

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 22, 2006 in Room 234-N of the Capitol.

All members were present except:

Jim Barone- excused
Dennis Wilson- excused

Committee staff present:

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

Conferees appearing before the committee:

Sonya Allen, State Banking Commissioner's office
Brad Smoot, BCBS
Larrie Ann Lower, Kansas Assn. Of Health Plans
Shannon Ratliff, Ratliff Law Firm
Bill Sneed, State Farm Insurance

Others attending:

See attached list.

Senator Schmidt moved to approve Minutes of March 14, 15 and 16. Senator Wysong seconded. Motion passed.

Final Action

The Chair said the committee has heard **(HB 2874) - An act relating to transmission of money; providing for the regulation thereof.** The Chair said there were some questions raised regarding **(HB 2874)** and Sonya Allen of the State Banking Commissioner's Office was present to talk about the amendments.

Sonya Allen said there were two issues brought up about **(HB 2874)**. She said the first issue was brought up by Ken Wilke concerning the need to add a provision on Page 2 of the bill. It has to do with the Kansas Open Records Act. It is required that if there is a confidentiality provision enacted or substantially amended that it Sunsets in five years unless the legislature reauthorizes it. That adds a new subsection (e) on Page 2 of the bill making that expire in 2011 unless the legislature reauthorizes it.

The second provision is on Page 4 line 26. She said Senator Wysong raised the issue of whether or not \$100,000 in net worth was an appropriate amount for a money transmitter. We did a review of other states laws and also found that in Kansas law it had been \$100,000 since our laws were enacted in 1967, so it was probably appropriate to increase that amount. We propose to amend that to \$250,000 in net worth. (Attachment 1)

Senator Brungardt moved to pass the amendments to **(HB 2874)** out favorably. Senator Wysong seconded. Motion passed.

Senator Wysong moved to pass the **(HB 2874)** out favorably as amended. Senator Steineger seconded. Motion passed.

The Chair opened discussion on **(HB 2692) - An act concerning insurance; pertaining to risk-based capital requirements.**

The Chair said there were two amendments to **(HB 2692)**. The first offered by John Federico. She said he would like to change group life so they can offer it to groups of two or more instead of three or more. Senator Wysong moved to amend **(HB 2692)** to offer group life to groups of two or more. Senator Steineger seconded. Motion passed.

CONTINUATION SHEET

MINUTES OF THE Senate Financial Institutions and Insurance Committee at 9:30 A.M. on March 22, 2006 in Room 234-N of the Capitol.

The Chair said the other amendment to **(HB 2692)** was brought by Dave Hanson of the Kansas Association of Property and Casualty Insurance Companies and the Kansas Life and Health Insurance Association. Mr. Hanson said the word “insured” needs to be corrected to “insurer” and when that is corrected, we are providing a new definition for domiciliary state consistent with the law that was passed last year and we are tying these amendments to the amendments that were made last year. (Attachment 2)

Senator Schmidt moved to approve the amendment to (HB 2692). Senator Brungardt seconded. Motion passed.

Senator Wysong moved to pass (HB 2692) out favorably as amended. Senator Barnett seconded. Motion passed.

The Chair called for discussion by the Committee on **(SB 592)**. Senator Barnett asked if there was a time requirement for exposure to asbestos for someone with a Mesothelioma. Shannon Ratliff said there is no threshold for a person diagnosed with Mesothelioma. They don't have to go through the Prima Facie cases as long as they have the definition of Meso in the bill and as long as they have a diagnosis from a Board certified pathologist as meso, they can go straight into the system, there is no requirement of any exposure.

Ken Wilke said there were issues raised that required amendments and he had a balloon for that. The first issue involved the question of the automatic adoption of various amendments likely to be American Medical Association guidelines and that is not proper under Kansas Law, so the one you have would go through the various places where there is an automatic amendment and just require those documents be put in place as they exist on July 1, 2006, which is the effective date of the Act.

On Page 7 the material set off on the right part of the section of **(HB 2868)** was apparently not included in the bill and should have been. So, I've pulled those particular portions from **(HB 2868)** and proposed to bring those in starting after line 25 on Page 7, he said. The subsection (e) deals with a civil action alleging an asbestos claim based upon mesothelioma, no prima facie showing is required. That should have been carried over. The subsections (h) and (i) also apply to both the asbestos and silicosis sections in the original **(HB 2868)**. They should have been carried over since they do apply to asbestosis and that is why they are included here.

The third thing that is necessary is on lines 16 through 18 in the amended material in **(HB 2868)**. The subsection (i) that is in **(HB 2868)** says that presentation of prima facie evidence meeting requirements in various subsections, but we don't know what section that refers back to. After consulting with the requester of the amendments, we just basically cut out all the subsections and left “meeting the requirements of section 3 and amendments thereto.”

On line 38, page 7 of **(SB 592)** the subsections (b) through (g) should have been changed to (b) through (e) because of the amendments that were made and this was just an internal reference that got missed.

The Chair called for any other questions from the committee.

The Chair recognized Senator Steineger. Senator Steineger said his thoughts on the underlying bill are that on a more global picture, he does agree that the American courts and lawsuits are out of control. I think it is very expensive and ultimately harmful to our national competitors to have a court system where there are so many lawsuits and many of them are frivolous. I think what we really need is a systemic look and overhaul of the way we process lawsuits and jurisprudence. I don't agree that going at it piecemeal, like this bill attempts to, is the way to go. I think this way will take forever if you want to overhaul the way we do lawsuits in this country. I think this bill needs to be part of a larger study this summer or ongoing about what is a bigger better way to overhaul jurisprudence permanently and how we process lawsuits and who can sue and over what. So, I think this bill and this issue needs to be looked at more thoroughly in some summer committee of some sort that has attorneys but, also has some business people, since they are the ones most negatively impacted by this, and try to find a more systemic solution. I don't think we should move this bill forward, Senator Steineger said.

CONTINUATION SHEET

MINUTES OF THE Senate Financial Institutions and Insurance Committee at 9:30 A.M. on March 22, 2006 in Room 234-N of the Capitol.

