

Approved: March 12, 1993

Date

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

The meeting was called to order by Chairperson Richard Bond at 9:15 a.m. on March 11, 1993 in Room 529-S of the Capitol.

Members present: Senators Corbin, Lee, Moran, Petty, Praeger, and Steffes.

Committee staff present: William Wolff, Legislative Research Department  
Fred Carman, Revisor of Statutes  
June Kossover, Committee Secretary

Conferees appearing before the committee: William Sneed, AmVestors Financial Corporation  
Richard Brock, Kansas Insurance Department  
Trix Niernberger, Kansas Healthy Kids Corporation  
Azzie Young, PhD, Kansas Department Health and Environment

Others attending: See attached list

The minutes of the meeting of March 10, 1993 were presented for approval. Senator Corbin made a motion to approve the minutes. Senator Steffes seconded the motion. The motion carried.

The hearing was opened on HB 2177, relating to insurance holding companies. William Sneed, AmVestors Financial Corporation, appeared as a proponent of this legislation and explained the intent of the amendments contained in this bill. (Attachment #1.) Mr. Sneed advised that the replacement language was developed in conjunction with the NAIC.

Richard Brock, Kansas Insurance Department, also testified in favor of the bill and presented a balloon containing several amendments. (Attachment #2.) Mr. Brock explained why these further amendments are felt to be necessary. Mr. Sneed advised that his client concurs with the amendments offered by the State Insurance Department.

There being no further conferees, the hearing was closed. Senator Steffes made a motion, seconded by Senator Praeger, to amend the bill as proposed by the Insurance Department. The motion carried.

Senator Corbin moved to pass the bill favorably as amended. Senator Steffes seconded the motion. The motion carried. Senator Steffes will carry HB 2177.

The hearing was opened on HB 2139, relating to the Kansas Healthy Kids Program. Trix Niernberger, Executive Director of the Kansas Healthy Kids Corporation, appeared as a proponent of this legislation and explained that the legislation is needed to remove unnecessary restrictions to the operation of the Kansas Healthy Kids Program. (Attachment #3.) In response to Senator Corbin's question, Ms. Niernberger explained the qualifications for providing insurance for kids who do not have insurance and how the program would be financed. Ms. Niernberger also clarified that this bill sets up pilot projects and the legislation is intended to uncomplicate the process.

Richard Brock, Kansas Insurance Department, also appeared as a proponent and explained that the bill was requested by the Insurance Commissioner. (Attachment #4.) Senator Bond questioned why being under the state purchasing law would be an impediment and Mr. Brock stated that the state purchasing law requires lengthy and time-consuming paperwork, which needs to be avoided so that the program can move forward more expeditiously. In response to Senator Petty's question regarding review of the quality of service given, Mr. Brock advised that the Board of Directors has oversight over the program, and explained the composition of the board.

Dr. Azzie Young, Director of the Bureau of Family Health, Kansas Department of Health and Environment, advised that the KDHE strongly supports this measure. (Attachment #5.)

There being no further questions and no other conferees, the hearing was closed. Senator Petty moved to pass the bill favorably. Senator Praeger seconded the motion. The motion carried. Senator Praeger will carry this bill.

The committee adjourned at 9:48 a.m.

The next meeting is scheduled for Friday, March 12, 1993.

## GUEST LIST

SENATE

COMMITTEE: FINANCIAL INSTITUTIONS AND INSURANCE

DATE: 3/11/93

[illegible]

## MEMORANDUM

TO: The Honorable Dick Bond, Chairman  
Senate Financial Institutions and Insurance Committee

FROM: William W. Sneed  
Legislative Counsel  
AmVestors Financial Corporation

DATE: March 11, 1993

RE: House Bill No. 2177

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Mr. Chairman, Members of the Committee: My name is William W. Sneed and I am here today testifying on behalf of my client, American Investors Life Insurance Company, and its parent corporation, AmVestors Financial Corporation. American Investors Life Insurance Company is a Kansas-domiciled stock life insurance company whose headquarters are located here in Topeka, Kansas. We appreciate the opportunity to testify in favor of H.B. 2177. This bill deals with a highly technical area of the Kansas Insurance Code; however, we believe that the amendments proposed in the bill in no way will drastically affect the regulation of insurance companies and their ultimate parent holding company.

For reference, initially let me go through the changes found in the bill. Inasmuch as the amendments are rather small and the statutes are very long, it is my hope this will be helpful to your review of the bill.

1. K.S.A. 40-233 is amended by adding a redrafted definition of how an insurance company can pay a "regular" dividend. That new language is found on page one, lines 39-43. This definition replaces the definition that has been struck on lines 21-28.

*Senate 7/41  
3/11/93  
Attachment #1*

The stricken language found on lines 29-39 is at the request of the Kansas Insurance Department inasmuch as it is their belief that the language is obsolete and not necessary.

2. The first amendment to K.S.A. 40-3305 is found on page three, lines 29-31. This amendment changes the notification to the Kansas Insurance Department of payments to shareholders from fifteen business days to five business days following the declaration, and also informing the Department of its payment no less than ten business days prior to the actual payment.

3. The next change to K.S.A. 40-3305 is found on page six, line 26. This is changing the language of "lesser" to "greater." Further, on line 34 we have deleted the term "profits" and inserted the word "earned" prior to "surplus" to correspond with the new definition found at page one, to which I made earlier reference.

4. Finally, the last proposed amendment to K.S.A. 40-3305 is found on page eight, lines 4-5, and adds an addition criteria that the Department will utilize in reviewing extraordinary dividends.

