Approved: 3-19-09
Date

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 10, 2009, in Room 136-N of the Capitol.

All members were present.

Committee staff present:
Bruce Kinzie, Office of the Revisor of Statutes
Melissa Calderwood, Kansas Legislative Research Department
Terri Weber, Kansas Legislative Research Department
Beverly Beam, Committee Assistant

Conferees appearing before the Committee:

Melissa Calderwood, Principal Analyst, Research Dept.
Bill Sneed, American Investors Life Insurance Co. (Attachment 1)
Nancy Zogleman, America's Health Insurance Plans (Attachment 2)
John Meetz, Kansas Insurance Department (Attachment 3)

Others attending:
See attached list.

The Chair called the meeting to order and welcomed everyone to the meeting.

Hearing on

HB 2052 - Life and health insurance guaranty association, claims.

Melissa Calderwood gave an overview of **HB 2052.** She stated this bill would increase the maximum annuity benefit from $100,00 to $250,000 for which a life and health guaranty association would be liable in the event of insurer insolvency. She said under current law any increased limit of liability of a guaranty association does not apply to an impaired or insolvent insurer prior to July 1, 1993. She noted that **HB 2052** would apply the guaranty association's limits of liability in effect on the date the association became liable for the impaired or insolvent insurer.

Bill Sneed, representing American Investors Life Insurance Co., testified in support of **HB 2052.** Mr. Sneed said insurance companies are regulated by the states. Companies must be licensed in each state in which they do business, and state insurance departments monitor their financial stability. He said if an insurance company is found to be financially unstable, the insurance department in its home state can step in and take control of the company. He noted that if the attempt to rehabilitate the company is successful, the receivership process for the company ends. If the company's financial difficulties are too great to overcome, the commissioner declares the company insolvent and the receivership process moves into liquidation. He added that when a member insurer is found to be insolvent and is ordered liquidated, a special deputy receiver takes over the insurer under court supervision and administers the assets and liabilities through liquidation. The task of servicing the insurance company's policies and providing coverage to Kansas resident policyholders becomes the responsibility of the Guaranty Association. Mr. Sneed said **HB 2052** provides another form of consumer confidence in some very precarious economic times. He said it is their belief that **HB 2052** is good for consumers, and as such, continues to support the health of the insurance industry. He noted that to avoid any concerns that the implantation of this proposal might increase coverages immediately, two changes to the bill are included. He said on page 6, beginning on line 43, and page 7, lines 1-6, it is clear that the increase in coverage under the Act will only apply to those insurers who become impaired or insolvent after the effective date of this bill. Additionally, on page 7, lines 35 and 36, January 1, 2010 was made the effective date, thus adding additional protection against any increase in coverage unanticipated during 2009. (Attachment 1)

Nancy Zogleman, representing America's Health Insurance Plans (AHIP), also testified in support of **HB 2052.** Ms. Zogleman said this bill would amend the Kansas Life and Health Insurance Guaranty Association Act to increase the maximum annuity benefit and would allow that the Guaranty Association's limits of

liability with respect to the obligations of any impaired or insolvent insurer are the limits of liability under this Act. She noted that in early 2008, the National Organization of Life and Health Guaranty Associations made known its position that state guaranty associations should include premiums associated with Medicare Part C & D programs in their health insurance assessment bases. She said in response to the position taken by NOLHGA at the national level, AHIP argued that the federal programs are exempt from assessment or from taxation by the states. She said because each state has its own guaranty fund act that does not automatically incorporate NAIC's suggested amendments to its model act, it is necessary that all state guaranty fund acts contain a similar exemption to the one adopted by the NAIC.

