

MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

The meeting was called to order by Chairman Ruth Teichman at 9:30 A.M. on March 8, 2005 in Room 234-N of the Capitol.

All members were present.

Committee staff present:

Melissa Calderwood, Kansas Legislative Research Department  
Terri Weber, Kansas Legislative Research Department  
Ken Wilke, Office of Revisor of Statutes  
Sandy Yingling, Committee Secretary

Conferees appearing before the committee:

Chris Swickard, Second Vice President and Counsel Security Benefit Life Insurance Company  
David Hanson, Legislative Counsel, Kansas Life & Health Insurance Association  
Bill Henry, Kansas Credit Union Association, Director of Governmental Affairs  
Jerel Wright, Kansas Department of Credit Unions

Others attending:

See attached list.

Madam Chair announced several Minutes that would be approved in our March 15 meeting.

Madam Chair opened the hearing on **HB 2323**.

**HB 2323 - Insurance company structure; statutory changes compatible with corporation.**

Chris Swickard, Security Benefit Life Insurance Company, testified in favor of **HB 2323**. This bill amends three Kansas statutes. K.S.A. 40-305, which applies to domestic insurance companies having capital stock, sets forth certain requirements regarding the number of directors an insurer must have and how directors are to be elected. K.S.A. 40-306, which deals with, among other things, the organization of stock insurance companies and provides that the board of directors of a company "shall elect from their number a President and Vice President, and shall appoint a Secretary, Treasurer and such other officers as shall be prescribed in the by laws, and shall fill any vacancies that may occur." K.S.A. 40-502, which applies to mutual life insurance companies and mutual holding companies, parallels 40-305 and 40-306 in that 40-502 requires directors to take an oath of office "as in other corporations." (Attachment 1)

Chair Teichman asked what the vote was in the House? **HB 2323** had no opposition with a 121 to 0 vote. Chair Teichman explained that basically the committee was dealing with clean-up language. Senator Schmidt asked if K.S.A. 40-306 in the last sentence of Mr. Swickard's testimony should read K.S.A. 40-502? Mr. Swickard stated, yes.

David Hanson, Kansas Life & Health Insurance Association, offered written testimony in favor of **HB 2323**. (Attachment 2)

There were no further questions.

Madam Chair closed the hearing on **HB 2323**.

Madam Chair opened the hearing on **HB 2325**.

**HB 2325 - Life insurance; regulation of certain types of contracts.**

Terry Weber, Kansas Legislative Research Department, presented a brief overview of **HB 2325**. **HB 2325** amends K.S.A. 40-401, K.S.A. 40-436 and K.S.A. 40-3641. Primarily **HB 2325** provides for stock in mutual life insurance companies to issue funding agreements, guaranteed investment contracts and synthetic guarantees. This bill was requested by Security Benefit and Life Insurance Company. There are a few of the technical amendments and amending language on page 1, line 20 & 21; page 2, line 37 & 41; and page 3, line

CONTINUATION SHEET

MINUTES OF THE Senate Financial Institutions and Insurance Committee at 9:30 A.M. on March 8, 2005 in Room 234-N of the Capitol.

16. There are other areas with small technical changes. One amendment made by the House committee to insert the word "guarantee" on page 1, line 21. There is no fiscal impact. The House vote was 121 to 0.

Chris Swickard, Security Benefit Life Insurance Company, testified in favor of **HB 2325**. Mr. Swickard explained funding agreement, guaranteed investment contract (GIC) and synthetic GIC. Mr. Swickard stated the lack of clarity in the Kansas Insurance Code can have detrimental effects on Security Benefit in a couple of ways, first, purchasers may prefer to deal with insurers domiciled in states where the statutes are clearer. Second, Security Benefit is regularly asked by purchasers to be provided an opinion of outside counsel (at considerable expense to the Company, thus policyholders) attesting to the validity of the contracts under Kansas law. (Attachment 3)

Chair Teichman asked Mr. Swickard to please define "synthetic guaranteed investment." Mr. Swickard referred to his attachment (attachment 3 herewith). Madam Chair stated it sounded like hedging to her. There was some agreement from the committee.

David Hanson, Kansas Life & Health Insurance Association, offered written testimony in favor of **HB 2325**. (Attachment 4)

There were no further questions.

Madam Chair closed the hearing on **HB 2325**.

Madam Chair opened the hearing on **HB 2099**.