A discussion on the history of why this bill is in front of you is probably necessary so that it is more understandable as to why we contend these changes are not dramatic and are appropriate. As this Committee is aware, the National Association of Insurance Commissioners ("NAIC"), in an attempt to solidify state regulation, instituted a program where states would become "certified" by the NAIC if they met certain rigid requirements. These requirements generally entailed proof that various uniform laws were in place which the NAIC deemed to be most important in the regulation of insurance

companies, primarily dealing with financial areas. In an attempt to become one of the first state insurance departments to be certified (which Kansas successfully accomplished), the Department over the last two years has presented to the Kansas legislature various model bills promulgated by the NAIC to help promote additional regulatory tools for the Kansas Insurance Department. One of those issues deals with the regulation of dividends of an insurance company, and more particularly, dividends declared by an insurance company to a parent or another affiliated company within a holding company organization.

Generally, you have two types of dividends. First is what could commonly be referred to as a "regular" dividend. Payment of these dividends is governed by K.S.A. 40-233. In an oversimplification, these dividends can only be paid out of monies found in earned surplus. Earned surplus is a mathematical formula derived when the company prepares its annual statement.

Additionally, insurance companies are allowed to pay dividends beyond that amount which is found in earned surplus, and such dividends are classified as "extraordinary" dividends. The payment of these dividends is provided under K.S.A. 40-3305.

The NAIC initially took the position that the amount of money to be allowed to be paid as an extraordinary dividend should be determined as the "lesser" of a mathematical formula as opposed to the "greater" of this mathematical formula.

When the Kansas Insurance Department brought this proposal to the Kansas legislature last year, the insurance industry, along with other Insurance Departments, were

still working with the NAIC on this particular provision. What the industry and other Insurance Departments were proposing was that such a severe limitation on extraordinary dividends might not be appropriate, particularly if a given state had additional state laws and procedures dealing with the declaration and payment of these types of dividends. Unfortunately, a finalization of these discussions was not going to be available by the end of the 1992 legislative session. Thus, the Insurance Department presented the amendment to K.S.A. 40-3305, but with an effective date of July 1, 1993. Therefore, the change from "greater" to "lesser" has not yet come into effect. Thereafter, during 1992 the NAIC did rule that other language in lieu of the change from "greater" to "lesser" would be appropriate if a given state had certain regulatory laws and/or procedures.

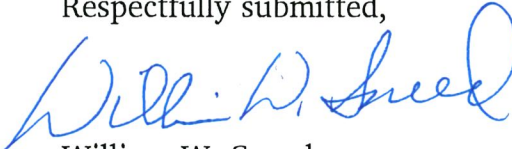
Inasmuch as the Kansas Insurance Department has consistently held higher standards for the payment of dividends, the only changes needed are very minor. Thus, this supports our position that the changes we are proposing do not have that adverse an effect on the oversight of the Kansas Insurance Department of insurance companies in the payment of their dividends.

If the "lesser than" language was retained in the statute and was allowed to go into effect on July 1, 1993, Kansas would have an overburdensome limitation on these dividends and Kansas companies would be placed at a disadvantage to companies in other states. We believe that such an overburdensome law will have an adverse effect on the Kansas domestic insurance industry and could in many instances also prohibit this industry from continuing to grow by virtue of utilizing the marketplace for additional capital.

Consequently, inasmuch as the Kansas Insurance Department has already had high standards in regard to this issue, coupled with the additional requirements that I have denoted in the amendments in H.B. 2177, we contend that the need for implementation of the "lesser than" language as opposed to maintaining the "greater than" language is necessary. Accordingly, we would appreciate the Committee's favorable treatment of this bill and respectfully request that it be passed out favorably.

I appreciate the opportunity to testify, and if you have any questions or comments, please feel free to contact me.

Respectfully submitted,



William W. Sneed

Testimony on  
House Bill No. 2177

by

Dick Brock

Kansas Insurance Department

In the late 1960s and early '70s, the American business community discovered the advantages of diversification. Some observers at the time were suspicious of the motives of those seeking to acquire ownership and control of insurance companies believing that the primary purpose of such activity was to circumvent many of the statutes that regulate the formation, management, investments and other operations of insurance companies. Others were less suspicious in that the acquisition of insurance companies by non-insurance interests would produce more access to capital markets, enhance profitability through new lines of business, and better serve expanding public needs through a more comprehensive range of financial services.

Regardless of which view was correct, it became evident that the interests of policyholders could be adversely affected if control of an insurer was sought for nefarious reasons; such acquisition would substantially lessen competition; the assets of the insurer were depleted; or its financial condition was otherwise jeopardized by transactions or relationships over which there was inadequate or no regulatory oversight or control.

Therefore, to meet the regulatory needs revealed by the acquisition and merger of insurance companies, the National Association of Insurance Commissioners developed and adopted the Insurance Holding Company System Regulatory Act which Kansas enacted in 1974. During the last two legislative sessions, amendments have been enacted to bring the Kansas Holding Company Act into conformity with the NAIC model.

The evolving NAIC Financial Regulatory Standards and related accreditation program have imposed specific requirements and focused

Senate F141  
3/11/93  
attachment #2



particular attention on the payment of what is called "extraordinary" dividends by insurance companies which are members of a holding company system. From the inception of the Holding Company Act "extraordinary" dividends have been subject to review and approval or disapproval by the Commissioner of Insurance before distribution to shareholders. Exactly what constitutes an "extraordinary" dividend for purposes of accreditation has, however, changed since the beginning of the accreditation program.

1992 House Bill No. 2787 contained the current NAIC model definition of "extraordinary" dividend and that definition will become operative on July 1 of this year unless House Bill No. 2177 or some other relevant amendment is enacted by the 1993 legislature.

The reason for this apparent vacillation is that the current NAIC (1992 House Bill 2787) definition subjects so many dividend declarations to specific review by the Commissioner that capital markets have allegedly tightened and/or the cost of obtaining capital has increased. As a result, the NAIC has now approved a number of alternatives as being substantially similar to the NAIC model language.

