mortality table, or any modification of this  
 6 table approved by the commissioner of insurance, and 6% interest.

7 (v) For all annuities and pure endowments purchased on or after July  
 8 1, 1978, under group annuity and pure endowment contracts, excluding  
 9 any disability and accidental death benefits purchased under such con-  
 10 tracts—the 1971 group annuity mortality table, or any group annuity mor-  
 11 tality table, adopted after 1980 by the national association of insurance  
 12 commissioners, that is approved by regulation promulgated by the com-  
 13 missioner for use in determining the minimum standard of valuation for  
 14 such annuities and pure endowments, or any modification of these tables  
 15 approved by the commissioner, and 7½% interest.

16 After July 1, 1973, any company may file with the commissioner of  
 17 insurance a written notice of its election to comply with the provisions of  
 18 this paragraph after a specified date before January 1, 1979, which shall  
 19 be the operative date of this paragraph for such company. A company  
 20 may elect a different operative date for individual annuity and pure en-  
 21 dowment contracts from that elected for group annuity and pure endow-  
 22 ment contracts. If a company makes no such election, the operative date  
 23 of this paragraph for such company shall be January 1, 1979.

24 (1-b) (A) Applicability of this paragraph:

25 (1) The interest rates used in determining the minimum standard for  
 26 the valuation of:

27 (a) All life insurance policies issued in a particular calendar year, on  
 28 or after the operative date of K.S.A. 40-428(d-3), and amendments  
 29 thereto;

30 (b) all individual annuity and pure endowment contracts issued in a  
 31 particular calendar year on or after January 1, 1983;

32 (c) all annuities and pure endowments purchased in a particular cal-  
 33 endar year on or after January 1, 1983, under group annuity and pure  
 34 endowment contracts; and

35 (d) the net increase, if any, in a particular calendar year after January  
 36 1, 1983, in amounts held under guaranteed interest contracts shall be the  
 37 calendar year statutory valuation interest rates as defined in this paragraph  
 38 (1-b).

39 (B) Calendar year statutory valuation interest rates:

40 (1) The calendar year statutory valuation interest rates, I, shall be  
 41 determined as follows and the results rounded to the nearer ¼%:

42 (a) For life insurance,  
 43  $I = .03 + W (R^1 - .03) + W/2 (R^2 - .09);$

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1 (b) For single premium immediate annuities and for annuity benefits  
 2 involving life contingencies arising from other annuities with cash settle-  
 3 ment options and from guaranteed interest contracts with cash settlement  
 4 options,

$$I = .03 + W (R - .03)$$

6 where R<sup>1</sup> is the lesser of R and .09,  
 7 R<sup>2</sup> is the greater of R and .09,

8 R is the reference interest rate defined in this paragraph and W is the  
 9 weighting factor defined in this paragraph.

10 (c) For other annuities with cash settlement options and guaranteed  
 11 interest contracts with cash settlement options, valued on an issue year  
 12 basis, except as stated in (b) above, the formula for life insurance stated  
 13 in (a) above shall apply to annuities and guaranteed interest contracts  
 14 with guarantee durations in excess of 10 years and the formula for single  
 15 premium immediate annuities stated in (b) above shall apply to annuities  
 16 and guaranteed interest contracts with guarantee duration of 10 years or  
 17 less.

18 (d) For other annuities with no cash settlement options and for guar-  
 19 anteed interest contracts with no cash settlement options, the formula for  
 20 single premium immediate annuities stated in (b) above shall apply.

21 (e) For other annuities with cash settlement options and guaranteed  
 22 interest contracts with cash settlement options, valued on a change in  
 23 fund basis, the formula for single premium immediate annuities stated in  
 24 (b) above shall apply.

25 (2) However, if the calendar year statutory valuation interest rate for  
 26 any life insurance policies issued in any calendar year determined without  
 27 reference to this sentence differs from the corresponding actual rate for  
 28 similar policies issued in the immediately preceding calendar year by less  
 29 than ½%, the calendar year statutory valuation interest rate for such life  
 30 insurance policies shall be equal to the corresponding actual rate for the  
 31 immediately preceding calendar year. For purposes of applying the im-  
 32 mediately preceding sentence, the calendar year statutory valuation in-  
 33 terest rate for life insurance policies issued in a calendar year shall be  
 34 determined for 1980 (using the reference interest rate defined for 1979)  
 35 and shall be determined for each subsequent calendar year regardless of  
 36 when K.S.A. 40-428(d-3), and amendments thereto, becomes operative.

37 (C) Weighting factors:

38 (1) The weighting factors referred to in the formulas stated above are  
 39 given in the following tables:

40 (a) Weighting factors for life insurance:

Guarantee Duration (Years)	Weighting Factors
41 10 or less .....	.50
42 More than 10, but not more than 20 .....	.45
43	

1 More than 20..... .35  
 2 For life insurance, the guarantee duration is the maximum number of  
 3 years the life insurance can remain in force on a basis guaranteed in the  
 4 policy or under options to convert to plans of life insurance with premium  
 5 rates or nonforfeiture values, or both, which are guaranteed in the original  
 6 policy;  
 7 (b) Weighting factor for single premium immediate annuities and for  
 8 annuity benefits involving life contingencies arising from other annuities  
 9 with cash settlement options and guaranteed interest contracts with cash  
 10 settlement options:

.80

11 (c) Weighting factors for other annuities and for guaranteed interest  
 12 contracts, except as stated in (b) above, shall be as specified in tables (i),  
 13 (ii) and (iii) below, according to the rules and definitions in (iv), (v) and  
 14 (vi) below:

15 (i) For annuities and guaranteed interest contracts valued on an issue  
 16 year basis:

Guarantee Duration (Years)	Weighting Factor for Plan Type		
	A	B	C
20 5 or less.....	.80	.60	.50
22 More than five, but not more than 10 .....	.75	.60	.50
23 More than 10, but not more than 20 .....	.65	.50	.45
24 More than 20.....	.45	.35	.35

25 (ii)

For annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in (i) above increased by.....	Plan Type		
	A	B	C
30	.15	.25	.05

31 (iii)

For annuities and guaranteed interest contracts valued on an issue year basis (other than those with no cash settlement options) which do not guarantee interest on considerations received more than one year after issue or purchase and for annuities and guaranteed interest contracts valued on a change in fund basis which do not guarantee interest rates on consider- ations received more than 12 months beyond the valuation date, the factors shown in (i) or derived in (ii) increased by .....	Plan Type		
	A	B	C
43	.05	.05	.05

1 (iv) For other annuities with cash settlement options and guaranteed  
 2 interest contracts with cash settlement options, the guarantee duration is  
 3 the number of years for which the contract guarantees interest rates in  
 4 excess of the calendar year statutory valuation interest rate for life insur-  
 5 ance policies with guarantee duration in excess of 20 years. For other  
 6 annuities with no cash settlement options and for guaranteed interest  
 7 contracts with no cash settlement options, the guarantee duration is the  
 8 number of years from the date of issue or date of purchase to the date  
 9 annuity benefits are scheduled to commence.

10 (v) Plan type as used in the above tables is defined as follows:

11 Plan type A: At any time policyholder may withdraw funds only: (1)  
 12 With an adjustment to reflect changes in interest rates or asset values  
 13 since receipt of the funds by the insurer; or (2) without such adjustment  
 14 but in installments over five years or more; or (3) as an immediate life  
 15 annuity; or (4) no withdrawal permitted.

16 Plan type B: Before expiration of the interest rate guarantee, poli-  
 17 cyholder may withdraw funds only: (1) With an adjustment to reflect  
 18 changes in interest rates or asset values since receipt of the funds by the  
 19 insurer; or (2) without such adjustment but in installments over five years  
 20 or more; or (3) no withdrawal permitted. At the end of interest rate guar-  
 21 antee, funds may be withdrawn without such adjustment in a single sum  
 22 or installments over less than five years.

23 Plan type C: Policyholder may withdraw funds before expiration of  
 24 interest rate guarantee in a single sum or installments over less than five  
 25 years either: (1) Without adjustment to reflect changes in interest rates  
 26 or asset values since receipt of the funds by the insurance company; or  
 27 (2) subject only to a fixed surrender charge stipulated in the contract as  
 28 a percentage of the fund.

29 (vi) A company may elect to value guaranteed interest contracts with  
 30 cash settlement options and annuities with cash settlement options on  
 31 either an issue year basis or on a change in fund basis. Guaranteed interest  
 32 contracts with no cash settlement options and other annuities with no  
 33 cash settlement options must be valued on an issue year basis. As used  
 34 in this paragraph (1-b), an issue year basis of valuation refers to a valuation  
 35 basis under which the interest rate used to determine the minimum val-  
 36 uation standard for the entire duration of the annuity or guaranteed in-  
 37 terest contract is the calendar year valuation interest rate for the year of  
 38 issue or year of purchase of the annuity or guaranteed interest contract,  
 39 and the change in fund basis of valuation refers to a valuation basis under  
 40 which the interest rate used to determine the minimum valuation stan-  
 41 dard applicable to each change in the fund held under the annuity or  
 42 guaranteed interest contract is the calendar year valuation interest rate  
 43 for the year of the change in the fund.

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1 or a cash surrender value or a combination thereof in an amount greater  
2 than such excess premium, the foregoing provisions of this paragraph (5)  
3 shall be applied as if the method actually used in calculating the reserve  
4 for such policy were the method described in paragraph (2), ignoring the  
5 third paragraph of paragraph (2). The minimum reserve at each policy  
6 anniversary of such a policy shall be the greater of the minimum reserve  
7 calculated in accordance with paragraph (2), including the third paragraph  
8 of paragraph (2), and the minimum reserve calculated in accordance with  
9 this paragraph (5).