**HB 2099 - Credit unions; powers of the administrator.**

Melissa Calderwood, Kansas Legislative Research Department, presented an overview of **HB 2099**. The bill amends three sections of Kansas credit union law, K.S.A. 17-2206, K.S.A. 17-2223a, and K.S.A. 17-2244. This bill would require that a credit union approved to do business in the state be subject to the same examination as a state chartered credit union. **HB 2099** is requested by the Kansas Credit Union Association.. There was no opposition in the House, the bill passed 122 to 0. There were House committee amendments in the bill. The fiscal note stated that there would be an increase in collection of fees and that expenditures could increase slightly.

Bill Henry, Kansas Credit Union Association, testified in support of **HB 2099**. This bill verifies the authority that we already have in federal chartered credit unions. If a Missouri-chartered credit union with operations in Kansas was offering a service allowed in Missouri, but not in Kansas, then a Kansas-chartered credit union would provide a written request of the Administrator for a special order to allow it to offer that same service. (Attachment 5)

Jerel Wright, Kansas Department of Credit Unions, testified in favor of **HB 2099**. Mr. Wright explained the amendments to the Kansas statutes. (Attachment 6)

Senator Wysong asked why this year, instead of 5 or 7 years ago, are the credit unions bringing this forth? Mr. Wright answered, in 2001 they looked into it and made a request to include it in the banker's bill. They eventually withdrew.

Ken Wilke stated that on page 4, subsection b of the bill, it appears that in regard to K.S.A. 17-2206 it would put them on the same parenting issue of authority. Mr. Wright stated that it actually gives them the authority to go into the institution for examination.

There were no other questions.

Madam Chair closed the hearing on **HB 2099**.

Meeting adjourned at 10:01 a.m.

FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE GUEST LIST

DATE: Tues. March 8, 2005

NAME	REPRESENTING
Alex Kotlyarsky	F.I.A.
Bill Sneed	Amenus
David Hanson	K's Insur Assns
<del>David Hanson</del>	KID
Chris Spickard	Security Benefit Life Ins Co
Bill Denny	K's Credit Union Assn
David Drek	" " "
Janel Wright	K's Dept of Credit Unions
Josh Holman	" " "
Leslie Kaufman	KCUA
Muel Busch	KCUA

**SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE**

*Testimony on House Bill 2323*

*March 8, 2005*

*By: Chris Swickard, Second Vice President and Counsel  
Security Benefit Life Insurance Company*

Thank you for the opportunity to be here today. My name is Chris Swickard and I am Second Vice President and Counsel for Security Benefit Life Insurance Company ("Security Benefit"). I am here to testify in favor of House Bill No. 2323.

**HB 2323 amending K.S.A. 40-305, 40-306 and 40-502.**

*Background & Reasons for Support:*

**K.S.A. 40-305**, which applies to domestic insurance companies having capital stock, sets forth certain requirements regarding the number of directors an insurer must have and how directors are to be elected. It also currently states that "directors shall take the oath of office as in other corporations" the implication being that, as a general matter, directors of a corporation are required by Kansas law to take an oath of office. This is not the case. The Kansas Corporation Code (Chapter 17 of the Kansas statutes) does not require directors of a general business corporation to take an oath of office. We are aware of only two instances in which the Kansas Corporation Code requires something akin to an oath of office. Section 2208 of Article 22 of Chapter 17 applicable to credit unions provides that "all members of the board and committees and all officers shall be sworn . . ." and Section 2331 of Article 23 of Chapter 17 applicable to development credit corporations provides that, "directors shall be annually sworn to the proper discharge of their duties . . ." The presence or absence of an oath of office has no bearing on the responsibilities, the duties or the standard of care imposed upon a director of an insurance company. In addition, except in the very isolated instances noted above, the requirement that an oath be administered is inconsistent with requirements of the Kansas Corporation Code. We also note that oaths are not required under the Delaware Corporation Code or the American Bar Association's Model Business Corporation Act which many states have adopted. In view of this, Security Benefit supports the amendment of K.S.A. 40-305 as proposed in HB 2323.