House Bill No. 2177 embodies one of those alternatives. Therefore, its enactment should not endanger Kansas' status as an accredited state. Neither does it lessen the restrictions which preclude the inadvisable or improper distribution of dividends. In an effort to be as certain as possible that this will, in fact, be the result if House Bill No. 2177 is enacted, it was submitted to NAIC financial services staff for review. Although final decisions on accreditation matters are made by the committee of insurance commissioners charged with this responsibility, the NAIC staff is usually a good barometer. Therefore, based on the staff review and suggestions we received in response to that review, we would request that House Bill No. 2177 be amended as indicated on the balloon attached to my testimony.

4/4 3/11/93

2-2

## Explanation of Proposed "Balloon" Amendments

Page 3, line 27 - Subsection referenced is in error in that it should be "(f)" instead of "(e)". However, even the correct subsection reference should not appear since it is now intended that all dividends be reported to the Commissioner within 5 days of declaration. Therefore, there is no exception to this reporting requirement and the suggested deletion recognizes this fact.

Page 3, line 29 - Notwithstanding the fact that House Bill 2177, if enacted, would result in fewer dividends being of the "extraordinary" variety, the fact that all dividends must be reported within 5 days of declaration and cannot be paid for at least 10 days following the Commissioner's receipt of such notice gives the Commissioner ample opportunity to halt the precipitous distribution of an inappropriate payment. The balloon amendment would more precisely identify when the "10 business days" commences.

Page 4, line 38 - Adding the word "transactions" is simply an editorial change designed to duplicate the approved NAIC alternative embodied in the bill.

Page 6, line 41 through Page 7, line 4 - This language is deleted because allowing the carryover permitted by this provision would allow more dividends to avoid "extraordinary" status than is contemplated by the NAIC alternative.

Page 8, line 5 - Editorial correction.

## HOUSE BILL No. 2177

By Committee on Financial Institutions and Insurance

2-1

AN ACT relating to insurance; concerning insurance holding companies; amending K.S.A. 40-233 and K.S.A. 1991 Supp. 40-3305, as amended by section 3 of chapter 288 of the 1992 Session Laws of Kansas and 40-3306, as amended by section 4 of chapter 288 of the 1992 Session Laws of Kansas and repealing the existing sections.

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

Section 1. K.S.A. 40-233 is hereby amended to read as follows: 40-233. It shall not be lawful for the directors, trustees, managers or officers of any insurance company organized under any of the laws of this state, directly or indirectly, to make or pay any dividends on its capital stock, or pay any interest, bonus or other allowance in lieu of dividends except from surplus profits arising from its business. In estimating such profits there shall be reserved a sum equal to all liabilities of the company, and there shall also be reserved all interest due and accrued and unpaid and the amount of all bonds and mortgages, notes, stocks, book accounts and judgments due to or held by the company on which no part of the principal or interest shall have been paid during the year previous.

This act shall not apply to the payment of dividends upon the preferred stock of any company organized under the laws of this state which has heretofore or may hereafter be issued to the government of the United States or any agency thereof which said preferred stock shall not be a continuing obligation of the company and which shall carry a fixed rate of dividend, and dividends may be paid upon said preferred stock from any available funds if such payment of dividends shall in no way impair the capital or reduce the surplus below the minimum legal requirements or impair the reserves of such company as established by the laws of this state. And out of earned surplus as distinguished from contributed surplus. Earned surplus shall be calculated after reserving a sum equal to all liabilities of the company and may include all or part of surplus arising from unrealized capital gains or revaluation of assets. Any dividends or payments made

FILED 3/11/93  
2-4

1 contrary to the provisions of this section shall subject the company  
2 to a forfeiture of its charter.

3 Sec. 2. K.S.A. 1991 Supp. 40-3305, as amended by section 3 of  
4 chapter 288 of the 1992 Session Laws of Kansas, is hereby amended  
5 to read as follows: 40-3305. (a) Every insurer which is authorized to  
6 do business in this state and which is a member of an insurance  
7 holding company system shall register with the commissioner of  
8 insurance, except a foreign insurer subject to registration require-  
9 ments and standards adopted by statute or regulation in the juris-  
10 diction of its domicile which are substantially similar to those  
11 contained in this section. Any insurer which is subject to registration  
12 under this section shall register within 15 days after it becomes  
13 subject to registration, and annually thereafter by May 1 of each  
14 year unless the commissioner of insurance for good cause shown  
15 extends the time for registration, and then within such extended  
16 time. The commissioner of insurance may require any authorized  
17 insurer which is a member of a holding company system and which  
18 is not subject to registration under this section to furnish a copy of  
19 the registration statement, the summary specified in subsection (c)  
20 or other information filed by such insurance company with the in-  
21 surance regulatory authority of domiciliary jurisdiction.

22 (b) Every insurer subject to registration shall file a registration  
23 statement on a form provided by the commissioner of insurance,  
24 which shall contain current information about:

25 (1) The capital structure, general financial condition, ownership  
26 and management of the insurer and any person controlling the  
27 insurer;

28 (2) the identity and relationship of every member of the insurance  
29 holding company system;

30 (3) the following agreements in force and transactions currently  
31 outstanding or which have occurred during the last calendar year  
32 between such insurer and its affiliates:

33 (A) loans, other investments, or purchases, sales or exchanges of  
34 securities of the affiliates by the insurer or of the insurer by its  
35 affiliates;

36 (B) purchases, sales, or exchanges of assets;

37 (C) transactions not in the ordinary course of business;

38 (D) guarantees or undertakings for the benefit of an affiliate which  
39 result in an actual contingent exposure of the insurer's assets to  
40 liability, other than insurance contracts entered into in the ordinary  
41 course of the insurer's business;

42 (E) all management agreements and service contracts and all cost  
43 sharing arrangements;

F14 3/11/93  
2-5

F/41 3/11/93  
2-6

1 (F) reinsurance agreements;

2 (G) dividends and other distributions to shareholders; and

3 (H) consolidated tax allocation agreements.