She said the rationale for this exemption is because federal law and regulations preempt state assessments and all parties agree that companies should only pay into a guaranty fund for premiums attributable to business that guaranty funds will need to cover in the event of insolvency. She said therefore, there is no need for state guaranty funds to assess these premiums. Continuing, she said in the event of an insolvency of a carrier participating in the Medicare Part C or D programs, the guaranty funds will not have Parts C and D claims to pay. She said Congress and CMS have assured that beneficiaries will continue to receive services in the event of insolvency by providing continuation of coverage for services in the event of insolvency by providing continuation of coverage for those beneficiaries, either through new carriers or original Medicare, and specifically prohibiting those beneficiaries from being billed by providers. She said given that beneficiaries do not need the protection afforded by guaranty associations in the event of insolvency, then the guaranty associations should not assess the premiums for those programs. She asked the Committee to amend HB 2052 on page 6, line 28, by adding a new (8). It would read, "a policy or contract providing any hospital, medical, prescription drug or other health care benefits pursuant to Part C or Part D of the Subchapter XVIII, Chapter 7 of Title 42 of the United States Code (commonly known as Medicare Part C & D() or any regulations issued pursuant thereto." (Attachment 2)

John Meetz, Government Affairs Liaison, Kansas Insurance Department, stated that KID supports **HB 2052** in an effort to make state regulated annuities as attractive as they were before the FDIC rule change. (Attachment 3)

The Chair closed the hearing on **HB 2052.**

Final Action

SB 241 - Regulating distressed property consulting services.

Melissa Calderwood reviewed the bill for the Committee. She stated **SB 241** would amend the Kansas Credit Services Organization Act to place additional requirements for individuals engaged in distressed property consulting services and would address activities related to "foreclosure avoidance" scams perpetrated on consumers and legitimate mortgage lenders. In addition, she said the bill transfers oversight of loan brokers from the Office of the Securities Commissioner to the Office of the State Bank Commissioner. She added that the Office of the State Bank Commissioner indicates the bill would require it to regulate loan brokers which would have a negligible fiscal affect on its operations. She noted the Office of the Securities Commissioner indicates the transfer of oversight of loan brokers to the Office of the State Bank Commissioner would have a negligible fiscal effect on its operations.

Luke Bell, on behalf of the Kansas Association of Realtors, presented an amendment to **SB 241** adding on page 11, line 36© "Services performed by an individual licensed as a real estate broker or salesperson pursuant to K.S.A. 58-3034 et seq., and amendments thereto, while providing any real estate brokerages services as defined under K.S.A. 58-3035(f).

Senator Masterson moved to pass the amendment to **SB 241.** Senator Kelsey seconded. Motion passed.

Kevin Glendening, State Banking Commissioner's Office, presented a proposed amendment to this bill. The first amendment clarifies that the financial statements that they are looking for are completed in the acceptable form. Second, page 15, line 34-35 simply adds some additional prohibited activities that we have inadvertently left out of our original draft.

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Senator Kelsey moved that the two amendments proposed by Bank Commissioner, Kevin Glendening, be passed as presented. Senator Barnett seconded. Motion carried.

Senator Kelsey moved to pass out **SB 241** favorably as amended. Senator Masterson seconded. Motion passed. Senator Brownlee voted no.

The meeting was adjourned at 10:15 a.m.

The next meeting is scheduled for March 11, 2009.

SENATE FINANCIAL INSTITUTIONS & INS. COMMITTEE
GUEST LIST

DATE: 3-10-09

NAME	REPRESENTING
P.J. Neary	Bank Commissioner's office
Kevin Glendening	"
Matthew Goddard	Heartland Community Bankers Assoc.
John Beeks	KID
Nancy Zogleman	Polsinelli
Bill Sneed	Am Ins Life
John C Bottenberg	Amvestors
Larry Magill	KAIA
Kerri Spielman	KAIA
Rick Fleming	Securities Commissioner

Polsinelli Shughart PC

Memorandum

TO: THE HONORABLE RUTH TEICHMAN, CHAIR
SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

FROM: WILLIAM W. SNEED, LEGISLATIVE COUNSEL
AMERICAN INVESTORS LIFE INSURANCE COMPANY

RE: H.B. 2052

DATE: MARCH 10, 2009

Madam Chair, Members of the Committee: My name is Bill Sneed and I am Legislative Counsel for American Investors Life Insurance Company ("AIL"). AIL is a member of Aviva USA, one of the largest sellers of fixed annuities in the United States. AIL is a Kansas domestic insurer located in Topeka, Kansas. At our request, this Committee graciously introduced H.B. 2052, and we appreciate the opportunity to request favorable passage of the bill.

