

Approved: Jan. 18, 1994
Date

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Chairperson William Bryant at 3:30 p.m. on January 12, 1994, in Room 527-S of the Capitol.

All members were present except: Representative Phil Kline, Excused

Committee staff present: William Wolff, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Nikki Feuerborn, Committee Secretary

Conferees appearing before the committee:

Sally Thompson, State Treasurer
Jim Maag, Kansas Bankers Association
Jeff Sonnich, Kansas-Nebraska League of Savings & Loan
Jerrell Wright, Credit Union Association
Jo Lana Pinion, State Treasurer's Office
Jennifer Wentz, Secretary of State's Office

Others attending: See attached list

Chairman Bryant welcomed the members back to the Committee and welcomed the new members: Representative Kathleen Sebelius and Representative George Teagarden. There will be meetings next week Tuesday-Thursday with the introduction of proposed legislation being the main agenda item.

Hearing on SB 393: Disposition of Unclaimed Property

Dr. William Wolff, Research, gave a brief history of the bill which was implemented in 1979. HB 2530 and SB 393 would be amendments to this statute.

Sally Thompson, State Treasurer, appeared before the committee requesting major changes to the Unclaimed Property Act, which would require the repeal of the existing statute and new uniform code language adopted (Attachment 1). This bill was passed in the Senate 40-0. The unclaimed property is primarily money or jewelry which has been turned over to the State after not being claimed within a five year period by the rightful owner. Lists of unclaimed property within their counties was made available to Committee members. Ms. Thompson reviewed the various methods for tracking rightful owners used by the Unclaimed Property Staff and noted their success rate of approximately 1/3. \$12 million has been returned to the rightful owner or heirs since 1979 however \$22 million is still being held by the State. A company has recently contacted the State Treasurer's Office with a request to deposit an additional \$25 million in this fund which becomes part of a fund to pay search costs, another fund to pay claimants, and eventually ends up in the fgnral fund. This would be the largest claim of unclaimed property in the United States. There is no statute of limitations on claiming property.

Ms. Thompson stated that the requested updates to the 1966 revision of the 1954 uniform code are:

1. the combination of reporting and remitting functions
2. the elimination of duplicative due diligence mailings by the state
3. state staffing of an audit function rather than reliance on the passive efforts of regulators. It is estimated that each hour of auditing brings in \$600-\$800.
4. holder service charges--limited to those cases where there is a written enforceable agreement between an owner and holder
5. the last known address of an owner will be the factor upon which a state will receive monies, and

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,
Room 527-S Statehouse, at 3:30 p.m. on January 12, 1994,

6. accounting changes to allow for the recovery of unclaimed property efforts prior to general fund deposit.

Ms. Thompson reviewed the requested changes and requested the bill become effective upon publication in the Kansas Register.

Questions asked during Committee discussion included: Why does the state become the property owner instead of the original business paying the money keeping the money? Why does the state need to be the facilitator? Why can't the counties where the unclaimed property is located retain the monies for economic development or some other project? Forty plus states have adopted a model act and 32 states have audit functions.

JoLana Pinion, Assistant Treasurer explained how the three funds work and how simplifying the system by using the general fund and the claimant fund and eliminating the expense fund would be beneficial.

Jim Maag, Kansas Bankers Association, presented the Committee with two amendments for SB 393 (Attachment 2) In Section 30 the State Treasurer is given authority to examine the records of any "person" to determine if they have complied with the provisions of this act. He requested that such examination authority be granted only to those regulatory agencies specifically designated to examine banks. The second amendment request is to add to line 26 of Section 34 Subsection (c) the word "willfully" to follow the word "who."

Jeffrey Sonnich, Vice-President of Kansas-Nebraska League of Savings Institutions, requested clarification on certain items (Attachment 3).

Jerrell Wright, Kansas Credit Union Association, commented on his association's support of the KBA and KNLSI's amendments.

Sally Thompson, State Treasurer, presented a balloon amendment to SB 393 (Attachment 4). This amendment would add a statement to Section 30 (b) stating that "the provisions of this section shall not apply to any person that provides a letter from an independent auditor or supervisory agency certifying compliance with this act."

Written testimony from William W. Sneed, Legislative Counsel for State Farm Insurance, was presented to the Committee (Attachment 5).

Jennifer Wentz, Legal Counsel for the Secretary of State, requested the introduction of a bill relating to the Uniform Commercial Code (Attachment 6). Three components of the bill are technical and of a clean-up nature, addressing sole proprietorships listing a social security number on financing statements, debtor's name changes as evidenced by an amendment to a financing statement; and the filing period for federal tax liens. Also requested is authorization of the Secretary of State's office to implement optional electronic filing procedures for financing statements.

Representative Helgerson moved for the request from the Secretary of State's Office to be introduced into legislation. Representative Sebelius seconded the motion. Motion carried.