4 (4) Other matters concerning transactions between registered in-  
5 surers and any affiliates as may be included from time to time in  
6 any registration forms adopted or approved by the commissioner of  
7 insurance;

8 (5) any pledge of the insurer's stock, including stock of any sub-  
9 sidiary or controlling affiliate, for a loan made to any member of the  
10 insurance holding company system.

11 (c) All registration statements shall contain a summary outlining  
12 all items in the current registration statement representing changes  
13 from the prior registration statement.

14 (d) No information need be disclosed on the registration state-  
15 ment filed pursuant to subsection (b) if such information is not ma-  
16 terial for the purpose of this section. Unless the commissioner of  
17 insurance by rules and regulations or order provides otherwise, sales,  
18 purchases, exchanges, loans or extensions of credit, investments or  
19 guarantees, involving .5% or less of an insurer's admitted assets as  
20 of the December 31 next preceding shall not be deemed material  
21 for purposes of this section.

22 (e) Each registered insurer shall keep current the information  
23 required to be disclosed in such insurer's registration statement by  
24 reporting all material changes or additions on amendment forms  
25 provided by the commissioner of insurance within 15 days after the  
26 end of the month in which it learns of each such change or addition,  
27 ~~except that subject to subsection (e) of K.S.A. 40-3306, and amend-~~  
28 ~~ments thereto, each registered insurer shall report all dividends and~~  
29 ~~other distributions to shareholders within 15 5 business days follow-~~  
30 ~~ing the declaration, and no less than 10 business days prior to pay-~~  
31 ~~ment thereof.~~

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its

32 (f) Any person within an insurance holding company system sub-  
33 ject to registration shall be required to provide complete and accurate  
34 information to an insurer, where such information is reasonably nec-  
35 essary to enable the insurer to comply with the provisions of this  
36 act.

Any such dividend or distribution shall not be  
paid for at least 10 business days from the  
commissioner's receipt of the notice of its  
declaration.

37 (g) The commissioner of insurance shall terminate the registration  
38 of any insurer which demonstrates that such insurer no longer is a  
39 member of an insurance holding company system.

40 (h) The commissioner of insurance may require or allow two or  
41 more affiliated insurers subject to registration hereunder to file a  
42 consolidated registration statement.

43 (i) The commissioner of insurance may allow an insurer which is

1 authorized to do business in this state and which is part of an  
2 insurance holding company system to register on behalf of any af-  
3 filiated insurer which is required to register under subsection (a) and  
4 to file all information and material required to be filed under this  
5 section.

6 (j) The provisions of this section shall not apply to any information  
7 or transaction if and to the extent the commissioner of insurance by  
8 order shall exempt the same from the provisions of this section.

9 (k) Any person may file with the commissioner of insurance a  
10 disclaimer of affiliation with any authorized insurer or such a dis-  
11 claimer may be filed by such insurer or any member of an insurance  
12 holding company system. The disclaimer shall fully disclose all ma-  
13 terial relationships and bases for affiliation between such person and  
14 such insurer as well as the basis for disclaiming such affiliation. After  
15 a disclaimer has been filed, the insurer shall be relieved of any duty  
16 to register or report under this section which may arise out of the  
17 insurer's relationship with such person unless and until the com-  
18 missioner of insurance disallows such a disclaimer. The commissioner  
19 of insurance shall disallow such a disclaimer only after furnishing all  
20 parties in interest with notice and opportunity to be heard in ac-  
21 cordance with the provisions of the Kansas administrative procedure  
22 act.

23 Sec. 3. K.S.A. 1991 Supp. 40-3306, as amended by section 4 of  
24 chapter 288 of the 1992 Session Laws of Kansas, is hereby amended  
25 to read as follows: 40-3306. (a) Material transactions by registered  
26 insurers with their affiliates shall be subject to the following  
27 standards:

- 28 (1) The terms shall be fair and reasonable;  
29 (2) the charges or fees for services performed shall be reasonable;  
30 (3) expenses incurred and payment received shall be allocated to  
31 the insurer in conformity with customary insurance accounting prac-  
32 tices consistently applied;  
33 (4) the books, accounts and records of each party to all such  
34 transactions shall be so maintained as to clearly and accurately dis-  
35 close the nature and details of the transactions including such ac-  
36 counting information necessary to support the reasonableness of the  
37 charges or fees to the respective parties; and

38 (5) the insurer's surplus as regards policyholders following any  
39 dividends or distributions to shareholder affiliates shall be reasonable  
40 in relation to the insurer's outstanding liabilities and adequate to its  
41 financial needs.

42 (b) The following transactions involving a domestic insurer and  
43 any person in such insurer's holding company system may not be

transactions,

F121 3/11/93  
2-7

F14 3/11/93  
2-8

1 entered into unless the insurer has notified the commissioner in  
2 writing of such insurer's intention to enter into such transaction at  
3 least 30 days prior thereto, or such shorter period as the commis-  
4 sioner may permit, and the commissioner has not disapproved such  
5 transaction within such period.

6 (1) Sales, purchases, exchanges, loans or extensions of credit,  
7 guarantees or investments provided such transactions are equal to  
8 or exceed:

9 (A) With respect to nonlife insurers, the lesser 3% of the insurer's  
10 admitted assets or 25% of surplus as regards policyholders;

11 (B) with respect to life insurers, 3% of the insurer's admitted  
12 assets, each as of December 31 next preceding.