10 (6) In the case of any plan of life insurance which provides for future  
11 premium determination, the amounts of which are to be determined by  
12 the insurance company based on then estimates of future experience, or  
13 in the case of any plan of life insurance or annuity which is of such a  
14 nature that the minimum reserves cannot be determined by the methods  
15 described in paragraphs (2), (2-a) and (5), the reserves which are held  
16 under any such plan must:

17 (a) Be appropriate in relation to the benefits and the pattern of pre-  
18 miums for that plan, and

19 (b) be computed by a method which is consistent with the principles  
20 of this standard valuation law, as determined by regulations promulgated  
21 by the commissioner.

22 (e) Any company organized under the laws of this state, which shall  
23 desire to do business in any other states wherein it is not permitted to  
24 issue or deliver policies valued as provided in subsection (d) of this sec-  
25 tion, may value its policies issued and delivered in such other states as  
26 provided in subsection (c) of this section.

27 (f) The commissioner shall adopt rules and regulations establishing  
28 the minimum standards applicable to the valuation of accident and sick-  
29 ness insurance and may adopt other rules and regulations necessary to  
30 administer the provisions of this act.

31 [Sec. 2. K.S.A. 40-409 is hereby repealed.

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

**SENATE BILL No. 348**

By Committee on Financial Institutions and Insurance

1-23

9 AN ACT concerning accident and health insurance; pertaining to the  
10 effect of health savings accounts on certain types of coverage; amend-  
11 ing K.S.A. 2003 Supp. 40-2,105 and repealing the existing section.  
12

~~13 Be it enacted by the Legislature of the State of Kansas:~~

14 Section 2. K.S.A. 2003 Supp. 40-2,105 is hereby amended to read as  
15 follows: 40-2,105. (a) On or after the effective date of this act, every  
16 insurer which issues any individual or group policy of accident and sick-  
17 ness insurance providing medical, surgical or hospital expense coverage  
18 for other than specific diseases or accidents only and which provides for  
19 reimbursement or indemnity for services rendered to a person covered  
20 by such policy in a medical care facility, must provide for reimbursement  
21 or indemnity under such individual policy or under such group policy,  
22 except as provided in subsection (d), which shall be limited to not less  
23 than 30 days per year when such person is confined for treatment of  
24 alcoholism, drug abuse or nervous or mental conditions in a medical care  
25 facility licensed under the provisions of K.S.A. 65-429 and amendments  
26 thereto, a treatment facility for alcoholics licensed under the provisions  
27 of K.S.A. 65-4014 and amendments thereto, a treatment facility for drug  
28 abusers licensed under the provisions of K.S.A. 65-4605 and amendments  
29 thereto, a community mental health center or clinic licensed under the  
30 provisions of K.S.A. 75-3307b and amendments thereto or a psychiatric  
31 hospital licensed under the provisions of K.S.A. 75-3307b and amend-  
32 ments thereto. Such individual policy or such group policy shall also pro-  
33 vide for reimbursement or indemnity, except as provided in subsection  
34 (d), of the costs of treatment of such person for alcoholism, drug abuse  
35 and nervous or mental conditions, limited to not less than 100% of the  
36 first \$100, 80% of the next \$100 and 50% of the next \$1,640 in any year  
37 and limited to not less than \$7,500 in such person's lifetime, in the facil-  
38 ities enumerated when confinement is not necessary for the treatment or  
39 by a physician licensed or psychologist licensed to practice under the laws  
40 of the state of Kansas.

41 (b) For the purposes of this section "nervous or mental conditions"  
42 means disorders specified in the diagnostic and statistical manual of men-  
43 tal disorders, fourth edition, (DSM-IV, 1994) of the American psychiatric

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1 (D) Reference interest rate:

2 (1) The reference interest rate referred to in paragraph (B) of this  
3 paragraph (1-b) shall be defined as follows:

4 (a) For all life insurance, the lesser of the average over a period of  
5 36 months and the average over a period of 12 months, ending on June  
6 30 of the calendar year next preceding the year of issue, of Moody's  
7 corporate bond yield average—monthly average corporates, as published  
8 by Moody's investors service, inc.

9 (b) For single premium immediate annuities and for annuity benefits  
10 involving life contingencies arising from other annuities with cash settle-  
11 ment options and guaranteed interest contracts with cash settlement op-  
12 tions, the average over a period of 12 months, ending on June 30 of the  
13 calendar year of issue or year of purchase, of Moody's corporate bond  
14 yield average—monthly average corporates, as published by Moody's in-  
15 vestors service, inc.

16 (c) For other annuities with cash settlement options and guaranteed  
17 interest contracts with cash settlement options, valued on a year of issue  
18 basis, except as stated in (b) above, with guarantee duration in excess of  
19 10 years, the lesser of the average over a period of 36 months and the  
20 average over a period of 12 months, ending on June 30 of the calendar  
21 year of issue or purchase, of Moody's corporate bond yield average—  
22 monthly average corporates, as published by Moody's investors service,  
23 inc.

24 (d) For other annuities with cash settlement options and guaranteed  
25 interest contracts with cash settlement options, valued on a year of issue  
26 basis, except as stated in (b) above, with guaranteed duration of 10 years  
27 or less, the average over a period of 12 months, ending on June 30 of the  
28 calendar year of issue or purchase, of Moody's corporate bond yield av-  
29 erage—monthly average corporates, as published by Moody's investors  
30 service, inc.

31 (e) For other annuities with no cash settlement options and for guar-  
32 anteed interest contracts with no cash settlement options, the average  
33 over a period of 12 months, ending on June 30 of the calendar year of  
34 issue or purchase, of Moody's corporate bond yield average—monthly  
35 average corporates, as published by Moody's investors service, inc.

36 (f) For other annuities with cash settlement options and guaranteed  
37 interest contracts with cash settlement options, valued on a change in  
38 fund basis, except as stated in (b) above, the average over a period of 12  
39 months, ending on June 30 of the calendar year of the change in the fund,  
40 of Moody's corporate bond yield average—monthly average corporates,  
41 as published by Moody's investors service, inc.

42 (E) Alternative method for determining reference interest rates:

43 (1) In the event that Moody's corporate bond yield average—monthly

1 average corporates is no longer published by Moody's investors service,  
2 inc., or in the event that the national association of insurance commis-  
3 sioners determines that Moody's corporate bond yield average—monthly  
4 average corporates as published by Moody's investors service, inc., is no  
5 longer appropriate for the determination of the reference interest rate,  
6 then an alternative method for determination of the reference interest  
7 rate, which is adopted by the national association of insurance commis-  
8 sioners and approved by regulation promulgated by the commissioner,  
9 may be substituted.

10 (2) *Commissioners' reserve valuation method.* Except as otherwise  
11 provided in paragraphs (2-a) and (5) of this subsection, reserves accord-  
12 ing to the commissioners' reserve valuation method, for the life insurance  
13 and endowment benefits of policies providing for a uniform amount of  
14 insurance and requiring the payment of uniform premiums, shall be the  
15 excess, if any, of the present value, at the date of valuation, of such future  
16 guaranteed benefits provided for by such policies, over the then present  
17 value of any future modified net premiums therefor.

18 The modified net premiums for any such policy shall be such uniform  
19 percentage of the respective contract premiums for such benefits that the  
20 present value, at the date of issue of the policy, of all such modified net  
21 premiums shall be equal to the sum of the then present value of such  
22 benefits provided for by the policy and the excess of (A) over (B), as  
23 follows:

24 (A) A net level annual premium equal to the present value, at the  
25 date of issue, of such benefits provided for after the first policy year,  
26 divided by the present value, at the date of issue, of an annuity of one  
27 per annum payable on the first and each subsequent anniversary of such  
28 policy on which a premium falls due. Such net level annual premium shall  
29 not exceed the net level annual premium on the nineteen-year premium  
30 whole life plan for insurance of the same amount at an age one year higher  
31 than the age at issue of such policy.

32 (B) A net one-year term premium for such benefits provided for in  
33 the first policy year.

34 Except for any life insurance policy issued on or after January 1, 1985,  
35 for which the contract premium in the first policy year exceeds that of  
36 the second year and for which no comparable additional benefit is pro-  
37 vided in the first year for such excess and which provides an endowment  
38 benefit or a cash surrender value or a combination thereof in an amount  
39 greater than such excess premium, the reserve according to the commis-  
40 sioners' reserve valuation method as of any policy anniversary occurring  
41 on or before the assumed ending date defined herein as the first policy  
42 anniversary on which the sum of any endowment benefit and any cash  
43 surrender value then available is greater than such excess premium shall,

1 except as otherwise provided in paragraph (5), be the greater of the re-  
 2 serve as of such policy anniversary calculated as described in this para-  
 3 graph and the reserve as of such policy anniversary calculated as described  
 4 in this paragraph, but with: (i) The value defined in subparagraph (A) of  
 5 this paragraph being reduced by 15% of the amount of such excess first-  
 6 year premium; (ii) all present values of benefits and premiums being  
 7 determined without reference to premiums or benefits provided for by  
 8 the policy after the assumed ending date; (iii) the policy being assumed  
 9 to mature on such date as an endowment; and (iv) the cash surrender  
 10 value provided on such date being considered as an endowment benefit.  
 11 In making the above comparison the mortality and interest bases stated  
 12 in paragraphs (1) and (1-b) shall be used.