Dick Brock, Insurance Commissioner's Office, presented legislative proposals with explanatory memorandums (Attachment 7) Proposals 7-15 18, 19, and 21 were explained by Mr. Brock.

Representative Sebelius moved to introduce the proposals from the Insurance Commissioner's Office into legislation. Motion seconded by Representative Helgerson. Motion carried.

Mr. Brock introduced Ron Nitcher from the Insurance Commissioner's Office.

The meeting adjourned at 5:05 p.m.

The next meeting is scheduled for January 13, 1994.

GUEST LIST

COMMITTEE: _____

DATE: 1-12-94

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Judi Stork	Topeka	Banking Dept.
Jennifer Wertz	Topeka	: Sec of State
Basel Beard	Sec of State	→
Jim May	Topeka	KBA
Lee Wright	Overland Park	Farmers Ins. Group
Danielle Noel	State Farm	Topeka
Ken Bahr	Topeka	4th Financial Corp
Kathy Oyster	"	KBA
John P. Smith	Topeka	Kansas State Dept. CU
Chuck Stoner	"	KBA
Jama Wagner	Topeka	State Treasurer
Sally Thompson	Topeka	State Treasurer
Peggy Hanna	Topeka	STO
Dick Brock	"	Ins Dept
Ron Kifler	✓	Ins. Dept.
Stefan Dixon	✓	STO
Jim King	✓	STO
Guthrie	✓	S. T.O.
Russell A. Frey	✓	Ks Vet Med Assoc.
Alan Steppat	Topeka	PETE McGill & Assoc.
Jeral Wright	Topeka	Ks Credit Union Assn

Testimony-SB 393
Financial Institutions & Insurance Committee
January 12, 1994 (3:30) 527-s
State Treasurer Sally Thompson

Mr. Chairman and members of the committee, it is a pleasure to come before you today to discuss SB 393, which provides major changes to the Unclaimed Property Act. SB 393 passed in the Senate last session, 40-0.

Chairman Bryant suggested it would be helpful to provide a little background about the state's Unclaimed Property division before discussing our request.

Thousands of people in our state have lost track of their property. It may sound hard to believe, but people move and forget to furnish their bank, broker, employer or insurance company a forwarding address. Unclaimed property can include anything from jewelry to insurance benefits, or even a utility deposit. Since 1979, it has been the state's, more specifically the Office of State Treasurer's, responsibility to locate and return unclaimed property to its rightful owner or heir.

As you may already know, after five years of failing to locate a rightful owner a "holder" is then required to turn over that property to the state. So then it becomes our turn to piece the puzzle together and locate owners and heirs.

Losing track of one's property can happen to anyone-young, old, rich and poor, heirs to large and small estates. Businesses, churches, non-profit organizations, colleges and universities all lose track of property. Property amounts range from just a few dollars to thousands of dollars. The sheets I've distributed to each of you provide some detail on the unclaimed property credited to your county. For the larger counties the lists include everyone with \$100 or more in unclaimed property...the other county list include all unclaimed property owners.

Sally Thompson
Attachment 1
January 12, 1993

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The reason for breaking down the larger counties, is pretty evident, this stack represents the complete list for Sedgwick County alone. So you can see just what a massive amount of information our Unclaimed Property division manages. If you recognize a name or would simply like additional information, you or anyone on the list can use our toll free number 1 800 432-0386 or write to our Unclaimed Property division at 900 SW Jackson, Suite 201, Topeka, KS 66612.

Since 1979, the State Treasurer's office has returned more than \$12 million to rightful owners or heirs. We have an excellent record for finding owners, compared to the national average, we return about a third of all property that is reported to our office. However, we are still holding approximately \$22 million in custody for the rightful owners who may claim these monies in perpetuity.

We use a variety of methods to locate owners. The first is, of course, the daily activities of the (five members of the) Unclaimed Property staff in sending letters or making phone calls and continually updating a rather extensive data base. We utilize a couple of publication marketing tools like local area newspapers and our own publication the "Messenger" which includes an alphabetized list of names of owners in each county.

One of our most effective methods of returning unclaimed property has been our booth at the Kansas State Fair. Last year, nearly 20,000 people made inquiries into our unclaimed property system; 1,211 claim requests were filed totaling \$181,000. The largest single claim was for \$16,000.

Additionally, we've made significant program changes in the unclaimed property process, like utilizing automation to increase our efficiency in returning property to rightful owners and heirs.

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Today we are asking you approve this legislation that will bring the unclaimed property act in compliance with the current national uniform code. At the present time we are operating the unclaimed property division on a 1966 revision of the 1954 uniform code, so you can see it is very dated. Uniform code is the set of procedures used by most states to govern unclaimed property programs.