**K.S.A. 40-306** deals with, among other things, the organization of stock insurance companies and provides that the board of directors of a company "shall elect from their number a President and Vice President, and shall appoint a Secretary, Treasurer and such other officers as shall be prescribed in the bylaws, and shall fill any vacancies that may occur" (emphasis added). In modern corporate law and governance, officers are not required to come from the board of directors unless that requirement is specified in the company's articles of incorporation or bylaws. In addition, the Kansas Corporation Code does not specify the officers a general business corporation is required to have. Ordinarily, it is the bylaws which specify which officers a company will have and how they are to be elected or appointed. Limiting the pool of candidates for President and Vice-President by law to the members of the board of directors is not only untraditional, it unnecessarily limits the pool of qualified candidates for these positions or forces companies to first put them on the board – whether they are qualified to be directors or

*Attachment 1  
3/8/05  
FII*

not. HB 2323 removes the words “from their number” in K.S.A. 40-306 and also removes the specific listing of officers a stock insurer must have. The language being removed regarding officers is replaced with language from the Kansas Corporation Code (K.S.A.17-6302) providing that officers shall be as stated in the bylaws or as provided by the Board of Directors. Thus, the proposed changes will better align the provisions in the Kansas Insurance Code dealing with officers of a stock insurance company with existing provisions in the Kansas Corporation Code. Security Benefit supports the amendment of K.S.A. 40-306 as proposed in HB 2323.

**K.S.A. 40-502**, which applies to mutual life insurance companies and mutual holding companies, parallels 40-305 and 40-306 in that 40-502 requires directors to take an oath of office “as in other corporations.” It also specifies the officers a mutual organization must have and that such officers shall be elected “from among their number” (i.e., the specified officers shall be elected from the pool of directors). HB 2323 removes the words “from their number” in K.S.A. 40-502 and also removes the specific listing of officers a mutual organization must have. The language being removed regarding officers is replaced with language from the Kansas Corporation Code (K.S.A.17-6302) providing that officers shall be as stated in the bylaws or as provided by the Board of Directors. Thus, the proposed changes will better align the provisions in the Kansas Insurance Code dealing with officers of a mutual organization with existing provisions in the Kansas Corporation Code. Security Benefit supports the amendment of K.S.A. 40-306 as proposed in HB 2323.

Thank you. I would be happy to address any questions you may have at this time.

# KANSAS LIFE & HEALTH INSURANCE ASSOCIATION

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

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

## Senate Financial Institutions and Insurance Committee Testimony on House Bill 2323

March 7, 2005

Madam Chair and Members of the Committee:

Thank you for this opportunity to support House Bill 2323 on behalf of the Kansas Life & Health Insurance Association, whose members are domestic insurance companies in Kansas.

The provisions of the bill will help modernize and simplify organizational requirements for insurance companies, making them more compatible with our corporation code. We support these changes and recommend them for your favorable consideration.

Respectfully,



DAVID A. HANSON  
Legislative Counsel

*Attachment 2*  
*3/8/05*  
*FII*

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

*Testimony on House Bill 2325*

*March 8, 2005*

*By: Chris Swickard, Second Vice President and Counsel  
Security Benefit Life Insurance Company*

Thank you for the opportunity to be here today. My name is Chris Swickard and I am Second Vice President and Counsel for Security Benefit Life Insurance Company ("Security Benefit"). I am here to testify in favor of House Bill No. 2325.

**HB 2325 amends K.S.A. 40-401, 40-436 and 40-3641.**

*Background and Reasons for Support:*

The proposed changes in HB 2325 would modernize the Kansas Insurance Code to reflect more fully what is occurring in the marketplace with respect to funding agreements, guaranteed investment contracts ("GICs") and synthetic guaranteed investment contracts ("synthetic GICs") and to remove any ambiguity regarding these products' status under the Kansas Insurance Code.

A "funding agreement" is an agreement under which an insurer accepts one or more deposits, typically from an institutional investor, and provides for (1) the deposits to be accumulated at a fixed or floating rate of interest and (2) one or more future payments to be made by the insurer to the policyholder. Obligations under a funding agreement are not based on mortality or morbidity contingencies, but normally do provide for a return of the principal amount invested as well as all or a portion of the interest credited under the agreement. Typical purchasers of funding agreements are mutual funds and large business entities.

A "guaranteed investment contract," or a "GIC," is very similar to a funding agreement. A GIC is a contract under which one or more deposits are accepted and that guarantees to the owner the return of principal, plus a fixed or floating rate of interest for a predetermined period of time. Like funding agreements, GICs are not based on mortality or morbidity contingencies. The typical purchaser of a GIC is a defined benefit or defined contribution retirement plan. Although there is no statute or regulation which provides for this, many view a GIC as an instrument purchased by a retirement plan and a funding agreement as the comparable instrument purchased by institutions which do not enjoy the tax-exempt status of a retirement plan.