This proposal makes a slight amendment to the Kansas Life and Health Insurance Guaranty Association statutes. Before getting to the meat of the bill, please allow me the opportunity to give the Committee a brief overview of Guaranty Association laws and how they operate within a given state.

Insurance companies are regulated by the states—companies must be licensed in each state in which they do business, and state insurance departments monitor their financial stability. The states also oversee the guaranty association safety net—each state, along with the District of Columbia and Puerto Rico, has a life and health insurance guaranty association to protect its residents if an insurance company fails. All companies licensed to do business in the state are required to be members of the guaranty association (in other words, a company that does business in 25 states would be a member of 25 guaranty associations).

If an insurance company is found to be financially unstable, the insurance department in its home state (also known as its domiciliary state) can step in and take control of the company. This begins what is known as the "receivership process," and in this first stage, the company is considered to be in "rehabilitation" (some states use a different term) as the insurance department attempts to improve the company's financial status. The state insurance commissioner becomes the "receiver" for the troubled company, although commissioners often appoint special deputy receivers to oversee the company's operations.

If the attempt to rehabilitate the company is successful, the receivership process for the company ends. If the company's financial difficulties are too great to overcome, however, the commissioner declares the company insolvent, and the receivership process moves into the next

555 Kansas Avenue, Suite 101
Topeka, KS 66603-3443
Telephone: (785) 233-1446
Facsimile: (785) 223-1939

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stage—liquidation. In this stage, the receiver or deputy receiver attempts to maximize the company's assets to pay off as many creditors as possible—including policyholders.

When a company is liquidated, state life and health insurance guaranty associations are triggered to provide continuing coverage and benefits to policyholders of the company living in their state. Policyholders who reside in states where the insolvent insurer was not licensed are covered, in most cases, by the guaranty association of the company's domiciliary state.

If the company does not have enough funds to meet its obligations to policyholders (a common occurrence with insolvent insurance companies), each state guaranty association assesses the member insurers in its state a share of the amount required to meet the claims of resident policyholders. The amount assessed is based on the amount of premiums each company collects in that state on the kind of business for which benefits are required.

In 1972 the Kansas Legislature enacted the Kansas Life and Health Insurance Guaranty Association Act ("Guaranty Association Act"). The Kansas Life and Health Guaranty Association ("Guaranty Association") is composed of all insurers licensed to sell life insurance, health insurance, and individual annuities in the state of Kansas. In the event that a member insurer is found to be insolvent and is ordered to be liquidated by a court, the Guaranty Association Act enables the Guaranty Association to provide protection (up to the limits spelled out in the Act) to Kansas residents who are holders of life and health insurance policies and individual annuities with the insolvent insurer.

Specifically, when a member insurer is found to be insolvent and is ordered liquidated, a special deputy receiver takes over the insurer under court supervision and administers the assets and liabilities through liquidation. The task of servicing the insurance company's policies and providing coverage to Kansas resident policyholders becomes the responsibility of the Guaranty Association. The protection provided by the Guaranty Association is based on Kansas law and the language of the insolvent company's policies at the time of insolvency.

The last time our Guaranty Association laws saw a major overhaul was in 1986. Currently, the National Association of Insurance Commissioners ("NAIC") has been working on updating the Guaranty Association laws for the individual states. My client has been an active participant in this process. It is anticipated that the final model bill will be approved by the Commissioners at their March meeting. However, once the uniform laws are approved it will take some time for the Kansas Commissioner and the Kansas domestics to draft the model bill for Kansas in such a way so as to not conflict with other Kansas laws. Thus, we do not anticipate bringing major changes to the Guaranty Association laws to the Legislature until the 2010 session.