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SB 393 will bring Kansas law up to date and into conformity with other states that have adopted this act, that it is also endorsed by the National Association of Unclaimed Property Administrators.

In updating, the current 28-year old code and bring it to the national level there are six basic issues:

- 1) the combination of reporting and remitting functions
- 2) the elimination of duplicative due diligence mailings by the state
- 3) state staffing of an audit function rather than reliance on the passive efforts of regulators
- 4) holder service charges--limited to those cases where there is a written enforceable agreement between an owner and holder
- 5) the last known address of an owner will be the factor upon which a state will receive monies and,
- 6) accounting changes to allow for the recovery of unclaimed property efforts prior to general fund deposit.

Updating the existing statute to uniform code levels appears to us to require so many changes that we propose the existing statute be repealed and the new uniform code language be

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adopted.

The only change in SB 393 we are requesting at this time would be the effective date. We would like this legislation to be effective on the date of publication in the Kansas register.

With the length of the bill, we have chosen to highlight major points and group like items together for discussion...Would you like me to go over these changes or would the committee prefer to study them on their own?

I. Definitions and General Rules (Sections 1-3):

In section 1, the bill provides for expanded coverage and is more specific than the current section (K.S.A. 58-3901), including a definition for mineral and mineral proceeds, as well as expanding "business association" to include mutual fund companies.

In section 2, the general rules for property presumed abandoned include: 1981 Act and NAUPA language on Service charges requiring a written agreement between a business and its customer; charges may only be taken for two years and notice of the service charge must be sent prior to the charge if the property is greater than \$25.

In section 3, provides the general rules for taking custody of unclaimed property. Current statute outlines types of unclaimed property that are reportable only if holder is "doing business within Kansas" and prevents our office from receiving funds owing to Kansans because it does not explicitly use language following the rules set forth in the 1965 Supreme Court ruling in Texas v. New Jersey. In this case the Court ruled that businesses should report unclaimed assets to the state of the last known address, only if the state's statute provided for such. If there is no provision in statute, then the unclaimed property must be reported to the state of incorporation.

This change in language will allow our office to demand that out-of-state holders return unclaimed assets owed to persons having a last known address in Kansas. This should be particularly helpful when dealing with businesses located in neighboring cities such as Kansas City, Missouri; St. Joseph, Missouri; and Joplin, Missouri.

II. In Sections 4 through 16:

Property which is reportable is specified and includes:

- travelers checks and money orders (Section 4);
- bank money orders and cashiers checks (Section 5);
- checking and savings accounts, retirement accounts, and certificates of deposit (Section 6);
- life insurance funds (Section 7);
- utility deposits (Section 8);
- refunds by businesses; class action awards and proceeds from bankruptcy estates (Section 9);
- stocks, dividends, and mutual funds (Section 10);
- mineral interests (Section 11);
- moneys held by transfer and other types of agents; condemnations, tax foreclosures and other proceeds from courts (Section 13);
- gift certificates (Section 14);
- wages (Section 15); and
- safe deposit boxes (Section 16).

These sections include important changes relating to securities in section 10. This section allows Kansas to explicitly require holders to report underlying shares to our state, which was never specified under current statute.

Under the 1981 Act, holders had to maintain additional recordkeeping for underlying shares for seven rather than five years. The changes adopted from the NAUPA Uniform Revision Project allow for the same dormancy period for all types of shares.

We have also adopted the proposal from NAUPA regarding unclaimed mineral rights and interests; in section 11, explicit treatment is given to a significant amount of Kansas holdings.

In addition, in section 13, we have adopted language covering any government agency or subdivision. Because of the decision in Texas v. New Jersey, Kansas will be able to require reporting of property held in other states, Kansas--for

instance--will be able to receive unclaimed court proceeds from Jackson (K.C.),
Chanan (St. Joseph), and Jasper (Joplin) Counties in Missouri owed to Kansans
who may live in neighboring Kansas counties.

III. Sections 17 and 19 discuss the procedures for reporting and remitting
unclaimed property to Kansas and a Holders Due Diligence requirement.

Overall the reporting procedures in 1981 Act are fairly similar to language found
within the current statute. Major differences are outlined below.

In section 19: We have adopted the proposal of NAUPA, whereby holders
would deliver unclaimed property at the time of the filing of their report. Well
over 50% of our holders already remit unclaimed property at the time of their
filed report. This proposal should save the additional recordkeeping expenses
that holders and our office undergo when a remittance is made six months after
a report is filed.

Currently, 19 states have a single report/remittance period including
neighboring states of Missouri and Nebraska as well as smaller states such as
Idaho, New Hampshire, and West Virginia, and larger states such as California,
New York, Illinois, and Texas.