13 (2) Loans or extensions of credit to any person who is not an  
14 affiliate, where the insurer makes such loans or extensions of credit  
15 with the agreement or understanding that the proceeds of such  
16 transactions, in whole or in substantial part, are to be used to make  
17 loans or extensions of credit to, purchase assets of, or make invest-  
18 ments in, any affiliate of the insurer making such loans or extensions  
19 of credit provided such transactions are equal to or exceed:

20 (A) With respect to nonlife insurers, the lesser of 3% of the  
21 insurer's admitted assets or 25% of surplus as regards policyholders;

22 (B) with respect to life insurers, 3% of the insurer's admitted  
23 assets, each as of December 31 next preceding.

24 (3) Reinsurance agreements or modifications thereto in which the  
25 reinsurance premium or a change in the insurer's liabilities equals  
26 or exceeds 5% of the insurer's surplus as regards policyholders, as  
27 of December 31 next preceding, including those agreements which  
28 may require as consideration the transfer of assets from an insurer  
29 to a nonaffiliate, if an agreement or understanding exists between  
30 the insurer and nonaffiliate that any portion of such assets will be  
31 transferred to one or more affiliates of the insurer;

32 (4) all management agreements, service contracts and all cost-  
33 sharing arrangements; and

34 (5) any material transactions, specified by regulation, which the  
35 commissioner determines may adversely affect the interests of the  
36 insurer's policyholders.

37 Nothing herein contained shall be deemed to authorize or permit  
38 any transactions which, in the case of an insurer not a member of  
39 the same holding company system, would be otherwise contrary to  
40 law.

41 (c) A domestic insurer may not enter into transactions which are  
42 part of a plan or series of like transactions with persons within the  
43 holding company system if the purpose of those separate transactions

1 is to avoid the statutory threshold amount and thus avoid the review  
2 that would occur otherwise. If the commissioner determines that  
3 such separate transactions were entered into over any 12 month  
4 period for such purpose, the commissioner may exercise authority  
5 under K.S.A. 40-3311 and amendments thereto.

6 (d) The commissioner, in reviewing transactions pursuant to sub-  
7 section (b), shall consider whether the transactions comply with the  
8 standards set forth in subsection (a), and whether they may adversely  
9 affect the interests of policyholders.

10 (e) The commissioner shall be notified within 30 days of any  
11 investment of the domestic insurer in any one corporation if the  
12 total investment in such corporation by the insurance holding com-  
13 pany system exceeds 10% of such corporation's voting securities.

14 (f) (1) No insurer subject to registration under K.S.A. 40-3305,  
15 and amendments thereto, shall pay any extraordinary dividend or  
16 make any other extraordinary distribution to such insurer's share-  
17 holders until: (A) Thirty days after the commissioner of insurance  
18 has received notice of the declaration thereof and has not within  
19 such period disapproved such payment; or (B) the commissioner of  
20 insurance shall have approved such payment within such 30-day  
21 period.

22 (2) For purposes of this section, an extraordinary dividend or  
23 distribution includes any dividend or distribution of cash or other  
24 property, whose fair market value together with that of other div-  
25 idends or distributions made within the preceding 12 months exceeds  
26 the ~~lesser~~ *greater* of: (A) Ten percent of such insurer's surplus as  
27 regards policyholders as of December 31 next preceding; or (B) the  
28 net gain from operations of such insurer, if such insurer is a life  
29 insurer, or the net income, if such insurer is not a life insurer, not  
30 including realized capital gains for the 12-month period ending De-  
31 cember 31 next preceding, but shall not include pro rata distributions  
32 of any class of the insurer's own securities. An extraordinary dividend  
33 or distribution shall also include any dividend or distribution made  
34 or paid out of any funds other than *earned* surplus ~~profits~~ arising  
35 from the insurer's business, as defined in K.S.A. 40-233, and amend-  
36 ments thereto. The provisions of K.S.A. 40-233, and amendments  
37 thereto, shall not be construed so as to prohibit an insurer, subject  
38 to registration under K.S.A. 40-3305, and amendments thereto, from  
39 making or paying an extraordinary dividend or distribution in ac-  
40 cordance with this section.

41 ~~In determining whether a dividend is extraordinary, an insurer~~  
42 ~~other than a life insurer may carry forward net income from the~~  
43 ~~previous two calendar years that has not already been paid out as~~

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7/4/93  
3/11/93  
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~~dividends. This carry-forward shall be computed by taking the net income from the second and third preceeding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceeding calendar years.~~

(3) Notwithstanding any other provisions of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval thereof, and such a declaration shall confer no rights upon shareholders until: (A) The commissioner of insurance has approved the payment of such dividend or distribution; or (B) the commissioner of insurance has not disapproved such payment within the 30-day period referred to above.

(g) (1) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with this act.

(2) Nothing herein shall preclude a domestic insurer from having or sharing a common management or cooperative or joint use of personnel, property or services with one or more other persons under arrangements meeting the standards of K.S.A. 40-3306, and amendments thereto.

(h) For purposes of this act, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to such insurer's financial needs, the following factors, among others, shall be considered:

(1) The size of the insurer as measured by such insurer's assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria;

(2) the extent to which the insurer's business is diversified among the several lines of insurance;

(3) the number and size of risks insured in each line of business;

(4) the extent of the geographical dispersion of the insurer's insured risks;

(5) the nature and extent of the insurer's reinsurance program;

(6) the quality, diversification, and liquidity of the insurer's investment portfolio;

(7) the recent past and projected future trend in the size of the insurer's surplus as regards policyholders;

(8) the surplus as regards policyholders maintained by other comparable insurers;

(9) the adequacy of the insurer's reserves; and

(10) the quality and liquidity of investments in affiliates. The commissioner of insurance may treat any such investment as a dis-

F/21 3/11/93  
2-10

1 allowed asset for purposes of determining the adequacy of surplus  
2 as regards policyholders whenever in the commissioner's judgment  
3 such investment so warrants; and

4 (11) *the quality of the insurer's earnings and the extent to which*  
5 *the reported earnings indicate the extraordinary items.*

include

6 Sec. 4. K.S.A. 40-233 and K.S.A. 1991 Supp. 40-3305, as  
7 amended by section 3 of chapter 288 of the 1992 Session Laws of  
8 Kansas and 40-3306, as amended by section 4 of chapter 288 of the  
9 1992 Session Laws of Kansas, are hereby repealed.