13 Reserves according to the commissioners' reserve valuation method  
 14 for: (i) Life insurance policies providing for a varying amount of insurance  
 15 or requiring the payment of varying premiums; (ii) group annuity and  
 16 pure endowment contracts purchased under a retirement plan or plan of  
 17 deferred compensation, established or maintained by an employer (in-  
 18 cluding a partnership or sole proprietorship) or by an employee organi-  
 19 zation, or by both, other than a plan providing individual retirement ac-  
 20 counts or individual retirement annuities under section 408 of the internal  
 21 revenue code, as now or hereafter amended; (iii) disability and accidental  
 22 death benefits in all policies and contracts; and (iv) all other benefits,  
 23 except life insurance and endowment benefits in life insurance policies  
 24 and benefits provided by all other annuity and pure endowment contracts,  
 25 shall be calculated by a method consistent with the principles of this  
 26 paragraph (2).

27 (2-a) This section shall apply to all annuity and pure endowment con-  
 28 tracts other than group annuity and pure endowment contracts purchased  
 29 under a retirement plan or plan of deferred compensation, established or  
 30 maintained by an employer (including a partnership or sole proprietor-  
 31 ship) or by an employee organization, or by both, other than a plan pro-  
 32 viding individual retirement accounts or individual retirement annuities  
 33 under section 408 of the internal revenue code, as now or hereafter  
 34 amended.

35 Reserves according to the commissioners' annuity reserve method for  
 36 benefits under annuity or pure endowment contracts, excluding any dis-  
 37 ability and accidental death benefits in such contracts, shall be the  
 38 greatest of the respective excesses of the present values, at the date of  
 39 valuation, of the future guaranteed benefits, including guaranteed non-  
 40 forfeiture benefits, provided for by such contracts at the end of each  
 41 respective contract year, over the present value, at the date of valuation,  
 42 of any future valuation considerations derived from future gross consid-  
 43 erations, required by the terms of such contract, that become payable

1 prior to the end of such respective contract year. The future guaranteed  
 2 benefits shall be determined by using the mortality table, if any, and the  
 3 interest rate, or rates, specified in such contracts for determining guar-  
 4 anteed benefits. The valuation considerations are the portions of the re-  
 5 spective gross considerations applied under the terms of such contracts  
 6 to determine nonforfeiture values.

7 (3) In no event shall a company's aggregate reserves for all life insur-  
 8 ance policies, excluding disability and accidental death benefits, be less  
 9 than the aggregate reserves calculated in accordance with the methods  
 10 set forth in paragraphs (2), (2-a), (5) and (6) and the mortality table or  
 11 tables and rate or rates of interest used in calculating nonforfeiture ben-  
 12 efits for such policies.

13 (3-a) In no event shall the aggregate reserves for all policies, contracts  
 14 and benefits be less than the aggregate reserves determined by the qual-  
 15 ified actuary rendering the opinion required by subsection (b).

16 (4) Reserves for any category of policies, contracts or benefits as es-  
 17 tablished by the commissioner of insurance may be calculated at the op-  
 18 tion of the company, according to any standards which produce greater  
 19 aggregate reserves for such category than those calculated according to  
 20 the minimum standard herein provided, but the rate or rates of interest  
 21 used for policies and contracts, other than annuity and pure endowment  
 22 contracts, shall not be higher than the corresponding rate or rates of  
 23 interest used in calculating any nonforfeiture benefits provided for  
 24 therein.

25 (5) If in any contract year the gross premium charged by any life  
 26 insurance company on any policy or contract is less than the valuation net  
 27 premium for the policy or contract calculated by the method used in  
 28 calculating the reserve thereon but using the minimum valuation stan-  
 29 dards of mortality and rate of interest, the minimum reserve required for  
 30 such policy or contract shall be the greater of either the reserve calculated  
 31 according to the mortality table, rate of interest, and method actually used  
 32 for such policy or contract, or the reserve calculated by the method ac-  
 33 tually used for such policy or contract but using the minimum valuation  
 34 standards of mortality and rate of interest and replacing the valuation net  
 35 premium by the actual gross premium in each contract year for which  
 36 the valuation net premium exceeds the actual gross premium.

37 The minimum valuation standards of mortality and rate of interest re-  
 38 ferred to in this section are those standards stated in paragraphs (1) and  
 39 (1-b).

40 Except for any life insurance policy issued on or after January 1, 1988,  
 41 for which the gross premium in the first policy year exceeds that of the  
 42 second year and for which no comparable additional benefit is provided  
 43 in the first year for such excess and which provides an endowment benefit

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P. 16

1 association but shall not include conditions:

2 (1) Not attributable to a mental disorder that are a focus of attention  
3 or treatment (DSM-IV, 1994); and

4 (2) defined as a mental illness in K.S.A. 2003 Supp. 40-2,105a and  
5 amendments thereto.

6 (c) The provisions of this section shall be applicable to health main-  
7 tenance organizations organized under article 32 of chapter 40 of the  
8 Kansas Statutes Annotated.

9 (d) There shall be no coverage under the provisions of this section  
10 for any assessment against any person required by a diversion agreement  
11 or by order of a court to attend an alcohol and drug safety action program  
12 certified pursuant to K.S.A. 8-1008 and amendments thereto or for eval-  
13 uations and diagnostic tests ordered or requested in connection with  
14 criminal actions, divorce, child custody or child visitation proceedings.

15 (e) The provisions of this section shall not apply to any medicare  
16 supplement policy of insurance, as defined by the commissioner of in-  
17 surance by rule and regulation.

18 (f) The provisions of this section shall be applicable to the Kansas  
19 state employees health care benefits program developed and provided by  
20 the Kansas state employees health care commission.

21 (g) The outpatient coverage provisions of this section shall not apply  
22 to a high deductible health plan as defined in ~~Section 301 of P.L. 104-~~  
23 ~~101 and any amendments thereto~~ *federal law* if such plan is purchased  
24 in connection with a medical or health savings account pursuant to that  
25 ~~act~~. After the amount of eligible deductible expenses have been paid by  
26 the insured, the outpatient costs of treatment of the insured for alcohol-  
27 ism, drug abuse and nervous or mental conditions shall be paid on the  
28 same level they are provided for a medical condition, subject to the yearly  
29 and lifetime maximums provided in subsection (a).

30 ~~Sec. 2. K.S.A. 2003 Supp. 40-2,105 is hereby repealed.~~

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

[ federal law, regardless of the effective date of the insurance policy



**SENATE BILL No. 342**

By Committee on Financial Institutions and Insurance

1-22

12 AN ACT concerning insurance; ~~pertaining to motor vehicle insur-~~  
13 ~~ance; pertaining to contracts by stock insurance companies; per-~~  
14 ~~taining to required provisions of certain accident and health policies;~~  
15 ~~amending K.S.A. 8-173, 40-306 and 40-2202 and repealing the ex-~~  
16 ~~isting section sections.~~

17  
18 ~~Be it enacted by the Legislature of the State of Kansas:~~

19 ~~Section 1. K.S.A. 8-173 is hereby amended to read as follows:~~

20 8-173. (a) An application for registration of a vehicle as provided  
21 in article 1 of chapter 8 of the Kansas Statutes Annotated and  
22 amendments thereto, shall not be accepted unless the person mak-  
23 ing such application shall exhibit:

24 (1) A receipt showing that such person has paid all personal  
25 property taxes levied against such person for the preceding year,  
26 including taxes upon such vehicle, except that if such application  
27 is made before June 21 such receipt need show payment of only  
28 one-half the preceding year's tax; or

29 (2) evidence that such vehicle was assessed for taxation pur-  
30 poses by a state agency, or was assessed as stock in trade of a mer-  
31 chant or manufacturer or was exempt from taxation under the laws  
32 of this state.

33 (b) An application for registration of a vehicle as provided in  
34 article 1 of chapter 8 of the Kansas Statutes Annotated shall not  
35 be accepted if the records of the county treasurer show that the  
36 applicant is delinquent and owes personal property taxes levied  
37 against the applicant for any preceding year.

38 (c) An application for registration or renewal of registration of  
39 a motor vehicle shall not be accepted until the applicant signs a  
40 certification, provided by the director of motor vehicles, certifying  
41 that the applicant has and will maintain, during the period of reg-  
42 istration, the required insurance, self insurance or other financial  
43 security required pursuant to K.S.A. 40-3104 and amendments

From and after July 1, 2004

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1 thereto.

2 (d) An application for registration or renewal of registration of  
 3 a vehicle shall not be accepted if the applicant is unable to provide  
 4 proof of the insurance, self insurance or other financial security  
 5 required by article 31 of chapter 40 of the Kansas Statutes Anno-  
 6 tated. Proof of insurance shall be verified by examination of the  
 7 insurance card or other documentation issued by an insurance  
 8 company, a certificate of self insurance issued by the commis-  
 9 sioner, a binder of insurance, a certificate of insurance, a motor  
 10 carrier identification number issued by the state corporation com-  
 11 mission, proof of insurance for vehicles covered under a fleet pol-  
 12 icy, a commercial policy covering more than one vehicle or a policy  
 13 of insurance required by K.S.A. 40-3104, and amendments thereto  
 14 and for vehicles used as part of a drivers education program, a  
 15 dealership contract and a copy of a motor vehicle liability insur-  
 16 ance policy issued to a school district or accredited nonpublic  
 17 school. Examination of a photocopy or facsimile of any of these  
 18 documents shall suffice for verification of registration or renewal.  
 19 Proof of insurance may also be verified on-line or electronically  
 20 and the commissioner of insurance may require, by duly adopted rules  
 21 and regulations, any motor vehicle liability insurance company author-  
 22 ized to do business in this state to provide verification of insurance in that  
 23 manner. Any motor vehicle liability insurance company which is provid-  
 24 ing verification of insurance on-line or electronically on the day preceding  
 25 the effective date of this act may continue to do so in the same manner  
 26 and shall be deemed to be in compliance with this section.