In section 17, subsections (e) through (h), adopted from the 1981 Uniform
Act, we have set up rules for holders to perform due diligence in order to try
to locate owners of unclaimed assets. Holders must send a letter to owners with
more than \$25 in assets. In addition we propose to adopt the Virginia statute
requiring holders to send letters to owners no later than 60 days and no earlier
than 120 days prior to reporting the assets to our office.

These subsections give holders specific yet flexible rules for determining
whether an asset is truly unclaimed prior to reporting the asset to our office.
Under the present statute, we have found inconsistent, and in many instances, no
real attempt by holders in locating unclaimed owners.

Again this is adopted from Virginia statute. Overall this complete
treatment on due diligence should significantly reduce the labor and expenses of
the State Treasurer's office that is required under the current statute in paying
claims of owners with current addresses. It should also help holders retrace and
reconnect with customers with whom they may have lost touch.

We have also adopted NAUPA changes to eliminate a second mailing of notice

our office. Since our proposal requires holders to send notice just prior to the reporting of the assets, it would be duplicative to repeat the task after we have taken custody of the asset.

As you may know, Kansas never actually receives a right of reversion or "taking" of the unclaimed property. Since we act only as custodian of unclaimed property, allowing unclaimed property to be claimed at any time by the actual owner or owner's heirs, there is no real "due process" concern for a repeated written notice.

IV. Section 18--Publication of Lists of Abandoned Property.

NAUPA changes also alter the treatment of advertising. The changes allow our office the discretion necessary to locate persons through more innovative media. We will have the flexibility of advertising within a given year, rather than being required to publish for two weeks twice a year.

We can also be more flexible with the language used in the advertising; current statute and the 1981 Act require very confusing legalistic language to be placed in the advertising.

V. Sections 29 through 34 address the enforcement mechanisms for the Act:

Under the proposal, Kansas will be able to require compliance with the reporting of unclaimed property which would be unworkable under the current statute.

In Section 30, using the language of the 1981 Uniform Act, our office will be able to examine the records of holders; examination cost language has been modeled after a similar Insurance Department statute.

The examination function will not only produce direct recovery results, but also create a multiplier effect of better voluntary reporting. Estimates from other states appear to produce approximately 400,000 additional dollars brought in for each examiner in the field.

Under Section 33, our office will be able to join with other states in performing joint and cooperative audits. This language is again adopted from the 1981 Uniform Act and is not found within current statute. Our expectations are that Kansas will be able to join in a number of examinations of holders who owe unclaimed property to Kansans, who otherwise would be out of our physical reach, but with the help of other states within the grasp of this Act.

Under section 34, subsection (b) provides for a fine up to \$5.00 for each failure to send written notice. Our current statute uses the language of the 1966 Act. The Uniform Law Commissioners Comments in the 1981 Act say: " A major weakness of the 1966 Act was its ineffective penalty provision... The experience of several states is that many holders find the economic incentive for noncompliance so great that violations of the law are frequent and extensive. The holder who neglects to report or pay has the use of property which is extremely valuable to it."

The bill's language is adopted from the NAUPA proposal clarifying the language used in the 1981 Act to ensure a factual showing for penalties, rather than an inquiry into purposeful or willful behavior or culpability of the holder. Criminal sanction and prosecutorial discretion by the State Treasurer ensure a "give and take" fairness to the section's integrity.

VI. Funding for the Act

In section 23, our office has adopted the language found within the 1981 Act which allows for a \$100,000 separate trust for payment of claims. Prior to deposit in the State General Fund, the State Treasurer is allowed to deduct for costs of sale, mailing, publication, office expenses, and costs incurred in examining and collecting property from holders.

VII. ADMINISTRATIVE PROCEDURES for the Act are fairly similar to the current statute. Sections 24 through 26, and section 28 talk about administrative procedures for claiming property, and the destruction of property which has no substantial commercial value.

Filing a claim remains fairly similar to current statute; appeal and hearing proceedings are governed under the Kansas Administrative Procedures Act and the Act of Judicial Review and Civil Enforcement of Agency Actions.

VIII. Miscellaneous

Section 20. Custody by State; Holder Relieved from Liability; Reimbursement of Holder Paying Claim; Reclaiming for Owner; Defense of Holder;

Section 21. Crediting of Dividends, Interest, or Increments to Owner's Account. This section, not found in 1966 Act, the owner is entitled to receive dividends when reported. Our modification of the statute is to limit payment if the total is less than \$5.00.

Section 22. Public Sale of Abandoned Property. Similar to 1966 Act [K.S.A. 58-3918].

Section 27. Election to Take Payment or Delivery. Similar to 1966 Act [K.S.A. 58-3923]. The 1981 Act allows for early delivery of property, prior to the run of the dormancy period.

Section 35. Agreement to Locate Reported Property. This is identical to language regarding current heirfinder limitations which provide for no agreement for 2 years after the state receives the property; and a maximum fee of 15%.