The Chair asked for further comments and asked for the wishes of the committee.

Senator Brownlee moved to pass out favorably the balloon as presented. Senator Wysong seconded. Motion passed.

Senator Brownlee moved to pass (SB 592) out favorably. Senator Wysong seconded. Motion passed with Senator Steineger voted No. (Attachment 3)

The Chair said her intention at this time is to try to amend into **(HB 2691) - An act concerning insurance; pertaining to HIPAA compliance** - some of the bills we have had in the F I & I Committee. Some of the bills she said she would like to amend into it are **(SB 405) - certain foreign insurance companies doing business in the state; SB 422 - concerning surety bonds; eliminating requirements for multiple sureties and SB 442 - An act concerning insurance; pertaining to allowing certain lienholders and mortgagees to be shown on the application for insurance.**

These are all bills we have passed out of this committee. The Chair said she asked Larrie Ann Lower, Kansas Association of Health Plans, to explain the bill. **(HB 2693) - An act concerning insurance; pertaining to continuation of certain group policies; establishing a pilot program to allow certain small businesses to provide health insurance through the state employees health benefits program has been presented by the Insurance Department.**

Larrie Ann said this bill was presented by the Insurance Department to the House Committee. The House Committee passed it out of committee but then it got amended on the floor with some pilot project and then it got killed in final action. Health insurance companies have treated HMO's and PPO's the same as far as continuation of coverage issues of people they have moved from coverage to coverage. But there is a technical change in the bill in the legislation that we needed to make sure that health plans treat HMO's and PPO's the same. This is just a technical change.

The Chair moved to **(HB 2366)**. The Chair said she would like to gut **(HB 2366)** and drop into it **(SB 522)** which is Barbara Allen's bill; **(SB 539) - concerning casualty insurance companies; relating to certain requirements regarding filing rates, forms and premiums**, which is the bill that would change the approval process for policy forms for certain lines of commercial insurance and **(SB 322) - Relating to the Kansas Automobile Reparations Act; concerning certain penalties; providing for triple damages, which is the penalty phase of the uninsured motorist.**

Ken Wilke said what was in the bill was rewritten so it would conform to the Department of Labor guidelines and some of the terminology was cleaned up and you will see some additional changes in here where we may have a second internal appeal or review. Everything that was in **(SB 522)** that left the senate is in here. Mr. Wilke said there was one additional amendment made last night in the House that is not in here. I don't know if you want to include that or not. The substance of that other amendment was to also require that when an insured is notified what the external review process is, they also be advised of their right to waive the second appeal and go directly to the external review process. (Attachment 4)

Senator Wysong moved to move out (HB 2366) favorably as amended which includes (SB 522); (SB 539) and (SB 322). Senator Barnett seconded. Motion passed.

Senator Steineger moved that (HB 2691) be amended to include the following three: (SB 405) as passed by the Senate; (SB 422) as passed by the Senate and (SB 442) as passed by the Senate and (HB 2693) as passed by the House be amended into (HB 2691). Senator Barnett seconded. Motion passed.

Senator Steineger moved to pass (HB 2691) out favorably as amended. Senator Brungardt seconded. Motion passed.

The Chair said depending on what happens to **(SB 512)** and **(SB 592)**, we might have a meeting at the rail.

Meeting adjourned at 10:30 a.m. This is the final meeting of this Committee for 2006.

As Amended by House Committee

Session of 2006

HOUSE BILL No. 2874

By Committee on Federal and State Affairs

2-9

10 AN ACT relating to transmission of money; providing for the regulation
11 thereof; amending K.S.A. 9-508, 9-509, 9-510, 9-511, 9-512 and 9-513
12 and repealing the existing sections.
13

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

15 New Section 1. The provisions of K.S.A. 9-508 through 9-513, and
16 amendments thereto, and sections 2 through 4, and amendments thereto,
17 shall be known as and may be cited as the Kansas money transmitter act.

18 New Sec. 2. (a) The commissioner shall not issue a license unless the
19 commissioner is of the opinion that the person will be able to and will
20 perform its obligations to purchasers of money transmission services and
21 purchasers, payees and holders of money orders sold by it and its agents,
22 and that the financial responsibility, character, reputation, experience and
23 general fitness of the person, its senior officers, directors and principal
24 stockholders are such to warrant belief that the business will be operated
25 efficiently, fairly and in the public interest.

26 (b) The commissioner may, after notice and an opportunity for a
27 hearing, revoke a license if the commissioner finds:

28 (1) The person may be financially unable to perform its obligations
29 or that the person has willfully failed without reasonable cause to pay or
30 provide for payment of any of its obligations related to the person's money
31 transmission business;

32 (2) the person no longer meets a requirement for initial granting of
33 a license;

34 (3) the person or a senior officer, director or a stockholder who owns
35 more than 10% of the money transmission business' outstanding stock
36 has been convicted of a crime involving fraud, dishonesty or deceit;

37 (4) there has been entry of a federal or state administrative order
38 against the person for violation of any law or any regulation applicable to
39 the conduct of the person's money transmission business;

40 (5) a refusal by the person to permit an investigation by the
41 commissioner;

42 (6) a failure to pay to the commissioner any fee required by this act;
43 or

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1 (7) a failure to comply with any order of the commissioner.
 2 New Sec. 3. (a) Each licensee under this act shall at all times possess
 3 permissible investments having an aggregate market value, calculated in
 4 accordance with generally accepted accounting principles, of not less than
 5 the aggregate amount of all outstanding payment instruments issued or
 6 sold by the licensee in the United States. This requirement may be waived
 7 by the commissioner if the dollar volume of a licensee's outstanding pay-
 8 ment instruments does not exceed the bond or other security devices
 9 posted by the licensee pursuant to K.S.A. 9-509, and amendments
 10 thereto.