27 ~~Sec. 2.~~ K.S.A. 40-306 is hereby amended to read as follows: 40-  
 28 306. The board of directors shall elect from their number a pres-  
 29 ident and vice-president, and shall appoint a secretary, treasurer  
 30 and such other officers as shall be prescribed in the bylaws, and  
 31 shall fill any vacancy that may occur. They shall also have power  
 32 to appoint any agents necessary for transacting the business of the  
 33 company, pay such salaries and require such bonds as they may  
 34 deem reasonable; and it shall be their duty to keep full and correct  
 35 entries of their transactions, which shall at all times be open to the  
 36 inspection of the stockholders. All contracts made by the company  
 37 shall be signed by the president or vice-president, and secretary, but such  
 38 requirement shall not apply to any contract now in existence or hereafter  
 39 entered into between the company and its agents.

From and after July 1, 2004

40 Section ~~1.~~ 2.5 K.S.A. 40-2202 is hereby amended to read as follows:  
 41 40-2202. (a) No policy of accident and sickness insurance shall be deliv-  
 42 ered or issued for delivery to any person in this state unless:

From and after July 1, 2004

43 (1) The entire money and other considerations therefor are expressed

1 therein;

2 (2) the time at which the insurance takes effect and terminates is  
3 expressed therein;

4 (3) it purports to insure only one person, except that a policy may  
5 insure, originally or by subsequent amendment, upon the application of  
6 an adult member of a family who shall be deemed the policyholder, any  
7 two or more eligible members of such family, including husband, wife,  
8 dependent children or any children under a specified age which shall not  
9 exceed nineteen years and any other person dependent upon the  
10 policyholder;

11 (4) the style, arrangement and over-all appearance of the policy give  
12 no undue prominence to any portion of the text, and unless every printed  
13 portion of the text of the policy and of any endorsements or attached  
14 papers is plainly printed in lightfaced type of a style in general use, the  
15 size of which shall be uniform and not less than 10-point with a lower-  
16 case unspaced alphabet length not less than 120-point (the "text" shall  
17 include all printed matter except the name and address of the insurer,  
18 name or title of the policy, the brief description if any, and captions and  
19 subcaptions);

20 (5) the exceptions and reductions of indemnity are set forth in the  
21 policy and, except those which are set forth in K.S.A. 40-2203 and amend-  
22 ments thereto, are printed, at the insurer's option, either included with  
23 the benefit provision to which they apply, or under an appropriate caption  
24 such as "Exceptions," or "Exceptions and reductions," provided, that if  
25 an exception or reduction specifically applies only to a particular benefit  
26 of the policy, a statement of such exception or reduction shall be included  
27 with the benefit provision to which it applies;

28 (6) each such form, including riders and endorsements, shall be iden-  
29 tified by a form number in the lower left-hand corner of the first page  
30 thereof;

31 (7) it contains no provision purporting to make any portion of the  
32 charter, rules, constitution, or bylaws of the insurer a part of the policy  
33 unless such portion is set forth in full in the policy, except in the case of  
34 the incorporation of, or reference to, a statement of rates or classification  
35 of risks, or short-rate table filed with the commissioner of insurance; and

36 (8) any provision purporting to base the payment of benefits on  
37 "usual, customary and reasonable charges" or a standard of similar import  
38 is specifically defined; ~~or~~ and the determination of payable benefits is  
39 developed from a statistically valid sample which: (A) Equitably recog-  
40 nizes geographic variations; (B) is produced at least every six months; and  
41 (C) is collected on the basis of the most current codes and nomenclature  
42 developed and maintained by recognized authorities.

43 (b) If any policy is issued by an insurer domiciled in this state for

1 delivery to a person residing in another state, and if the official having  
2 responsibility for the administration of the insurance laws of such other  
3 state shall have advised the commissioner of insurance that any such pol-  
4 icy is not subject to approval or disapproval by such official, the commis-  
5 sioner of insurance may by ruling require that such policy meet the stan-  
6 dards set forth in subsection (a) of this section and in K.S.A. 40-2203 and  
7 amendments thereto.

8 ~~Sec. 2.3. K.S.A. 40-2202 8-173, 40-306 and 40-2202 are hereby~~  
9 ~~repealed.~~

10 ~~Sec. 3.4. This act shall take effect and be in force from and after its~~  
11 ~~publication in the statute book.~~

SENATE BILL No. 546

By Committee on Federal and State Affairs

2-26

9 AN ACT concerning insurance; relating to the regulation of transfer and  
10 novation of insurance contracts; relating to group term life insurance;  
11 amending K.S.A. 40-433 and repealing the existing section.  
12

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

14 New Section ~~1.6~~ (a) This act applies to any insurer authorized in this  
15 state which either assumes or transfers the obligations or risks, or both,  
16 on contracts of insurance pursuant to an assumption reinsurance  
17 agreement.

18 (b) This act does not apply to: (1) Any reinsurance agreement or  
19 transaction in which the ceding insurer continues to remain directly liable  
20 for its insurance obligations or risks, or both, under the contracts of in-  
21 surance subject to the reinsurance agreement;

22 (2) the substitution of one insurer for another upon the expiration of  
23 insurance coverage pursuant to statutory or contractual requirements and  
24 the issuance of a new contract of insurance by another insurer;

25 (3) the transfer of contracts of insurance pursuant to mergers or con-  
26 solidations of two or more insurers to the extent that those transactions  
27 are regulated by statute;

28 (4) any insurer subject to a judicial order of liquidation or  
29 rehabilitation;

30 (5) any reinsurance agreement or transaction to which a state insur-  
31 ance guaranty association is a party, provided that policyholders do not  
32 lose any rights or claims afforded under their original policies pursuant  
33 to K.S.A. 40-2901 et seq., and amendments thereto, or K.S.A. 40-3001 et  
34 seq., and amendments thereto; or

35 (6) the transfer of liabilities from one insurer to another under a sin-  
36 gle group policy upon the request of the group policyholder.

37 New Sec. ~~2.7~~ For the purposes of this act:

38 (a) "Assuming insurer" means the insurer that acquires an insurance  
39 obligation or risk, or both, from the transferring insurer pursuant to an  
40 assumption reinsurance agreement.

41 (b) "Assumption reinsurance agreement" means any contract that  
42 both:

43 (1) Transfers insurance obligations or risks, or both, of existing or in-

(c) Sections 6 through 15 shall be known as the Kansas assumption reinsurance agreement act.  
(d) This section shall take effect on and after July 1, 2004.

1 force contracts of insurance from a transferring insurer to an assuming  
2 insurer; and

3 (2) is intended to effect a novation of the transferred contract of in-  
4 surance with the result that the assuming insurer becomes directly liable  
5 to the policyholders of the transferring insurer and the transferring in-  
6 surer's insurance obligations or risks, or both, under the contracts are  
7 extinguished.

8 (c) "Commissioner" shall mean the commissioner of insurance as de-  
9 fined by K.S.A. 40-102 and amendments thereto, unless the context re-  
10 quires otherwise.

11 (d) "Contract of insurance" means any written agreement between  
12 an insurer and policyholder pursuant to which the insurer, in exchange  
13 for premium or other consideration, agrees to assume an obligation or  
14 risk, or both, of the policyholder or to make payments on behalf of, or  
15 to, the policyholder or its beneficiaries. Contract of insurance includes all  
16 property, casualty, life, health, accident, surety, title and annuity business  
17 authorized to be written pursuant to the insurance laws of this state.

18 (e) "Home service business" means insurance business on which pre-  
19 miums are collected on a weekly or monthly basis by an agent of the  
20 insurer.

21 (f) "Notice of transfer" means the written notice to policyholders re-  
22 quired by section 3 and amendments thereto.

23 (g) "Policyholder" means any individual or entity which has the right  
24 to terminate or otherwise alter the terms of a contract of insurance.

25 (h) "Transferring insurer" means the insurer which transfers an in-  
26 surance obligation or risk, or both, to an assuming insurer pursuant to an  
27 assumption reinsurance agreement.

28 New Sec. 3. (a) The transferring insurer shall provide or cause to be  
29 provided to each policyholder a notice of transfer by first-class mail, ad-  
30 dressed to the policyholder's last known address or to the address to which  
31 premium notices or other policy documents are sent or, with respect to  
32 home service business, by personal delivery with acknowledged receipt.  
33 A notice of transfer shall also be sent to the transferring insurer's agents  
34 or brokers of record on the affected policies.

35 (b) The notice of transfer shall state or provide:

36 (1) The date the transfer and novation of the policyholder's contract  
37 of insurance is proposed to take place;

38 (2) the name, address and telephone number of the assuming and  
39 transferring insurer;

40 (3) that the policyholder has the right to either consent to or reject  
41 the transfer and novation;

42 (4) the procedures and time limit for consenting to or rejecting the  
43 transfer and novation;

1 (5) a summary of any effect that consenting to or rejecting the trans-  
2 fer and novation will have on the policyholder's rights;

3 (6) a statement that the assuming insurer is licensed to write the type  
4 of business being assumed in the state where the policyholder resides, or  
5 is otherwise authorized, as provided herein, to assume such business;

6 (7) the name and address of the person at the transferring insurer to  
7 whom the policyholder should send its written statement of acceptance  
8 or rejection of the transfer and novation;

9 (8) the address and phone number of the insurance department  
10 where the policyholder resides so that the policyholder may write or call  
11 the insurance department for further information regarding the financial  
12 condition of the assuming insurer;

13 (9) the following financial data for both companies:

14 (A) Ratings for the last five years if available or for such lesser period  
15 as is available from two nationally recognized insurance rating services  
16 acceptable to the commissioner including the rating service's explanation  
17 of the meaning of the ratings. If ratings are unavailable for any year of  
18 the five-year period, this shall also be disclosed;

19 (B) a balance sheet as of December 31 for the previous three years,  
20 if available, or for such lesser period as is available and as of the date of  
21 the most recent quarterly statement;

22 (C) a copy of the management's discussion and analysis that was filed  
23 as a supplement to the previous year's annual statement; and

24 (D) an explanation of the reason for the transfer.