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

7/14 3/11/93  
2-11



## KANSAS HEALTHY KIDS CORPORATION

109 S.W. 9th Street, Suite 410  
Topeka, Kansas 66612-1215

913-296-7200  
FAX 913-296-1586

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March 8, 1993

Dear Superintendent:

We invite you to participate in a pilot project authorized by the Kansas Legislature. It is an exciting opportunity to provide your uninsured students with health insurance.

The Kansas Healthy Kids Corporation was created by the Kansas Legislature last year and became operational two months ago. We are a quasi-public corporation that will implement pilot projects in three school districts in the State. The pilot projects will provide, based on ability to pay, health insurance benefits to school children and their non-school siblings younger than 18 years of age. The health insurance benefits will include preventive and primary care services, as well as basic dental care. Eligibility may be linked with the school lunch program.

We know that you were recently asked to promote The Caring Program for Children, which is a free health insurance program for poor children. We were not established to duplicate the work of The Caring Program. Instead, we are coordinating our efforts.

The Caring Program will continue to provide health insurance to Kansas children, while we conduct experiments in narrow pilot projects with limited enrollments. From the pilots, we will gather empirical data that will help the Kansas Legislature and the Governor decide the State's future direction in providing health insurance to our uninsured children.

If you are interested in receiving our application package, please return the pink form by March 31, 1993. The application will closely follow the criteria that are enclosed. Your completed application will be due to us by May 14. We plan to choose the pilot sites by July 1, and then spend the next year planning and implementing the projects. We have considerable flexibility on project design and look forward to hearing your ideas on how you'd like to see the pilot structured in your district. We are anxious to work with you and hope to hear from you soon!

Sincerely,

A handwritten signature in cursive script, reading "Trix Niernberger", is written below the word "Sincerely,".

Trix Niernberger  
Executive Director

Senate FILE 3/11/93  
Attachment #3



**CRITERIA FOR SELECTION OF  
PARTICIPATING SCHOOL DISTRICTS**  
Approved by Kansas Healthy Kids Corporation  
Board of Directors  
February 24, 1993

The Kansas Healthy Kids Corporation will implement three pilot projects for the purpose of providing research data on the impact of providing health insurance to uninsured children. These pilot projects will be limited to a specific time period and might not exceed one year in duration. The progress and results of the pilot projects will be reported to the Governor and the Kansas Legislature. The study will be structured to measure utilization of services, cost, provider acceptance, beneficiary acceptance, and the overall success of the pilot projects.

School districts are eligible to apply to work with the Kansas Healthy Kids Corporation in establishing the three pilot sites.

The criteria for selecting the three pilot sites are listed below.

1. Overall criteria:
  - A. Geographic distribution of pilot projects.
  - B. Balance of size of community. No more than 1000 children in any community will be eligible for the program due to funding limitations. School districts with more than 1000 uninsured children should define how the children will be targeted or limited to certain schools. Target groups of less than 1000 will be welcomed.
  - C. Demographics including ethnicity, single parent families, special education, number of students who have qualified for school lunch program (free and reduced), any other relevant data.
2. Demonstrated commitment from parents:
  - A. Attendance at parent association meetings.
  - B. Attendance of parents at site-based council meetings.
  - C. Resolution of support from parent association.
  - D. Commitment from parent association to help with project.
  - E. Ideas of how to reach parents.
3. Demonstrated commitment from school district:
  - A. School board resolution supporting project.
  - B. Financial support and services committed to project including assistance with marketing, eligibility determination, distribution of materials and surveys, etc.
  - C. Name of person in school district who will be coordinating Healthy Kids effort and his/her interest in the project. How project fits with his/her other work.

F/41 3/11/93



Kansas Healthy Kids Corporation  
Criteria for Selection  
Page Two

- D. Resolution of support or letter of interest from site-based councils of each participating school.
  - E. Current school health programs including on-site health services.
  - F. Prior demonstrated effort in providing health screening service and follow-up.
  - G. Proposed methods of how school district can enhance participation in project.
4. Demonstrated commitment from medical and dental community:
- A. Resolution from local medical and dental associations.
  - B. Support letters from local doctors and dentists indicating that they will serve patients and indicating that the volume of patients can be handled.
  - C. District or school health committees who are interested in Healthy Kids program.
  - D. Commitments from health facilities (hospitals and clinics) that will treat patients.
5. Demonstrated commitment from business and civic communities:
- A. Resolutions of support from business, civic or social organizations.
  - B. Commitments of contributions from business, civic or social organizations.
  - C. Ideas of how public/private partnership can be enhanced in local community.
6. Demonstrated commitment from local health department:
- A. Letter of support from local health director.
  - B. Commitment of service from local health department.
7. Demonstrated commitment from Blueprint Local Planning Council:
- A. Resolution of support.
  - B. Commitment of contributions and service.
8. Demonstrated experience and commitment to coordination of services for children:
- A. Experience in coordinating services with other agencies, organizations, businesses, health centers or others (federal, state, local and private).
  - B. Letters of support indicating interest from agencies, organizations, businesses, health centers and others who plan to coordinate services with pilot project.





**YES**, we are interested in submitting an application to participate as a Kansas Healthy Kids Corporation pilot project. Please send us an application. I understand that the application will be due May 14, 1993.