11 (b) Permissible investments shall be deemed by operation of law to
 12 be held in trust for the benefit of the purchasers and holders of the
 13 licensee's outstanding payment instruments in the event of the bank-
 14 ruptcy of the licensee even if such permissible investments are commin-
 15 gled with other assets of the licensee.

16 New Sec. 4. (a) Notwithstanding any other provision of law, all in-
 17 formation or reports obtained by the commissioner in the course of li-
 18 censing or examining a person engaged in money transmission business
 19 shall be confidential and may not be disclosed by the commissioner except
 20 as provided in subsection (b) or (c).

21 (b) The commissioner shall have the authority to share supervisory
 22 information, including examinations, with other state or federal agencies
 23 having regulatory authority over the person's money transmission busi-
 24 ness and shall have the authority to conduct joint examinations with other
 25 regulatory agencies.

26 (c) The commissioner may provide for the release of information to
 27 law enforcement agencies or prosecutorial agencies or offices who shall
 28 maintain the confidentiality of the information.

29 (d) Nothing shall prohibit the commissioner from releasing to the
 30 public a list of persons licensed or their agents or from releasing aggre-
 31 gated financial data on such persons.

32 ~~Sec. 5. K.S.A. 9-508 is hereby amended to read as follows: 9-508. As
 33 used in this act, the word "person" shall mean any individual, partnership,
 34 association, joint stock association, trust, corporation, or any other form
 35 of business enterprise, authorized to do business in this state.~~

36 (a) "Commissioner" means the state bank commissioner;

37 (b) "electronic instrument" means a card or other tangible object for
 38 the transmission or payment of money, including a stored value card or
 39 device which contains a microprocessor chip, magnetic stripe or other
 40 means for the storage of information, that is prefunded and for which the
 41 value is decremented upon each use, but does not include a card or other
 42 tangible object that is redeemable by the issuer in goods or services;

43 (c) "monetary value" means a medium of exchange, whether or not

(e) The provisions of subsection (a) shall expire on July 1, 2011, unless the legislature acts to reauthorize such provisions. The provisions of subsection (a) shall be reviewed by the legislature prior to July 1, 2011.

1 *redeemable in money;*

2 (d) *“money transmission” means to engage in the business of the sale*
3 *or issuance of payment instruments or of receiving money or monetary*
4 *value for transmission to a location within or outside the United States*
5 *by wire, facsimile, electronic means or any other means;*

6 (e) *“outstanding payment instrument” means any payment instru-*
7 *ment issued by the licensee which has been sold in the United States*
8 *directly by the licensee or any money order or instrument issued by the*
9 *licensee which has been sold by an agent of the licensee in the United*
10 *States, which has been reported to the licensee as having been sold and*
11 *which has not yet been paid by or for the licensee;*

12 (f) *“payment instrument” means any electronic or written check,*
13 *draft, money order, travelers check or other electronic or written instru-*
14 *ment or order for the transmission or payment of money, sold or issued*
15 *to one or more persons, whether or not such instrument is negotiable. The*
16 *term “payment instrument” does not include any credit card voucher, any*
17 *letter of credit or any instrument which is redeemable by the issuer in*
18 *goods or services;*

19 (g) *“permissible investments” means:*

20 (1) *Cash;*

21 (2) *certificates of deposit or other debt obligations of a financial in-*
22 *stitution, either domestic or foreign;*

23 (3) *bills of exchange or time drafts drawn on and accepted by a com-*
24 *mmercial bank, otherwise known as bankers’ acceptances, which are eligible*
25 *for purchase by member banks of the federal reserve system;*

26 (4) *any investment bearing a rating of one of the three highest grades*
27 *as defined by a nationally recognized organization that rates such*
28 *securities;*

29 (5) *investment securities that are obligations of the United States, its*
30 *agencies or instrumentalities, or obligations that are guaranteed fully as*
31 *to principal and interest of the United States, or any general obligations*
32 *of any state, municipality or any political subdivision thereof;*

33 (6) *shares in a money market mutual fund, interest-bearing bills or*
34 *notes or bonds, debentures or stock traded on any national securities*
35 *exchange or on a national over-the-counter market, or mutual funds pri-*
36 *marily composed of such securities or a fund composed of one or more*
37 *permissible investments as set forth herein;*

38 (7) *any demand borrowing agreement or agreements made to a cor-*
39 *poration or a subsidiary of a corporation whose capital stock is listed on*
40 *a national exchange;*

41 (8) *receivables which are due to a licensee from its authorized agents*
42 *pursuant to a contract, which are not past due or doubtful of collection;*
43 *or*

1 (9) any other investment or security device approved by the
2 commissioner.

3 (h) "person" means any individual, partnership, association, joint-
4 stock association, trust, corporation or any other form of business enter-
5 prise authorized to do business in this state; and

6 (i) "stored value" means monetary value that is evidenced by an elec-
7 tronic record.

8 Sec. 6. K.S.A. 9-509 is hereby amended to read as follows: 9-509. (a)
9 No person shall engage in the business of selling, issuing or delivering its
10 payment instrument, check, draft, money order, personal money order,
11 bill of exchange, evidence of indebtedness or other instrument for the
12 transmission or payment of money or otherwise engage in the business of
13 money transmission with a resident of this state, or, except as provided
14 in K.S.A. 9-510, and amendments thereto, act as agent for another in the
15 transmission of money in the face amount of a check, draft, money order,
16 personal money order, bill of exchange, evidence of indebtedness or other
17 instrument for the transmission or payment of money, as a service or for
18 a fee or other consideration, unless: such person obtains a license from
19 the commissioner.