25 (e) Notice in a form identical or substantially similar to the form set  
26 forth in this act shall be deemed to comply with the requirements of  
27 subsection (b) of section 3 and amendments thereto. (d) The notice of  
28 transfer shall include a pre-addressed, postage-paid response card which  
29 a policyholder may return as such policyholder's written statement of  
30 acceptance or rejection of the transfer and novation.

31 (e) The notice of transfer shall be filed as part of the prior approval  
32 requirement.

33 New Sec. 4. (a) Prior approval by the commissioner is required for  
34 any transaction where an insurer domiciled in this state assumes or trans-  
35 fers obligations or risks, or both, on contracts of insurance under an as-  
36 sumption reinsurance agreement. No insurer licensed in this state shall  
37 transfer obligations and/or risks on contracts of insurance issued to or  
38 owned by residents of this state to any insurer that is not licensed in this  
39 state. An insurer domiciled in this state shall not assume obligations or  
40 risks, or both, on contracts of insurance issued to or owned by policyhol-  
41 ders residing in any other state unless it is licensed in the other state, or  
42 the insurance regulatory official of that state has approved the  
43 assumption.

(i) This section shall take effect on and after July 1, 2004

(j) This section shall take effect on and after July 1, 2004.

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1 (b) Any licensed foreign insurer that enters into an assumption re-  
 2 insurance agreement which transfers the obligations or risks, or both, on  
 3 contracts of insurance issued to or owned by residents of this state, shall  
 4 file or cause to be filed with the commissioner of insurance of this state  
 5 the assumption certificate, a copy of the notice of transfer and an affidavit  
 6 that the transaction is subject to substantially similar requirements in the  
 7 state of domicile of both the transferring and assuming insurer. If no such  
 8 requirements exist in the domicile of either the transferring or assuming  
 9 insurers, then the requirements of this act shall apply.

10 (c) Any licensed foreign insurer that enters into an assumption rein-  
 11 surance agreement which transfers the obligations or risks, or both, on  
 12 contracts of insurance issued to or owned by residents of this state, shall  
 13 obtain prior approval of the commissioner of insurance of this state and  
 14 be subject to all other requirements of this act with respect to residents  
 15 of this state, unless the transferring and assuming insurers are subject to  
 16 assumption reinsurance requirements adopted by statute or regulation in  
 17 the jurisdiction of their domicile which are substantially similar to those  
 18 contained herein.

19 (d) The following factors, along with such other factors as the com-  
 20 missioner deems appropriate under the circumstances, shall be consid-  
 21 ered by the commissioner in reviewing a request for approval:

- 22 (1) The financial condition of the transferring and assuming insurers
- 23 and the effect the transaction will have on the financial condition of each
- 24 company;
- 25 (2) the competence, experience and integrity of those persons who
- 26 control the operation of the assuming insurer;
- 27 (3) the plans or proposals the assuming party has with respect to the
- 28 administration of the policies subject to the proposed transfer;
- 29 (4) whether the transfer is fair and reasonable to the policyholders of
- 30 both companies; and
- 31 (5) whether the notice of transfer to be provided by the insurer is
- 32 fair, adequate and not misleading.

33 New Sec. ~~5.10~~ <sup>6.10</sup> (a) Policyholders shall have the right to reject the trans-  
 34 fer and novation of their contracts of insurance. Policyholders electing to  
 35 reject the assumption transaction shall return to the transferring insurer  
 36 the pre-addressed, postage-paid response card or other written notice and  
 37 indicate thereon that the assumption is rejected (collectively referred to  
 38 as the "response card").

39 (b) Payment of any premium to the assuming company during the  
 40 24-month period after notice is received shall be deemed to indicate the  
 41 policyholder's acceptance of the transfer to the assuming insurer and a  
 42 novation shall be deemed to have been effected, provided that the pre-  
 43 mium notice clearly states that payment of the premium to the assuming

1 insurer shall constitute acceptance of the transfer. However, the premium  
 2 notice shall also provide a method for the policyholder to pay the pre-  
 3 mium while reserving the right to reject the transfer. With respect to any  
 4 home service business or any other business not using premium notices,  
 5 the disclosures and procedural requirements of this subsection are to be  
 6 set forth in the notice of transfer required by section ~~5.8~~ <sup>6.8</sup> and amendmen-  
 7 thereto, and in the assumption certificate.

8 (c) After no fewer than 24 months from the mailing of the initial  
 9 notice of transfer required under section ~~5.8~~ <sup>6.8</sup> and amendments thereto, if  
 10 positive consent to, or rejection of, the transfer and assumption has not  
 11 been received or consent has not been deemed to have occurred under  
 12 subsection (b) of this section, the transferring company shall send to the  
 13 policyholder a second and final notice of transfer as specified in section  
 14 3 and amendments thereto. If the policyholder does not accept or reject  
 15 the transfer during the one-month period immediately following the date  
 16 on which the transferring insurer mails the second and final notice of  
 17 transfer, the policyholder's consent will be deemed to have occurred and  
 18 novation of the contract will be effected. With respect to the home service  
 19 business, or any other business not using premium notices, the 24-month  
 20 and one-month periods shall be measured from the date of delivery of  
 21 the notice of transfer pursuant to subsection (a) of section ~~5.8~~ <sup>6.8</sup> and amend-  
 22 ments thereto.

23 (d) The transferring insurer will be deemed to have received the re-  
 24 sponse card on the date it is postmarked. A policyholder may also send  
 25 its response card by facsimile or other electronic transmission or by reg-  
 26 istered mail, express delivery or courier service, in which case the re-  
 27 sponse card shall be deemed to have been received by the assuming  
 28 insurer on the date of actual receipt by the transferring insurer.

29 New Sec. ~~6.11~~ <sup>7.11</sup> If a policyholder consents to the transfer pursuant to  
 30 section ~~5.10~~ <sup>6.10</sup> and amendments thereto, or if the transfer is effected under  
 31 section ~~7.12~~ <sup>8.12</sup> and amendments thereto, there shall be a novation of the con-  
 32 tract of insurance subject to the assumption reinsurance agreement with  
 33 the result that the transferring insurer shall thereby be relieved of all  
 34 insurance obligations or risks, or both, transferred under the assumption  
 35 reinsurance agreement and the assuming insurer shall become directly  
 36 and solely liable to the policyholder for those insurance obligations or  
 37 risks, or both.

38 New Sec. ~~7.12~~ <sup>8.12</sup> If an insurer domiciled in this state or in a jurisdiction  
 39 having a substantially similar law is deemed by the domiciliary commis-  
 40 sioner to be in hazardous financial condition or an administrative pro-  
 41 ceeding has been instituted against it for the purpose of reorganizing or  
 42 conserving the insurer, and the transfer of the contracts of insurance is  
 43 in the best interest of the policyholders, as determined by the domiciliary

(e) This section shall take effect on and after July 1, 2004.

This section shall take effect on and after July 1, 2004.

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1 commissioner, a transfer and novation may be effected notwithstanding  
2 the provisions of this act. This may include a form of implied consent and  
3 adequate notification to the policyholder of the circumstances requiring  
4 the transfer as approved by the commissioner.

5 New Sec. ~~8.~~<sup>13</sup> Residents of this state whose policies were previously  
6 subject to the protections set forth in K.S.A. 40-2901 et seq., and amend-  
7 ments thereto, or K.S.A. 40-3001 et seq., and amendments thereto, and  
8 whose policies are transferred to an unlicensed insurer pursuant to this  
9 section are entitled to continued protection thereunder.

10 New Sec. ~~9.~~<sup>14</sup> A notice of transfer and form for response by an insured  
11 to such a notice shall be deemed to be sufficient for the purposes of this  
12 act if it substantially conforms with the following form:

13 NOTICE OF TRANSFER  
14 IMPORTANT: THIS NOTICE AFFECTS YOUR CONTRACT  
15 RIGHTS. PLEASE READ IT CAREFULLY.

16 Transfer of Policy

17 The [ABC Insurance Company] has agreed to replace us as your insurer  
18 under[insert policy/certificate name and number] effective [insert date].  
19 The[ABC Insurance Company's] principal place of business is [insert ad-  
20 dress] and certain financial information concerning both companies is  
21 attached, including (1) ratings for the last five years, if available, or for  
22 such lesser period as is available from two nationally recognized insurance  
23 rating services; (2) balance sheets for the previous three years, if available,  
24 or for such lesser period as is available and as of the date of the most  
25 recent quarterly statement; (3) a copy of the Management's Discussion  
26 and Analysis that was filed as a supplement to the previous year's annual  
27 statement; and (4) an explanation of the reason for the transfer. You may  
28 obtain additional information concerning[ABC Insurance Company] from  
29 reference materials in your local library or by contacting your Insurance  
30 Commissioner at [insert address and phone number].

31 The [ABC Insurance Company] is licensed to write this coverage in  
32 your state. The Commissioner of Insurance in your state has reviewed  
33 the potential effect of the proposed transaction, and has approved the  
34 transaction.

35 Your Rights

36 You may choose to consent to or reject the transfer of your policy to  
37 [ABC Insurance Company]. If you want your policy transferred, you may  
38 notify us in writing by signing and returning the enclosed pre-addressed,  
39 postage-paid card or by writing to us at:

40 [Insert name, address and facsimile number of contact person.]

41 Payment of your premium to the assuming company will also constitute  
42 acceptance of the transaction. However, a method will be provided to  
43 allow you to pay the premium while reserving the right to reject the

1 transfer.