Contact Person: \_\_\_\_\_  
(Please Print)

School District No.: \_\_\_\_\_

School District Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone No.: \_\_\_\_\_

**Please return this form, no later than March 31, 1993, to:**

LISA MORRIS  
KANSAS HEALTHY KIDS CORPORATION  
109 SW 9TH STREET, SUITE 410  
TOPEKA, KS 66612-1215

F141 3/11/93  
3-4

Testimony on  
House Bill No. 2139 as Amended by the House Committee  
by  
Dick Brock  
Kansas Insurance Department

House Bill No. 2139 amends the provisions of Article 44, Chapter 40 of the Kansas statutes enacted by the 1992 legislature which created the Kansas Healthy Kids Program. The stated legislative intent of this program is to "... bring preventive and primary care health care services to children, if necessary through the use of school facilities ... and to provide health insurance coverage to such children."

The program has been implemented and is administered by a Kansas Healthy Kids Corporation. This Corporation was established by the legislation and is governed by a board of directors the members of which are appointed by the Governor and specified members of legislative leadership. In addition, the Secretaries of Social and Rehabilitation Services and Health and Environment and the Commissioners of Insurance and Education are nonvoting members of the board. Attached to my testimony is a copy of the board's first report to the Governor and legislature which summarizes its activities to this point in time.

Since the report provides the basic background information, I will simply defer any questions you may have in this area and move to an explanation of the actual amendments proposed by House Bill No. 2139. The first amendment appears in lines 27 through 42 on page 2 of the bill. This amendment is intended to prevent a situation where the insurance laws -- and consequently, the Insurance Department -- would become an obstacle to the development and implementation of innovative or desirable initiatives developed by the Healthy Kids Corporation or otherwise interfere with the Corporation's ability to achieve the objectives envisioned by the legislation.

Senate File 3/11/93  
Attachment #4

As amended by the House Committee, this preemption of state law is limited to those statutes relating to the licensing and qualification of insurance agents. Without this amendment, it is quite likely the Executive Director of the Corporation, perhaps members of the Board, PTA representatives and others involved in explaining and promoting the program would have to be licensed as an insurance agent the minute they begin talking or otherwise providing information to schools, parents and others regarding insurance programs that might be available through the efforts and facilities of the Corporation. This would involve completion of the agent's qualifying examination, payment of fees, compliance with continuing education requirements and being subject to other requirements imposed on insurance agents. Compliance with such statutes and requirements would be an onerous, unnecessary, and, in many cases, an insurmountable obstacle to successfully completing the Corporation's statutory responsibilities.

Because of the length of the statutes being amended, the amendments appearing on Sections 2 and 3 of the bill are not as significant as they might first appear. Section 2, lines 31 through 33, page 3 amends K.S.A. 1992 Supp. 40-4405 to exempt the Kansas Healthy Kids Corporation from the state purchasing statutes. This provision was taken from K.S.A. 1992 Supp. 74-8005 which establishes the administrative arm of Kansas Inc., a corporate body created by statute that is very similar to the Kansas Healthy Kids Corporation except its purpose relates to economic development activities instead of health care for Kansas kids. Both are governed by a board of directors drawn primarily from the private sector but also include legislators and representatives from the executive branch of state government. Therefore, despite the exemption from the purchasing laws, the legislative and executive branch representation assures that ample oversight exists to preclude improper purchases and we have already discovered that the time required to obtain essential furniture, equipment and so forth more than offsets any cost savings that result from the bidding process. However, a much more important reason for the exemption is the need for the Corporation's board to have complete latitude to negotiate innovative insurance contracts with carriers and administrators authorized to do business in Kansas that will



permit the Kansas Healthy Kids Corporation to fulfill its statutory obligations. Adherence to the purchasing statutes would make this task extremely difficult, if not impossible, and would almost certainly result in a less satisfactory program than can otherwise be achieved. This is particularly true as the Corporation enters into the experimental phase of its activities by selection and establishment of programs in 3 pilot school districts as required by the legislation.

The third proposed statutory change amends K.S.A. 1992 Supp. 40-4406 to permit the Corporation to establish a separate account in a bank or savings and loan association. This account would be used as a depository for private funds received by the Corporation from gifts, grants, donations and other sources. Initially the Corporation's board of directors was advised by representatives of the Division of Accounts and Reports that this was already provided for in the 1992 legislation. We have since been advised otherwise. Therefore, the proposed amendment would simply incorporate in the Kansas Healthy Kids Program Act the same ability to establish a separate account for private funds that now exists for Kansas Inc., the Corporation for Change and probably most, if not all, other similar bodies. Not only would this amendment remove some reluctance on the part of some potential contributors to donate or otherwise provide funds to the Corporation that would be deposited in the State Treasury but it would also permit the Corporation to expedite the receipt and expenditure of private funds.

All of the amendments originally proposed by House Bill No. 2139 were specifically authorized and approved by the Corporation's board of directors at its January 27, 1993 meeting. The House Committee amendments were noted by the Board and no objections were raised at its February 24 meeting.



## KANSAS HEALTHY KIDS CORPORATION

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913-296-7200  
FAX 913-296-1586

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### REPORT TO GOVERNOR JOAN FINNEY AND THE KANSAS LEGISLATURE

Submitted by the Board of Directors of the  
Kansas Healthy Kids Corporation  
February 1, 1993

The Board of Directors of the Kansas Healthy Kids Corporation is pleased to present our first report to Governor Joan Finney and the Kansas Legislature, as required by Chapter 168 of the 1992 Session Laws of Kansas. We approved this report by action in our meeting of January 27, 1993.

The goal of the Kansas Healthy Kids Corporation is to implement programs which will provide comprehensive health insurance benefits to all Kansas school age children who are not insured, as well as their non-school siblings. We will be testing the programs in three school districts and plan to choose the pilot sites by July 1, 1993. We will also be selecting insurance benefits for the pilot sites by that same date.

The responsibility for implementing the goals of the Kansas Healthy Kids Corporation rests with the Board of Directors. The Board is committed to involving the financial and human resources of the private and public sectors, including businesses, foundations and the federal government, in order to execute our goals.