Section 42. Application to certain intangible property originating or issued in Kansas. This allows Kansas to obtain aggregate amounts owed either to the state of incorporation or the state of the principal executive office of the issuer of securities per Delaware v. New York.

Section 43. Government agency cooperation. This language is adopted from K.S.A. 58-3924.

Section 45. Time of Taking Effect. Legislation will take effect January, 1994.



The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

January 12, 1994

TO: House Financial Institutions and Insurance Committee
RE: SB 393 - The Uniform Unclaimed Property Act

Mr. Chairman and Members of the Committee:

The KBA, representing the 480 banks throughout the state of Kansas, appreciates the opportunity to appear before the committee to discuss the provisions of SB 393 which would replace most of the existing law relating to unclaimed property with the provisions of the Uniform Unclaimed Property Act.

Most of the changes created by this proposal are acceptable to our industry, but there are two specific amendments we would like to recommend. In Section 30 of the bill the State Treasurer is given authority to examine the records of any "person" (which is defined to include banks) to determine whether the "person" has complied with the provisions of this act. We believe such examination authority should be granted only to those regulatory agencies specifically designated to examine banks.

The current law on examination of records relating to unclaimed property specifically exempts banks, trust companies, S&Ls, credit unions, licensed lenders, and insurance companies from any audits or inspections by the State Treasurer relating to unclaimed property. The statute (K.S.A. 58-3924) further requires the appropriate regulatory agencies to provide any necessary information required by the State Treasurer. We respectfully request that the exemption language contained in K.S.A. 58-3924 for the supervised institutions listed be included in Section 30 of SB 393.

Subsection (c) of Section 34 of SB 393 imposes a civil penalty on any "person" failing to pay or deliver to the State Treasurer any unclaimed property. We strongly believe the word "willfully" should be included on line 26 following the word "who". We do not believe it is fair to impose a very harsh penalty (25% of the value of the property) for what could be an inadvertent error by a bank or

Laure F. D. D.

Attachment 2

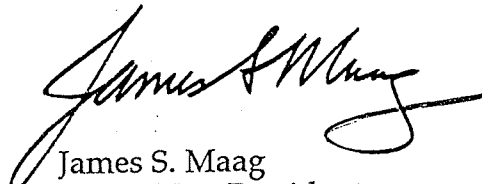
January 12, 1993

Office of Executive Vice President • 1500 Merchants National Building
Eighth and Jackson • Topeka, Kansas 66612 • (913) 232-3444
FAX (913) 232-3484



any other institution. It should be noted that the term "willfully" is used in both subsection (a) and subsection (e) of Section 34 and we believe it should be included in subsection (c).

The banking industry does not oppose the concept of SB 393 and would have no objection to its enactment if the issues discussed above are appropriately addressed. Thank you once again for the opportunity to discuss this issue with the committee.



James S. Maag
Senior Vice President

58-3924. Examination of records; state agency cooperation. The state treasurer may within one hundred twenty (120) days after receiving the report required under K.S.A. 58-3912 and upon reasonable notice examine all records pertaining to abandoned property of any person if the state treasurer has reason to believe that such person has failed to report property that should have been reported pursuant to this act. Audits and inspections made pursuant to this act shall be conducted only by employees of this state, duly authorized by the state treasurer. The provisions of this section shall not be deemed to authorize audits or inspections of supervised commercial banks, trust companies, savings and loan associations, credit unions, supervised licensed lenders, and insurance companies with home offices located in this state. All state agencies shall provide the state treasurer with such information as is necessary for carrying out the provisions of this act.

History: L. 1979, ch. 173, § 24; July 1.



Jeffrey D. Sonnich, Vice-President

Suite 512
700 Kansas Avenue
Topeka, Kansas 66603
(913) 232-8215

January 12, 1994

TO: House Committee on Financial Institutions and Insurance
FROM: Jeffrey Sonnich, Vice President KNLSI
RE: S.B. 393

Mr. Chairman. Members of the Committee. The Kansas-Nebraska League of Savings Institutions appreciates the opportunity to comment on S.B. 393 which would make major changes in the unclaimed property act.

While we do not have any objections to the notice provision of the bill there are several sections that need clarification.

Section 30 of the bill would give the State Treasurer the authority to, upon reasonable notice, examine the record of a financial institutions to determine whether abandoned accounts exist. Current provisions (58-3924) exempt the supervised financial institution from the audit provisions. This exemption was enacted ostensibly because these institutions are regularly examined by federal and state regulators. We see no reason to add another layer of regulatory bureaucracy.

Section 34 of the bill would allow for the imposition of civil money penalties for persons who willfully fail to present a report of unclaimed property to the treasurer. While we do not have a concern with the "willful failure to report" language under subsection (a) we do object to the provisions of subsections (b) and (c). We feel that the same standard of liability should apply. This would prevent imposition of fines where bona fide errors occurred on the part of the holder.