20 (b) An application for a license shall be submitted on forms prescribed
21 by the commissioner. The application shall be accompanied by an appli-
22 cation fee as established by rules and regulations adopted by the com-
23 missioner. In addition, each person submitting an application shall meet
24 the following requirements:

25 ~~(a)~~ (1) The net worth of such person ~~is~~ shall be at all times not less
26 than \$100,000, as shown by a an audited financial statement and certified
27 to by an owner, a partner or officer of the corporation or other entity in
28 a form prescribed by the state bank commissioner and filed in the com-
29 missioner's office. The commissioner may require any person to file a
30 statement at any other time upon request;

\$250,000

31 ~~(b)~~ (2) such person ~~has deposited~~ shall deposit and at all times keeps
32 keep on deposit with the state treasurer, or a bank in this state approved
33 by the state bank commissioner, cash or securities satisfactory to the state
34 bank commissioner in an amount of \$50,000 plus an additional sum of
35 \$5,000 for each location, in excess of one, at which such person proposes
36 to conduct such business, but not to exceed \$200,000, and

37 ~~(c)~~ such person submits a list to the commissioner of the names and
38 addresses of the selling agents of such person. not less than \$200,000.
39 The commissioner may increase the amount of cash or securities required
40 up to a maximum of \$500,000 upon the basis of the impaired financial
41 condition of a person, as evidenced by a reduction in net worth, financial
42 losses or other relevant criteria as determined by the commissioner;

43 (3) in lieu of such the deposit of cash or securities required by par-

1 *agraph (2)*, such person may give a surety bond in an amount equal to
2 that required for the deposit of cash or securities, in a form satisfactory
3 to the ~~state bank~~ commissioner and issued by a company authorized to
4 do business in this state, which bond shall ~~run to the state of Kansas be~~
5 *payable to the office of the state bank commissioner* and be filed with the
6 ~~state bank~~ commissioner. The deposit of cash or securities or surety bond
7 shall be for the protection and benefit of purchasers of *money transmis-*
8 *sion services, purchasers* or holders of *payment* instruments furnished by
9 such person or for the protection of those for whom such person has
10 agreed to act as agent in the transmission of ~~money monetary value~~ and
11 to secure the faithful performance of the obligations of such person in
12 respect to the receipt, handling, transmission and payment of ~~money mon-~~
13 *etary value*. The aggregate liability of the surety for all breaches of the
14 conditions of the bond shall, in no event, exceed the amount of such bond.
15 The surety on the bond shall have the right to cancel such bond upon
16 giving 30 days' notice to the commissioner and thereafter shall be relieved
17 of liability for any breach of condition occurring after the effective date
18 of the cancellation. The ~~state bank~~ commissioner or any aggrieved party
19 may enforce claims against such deposit of cash or securities or surety
20 bond. So long as the depositing person is not in violation of this act, such
21 person shall be permitted to receive all interest and dividends on the
22 deposit and shall have the right to substitute other securities satisfactory
23 to the ~~state bank~~ commissioner. If the deposit is made with a bank, any
24 custodial fees shall be paid by such person. ~~The financial statement shall~~
25 ~~be filed annually and at the time of filing each person shall pay to the~~
26 ~~state bank commissioner an annual fee in an amount established by rules~~
27 ~~and regulations adopted by the commissioner. The state bank commis-~~
28 ~~sioner may require any person to file a statement at more frequent in-~~
29 ~~tervals, but only the annual fee need be paid; and~~

30 *(4) such person shall submit a list to the commissioner of the names*
31 *and addresses of other persons who are authorized to act as selling agents*
32 *for transactions with Kansas residents.*

33 *(c) The bank commissioner shall have the right authority to examine*
34 *the books and records of any person operating in accordance with the*
35 *provisions of this act at such person's expense, and if it appears that such*
36 *person's financial affairs are unsound so as to affect the solvency of such*
37 *person's operations then the bank commissioner is authorized to obtain*
38 *a restraining order, or a temporary or permanent injunction without bond,*
39 *in any court of competent jurisdiction so as to prevent such person, or*
40 *any agents of such person, from continuing in business to verify compli-*
41 *ance with state and federal law.*

42 Sec. 7. K.S.A. 9-510 is hereby amended to read as follows: 9-510.
43 Any person complying with the provisions of this act may engage in such

1 business at one or more locations in this state and through or by means
2 of such agents as such person may designate and appoint from time to
3 time. A verified list of agents shall be furnished annually to the ~~bank~~
4 commissioner by persons operating hereunder, on a date prescribed by
5 ~~said the~~ commissioner. No such agent shall be required to comply with
6 the *licensing* provisions of this act.

7 Sec. 8. K.S.A. 9-511 is hereby amended to read as follows: 9-511.
8 This act shall not apply to banks, building and loan associations, savings
9 and loan associations, *savings banks* or credit unions organized under the
10 laws of and subject to the supervision of this state, *another state* or the
11 United States, *or to the government of the United States and its agencies,*
12 *or to the state of Kansas and its agencies.* This act also shall not apply to
13 the distribution, transmission or payment of money as a part of the lawful
14 practice of law, bookkeeping, accounting or real estate sales or brokerage
15 or as an incidental and necessary part of any lawful business activity.

16 Sec. 9. K.S.A. 9-512 is hereby amended to read as follows: 9-512.

17 (a) Any person who **knowingly** violates any provision of this act shall
18 be guilty of a misdemeanor and, upon conviction, shall be punished by a
19 fine of not more than one thousand dollars (\$1,000), or by imprisonment
20 in the county jail for not more than one year, or by both such fine and
21 imprisonment *severity level 9, nonperson felony.* Each transaction in vi-
22 olation of this act and each day that a violation continues shall be a sep-
23 arate offense: ~~Provided, except~~ that whenever a corporation shall violate
24 any provision of this act, such violation shall be deemed to be also that
25 of the individual directors, officers, and agents of such corporation who
26 shall have authorized, ordered, or done any of the acts constituting such
27 violation in whole or in part: ~~And provided further, That~~

28 (b) A corporation and its ~~different~~ directors, officers, and agents may
29 each be prosecuted separately for violations of this act and the acquittal
30 or conviction of one such director, officer or agent shall not abate the
31 prosecution of the others.

32 (c) Violations of this act also may be enjoined or the violators ousted
33 from continuing such violations by proceedings brought by the county
34 attorney of the proper county or by the attorney general, regardless of
35 whether or not criminal proceedings have been instituted.