Notwithstanding that, because of the current economic situation, my client believes that the Legislature should move forward on one particular point that is included in this proposal. That is to increase the coverage of the Guaranty Act on annuities from $100,000 to $250,000. In many respects, annuities are looked upon by consumers similarly to products issued by banks. As you know, the federal government has recently increased its insurance coverage from $100,000 to $250,000. Although one never wants to anticipate problems in a given industry, we believe it is important for consumer confidence to have this increase put into place.

In order to avoid any concerns that the implantation of this proposal might increase coverages immediately, we have also included two other changes in the bill. On page 6, beginning on line 43, and page 7, lines 1-6, we make it perfectly clear that the increase in coverage under the Act will only apply to those insurers who become impaired or insolvent after the effective date of this bill. Additionally, you will note on page 7, lines 35-36, that we made the effective date January 1, 2010, thus adding additional protection against any increase in coverage unanticipated during 2009.

This bill passed the House 124-0.

We believe H.B. 2052 provides another form of consumer confidence in some very precarious economic times. We believe this bill is good for consumers, and as such, continues to support the health of the insurance industry. Thus, we respectfully request that the Committee act favorably on H.B. 2052.

I am happy to answer questions at your convenience.

Respectfully submitted,

William W. Sneed

WWS:kjb

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Senate Financial Institutions and Insurance Committee

Testimony on HB 2052

March 10, 2009

Presented by Nancy Zogleman with Polsinelli Shughart, PC

Thank you for the opportunity to appear before you today as a proponent of HB 2052. My name is Nancy Zogleman with Polsinelli Shughart representing one of our clients, America's Health Insurance Plans (AHIP).

HB 2052 would amend the Kansas Life and Health Insurance Guaranty Association Act to increase the maximum annuity benefit and would allow that the Guaranty Association's limits of liability with respect to the obligations of any impaired or insolvent insurer are the limits of liability in effect under this Act.

Another issue has come to light which we believe should be fixed in this bill. In early 2008, the National Organization of Life and Health Guaranty Associations (NOLHGA), made know its position that state guaranty associations should include premiums associated with Medicare Part C & D programs in their health insurance assessment bases.

AHIP, in response to the position taken by NOLHGA at the national level, argued that the federal programs are exempt from assessment or from taxation by the states. The Centers for Medicare and Medicaid Services (CMS) took a similar position. NAIC later modified its model act on this issue to clarify that claims by providers for payment for services rendered under the Parts C or D programs are not covered.

Because each state has its own guaranty fund act that does not automatically incorporate NAIC's suggested amendments to its model act, it is necessary that all state guaranty fund acts contain a similar exemption to the one adopted by the NAIC.

The rationale for this exemption is as follows:

-Federal law and regulations preempt state assessments. 42 USC 1395w-24 and 42 USC 139w-112 are explicit that states may not levy a tax or assessment on federal premiums.

- All parties agree that companies should only pay into a guaranty fund for premiums attributable to business that guaranty funds will need to cover in the event of insolvency.

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- Therefore, there is no need for state guaranty funds to assess these premiums. In the event of an insolvency of a carrier participating in the Medicare Part C or D programs, the guaranty funds will not have Parts C and D claims to pay. Congress and CMS have assured that beneficiaries will continue to receive services in the event of insolvency by providing continuation of coverage for those beneficiaries, either through new carriers or original Medicare, and specifically prohibiting those beneficiaries from being billed by providers.

- Given that beneficiaries do no need the protection afforded by guaranty associations in the event of insolvency, then the guaranty associations should not assess the premiums for those programs.

Given this assessment, we would ask the committee to amend HB 2052 with the following amendment on page 6, line 28, by adding a new (8).