Section 6 , subsection (c) of the bill addresses deposits that are automatically renewable. We feel clarification is needed to determine what constitutes consent by the owner for purposes of renewal. Current statutes allow for a "negative response provision" where correspondence sent by a depository institution is evidence of contact when it has not been returned to the sender.

The Kansas Nebraska League appreciated the opportunity to comment on S.B. 393 and would ask the committee's consideration of our concerns before passage

Jeffrey Sonnich
Vice President

*House File
Attachment 3
January 12, 1994*

(b) A holder, with the written consent of the administrator and upon conditions and terms prescribed by the administrator, may report and deliver property before the property is presumed abandoned. Property delivered under this subsection ~~must~~ *shall* be held by the administrator and is not presumed abandoned until such time as it otherwise would be presumed abandoned under this act.

Sec. 28. If the administrator determines after investigation that any property delivered under this act has insubstantial commercial value, the administrator may destroy or otherwise dispose of the property at any time. No action or proceeding may be maintained against the state or any officer or against the holder for or on account of any action taken by the administrator pursuant to this section.

Sec. 29. (a) The expiration, before or after the effective date of this act, or any period of time specified by contract, statute or court order during which a claim for money or property can be made or during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or to recover property does not prevent the money or property from being presumed abandoned or affect any duty to file a report or to pay or deliver abandoned property to the administrator as required by this act.

(b) No action or proceeding may be commenced by the administrator against a holder concerning any provision of this act more than 10 years after the holder either specifically reported the property, or gave notice of a dispute regarding the property, to the administrator.

Sec. 30. (a) The administrator may require any person who has not filed a report to file a verified report stating whether or not the person is holding any unclaimed property reportable or deliverable under this act.

(b) The administrator, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with the provisions of this act. The administrator may conduct the examination even if the person believes it is not in possession of any property reportable or deliverable under this act. ←

(c) If a person is treated under section 12 and amendments thereto as the holder of the property only insofar as the interest of the business association in the property is concerned, the administrator, pursuant to subsection (b), may examine the records of the person if the administrator has given the notice required by subsection (b) to both the person and the business association at least 90 days before the examination.

(d) If an examination of the records of a person results in the

The provisions of this section shall not apply to any person that provides a letter from an independent auditor or supervisory agency certifying compliance with this act.

House F&D
Attachment 4
January 12, 1993

House F&D
Attachment 4
1-12-93

disclosure of property reportable and deliverable under this act, the administrator may assess the cost of the examination against the holder based upon the actual hourly salary rate for each examiner involved in the examination inclusive of travel to and from the place of the examination along with necessary and actual expenses for travel and subsistence as allowed under K.S.A. 75-3201 *et seq.* and amendments thereto, along with any consulting, data processing or other related expenses necessary to perform the examination. In no case may the examination charges exceed the value of the property found to be reportable and deliverable. The cost of examination made pursuant to subsection (c) may be imposed only against the business association.

(e) If a holder fails after the effective date of this act to maintain the records required by section 31 and amendments thereto and the records of the holder available for the periods subject to this act are insufficient to permit the preparation of a report, the administrator may require the holder to report and pay such amounts as may reasonably be estimated from any available records.

Sec. 31. (a) Every holder required to file a report under section 17 and amendments thereto, as to any property for which the holder has obtained the last known address of the owner, shall maintain a record of the name and last known address of the owner for 10 years after the property becomes reportable, except to the extent that a shorter time is provided in subsection (b) or by ~~rule and regulation~~ *rules and regulations* of the administrator.

(b) Any business association that sells in this state travelers checks or money orders, other than third-party bank checks on which the business association is directly liable, or that provides such instruments to others for sale in this state shall maintain a record of those instruments while they remain outstanding, indicating the state and date of issue for three years after the date the property is reportable.

Sec. 32. (a) The administrator, for and on behalf of this state, may commence an action, ~~summary or otherwise~~, in a district court of Kansas:

(1) For an adjudication that certain property is unclaimed and payable or distributable to the administrator;

(2) to compel presentation of a report or payment or distribution of property to the administrator;

to enforce the duty of a person to permit the examination or
at. of the records of that person;

(4) to enjoin any act that violates the public policy or provisions of this act; or

(5) to enforce any aspect of this act in any manner.

MEMORANDUM

TO: The Honorable William M. Bryant, Chairman
House Financial Institutions and Insurance Committee

FROM: William W. Sneed
Legislative Counsel
The State Farm Insurance Companies

DATE: January 12, 1994

RE: S.B. 393

Mr. Chairman, members of the Committee: My name is Bill Sneed and I am Legislative Counsel for the State Farm Insurance Companies. Please accept this memorandum as our testimony in regard to S.B. 393.