36 Sec. 10. K.S.A. 9-513 is hereby amended to read as follows: 9-513.

37 (a) If any sentence, clause, provision or section of this act or the appli-
38 cability thereof to any person or circumstance shall be held invalid, such
39 invalidity shall not affect the validity of the remainder of this act or its
40 applicability to other persons or circumstances. It shall be presumed con-
41 clusively that the legislature would have enacted the remainder of this
42 act without the sentence, clause, provision or section held invalidly en-
43 acted or applied.

1 **(b)** *This act shall be interpreted by the commissioner for the purpose*
2 *of protecting the citizens of this state, against financial loss, who purchase*
3 *payment instruments or who give money or control of their funds or credit*
4 *into the custody of another person for transmission, regardless of whether*
5 *the transmitter has any office, facility, agent or other physical presence*
6 *in the state.*

7 Sec. 11. K.S.A. 9-508, 9-509, 9-510, 9-511, 9-512 and 9-513 are
8 hereby repealed.

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

HOUSE BILL No. 2692

By Committee on Insurance

1-24

pertaining to the Kansas insurance guaranty association act
pertaining to group life insurance;

K.S.A. 40-433 and

and 40-2903

sections

9 AN ACT concerning insurance; pertaining to risk-based capital require-
10 ments, amending K.S.A. 2005 Supp. 40-2c01 and repealing the existing
11 [section]

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

14 Section 1. K.S.A. 2005 Supp. 40-2c01 is hereby amended to read as
15 follows: 40-2c01. As used in this act:

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

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

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

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

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

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

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

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

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

43 (j) "RBC instructions" mean the risk-based capital instructions prom-

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1 ulgated by the NAIC, which are in effect on December 31, 2004 2005.

2 (k) "RBC level" means an insurer's company action level RBC, reg-
3 ulatory action level RBC, authorized control level RBC, or mandatory
4 control level RBC where:

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

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

9 (3) "authorized control level RBC" means the number determined
10 under the risk-based capital formula in accordance with the RBC instruc-
11 tions; and

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

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

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

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

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

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

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

4 26 Sec. ~~2~~ [K.S.A. 2005 Supp. 40-2c01 is] hereby repealed.

5 27 Sec. ~~3~~ This act shall take effect and be in force from and after its

28 publication in the statute book.

Sec. 4.
K.S.A. 2005 Supp. 40-2903 is hereby amended to read as follows: 40-2903. As used in this act: (a) R-2-J
"Association" means the Kansas insurance guaranty association created by this act.

(b) "Commissioner" means the commissioner of insurance of this state.

(c) "Covered claim" means an unpaid claim, including one for unearned premiums, which arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this act applies issued by an insurer, if such insurer becomes an insolvent insurer after the effective date of this act and:

(1) The claimant or insured is a resident of this state at the time of the insured event. For entities other than an individual, the residence of a claimant, insured or policyholder is the state in which the principal place of business of such claimant, insured or policyholder is located at the time of the insured events; or

(2) the claim is a first party claim for damage to property that is permanently located in this state.

"Covered claim" shall not include:

(1) Any amount due any reinsurer, insurer, insurance pool or underwriting association, as subrogation recoveries or otherwise.

(2) any amount awarded as punitive or exemplary damages unless such damages were covered under the policy of the insolvent insurer;

(3) any claim by an affiliate of the insolvent insurer.

(d) "Domiciliary state" means:

(1) The state in which an insurer is incorporated or organized; or

(2) in the case of an alien insurer, the state of entry of such insurer.

(e) "Insolvent insurer" means:

(1) An insurer licensed by the commissioner to transact insurance in this state either at the time the policy was issued or when the insured event occurred; and

(2) determined to be insolvent by a court of competent jurisdiction and against whom a final order of liquidation has been entered by a court of competent jurisdiction in the ~~insured's home~~ insurer's domiciliary state.

(~~e~~) (~~f~~) "Member insurer" means any person who (1) is authorized to write any kind of insurance to which this act applies under K.S.A. 40-2902, and amendments thereto, including the exchange of reciprocal or inter-insurance contracts; and

(2) is licensed by the commissioner to transact insurance in this state. This act shall not apply to those persons transacting business pursuant to the provisions of K.S.A. 40-202, and amendments thereto.

(~~f~~) (~~g~~) "Net direct written premiums" means first gross premiums written in this state on insurance policies to which this act applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers.

(~~g~~) (~~h~~) "Person" means any individual, corporation, partnership, association or voluntary organization.

(i) The provisions of this section, as amended on July 1, 2006, shall apply to all claims which have not been paid prior to April 14, 2005.

Sec. 3 **INSERT SEC. 3. ATTACHED**

renumber the remaining sections accordingly

[K.S.A. 40-433 and K.S.A. 2005 Supp. 40-2c01 and 40-2903 are

Sec. 3 . K.S.A. 2005 Supp. 40-433 is hereby amended to read as follows: 40-433. No policy of group life insurance shall be delivered in this state unless it conforms to one of the following descriptions:

(1) A policy issued by an insurance company organized under the laws of the state of Kansas on its employees and agents, which agents for the purpose of this act only shall be deemed employees, the beneficiaries under such policies to be persons designated by each insured, or a policy issued to an employer, or to the trustees of a fund established by an employer, which employer or trustees shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer, both subject to the following requirements:

(a) The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors or partnerships if the business of the employer and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract or otherwise. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be

eligible for insurance under the policy unless the proprietor or partner is actively engaged in and devotes a substantial part of their time to the conduct of the business of the proprietor or partnership. A policy issued to insure the employees of a public body may provide that the term "employees" shall include elected or appointed officials.

(b) The premium for the policy shall be paid by the policyholder, either wholly from the employer's funds or funds contributed by the employer, or partly from such funds and partly from funds contributed by the insured employees. No policy shall be issued on which the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least 75% of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contribution. A policy on which no part of the premium is to be derived from funds contributed by the insured employees shall insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer. (c) The policy shall cover at least

three employees at date of issue. (d) The amounts of insurance under the policy shall be based upon some plan, precluding individual selection either by the employees or by the employer or trustees.