A "synthetic GIC" is a contract under which the insurer's obligation is established by reference to a portfolio of assets that the insurer does not own. A synthetic GIC simulates the performance of a traditional GIC and is sometimes colloquially referred to as a "wrapper agreement" as it "wraps" the assets in question. In a typical synthetic GIC arrangement the insurer agrees to purchase from the policyholder, such as a defined benefit retirement plan, securities owned by the plan at the price the plan paid for the securities (i.e., at book value) if the plan must sell the securities in order to make benefit payments. Thus, the plan is assured of having sufficient assets to fund benefit payments.

*Attachment 3  
3/8/05  
FII*

Unfortunately, none of these products are mentioned specifically in the Kansas Insurance Code. K.S.A. 40-401 deals with the formation of life insurance companies and sets forth the types of products which life insurers are permitted to issue. However, it makes no reference to funding agreements, GICs or synthetic GICs, products that were not in existence in 1927 when the statute was adopted. Similarly, K.S.A. 40-436 authorizes life insurers to create separate accounts, accounts which are not charged with the liabilities arising from any other business the insurer conducts. However, the only types of products specifically mentioned under 40-436 are life insurance and annuity contracts. Thus the ability of a life insurer to create separate accounts to support funding agreements and GICs is unclear. Finally, K.S.A. 40-3602 *et. seq.* governs the priority status of claims against the estate of an insolvent insurer. K.S.A. 40-3641 identifies claims under life insurance and annuity policies as Class 3 “loss claims” but makes no mention of funding agreements, GIC and synthetic GICs.

Given that the Kansas Insurance Code does not specifically mention funding agreements, GICs and synthetic GICs, confusion can be created in the minds of potential purchasers about these products’ status. The lack of clarity in the Kansas Insurance Code can have detrimental effects on Security Benefit in a couple of ways. First, purchasers may prefer to deal with insurers domiciled in states where the statutes are clearer. Second, Security Benefit is regularly asked by purchasers to be provided an opinion of outside counsel (at considerable expense to the Company and, thus, its policyholders) attesting to the validity of the contracts under Kansas law. The Kansas Insurance Department (the “Department”) has worked cooperatively with Security Benefit in dealing with these issues and we appreciate their support. For example, the Department’s General Counsel issued an opinion in May of 2000 indicating that funding agreements were viewed by the Department as annuities and therefore a life insurer was permitted to issue them under K.S.A. 40-401. The opinion also indicated that the Department believed funding agreements should be accorded Class 3 loss claim status. However, the opinion is getting dated and in any event, obviously does not carry the weight of a statute adopted by the Legislature.

A number of other states have recognized these problems and amended their laws to specifically provide statutory authority and insolvency claim priority for products like funding agreements. New York, California, Connecticut and Nebraska have specifically dealt with this issue.

The bill was amended by the House Committee on Insurance to correct a technical error where the word “guaranteed” was left out of Section 1, line 21. Security Benefit supports House Bill 2325 as amended in order to clarify the cited sections of the Kansas Insurance Code and to remove competitive barriers.

Thank you. I would be happy to address any questions you may have at this time.



# KANSAS LIFE & HEALTH INSURANCE ASSOCIATION

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

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

## Senate Financial Institutions and Insurance Committee Testimony on House Bill 2325

March 7, 2005

Madam Chair and Members of the Committee:

Thank you for this opportunity to support House Bill 2325 on behalf of the Kansas Life & Health Insurance Association, whose members are domestic insurance companies in Kansas.

We support the inclusions of the references to the types of contracts as shown in House Bill 2325. We believe this will help provide clarity in identifying and regulating these types of contracts. We support these changes and recommend them for your favorable consideration.

Respectfully,



DAVID A. HANSON  
Legislative Counsel

*Attachment 4  
3/8/05  
FII*



KANSAS CREDIT UNION ASSOCIATION

Testimony on HB 2099  
For  
The House Financial Institutions Committee

March 8, 2005

Madam Chair, members of the Senate Financial Institutions and Insurance Committee, thank you for the opportunity to share comments on behalf of the Kansas Credit Union Association. I am Bill Henry and I serve the Kansas Credit Union Association as the Director of Governmental Affairs. The Kansas Credit Union Association represents 112 credit unions with combined membership of over half a million Kansans.

I appear today as a proponent of HB 2099, which allows the Administrator of the State Credit Union Department to issue special orders to insure parity for state chartered credit unions with foreign based credit unions operating in Kansas.