(8) a policy or contract providing any hospital, medical, prescription drug or other health care benefits pursuant to Part C or Part D of the Subchapter XVIII, Chapter 7 of Title 42 of the United States Code (commonly known as Medicare Part C & D) or any regulations issued pursuant thereto.

Thank you for allowing me to appear before you today.

tracting two percentage points from Moody's corporate bond yield average averaged for that same four-year period or for such lesser period if the policy or contract was issued less than four years before the association became obligated; and

(B) on and after the date on which the association becomes obligated with respect to such policy or contract, exceeds the rate of interest determined by subtracting three percentage points from Moody's corporate bond yield average as most recently available;

(4) any plan or program of an employer, association or similar entity to provide life, health or annuity benefits to its employees or members to the extent that such plan or program is self-funded or uninsured, including but not limited, to benefits payable by an employer, association or similar entity under: (A) A multiple employer welfare arrangement as defined in section 514 of the employee retirement income security act of 1974, as amended;

(B) a minimum premium group insurance plan;

(C) a stop-loss group insurance plan; or

(D) an administrative services only contract;

(5) any portion of a policy or contract to the extent that it provides dividends or experience rating credits, or provides that any fees or allowances be paid to any person, including the policy or contract holder, in connection with the service to or administration of such policy or contract;

(6) any policy or contract issued in this state by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue such policy or contract in this state; and

(7) any unallocated annuity contract, except as provided in subsection (b) of K.S.A. 40-3003 and amendments thereto.

(8) a policy or contract providing any hospital, medical, prescription drug or other health care benefits pursuant to Part C or Part D of the Subchapter XVIII, Chapter 7 of Title 42 of the United States Code (commonly known as Medicare Part C & D) or any regulations issued pursuant thereto.

(o) The benefits for which the association may become liable shall in no event exceed the lesser of: (1) The contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer; or

(2) with respect to any one life, regardless of the number of policies or contracts: (A) $300,000 in life insurance death benefits, but not more than $100,000 in net cash surrender and net cash withdrawal values for life insurance;

(B) $100,000 in health insurance benefits, including any net cash surrender and net cash withdrawal values; or

(C) ~~$100,000~~ *$250,000* in the present value of annuity benefits, including net cash surrender and net cash withdrawal values;

(D) In no event shall the association be liable to expend more than $300,000 in the aggregate with respect to any one life as provided in paragraph (A), (B) or (C) of this subsection.

(E) ~~Any increased limits of liability of the guaranty association by this~~

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Kansas Insurance Department
Sandy Praeger, Commissioner of Insurance

TESTIMONY ON
HB 2052

SENATE FINANCIAL INSTITUTIONS AND INSURANCE
March 10, 2008

Madam Chair and Members of the Committee:

Thank you for the opportunity to appear in support of HB 2052. This bill increases the maximum annuity benefits from $100,000 to $250,000 for which the guaranty association would be liable in the event of insurer insolvency. This change is being proposed in response to actions taken by the Federal Deposit Insurance Corporation (FDIC) that now insure deposits up to $250,000, up from the previous limit of $100,000. The change came about as a result of current financial crisis in the hopes of creating more consumer confidence in the banking industry.

The FDIC change has created a situation where state regulated annuities no longer carry the same assurances as a bank deposit. Under current law if an insurance company selling annuities were to become insolvent then annuity policies with that company would be insured by the state life and health guaranty association up to $100,000. HB 2052 would raise the limit that can be paid for annuity contracts to $250,000, thus assuring annuities at the same level as a standard bank deposit.

The Kansas Insurance Department supports HB 2052 in an effort to make state regulated annuities as attractive as they were before the FDIC rule change.

Thank you for the opportunity to appear today I would now stand for questions.

John Meetz
Government Affairs Liaison

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420 SW 9th Street
Topeka, Kansas 66612-1678

785-296-3071 Phone
785-296-2283 Fax

Consumer Hotline
800-432-2484

Website
www.ksinsurance.org