TWO

(2) 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 thereof

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. A policy on which part or all of the premium is to be derived from the collection from the insured debtors of identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless at least 75% of the then eligible debtors elect to pay the required charges. A policy on which no part of the premium is to be derived from the collection of such identifiable charges shall insure all eligible debtors, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer. (c) The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least 100 persons yearly, or may reasonably be expected to receive at least 100 new entrants during the first policy year, and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than 75% of the new entrants become insured. (d) The amount of insurance on the life of any debtor shall at no time, under one or more policies, exceed the amount owed by that debtor which is repayable in installments to the creditor, or \$100,000, whichever is less. (e) The insurance shall be payable to the policyholder. Such payment shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of such payment.

(3) A policy issued to a labor union, which shall be deemed the policyholder, to insure members of such union for the benefit of persons other than the union or any of its officials, representatives or agents, subject to the following requirements: (a) The

members eligible for insurance under the policy shall be all of the members of the union, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the union, or both.

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

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

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

(4) A policy issued to the trustees of a fund established in this state by two or more employers if a majority of the employees to be insured of each employer are located within the state, or to the trustees of a fund established by one or more labor unions, or by one or more employers and one or more labor unions, which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions for the

benefit of persons other than the employers
or the unions, subject to the following
requirements: (a) The persons eligible for
insurance shall be all of the employees of
the employers or all of the members of the
unions, or all of any class or classes
thereof determined by conditions pertaining
to their employment, or to membership in the
unions, or to both. The policy may provide
that the term "employees" shall include
retired employees and the individual
proprietor or partners if any employer is an
individual proprietor or a partnership. No
director of a corporate employer shall be
eligible for insurance under the policy
unless such person is otherwise eligible as a
bona fide employee of the corporation by
performing services other than the usual
duties of a director. No individual
proprietor or partner shall be eligible for
insurance under the policy unless the
proprietor or partner is actively engaged in
and devotes a substantial part of their time
to the conduct of the business of the
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. (b) The
premium for the policy shall be paid by the
trustees either wholly from funds contributed
by the employer or employers of the insured
persons, or by the union or unions, or by
both, or partly from such funds and partly
from funds contributed by the insured
employees. No policy shall be issued on which
the entire premium is to be derived from
funds contributed by the insured persons. The
policy shall insure all eligible persons, or
all except any as to whom evidence of
individual insurability is not satisfactory
to the insurer. (c) The policy shall cover at
date of issue at least 100 persons and not
less than an average of five persons per
employer unit. (d) The amounts of insurance

under the policy shall be based upon some plan precluding individual selection either by the insured persons or by the policyholder, employers, or union.

(e) The requirements of paragraphs (b) and (d) of this subsection governing employer contributions and amounts of insurance shall not apply to a voluntary term life insurance policy issued on a group basis.

(5) A policy issued to an association which has been organized and is maintained for 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" as used herein shall be deemed to 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. The amounts of insurance under the policy shall be based upon some plan precluding individual selection either by the insured person or by the association or by the member.

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

(a) The premium for the insurance shall be paid by the policyholder, either from the employer's funds or from funds contributed by the insured employees, or from both. If any part of the premium is to be derived from funds contributed by the insured employees, the insurance with respect to spouses, their children, their grandchildren, their spouse's

children, their spouse's grandchildren, their parents and their spouse's parents may be placed in force only if at least 75% of the then eligible employees, excluding any as to whose family members' evidence of insurability is not satisfactory to the insurer, elect to make the required contribution. If no part of the premium is to be derived from funds contributed by the employees, all eligible employees, excluding any as to whose family members' evidence of insurability is not satisfactory to the insurer, shall be insured with respect to their spouses, their children, their grandchildren, their spouse's children, their spouse's grandchildren, their parents, their spouse's parents.

(b) The amounts of insurance shall be based upon some plan precluding individual selection either by the employees or by the policyholder, or employer and shall not exceed with respect to any spouse, child or parent 50% of the insurance on the life of such insured employee.

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

(d) Notwithstanding the provisions of K.S.A. 40-434 and amendments thereto only one certificate need be issued for delivery to an insured person if a statement concerning any dependent's coverage is included in such certificate.

(e) The requirements of paragraphs (a) and (b) of this subsection governing participation, contribution by an employer and amounts of insurance for dependents shall not apply to a voluntary term life insurance policy issued on a group basis.

(7) A policy may be issued to any other

group which the commissioner of insurance finds is the proper subject of a group life insurance policy or contract. Any such group shall be subject to any appropriate conditions or provisions relating thereto which the commissioner may establish or require, consistent with the provisions of this act, and such conditions and provisions shall be included in the policy or contract.

SENATE BILL No. 592

By Committee on Ways and Means

3-16

9 AN ACT enacting the asbestos compensation fairness act; concerning
10 asbestos claims.

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

13 Section 1. This act shall be known and may be cited as the asbestos
14 compensation fairness act.

15 Sec. 2. As used in this act:

16 (a) "AMA guides to the evaluation of permanent impairment" means
17 the American Medical Association's Guides to the Evaluation of Perma-
18 nent Impairment (fifth edition 2000) as [modified by the American med-
19 ical association]

20 (b) "Asbestos" means all minerals defined as asbestos in 29 C.F.R. [§]
21 1910, as [amended]

22 (c) "Asbestos claim" means any claim for damages or other civil or
23 equitable relief presented in a civil action arising out of, based on or
24 related to the health effects of exposure to asbestos, including loss of
25 consortium, wrongful death and any other derivative claim made by or
26 on behalf of any exposed person or any representative, spouse, parent,
27 child or other relative of any exposed person. The term does not include
28 claims for benefits under a workers' compensation law or veterans' ben-
29 efits program or claims brought by any person as a subrogee by virtue of
30 the payment of benefits under a workers' compensation law.

31 (d) "Asbestosis" means bilateral diffuse interstitial fibrosis of the
32 lungs caused by inhalation of asbestos fibers.