The State Credit Union Administrator currently has authority that has been in place since 1982 to approve requests for parity between state chartered and federally chartered credit unions. HB 2099 will extend the Administrator's authority to provide this same parity between Kansas-chartered credit unions and out-of-state chartered credit unions with operations in Kansas. The parity provisions found in HB 2099 match the parity provisions for banks and savings and loans that were included in SB 142 passed by the Legislature in 2001 and will provide the State Credit Union Administrator with the same authority to issue orders for parity for credit unions currently held by the Kansas Bank Commissioner for banks.

The process used would follow the process that has been in place for parity requests with federally chartered credit unions. If a Missouri-chartered credit union with operations in Kansas was offering a service allowed in Missouri, but not in Kansas, then a Kansas-chartered credit union could provide a written request of the Administrator for a special order to allow it to offer that same service. The Administrator would need to determine that the special order was "reasonably required" to preserve and protect the welfare of such an institution and promote the general economy of the state as a part of this process.

Under this bill, whenever the Administrator issues such a special order, a written report would have to be filed with the president and the minority leader of the Senate and with the speaker and the minority leader of the House of Representatives.

Finally, Madam Chair, I would like to point out two additional sections of the bill covering examinations of out of state credit unions. These sections clarify that out-of-state credit unions will comply with the provisions of subsection (b) of K.S.A. 17-2206 covering examinations and that such credit unions shall pay to the Administrator the same fees for examination that state-chartered credit unions are required to pay.

I would be happy to respond to any questions the committee would have, Madam Chair.

Respectfully Submitted,

Bill Henry  
KCUA, Director of Governmental Affairs

650 S. Westdale Drive  
Suite 100  
Wichita, Kansas  
67209-2570  
1-800-362-2076  
Tel 316-942-7965  
Fax 316-206-2203

Topeka Office  
816 SW Topeka Blvd.  
Topeka, Kansas  
66612-1635  
1-888-482-5282  
Tel 785-232-2446  
Fax 785-232-2730

Attachment 5  
3/8/05  
FII



# K A N S A S

JEREL WRIGHT, ADMINISTRATOR

DEPARTMENT OF CREDIT UNIONS

KATHLEEN SEBELIUS, GOVERNOR

**Senate Financial Institutions and Insurance Committee  
Testimony on House Bill 2099  
From Jerel Wright  
March 8, 2005**

Chairman Teichman and members of the committee:

I ask for the committee's support in passage of this bill.

House Bill 2099 amends three sections of Kansas credit union law, K.S.A. 17-2206, K.S.A. 17-2223a and K.S.A. 17-2244 in the following ways.

**Section 1 amends K.S.A. 17-2206: Supervision by administrator; reports, plans and programs, penalties; examination, fees.**

This amendment requires the Administrator to examine and collect examination fees from out-of-state credit unions with approved offices in Kansas.

The collection of fees will allow the Kansas Department of Credit Unions to expand the pool of funds available to fund the Department while providing the ability to lower examination fees for Kansas state-chartered credit unions.

The requirement for the examination of out-of-state credit unions would increase the work required by the Department, although, we would anticipate this work could be handled with our current staff.

**Section 2 amends K.S.A 17-2223a. Administrator's approval required before foreign credit union does business in state; examination; hearing.**

This amendment clarifies that an out-of-state credit union is subject to the same examination requirements as a credit union chartered in Kansas.

The language struck from the K.S.A. 17-2223a(b) already exists in K.S.A. 17-2206 (b).

400 KANSAS AVENUE, SUITE B, TOPEKA, KS 66603

Voice 785-296-3021

Fax 785-296-6830

e-mail: [kdcuoffice@kdcu.state.ks.us](mailto:kdcuoffice@kdcu.state.ks.us)

*Attachment 6  
3/8/05  
FII*

**Section 3 amends K.S.A 17-2244. Authority to operate in same activities as federal chartered credit unions; powers of the administrator; report to legislature.**

This amendment expands Administrator's authority to authorize any credit union to engage in any activity in which such credit union could engage were they operating as any other federally insured credit union, whether state or federally chartered.

This is considered a "parity" provision allowing the Administrator powers consistent with the authority granted to the Office of the State Bank Commissioner by the 2001 Legislature.

Any special order adopted under this law requires specific disclosure by the Administrator to the house and senate leadership at the time of issuing the special order.

**Again, I ask for your support in passage of HB 2099.**

---