As you have been informed, S.B. 393 would repeal several of the statutes relating to unclaimed property and enact a more recent version of the model Uniform Unclaimed Property Act. Historically, unclaimed property held by a life insurance corporation has been statutorily defined within the Disposition of Unclaimed Property Act under K.S.A. 58-3903. New section 7 is an attempt to "modernize" that portion of the Disposition of Unclaimed Property Act as it relates to life insurance products.

We recognize the necessity for upgrading statutory language as products evolve, and as such, we have no opposition to the general substance of S.B. 393.

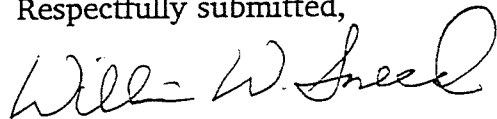
However, under current law insurance companies are exempt from audits by the state treasurer once the treasurer has received a standard report on unclaimed property, and current state law provides for a coordination of all other state agencies to provide such information as is necessary to carry out the provisions of the Act. This is found in K.S.A.

*House F&I
Attachment 5
January 12, 1993*

58-3924. The reason for this "exemption" is that insurance companies are currently regulated and examined by the Kansas Insurance Department. Without this exemption insurance companies would be subject to multiple examinations from two separate state agencies. Thus, we respectfully request that the exemption found in K.S.A. 58-3924 be reinserted into S.B. 393 to provide for more conformity and less duplication of governmental regulation.

We appreciate the opportunity to submit this testimony, and if you have any questions, please feel free to contact me.

Respectfully submitted,

A handwritten signature in cursive script that reads "William W. Sneed". The signature is written in dark ink and is positioned above the printed name.

William W. Sneed

Attachments: 1

The claim shall be paid without deduction for costs of notices or sale or for service charges.

History: L. 1979, ch. 173, § 21; July 1.

58-3922. Appeal of decision of state treasurer to district court. Any person aggrieved by a decision of the state treasurer or as to whose claim the state treasurer has failed to act within ninety (90) days after the filing of the claim, may commence an action in the district court of the county in which the claimant resides, or if the claimant is not a resident of Kansas, in the district court of Shawnee county. The proceeding shall be brought within ninety (90) days after the decision of the state treasurer or within one hundred eighty (180) days from the filing of the claim if the state treasurer fails to act. The action shall be tried *de novo* without a jury.

History: L. 1979, ch. 173, § 22; July 1.

58-3923. Election to take payment or delivery of property. The state treasurer, after receiving reports of property deemed abandoned pursuant to this act, may decline to receive any tangible property reported which he or she deems to have a value less than the cost of giving notice and holding sale, or he or she may, if he or she deems it desirable because of the small sum involved, postpone taking possession until a sufficient sum accumulates. Unless the holder of the property is notified to the contrary within one hundred twenty (120) days after filing the report required under K.S.A. 58-3912, the state treasurer shall be deemed to have elected to receive the custody of the property.

History: L. 1979, ch. 173, § 23; July 1.

58-3924. Examination of records; state agency cooperation. The state treasurer may within one hundred twenty (120) days after receiving the report required under K.S.A. 58-3912 and upon reasonable notice examine all records pertaining to abandoned property of any person if the state treasurer has reason to believe that such person has failed to report property that should have been reported pursuant to this act. Audits and inspections made pursuant to this act shall be conducted only by employees of this state, duly authorized by the state treasurer. The provisions of this section shall not be deemed to authorize audits or in-

spections of supervised commercial banks, trust companies, savings and loan associations, credit unions, supervised licensed lenders, and insurance companies with home offices located in this state. All state agencies shall provide the state treasurer with such information as is necessary for carrying out the provisions of this act.

History: L. 1979, ch. 173, § 24; July 1.

58-3925. Court action to compel delivery of abandoned property. If any person refuses to deliver property to the state treasurer as required under this act, the state treasurer shall bring an action in a court of appropriate jurisdiction to enforce such delivery.

History: L. 1979, ch. 173, § 25; July 1.

58-3926. Penalties. (a) Any person who, during a reporting period, willfully fails to render any report or perform other duties required under this act, shall be punished by a fine of ten dollars (\$10) for each day such report is withheld, but not more than one thousand dollars (\$1,000) in the aggregate.

(b) Any person who, during a reporting period, willfully refuses to pay or deliver abandoned property to the state treasurer as required under this act shall be punished by a fine equal to one-half ($\frac{1}{2}$) of the value of the abandoned property, the delivery of which has been refused, or by a fine of two hundred dollars (\$200), whichever is greater.

(c) Any person who, during a reporting period, knowingly and with intent to defraud makes a false statement in any report required under this act, shall be punished by a fine of not less than one hundred dollars (\$100), but not more than one thousand dollars (\$1,000).

History: L. 1979, ch. 173, § 26; July 1.