33 (e) "Bankruptcy proceeding" means a case brought under Title 11,
34 U.S.C., or any related proceeding as provided in section 157 of Title 28,
35 U.S.C.

36 (f) "Board-certified in internal medicine" means certified by the
37 American board of internal medicine or the American osteopathic board
38 of internal medicine.

39 (g) "Board-certified in occupational medicine" means certified in the
40 subspecialty of occupational medicine by the American board of preven-
41 tive medicine or the American osteopathic board of preventive medicine.

42 (h) "Board-certified in oncology" means certified in the subspecialty
43 of medical oncology by the American board of internal medicine or the

in effect on July 1, 2006

in effect on July 1, 2006

Senate FI & I Committee
Attachment 3
March 22, 2006

3-2

1 American osteopathic board of internal medicine.

2 (i) "Board-certified in pathology" means holding primary certification
3 in anatomic pathology or clinical pathology from the American board of
4 pathology or the American osteopathic board of internal medicine and
5 with professional practice:

6 (1) Principally in the field of pathology.

7 (2) Involving regular evaluation of pathology materials obtained from
8 surgical or postmortem specimens.

9 (j) "Board-certified in pulmonary medicine" means certified in the
10 subspecialty of pulmonary medicine by the American board of internal
11 medicine or the American osteopathic board of internal medicine.

12 (k) "Certified B-reader" means an individual qualified as a final or B-
13 reader under 42 C.F.R. [s] 37.51(b), as amended.

in effect on July 1, 2006

14 (l) "Civil action" means all suits or claims of a civil nature in court,
15 whether cognizable as cases at law or in equity or in admiralty. The term
16 does not include an action relating to any workers' compensation law or
17 a proceeding for benefits under any veterans' benefits program.

18 (m) "Exposed person" means any person whose exposure to asbestos
19 or asbestos-containing products is the basis for an asbestos claim.

20 (n) "Exposure years" means:

21 (1) Each single year of exposure prior to 1972 to be counted as one
22 year.

23 (2) Each single year of exposure from 1972 through 1979 to be
24 counted as one-half year.

25 (3) Exposure after 1979 not to be counted, except that each year from
26 1972 forward for which the plaintiff can establish exposure exceeding the
27 occupational safety and health administration limit for 8-hour, time-
28 weighted average airborne concentration for a substantial portion of the
29 year to be counted as one year.

30 (o) "FEV1" means forced expiratory volume in the first second,
31 which is the maximal volume of air expelled in one second during per-
32 formance of simple spirometric tests.

33 (p) "FVC" means forced vital capacity which is the maximal volume
34 of air expired with maximum effort from a position of full inspiration.

35 (q) "ILO scale" means the system for the classification of chest x-rays
36 set forth in the international labor office's guidelines for the use of ILO
37 international classification of radiographs of pneumoconioses (1980) [as
38 amended] by the international labor office.

published

and in effect on July 1, 2006

39 (r) "Lung cancer" means a malignant tumor in which the primary site
40 of origin of the cancer is located inside of the lungs, but such term does
41 not include an asbestos claim based upon mesothelioma.

42 (s) "Mesothelioma" means a malignant tumor with a primary site in
43 the pleura or the peritoneum which has been diagnosed by a board-cer-

3-3

1 elapsed between the date of first exposure to asbestos and the date of
2 diagnosis of the cancer.

3 (3) The requirement of:

4 (A) Radiological or pathological evidence of asbestosis; or

5 (B) evidence of occupational exposure to asbestos for the following
6 minimum exposure periods in the specified occupations:

7 (i) Five exposure years for insulators, shipyard workers, workers in
8 manufacturing plants handling raw asbestos, boilermakers, shipfitters,
9 steamfitters or other trades performing similar functions;

10 (ii) ten exposure years for utility and powerhouse workers, secondary
11 manufacturing workers or other trades performing similar functions; or

12 (iii) fifteen exposure years for general construction, maintenance
13 workers, chemical and refinery workers, marine engine room personnel
14 and other personnel on vessels, stationary engineers and firemen, railroad
15 engine repair workers or other trades performing similar functions.

16 (4) A conclusion by a qualified physician that the exposed person's
17 medical findings and impairment were not more probably the result of
18 causes other than the asbestos exposure revealed by the exposed person's
19 employment and medical history. A conclusion that the medical findings
20 and impairment are consistent with or compatible with exposure to as-
21 bestos does not meet the requirements of this paragraph.

22 If the exposed person is deceased, the qualified physician may obtain
23 the evidence required in paragraph (2) and subparagraph (3)(B) from the
24 person most knowledgeable about the alleged exposures that form the
25 basis of the asbestos claim.

26 Sec. 4. (a) A court may consolidate for trial any number and type of
27 asbestos claims with consent of all the parties. In the absence of such
28 consent, the court may consolidate for trial only asbestos claims relating
29 to the same exposed person and members of such person's household.

30 (b) A civil action alleging an asbestos claim may only be brought in
31 the courts of this state if the plaintiff is domiciled in this state or the
32 exposure to asbestos that is a substantial contributing factor to the physical
33 impairment on which the claim is based occurred in this state.

34 (c) The plaintiff in any civil action alleging an asbestos claim shall file
35 together with the complaint or other initial pleading a written report and
36 supporting test results constituting prima facie evidence of the exposed
37 person's asbestos-related physical impairment meeting the requirements
38 of subsections (b) through (g) of section 3, and amendments thereto. For
39 any asbestos claim pending on the effective date of this act, the plaintiff
40 shall file such a written report and supporting test results no later than
41 60 days after the effective date or no later than 30 days prior to the
42 commencement of trial. The defendant shall be afforded a reasonable
43 opportunity to challenge the adequacy of the proffered prima facie evi-

41 (e) In a civil action alleging an asbestos claim based upon mesothe-
42 lioma, no prima facie showing is required.
43 ~~(f) No person shall bring or maintain a civil action alleging a silica~~

(f)

1 [h] Evidence relating to physical impairment under this section, in-
2 cluding pulmonary function testing and diffusing studies, shall:

3 (1) Comply with the technical recommendations for examinations,
4 testing procedures, quality assurance, quality control and equipment of
5 the AMA guides to the evaluation of permanent impairment, as set forth
6 in 2d C.F.R. Pt. 404, Subpt. P. Appl., Part A, Sec. 3.00 E. and F., and
7 the interpretive standards set forth in the official statement of the Amer-
8 ican Thoracic Society entitled "Lung function testing: selection of refer-
9 ence values and interpretive strategies" as published in American Review
10 of Respiratory Disease, 1991, 144:1202-1218.