Our Board of Directors is composed of 21 members, which includes four non-voting members. Seventeen of the board members are appointed by the Governor and legislative leaders. These appointments have been made, with the exception of one appointment by the Governor.

The first meeting of the Board of Directors was convened at the direction of Governor Finney on September 18, 1992. At that meeting, we elected officers who are: Gary Sherrer from Wichita as Chairperson, Representative Barbara Allen from Prairie Village as Vice-Chairperson, Patricia Hurley from Topeka as Secretary, and Michael Keating from Marysville as Treasurer. In this first meeting, we also agreed on qualifications and a hiring process for staff, extended

F/4 3/11/93

4-4

Report submitted by the Kansas Healthy Kids Corporation

February 1, 1993

Page 2

authority to Board officers to locate office space, and made arrangements for working with the State budget division.

The Executive Committee of the Board quickly began the search process for the executive director of the Corporation. The position was advertised throughout the State. In the Board meeting of November 5, 1992, we authorized the hiring of Trix Niernberger as executive director for the corporation. Trix has extensive health and non-profit management expertise, as well as experience working in the Kansas budget division.

The Board met on December 2, 1992, in an extended session to discuss an agency mission statement and goals, formulate action steps and identify operational or structural issues.

Both Trix Niernberger and Lisa Morris, administrative assistant, began employment with Kansas Healthy Kids Corporation on January 4, 1993. They have spent the last few weeks establishing an office in accordance with state procedures, as well as beginning to implement the programmatic functions of the corporation.

Five committees of the Board have been established which include the Executive Committee, a committee to study elements of The Caring Program For Children to better able us to plan and coordinate our efforts, a committee to define the benefits to be offered under the Healthy Kids Program, a committee to determine the criteria for pilot site selection, and a committee to study and learn from other states' efforts in health insurance reform for children. All committees met on January 27, 1993 and have begun their work.

With less than half of our fiscal year remaining, we are well within our budget in all budget categories. We plan to carry forward some of this year's appropriation to continue our work into next fiscal year.

We have carefully and deliberately reviewed the law which created the Kansas Healthy Kids Corporation to ensure that it will meet our future needs. Although the initial legislation provides the framework for the Kansas Healthy Kids Corporation, we are requesting technical amendments this session to enhance our public/private partnership and to ensure the success of our pilot projects. These amendments will allow us to establish a bank or savings account for non-state revenue, exempt our corporation and our contracts from Kansas insurance laws other than the unfair trade practices act provisions, and exempt the corporation from state purchasing laws as are other quasi-public corporations which have been developed by the State such as Kansas, Inc.

The members of the Board of Directors are aware of our 11 duties under the law. We plan to fulfill our responsibilities in an effective and efficient manner. These requirements are:

F 121 3/11/93  
4-5

- (1) Develop a program which will provide, based on ability to pay, health insurance benefits including preventive and primary care services and basic dental care to all Kansas school aged children who are not otherwise covered by public or private insurance programs, grades kindergarten through 12, and their non-school siblings younger than 18 years of age, such program to have children enrolled and be providing services in at least three pilot school districts on or before July 1, 1994, and subsequent to the establishment of such pilot programs provide for the expansion of the program to other school districts as appropriate.
- (2) Establish, with consultation from experts, appropriate professional organizations and others, a list of benefits appropriate to children which will be included in the insurance program.
- (3) Establish eligibility criteria which children and their families must meet in order to participate in the program.
- (4) Develop and implement a plan to publicize the Kansas healthy kids program, the eligibility requirements of the program and the procedures for enrollment in the program.
- (5) Accept and receive grants, loans, gifts or donations from any public or private entity.
- (6) Develop funding sources.
- (7) Employ staff necessary to administer the program.
- (8) Establish administrative and accounting procedures for the operation of the corporation.
- (9) Enter into contracts as may be necessary for administrative and other services.
- (10) Coordinate the development of the Kansas healthy kids program with other public or private initiatives in order to promote efficiency and coordination and to avoid duplication of effort.
- (11) Report on activities to the Governor and to the Legislature on or before February 1 each year.

We are pleased with our progress to date and are looking forward to a very productive next few months as we plan the insurance program and choose the pilot sites. We are excited about our challenges and the opportunity you have given us. Please call any member of our Board or our executive director, Trix Niernberger, at 296-7200, if you have questions or would like to discuss our work. A list of our Board of Directors is attached. We look forward to hearing from you, as we design health insurance programs which will benefit the uninsured children of our State.

F141 3/11/93  
4-6

# KANSAS HEALTHY KIDS CORPORATION

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F14 3/11/93  
4-7



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Department of Health and Environment

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**Robert C. Harder, Secretary**

Reply to:

Testimony presented to

Senate Financial Institutions and Insurance

by

The Kansas Department of Health and Environment

House Bill 2139

The Kansas Department of Health and Environment strongly supports comprehensive strategies to improve and expand health care services for children.

Currently, lack of health insurance for infants and young children has reached crisis proportions in Kansas and elsewhere in the nation. Increasing numbers of families with children cannot afford to pay for visits to physicians and health care is a low priority for many families -- except for accidents and emergencies.

We need to support efforts such as the Healthy Kids Corporation with its emphasis on preventive and primary care for children. We need to expand the capacity of our insurance system to meet the needs of all Kansas children. We need to use existing legislation and financing sources more creatively in order to accomplish these ends.

It is our understanding that the amendments to the Kansas Healthy Kids Corporation Act, HB 2139, will provide this emerging program with sufficient flexibility to enroll greater numbers of Kansas children.

Recommendation:

KDHE strongly supports HB 2139 and all other efforts to ensure that greater numbers of Kansas children receive basic preventive and primary care services.

Testimony presented by:      Azzie Young, PhD  
   Director  
   Bureau of Family Health  
   March 11, 1993