2 If you reject the transfer, you may keep your policy with us or exercise  
3 any option under your policy. If we do not receive a written rejection you  
4 will, as a matter of law, have consented to the transfer. However, before  
5 this consent is final you will be provided a second notice of the transfer  
6 24 months from now. After the second notice is provided, you will have  
7 one month to reply. If you have paid your premium to the [ABC Insur-  
8 ance Company], without reserving your right to reject the transfer, you  
9 will not receive a second notice.

10 Effect of Transfer

11 If you accept this transfer, [ABC Insurance Company] will be your  
12 insurer. It will have direct responsibility to you for the payment of all  
13 claims, benefits and for all other policy obligations. We will no longer  
14 have any obligations to you.

15 If you accept this transfer, you should make all premium payments and  
16 claims submissions to [ABC Insurance Company] and direct all questions  
17 to[ABC Insurance Company].

18 If you have any further questions about this agreement, you may con-  
19 tact [XYZ Insurance] or [ABC Insurance].

20 Sincerely,  
21 \_\_\_\_\_

22 [XYZ Insurance Company  
23 111 No Street  
24 Smithville, USA  
25 555/555-5555]

[ABC Insurance Company  
222 No Street  
Jonesville, USA  
333/333-3333]

26 For your convenience, we have enclosed a pre-addressed postage-paid  
27 response card. Please take time now to read the enclosed notice and  
28 complete and return the response card to us.

29 [Notice Date]

30 RESPONSE CARD

31 \_\_\_\_\_ Yes, I accept the transfer of my policy from [name of  
32 transferring company] to [name of assuming  
33 company].

34 \_\_\_\_\_ No, I reject the proposed transfer of my policy from  
35 [name of transferring company] to [name of assuming  
36 company] and wish to retain my policy with [name of  
37 transferring company].

38 \_\_\_\_\_  
39 Date Signature

40 Name: \_\_\_\_\_

41 Street Address: \_\_\_\_\_

42 City, State, Zip: \_\_\_\_\_

43 New Sec. ~~10.~~<sup>15</sup> (a) Sections ~~1~~<sup>6</sup> through ~~10.~~<sup>15</sup> and amendments thereto.

3-17  
P  
This section shall take effect on and after July 1, 2004.

P  
This section shall take effect on and after July 1, 2004.

1 shall be known and may be cited as the transfer and novation of insurance  
2 contracts act.

3 (b) This act shall be administered by the commissioner.

4 Sec. 11. K.S.A. 40-433 is hereby amended to read as follows: 40-433.

5 No policy of group life insurance shall be delivered in this state unless it  
6 conforms to one of the following descriptions:

7 (1) A policy issued by an insurance company organized under the laws  
8 of the state of Kansas on its employees and agents, which agents for the  
9 purpose of this act only shall be deemed employees, the beneficiaries  
10 under such policies to be persons designated by each insured, or a policy  
11 issued to an employer, or to the trustees of a fund established by an  
12 employer, which employer or trustees shall be deemed the policyholder,  
13 to insure employees of the employer for the benefit of persons other than  
14 the employer, both subject to the following requirements: (a) The employ-  
15 ees eligible for insurance under the policy shall be all of the employ-  
16 ees of the employer, or all of any class or classes thereof determined by  
17 conditions pertaining to their employment. The policy may provide that  
18 the term "employees" shall include the employees of one or more sub-  
19 sidiary corporations, and the employees, individual proprietors, and part-  
20 ners of one or more affiliated corporations, proprietors or partnerships if  
21 the business of the employer and of such affiliated corporations, propri-  
22 etors or partnerships is under common control through stock ownership,  
23 contract or otherwise. The policy may provide that the term "employees"  
24 shall include the individual proprietor or partners if the employer is an  
25 individual proprietor or a partnership. The policy may provide that the  
26 term "employees" shall include retired employees. No director of a corpo-  
27 rate employer shall be eligible for insurance under the policy unless  
28 such person is otherwise eligible as a bona fide employee of the corpo-  
29 ration by performing services other than the usual duties of a director.  
30 No individual proprietor or partner shall be eligible for insurance under  
31 the policy unless the proprietor or partner is actively engaged in and  
32 devotes a substantial part of their time to the conduct of the business of  
33 the proprietor or partnership. A policy issued to insure the employees of  
34 a public body may provide that the term "employees" shall include  
35 elected or appointed officials. (b) The premium for the policy shall be  
36 paid by the policyholder, either wholly from the employer's funds or funds  
37 contributed by the employer, or partly from such funds and partly from  
38 funds contributed by the insured employees. No policy shall be issued on  
39 which the entire premium is to be derived from funds contributed by the  
40 insured employees. A policy on which part of the premium is to be derived  
41 from funds contributed by the insured employees may be placed in force  
42 only if at least 75% of the then eligible employees, excluding any as to  
43 whom evidence of individual insurability is not satisfactory to the insurer,

1 elect to make the required contribution. A policy on which no part of the  
2 premium is to be derived from funds contributed by the insured em-  
3 ployees shall insure all eligible employees, or all except any as to whom  
4 evidence of individual insurability is not satisfactory to the insurer. (c)  
5 The policy shall cover at least three employees at date of issue. (d) The  
6 amounts of insurance under the policy shall be based upon some plan,  
7 precluding individual selection either by the employees or by the em-  
8 ployer or trustees.

9 (2) A policy issued to a creditor, who shall be deemed the policyhol-  
10 der, to insure debtors of the creditor, subject to the following require-  
11 ments: (a) The debtors eligible for insurance under the policy shall be all  
12 of the debtors of the creditor whose indebtedness is repayable in install-  
13 ments, or all of any class or classes thereof determined by conditions  
14 pertaining to the indebtedness or to the purchase giving rise to the in-  
15 debtedness. (b) The premium for the policy shall be paid by the policy-  
16 holder, either from the creditor's funds or from charges collected from  
17 the insured debtors, or from both. A policy on which part or all of the  
18 premium is to be derived from the collection from the insured debtors  
19 of identifiable charges not required of uninsured debtors shall not in-  
20 clude, in the class or classes of debtors eligible for insurance, debtors  
21 under obligations outstanding at its date of issue without evidence of  
22 individual insurability unless at least 75% of the then eligible debtors elect  
23 to pay the required charges. A policy on which no part of the premium  
24 is to be derived from the collection of such identifiable charges shall  
25 insure all eligible debtors, or all except any as to whom evidence of in-  
26 dividual insurability is not satisfactory to the insurer. (c) The policy may  
27 be issued only if the group of eligible debtors is then receiving new en-  
28 trants at the rate of at least 100 persons yearly, or may reasonably be  
29 expected to receive at least 100 new entrants during the first policy year,  
30 and only if the policy reserves to the insurer the right to require evidence  
31 of individual insurability if less than 75% of the new entrants become  
32 insured. (d) The amount of insurance on the life of any debtor shall at  
33 no time, under one or more policies, exceed the amount owed by that  
34 debtor which is repayable in installments to the creditor, or \$100,000,  
35 whichever is less. (e) The insurance shall be payable to the policyholder.  
36 Such payment shall reduce or extinguish the unpaid indebtedness of the  
37 debtor to the extent of such payment.

38 (3) A policy issued to a labor union, which shall be deemed the pol-  
39 icyholder, to insure members of such union for the benefit of persons  
40 other than the union or any of its officials, representatives or agents,  
41 subject to the following requirements: (a) The members eligible for in-  
42 surance under the policy shall be all of the members of the union, or all  
43 of any class or classes thereof determined by conditions pertaining to their

(c) This section shall take effect on and after July 1, 2004.

[ From and after July 1, 2004



1 employment, or to membership in the union, or both.

2 (b) The premium for the policy shall be paid by the policyholder,  
3 either wholly from the union's funds, or partly from such funds and partly  
4 from funds contributed by the insured members specifically for their  
5 insurance. No policy shall be issued on which the entire premium is to  
6 be derived from funds contributed by the insured members specifically  
7 for their insurance. A policy on which part of the premium is to be derived  
8 from funds contributed by the insured members specifically for their  
9 insurance may be placed in force only if at least 75% of the then eligible  
10 members excluding any as to whom evidence of individual insurability is  
11 not satisfactory to the insurer, elect to make the required contributions.  
12 A policy on which no part of the premium is to be derived from funds  
13 contributed by the insured members specifically for their insurance shall  
14 insure all eligible members, or all except any as to whom evidence of  
15 individual insurability is not satisfactory to the insurer.

16 (c) The policy shall cover at least 25 members at date of issue.

17 (d) The amounts of insurance under the policy shall be based upon  
18 some plan precluding individual selection either by the members or by  
19 the union.

20 (4) A policy issued to the trustees of a fund established in this state  
21 by two or more employers if a majority of the employees to be insured  
22 of each employer are located within the state, or to the trustees of a fund  
23 established by one or more labor unions, or by one or more employers  
24 and one or more labor unions, which trustees shall be deemed the poli-  
25 cyholder, to insure employees of the employers or members of the unions  
26 for the benefit of persons other than the employers or the unions, subject  
27 to the following requirements: (a) The persons eligible for insurance shall  
28 be all of the employees of the employers or all of the members of the  
29 unions, or all of any class or classes thereof determined by conditions  
30 pertaining to their employment, or to membership in the unions, or to  
31 both. The policy may provide that the term "employees" shall include  
32 retired employees and the individual proprietor or partners if any em-  
33 ployer is an individual proprietor or a partnership. No director of a cor-  
34 porate employer shall be eligible for insurance under the policy unless  
35 such person is otherwise eligible as a bona fide employee of the corpora-  
36 tion by performing services other than the usual duties of a director.  
37 No individual proprietor or partner shall be eligible for insurance under  
38 the policy unless the proprietor or partner is actively engaged in and  
39 devotes a substantial part of their time to the conduct of the business of  
40 the proprietor or partnership. The policy may provide that the term "em-  
41 ployees" shall include the trustees or their employees, or both, if their  
42 duties are principally connected with such trusteeship. (b) The premium  
43 for the policy shall be paid by the trustees either wholly from funds con-

1 tributed by the employer or employers of the insured persons, or by the  
2 union or unions, or by both, or partly from such funds and partly from  
3 funds contributed by the insured employees. No policy shall be issued on  
4 which the entire premium is to be derived from funds contributed by the  
5 insured persons. The policy shall insure all eligible persons, or all except  
6 any as to whom evidence of individual insurability is not satisfactory to  
7 the insurer. (c) The policy shall cover at date of issue at least 100 persons  
8 and not less than an average of five persons per employer unit. (d) The  
9 amounts of insurance under the policy shall be based upon some plan  
10 precluding individual selection either by the insured persons or by the  
11 policyholder, employers, or union.