11 (2) Not be obtained through testing or examinations that violate any
12 applicable law, regulation, licensing requirement, or medical code of
13 practice.

14 (3) Not be obtained under the condition that the exposed person
15 retain legal services in exchange for the examination, test or screening.

(g)

16 (i) Presentation of prima facie evidence meeting the requirements of
17 subsection (2), subsection (3), subsection (4), subsection (6) or subsection
18 (7) shall not:

19 A) Result in any presumption at trial that the exposed person is im-
20 paired by an asbestos-related or silica-related condition.

21 B) Be conclusive as to the liability of any defendant.

22 C) Be admissible at trial.

section 3, and amendments thereto,

(e)

HOUSE SUBSTITUTE FOR SENATE BILL 522

AN ACT concerning health insurance; providing the insured certain appeal rights regarding adverse health care decisions.

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

Section 1. (a) Every health insurance plan for which utilization review is performed shall include a description of the health insurance plan's procedures for an insured to obtain an internal appeal or review of an adverse decision. This description shall include all applicable time periods, contact information, rights of the insured and available levels of appeal. If the health insurer uses a utilization review organization, the insured shall be notified of the name of such utilization review organization. The health insurance plan shall provide an insured with written or electronic notification of any adverse decision, and a description of the health insurance plan's internal appeal or review procedure, including the insured's right to external review as provided in K.S.A. 40-22a14 and amendments thereto.

(b) If the health insurance plan contains a provision for two levels of internal appeal or review of a health care decision which is adverse to the insured, the health insurance plan shall allow the insured to voluntarily waive such insured's right to the second internal appeal or review. Such waiver shall be made in writing to the health insurance plan and shall constitute the exhaustion of all available internal appeal or review procedures within the meaning of subsection (d) of K.S.A. 40-22a14 and amendments thereto.

(c) If an insured elects to request the second internal appeal or review of a health care decision which is adverse to the insured, the insured shall have the right to appear in person before a designated representative or representatives of the health insurance plan or utilization review organization at the second internal appeal or review meeting. If a majority of the designated representatives of the health plan or utilization review organization who will be deciding the second internal appeal or review cannot be present in person, by telephone or by other electronic means, at least one of those designated representatives who will be deciding the second internal appeal or review shall be a physician and shall be present in person, by telephone or by other electronic means. No physician or other health care provider serving as a reviewer in an internal appeal or review of an adverse decision shall be liable in damages to the insured or the health insurance plan for any opinion rendered as part of the internal appeal or review.

(d) All second internal appeals or reviews shall provide that the insured has a right to:

(1) receive from the health insurance plan or utilization review organization, upon request, copies of all documents, records and other information that are not confidential or privileged relevant to the insured's request for benefits;

(2) have a reasonable and adequate amount of time to present the insured's case to a designated representative or representatives of the health insurance plan or utilization review organization who will be deciding the second internal appeal or review;

(3) submit written comments, documents, records and other material relating to the request for benefits for the second internal appeal or review panel to consider when conducting the second appeal or review ~~meeting~~ both before and, if applicable, at the second ~~review~~

Internal

Senate FI & I Com.
Attachment 4
March 22, 2006

Internal
appeal or
review

meeting;

(4) prior to or during the second internal appeal or review ^{meeting} ask questions relevant to the subject matter of the internal appeal or review of any representative of the health insurance plan or utilization review organization serving on the internal appeal or review panel provided that such representative may respond verbally if the question is asked in person during an insured's appearance before the internal appeal or review panel or in writing if the questions are asked in writing, not more than 30 days from receipt of such written questions;

(5) be assisted or represented at the second internal appeal or review meeting by an individual or individuals of the insured's choice; and

(6) record the proceedings of the second internal appeal or review meeting at the expense of the insured.

(e) An insured, or the insured's authorized representative, wishing to request to appear in person before the second internal appeal or review panel consisting of the health insurance plan's or utilization review organization's designated representative or representatives shall make the request to the health insurance plan or utilization review organization within five working days before the date of the scheduled review ~~hearing~~ ^{meeting} except that in the case of an emergency medical condition, such request must be made no less than 24 hours prior to the scheduled review ~~hearing~~ ^{meeting}.

(f) The health insurance plan or utilization review organization shall provide the insured a written decision setting forth the relevant facts and conclusions supporting its decision within:

(1) 72 hours if the ^{second} internal appeal or review involves an emergency medical condition as defined by subsection (b) of K.S.A. 40-22a13 and amendments thereto;

(2) 15 business days if the ^{second} internal appeal or review involves a pre-service claim; and

(3) 30 days if the ^{second} internal appeal or review involves a post-service claim.

(g) For the purposes of this section:

(1) "Health insurance plan" shall have the meaning ascribed to it in K.S.A. 40-22a13 and amendments thereto.

(2) "Insured" shall have the meaning ascribed to it in K.S.A. 40-22a13 and amendments thereto.

(3) "Insurer" shall have the meaning ascribed to it in K.S.A. 40-22a13 and amendments thereto.

(4) "Adverse decision" shall have the meaning ascribed to it in K.S.A. 40-22a13, and amendments thereto.

(5) "Pre-service claim" means a request for a claims decision when prior authorization of services is required.

(6) "Post-service claim" means a request for a claims decision for services that have already been provided.

(h) This section shall be a part of and supplemental to the utilization review act.

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

294 7/21