12 (e) *The requirements of paragraphs (b) and (d) of this subsection*  
13 *governing employer contributions and amounts of insurance shall not ap-*  
14 *ply to a voluntary term life insurance policy issued on a group basis.*

15 (5) A policy issued to an association which has been organized and is  
16 maintained for purposes other than that of obtaining insurance, insuring  
17 at least 25 members, employees, or employees of members of the asso-  
18 ciation for the benefit of persons other than the association or its officers.  
19 The term "employees" as used herein shall be deemed to include retired  
20 employees. The premiums for the policies shall be paid by the policy-  
21 holder, either wholly from association funds, or funds contributed by the  
22 members of such association or by employees of such members or any  
23 combination thereof. The amounts of insurance under the policy shall be  
24 based upon some plan precluding individual selection either by the in-  
25 sured person or by the association or by the member.

26 (6) Any policy issued pursuant to this section may be extended to  
27 insure the employees against loss due to the death of their spouses, their  
28 children, their grandchildren, their spouse's children, their spouse's  
29 grandchildren, their parents, their spouse's parents, or any class or classes  
30 thereof, subject to the following requirements:

31 (a) The premium for the insurance shall be paid by the policyholder,  
32 either from the employer's funds or from funds contributed by the in-  
33 sured employees, or from both. If any part of the premium is to be derived  
34 from funds contributed by the insured employees, the insurance with  
35 respect to spouses, their children, their grandchildren, their spouse's chil-  
36 dren, their spouse's grandchildren, their parents and their spouse's par-  
37 ents may be placed in force only if at least 75% of the then eligible  
38 employees, excluding any as to whose family members' evidence of in-  
39 surability is not satisfactory to the insurer, elect to make the required  
40 contribution. If no part of the premium is to be derived from funds con-  
41 tributed by the employees, all eligible employees, excluding any as to  
42 whose family members' evidence of insurability is not satisfactory to the  
43 insurer, shall be insured with respect to their spouses, their children, their

1 grandchildren, their spouse's children, their spouse's grandchildren, their  
2 parents, their spouse's parents.

3 (b) The amounts of insurance shall be based upon some plan pre-  
4 cluding individual selection either by the employees or by the policyhol-  
5 der, or employer and shall not exceed with respect to any spouse, child  
6 or parent 50% of the insurance on the life of such insured employee.

7 (c) Upon termination of the insurance with respect to the spouse of  
8 an employee by reason of the employee's termination of employment or  
9 death, the spouse insured pursuant to this section shall have the same  
10 conversion rights as to the insurance on such spouse's life as is provided  
11 for the employee under K.S.A. 40-434 and amendments thereto.

12 (d) Notwithstanding the provisions of K.S.A. 40-434 and amend-  
13 ments thereto only one certificate need be issued for delivery to an in-  
14 sured person if a statement concerning any dependent's coverage is in-  
15 cluded in such certificate.

16 (e) *The requirements of paragraphs (a) and (b) of this subsection gov-*  
17 *erning participation, contribution by an employer and amounts of insur-*  
18 *ance for dependents shall not apply to a voluntary term life insurance*  
19 *policy issued on a group basis.*

20 (7) A policy may be issued to any other group which the commis-  
21 sioner of insurance finds is the proper subject of a group life insurance  
22 policy or contract. Any such group shall be subject to any appropriate  
23 conditions or provisions relating thereto which the commissioner may  
24 establish or require, consistent with the provisions of this act, and such  
25 conditions and provisions shall be included in the policy or contract.

~~26 Sec. 12. K.S.A. 40-433 is hereby repealed.~~

~~27 Sec. 13. This act shall take effect and be in force from and after its  
28 publication in the statute book.~~

# SENATE BILL No. 508

By Committee on Financial Institutions and Insurance

2-11

9 AN ACT concerning insurance; enacting the standard nonforfeiture law  
10 for individual deferred annuities; repealing K.S.A. 2003 Supp. 40-428a.

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

12 Section ~~1~~<sup>17</sup> (a) Sections ~~1~~<sup>17</sup> through ~~13~~<sup>29</sup>, and amendments thereto, shall  
13 be known as the standard nonforfeiture law for individual deferred  
14 annuities.

(c) This section shall take effect on and after July 1, 2004.

15 (b) For the purposes of this act, the term "commissioner" shall mean  
16 the commissioner of insurance.

17 Sec. ~~2~~<sup>18</sup> This act shall not apply to any reinsurance, group annuity  
18 purchased under a retirement plan or plan of deferred compensation  
19 established or maintained by an employer, including a partnership or sole  
20 proprietorship, or by an employee organization, or by both, other than a  
21 plan providing individual retirement accounts or individual retirement  
22 annuities under Section 408 of the federal internal revenue code, pre-  
23 mium deposit fund, variable annuity, investment annuity, immediate an-  
24 nuity, any deferred annuity contract after annuity payments have com-  
25 menced or reversionary annuity, nor to any contract which shall be  
26 delivered outside this state through an agent or other representative of  
27 the company issuing the contract.

This section shall take effect on and after July 1, 2004.

28 Sec. ~~3~~<sup>19</sup> (a) Except as stated in section ~~2~~<sup>18</sup>, and amendments thereto,  
29 in the case of any annuity contract issued on or after the operative date  
30 of this act as defined in section ~~13~~<sup>29</sup>, and amendments thereto, no annuity  
31 contract, shall be delivered or issued for delivery in this state unless such  
32 annuity contract contains in substance the following provisions, or cor-  
33 responding provisions which in the opinion of the commissioner are at  
34 least as favorable to the holder of such annuity contract, upon cessation  
35 of payment of considerations under the annuity contract:

36 (1) That upon cessation of payment of considerations under an an-  
37 nuity contract, or upon the written request of the owner of an annuity  
38 contract, the company shall grant a paid-up annuity benefit on a plan  
39 stipulated in the contract of such value as is specified in sections ~~5, 6, 7,~~<sup>21, 22, 23</sup>  
40 ~~8~~<sup>26</sup> and ~~10~~<sup>26</sup>, and amendments thereto;

41 <sup>24</sup> (2) if an annuity contract provides for a lump sum settlement at ma-  
42 turity, or at any other time, that upon surrender of such annuity contract  
43

1 at or prior to the commencement of any annuity payments, the company  
2 shall pay in lieu of a paid-up annuity benefit a cash surrender benefit of  
3 such amount as is specified in sections ~~5, 6, 8 and 10~~ <sup>21, 22, 23, 24</sup> and amendments  
4 thereto. The company may reserve the right to defer the payment of the  
5 cash surrender benefit for a period not to exceed six months after demand  
6 therefor with surrender of the annuity contract after making a written  
7 request to and receiving written approval from the commissioner. The  
8 request shall address the necessity and equitability to all policyholders of  
9 the deferral;

10 (3) a statement of the mortality table, if any, and interest rates used  
11 in calculating any minimum paid-up annuity, cash surrender or death  
12 benefits that are guaranteed under the annuity contract, together with  
13 sufficient information to determine the amounts of the benefits; and

14 (4) a statement that any paid-up annuity, cash surrender or death  
15 benefits that may be available under the annuity contract are not less than  
16 the minimum benefits required by any statute of the state in which the  
17 annuity contract is delivered and an explanation of the manner in which  
18 the benefits are altered by the existence of any additional amounts cred-  
19 ited by the company to the annuity contract, any indebtedness to the  
20 company on the annuity contract or any prior withdrawals from or partial  
21 surrenders of the annuity contract.

22 (b) Notwithstanding the requirements of this section, a deferred annu-  
23 ity contract may provide that if no considerations have been received  
24 under a contract for a period of two full years and the portion of the paid-  
25 up annuity benefit at maturity on the plan stipulated in the annuity con-  
26 tract arising from prior consideration paid would be less than \$20  
27 monthly, the company may, at its option, terminate the annuity contract  
28 by payment in cash of the then present value of the portion of the paid-  
29 up annuity benefit, calculated on the basis on the mortality table, if any,  
30 and interest rate specified in the annuity contract for determining the  
31 paid-up annuity benefit, and by this payment shall be relieved of any  
32 further obligation under the annuity contract.

33 <sup>21, 22, 23, 24</sup> Sec. A. <sup>20</sup> The minimum values as specified in sections ~~5, 6, 7, 8~~  
34 ~~10~~ and amendments thereto, of any paid-up annuity, cash surrender or  
35 death benefits available under an annuity contract shall be based upon  
36 minimum nonforfeiture amounts as defined in this section and amend-  
37 ments thereto.

38 (a) (1) The minimum nonforfeiture amount at any time at or prior  
39 to the commencement of any annuity payments shall be equal to an ac-  
40 cumulation up to such time at rates of interest as indicated in subsection  
41 (b) of the net considerations, as hereinafter defined, paid prior to such  
42 time, decreased by the sum of subparagraphs (A) through (D) below:

43 (A) Any prior withdrawals from or partial surrenders of the contract

1 accumulated at rates of interest as indicated in subsection (b).

2 (B) An annual contract charge of \$50, accumulated at rates of interest  
3 as indicated in subsection (b).

4 (C) Any premium tax paid by the company for the contract, accu-  
5 mulated at rates of interest as indicated in subsection (b).

6 (D) The amount of any indebtedness to the company on the contract,  
7 including interest due and accrued.

8 (2) The net considerations for a given contract year used to define  
9 the minimum nonforfeiture amount shall be an amount equal to 87.5%  
10 of the gross considerations credited to the annuity contract during that  
11 contract year.

12 (b) The interest rate used in determining minimum nonforfeiture  
13 amounts shall be an annual rate of interest determined as the lesser of  
14 three percent per annum and the following, which shall be specified in  
15 the annuity contract if the interest rate will be reset:

16 (1) The five-year constant maturity treasury rate reported by the fed-  
17 eral reserve as of a date, or average over a period, rounded to the nearest  
18 1/20th of one percent, specified in the contract no longer than 15 months  
19 prior to the annuity contract's issue date or redetermination date of par-  
20 agraph (4) of subsection (b) of section ~~4~~ <sup>20</sup> and amendments thereto;

21 (2) reduced by 125 basis points;

22 (3) where the resulting interest rate is not less than one percent; and

23 (4) the interest rate shall apply for an initial period and may be re-  
24 determined for additional periods. The redetermination date, basis and  
25 period, if any, shall be stated in the annuity contract. The basis is the date  
26 or average over a specified period that produces the value of the five-  
27 year constant maturity treasury rate to be used at each redetermination  
28 date.

29 (c) During the period or term that an annuity contract provides sub-  
30 stantive participation in an equity indexed benefit, such annuity contract  
31 may increase the reduction described in paragraph (2) of subsection (b)  
32 above by up to an additional 100 basis points to reflect the value of the  
33 equity index benefit. The present value at the issue date of such annuity  
34 contract, and at each redetermination date thereafter, of the additional  
35 reduction shall not exceed the market value of the benefit. The commis-  
36 sioner may require a demonstration that the present value of the addi-  
37 tional reduction does not exceed the market value of the benefit. Lacking  
38 such a demonstration that is acceptable to the commissioner, the com-  
39 missioner may disallow or limit the additional reduction.

40 (d) The commissioner may adopt rules and regulations to implement  
41 the provisions of subsection (c) of section ~~4~~ <sup>20</sup> and amendments thereto,  
42 and to provide for further adjustments to the calculation of minimum  
43 nonforfeiture amounts for annuity contracts that provide substantive par-

(c) This section shall take effect on and after July 1, 2004.

1 ticipation in an equity index benefit and for such other annuity contracts  
2 that the commissioner determines adjustments are justified.

3 Sec. ~~8.~~<sup>21</sup> Any paid-up annuity benefit available under an annuity con-  
4 tract shall be such that its present value on the date annuity payments  
5 are to commence is at least equal to the minimum nonforfeiture amount  
6 on that date. Present value shall be computed using the mortality table,  
7 if any, and the interest rates specified in the annuity contract for deter-  
8 mining the minimum paid-up annuity benefits guaranteed in such annuity  
9 contract.

P

[ This section shall take effect on and after July 1, 2004.

10 Sec. ~~9.~~<sup>22</sup> For annuity contracts that provide cash surrender benefits,  
11 the cash surrender benefits available prior to maturity shall not be less  
12 than the present value as of the date of surrender of that portion of the  
13 maturity value of the paid-up annuity benefit that would be provided  
14 under the contract at maturity arising from considerations paid prior to  
15 the time of cash surrender reduced by the amount appropriate to reflect  
16 any prior withdrawals from or partial surrenders of the contract, such  
17 present value being calculated on the basis of an interest rate not more  
18 than one percent higher than the interest rate specified in the contract  
19 for accumulating the net considerations to determine maturity value, de-  
20 creased by the amount of any indebtedness to the company on the con-  
21 tract, including interest due and accrued, and increased by any existing  
22 additional amounts credited by the company to the annuity contract. In  
23 no event shall any cash surrender benefit be less than the minimum non-  
24 forfeiture amount at that time. The death benefit under such annuity  
25 contracts shall at least equal to the cash surrender benefit.

P

[ This section shall take effect on and after July 1, 2004.

26 Sec. ~~7.~~<sup>23</sup> For annuity contracts that do not provide cash surrender ben-  
27 efits, the present value of any paid-up annuity benefit available as a non-  
28 forfeiture option at any time prior to maturity shall not be less than the  
29 present value of that portion of the maturity value of the paid-up annuity  
30 benefit provided under the annuity contract arising from considerations  
31 paid prior to the time the annuity contract is surrendered in exchange  
32 for, or changed to, a deferred paid-up annuity, such present value being  
33 calculated for the period prior to the maturity date on the basis of the  
34 interest rate specified in the annuity contract for accumulating the net  
35 considerations to determine maturity value, and increased by any addi-  
36 tional amounts credited by the company to the annuity contract. For  
37 annuity contracts that do not provide any death benefits prior to the  
38 commencement of any annuity payments, present values shall be calcu-  
39 lated on the basis of such interest rate and the mortality table specified  
40 in the contract for determining the maturity value of the paid-up annuity  
41 benefit. However, in no event shall the present value of a paid-up annuity  
42 benefit be less than the minimum nonforfeiture amount at that time.

P

[ This section shall take effect on and after July 1, 2004.

43 Sec. ~~8.~~<sup>24</sup> For the purpose of determining the benefits calculated under

1 sections ~~6 and 7~~<sup>22 23</sup>, and amendments thereto, in the case of annuity contracts  
 2 under which an election may be made to have annuity payments com-  
 3 mence at optional maturity dates, the maturity date shall be deemed to  
 4 be the latest date for which election shall be permitted by the annuity  
 5 contract, but shall not be deemed to be later than the anniversary of such  
 6 annuity contract next following the annuitant's 70th birthday or the 10th  
 7 anniversary of such annuity contract, whichever is later.

R  
 [ This section shall take effect on and after July 1, 2004.

8 Sec. ~~9.25~~<sup>10.25</sup> Any annuity contract that does not provide cash surrender  
 9 benefits or does not provide death benefits at least equal to the minimum  
 10 nonforfeiture amount prior to the commencement of any annuity pay-  
 11 ments shall include a statement in a prominent place in such contract  
 12 that such benefits are not provided.

P  
 [ This section shall take effect on and after July 1, 2004.

13 Sec. ~~10.26~~<sup>10.26</sup> Any paid-up annuity, cash surrender or death benefits avail-  
 14 able at any time, other than on the contract anniversary under any annuity  
 15 contract with fixed scheduled considerations, shall be calculated with al-  
 16 lowance for the lapse of time and the payment of any scheduled consid-  
 17 erations beyond the beginning of the contract year in which cessation of  
 18 payment of considerations under the annuity contract occurs.

P  
 [ This section shall take effect on and after July 1, 2004.

19 Sec. ~~11.27~~<sup>11.27</sup> For any annuity contract which provides, within the same  
 20 contract by rider or supplemental contract provision, both annuity ben-  
 21 efits and life insurance benefits that are in excess of the greater of cash  
 22 surrender benefits or a return of the gross considerations with interest,  
 23 the minimum nonforfeiture benefits shall be equal to the sum of the  
 24 minimum nonforfeiture benefits for the annuity portion and the mini-  
 25 mum nonforfeiture benefits, if any, for the life insurance portion com-  
 26 puted as if each portion ~~was~~<sup>was</sup> a separate contract. Notwithstanding the  
 27 provisions of sections ~~5, 6, 7, 8 and 10~~<sup>5, 6, 7, 8 and 10</sup>, and amendments thereto, addi-  
 28 tional benefits payable in the event of total and permanent disability, as  
 29 reversionary annuity or deferred reversionary annuity benefits, or as other  
 30 policy benefits additional to life insurance, endowment and annuity ben-  
 31 efits, and considerations for all such additional benefits, shall be disre-  
 32 garded in ascertaining the minimum nonforfeiture amounts, paid-up an-  
 33 nuity, cash surrender and death benefits that may be required by this act.  
 34 The inclusion of such benefits shall not be required in any paid-up ben-  
 35 efits, unless the additional benefits separately would require minimum  
 36 nonforfeiture amounts, paid-up annuity, cash surrender and death  
 37 benefits.

P  
 [ This section shall take effect on and after July 1, 2004.

38 Sec. ~~12.~~<sup>12.</sup> The commissioner may adopt rules and regulations reason-  
 39 ably necessary to implement the provisions of this act.

40 Sec. ~~13.29~~<sup>13.29</sup> (a) After the effective date of this act, a company may elect  
 41 to apply its provisions to annuity contracts on a contract form-by-contract  
 42 form basis before the second anniversary of the effective date of this act.

43 (b) In all other instances, this act shall become operative with respect

1 to all annuity contracts issued by the company on or after the second  
2 anniversary of this act.

3 Sec. ~~14~~<sup>32</sup> On July 1, 2006, K.S.A. 2003 Supp. 40-428a is hereby  
4 repealed.

5 ~~Sec. 15. This act shall take effect and be in force from and after its~~  
6 ~~publication in the statute book.~~

Sec. 33, This act shall take effect and be in force from and after its  
publication in the Kansas register.

(c) This section shall take effect on and after July 1, 2004.

Sec. ~~30~~ K.S.A. 2003 Supp. 40-2,105 is hereby repealed.

Sec. ~~31~~ From and after July 1, 2004, K.S.A. 8-173, 40-306, 40-  
409, 40-433, 40-2202 and K.S.A. 2003 Supp. 40-428a. are hereby  
repealed.

3-25