58-3927. Rules and regulations. The state treasurer is hereby authorized to adopt such rules and regulations as may be necessary to carry out the provisions of this act.

History: L. 1979, ch. 173, § 27; July 1.

58-3928.

History: L. 1979, ch. 173, § 28; Repealed, L. 1983, ch. 188, § 6; July 1.

58-3929. Act not applicable in certain instances. (a) The provisions of this act shall not apply to any tangible or intangible per-

Bill Graves
Secretary of State



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STATE OF KANSAS

Request for Bill Introduction
House Financial Institutions and Insurance Committee
January 12, 1994

Mr. Chairman and Members of the Committee: The Secretary of State's Office requests committee introduction of a bill relating to the Uniform Commercial Code.

Three components of the bill are technical and of a clean-up nature, addressing sole proprietorships listing a social security number on financing statements; debtor name changes as evidenced by an amendment to a financing statement; and the filing period for federal tax liens.

One component of the bill authorizes the secretary of state's office to implement electronic filing procedures for financing statements through the adoption of administrative rules and regulations. Electronic filing will be permissive, not mandatory. The secretary of state's office will work with the Information Network of Kansas to establish the necessary computer programming to permit an authorized user to file financing statements electronically.

Jennifer Wentz
Legal Counsel

House FID
Attachment 6
January 12, 1993

Kansas Insurance Department
1994 Legislative Proposals

- (S) 1. Amendment to Standard Valuation Law
- (S) 2. Life Risk Based Capital
- (S) 3. Reporting of Material Transactions
- (S) 4. Diskette Filing of Financial Statements
- (S) 5. Amendment to Managing General Agents Act
- (S) 6. Utilization Review
- (H) 7. A&H Usual, Reasonable & Customary Charges
- (H) 8. A&H Workers Compensation Exclusion
- (H) 9. A&H Closed Blocks of Business
- (H) 10. OBRA '93/SRS Legislation
- (H) 11. Property Insurance Cancellation/Nonrenewal
- (H) 12. Auto Insurance Cancellation/Nonrenewal
- (H) 13. Workers Compensation Plan Performance Standards
- (H) 14. Life Insurance Conversion
- (H) 15. Amendment to K.S.A. 40-906 - Inspection of Premises
- (S) 16. A&H Designation of Statistical Agent
- (S) 17. Monoline P&C Insurers/HO and FO
- (H) 18. Adverse Underwriting Decisions/HMOs
- (H) 19. Payment of Insurance Premium by Credit Card
- (S) 20. Similarity of Names
- (H) 21. Extension of Notice for Withdrawal from Kind or Class of Business
- (S) 22. Attorney Fees, HCSF
- (S) 23. Amend 40-2a09 and 40-2b23 with regard to HMOs

House File
January 12, 1993
Attachment 7

Legislative Proposal No. 7

Explanatory Memorandum

Legislative Proposal No. 7 deals with accident and sickness insurance policies which base the payment of benefits on "usual, reasonable and customary charges". Currently, there are no guidelines or requirements insurers must adhere to in determining the actual benefit allowance for a given insured in a given situation. The proposal would fill this void by establishing standards any schedule used by insurers to determine individual claim payments would have to meet.

LEGISLATIVE PROPOSAL No. 7

AN ACT relating to insurance; accident and sickness insurance; usual, reasonable and customary charges; standards; amending K.S.A. 40-2202 and repealing the existing section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

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

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

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

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

(4) the style, arrangement and over-all appearance of the policy give no undue prominence to any portion of the text, and unless every printed portion of the text of the policy and of any endorsements or attached papers is plainly printed in light-faced type of a style in general use, the size of which shall be uniform and not less than ten-point with a lower-case

unspaced alphabet length not less than one hundred and twenty-point (the "text" shall include all printed matter except the name and address of the insurer, name or title of the policy, the brief description if any, and captions and subcaptions); and

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

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

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

(8) any provision purporting to base the payment of benefits on "usual, customary and reasonable charges" or a standard of similar import is specifically defined; or the determination of payable benefits is developed from a statistically valid sample which: (a) equitably recognizes geographic variations; (b) is produced at no less than 6 month intervals;

and (c) is collected on the basis of the most current codes and nomenclature developed and maintained by recognized authorities.

(B) If any policy is issued by an insurer domiciled in this state for delivery to a person residing in another state, and if the official having responsibility for the administration of the insurance laws of such other state shall have advised the commissioner of insurance that any such policy is not subject to approval or disapproval by such official, the commissioner of insurance may by ruling require that such policy meet the standards set forth in subsection (A) of this section and in K.S.A. 40-2203.

Sec. 2. K.S.A. 40-2202 is hereby repealed.

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

Legislative Proposal No. 8

Explanatory Memorandum

Legislative Proposal No. 8 would statutorily clarify the extent to which workers compensation benefits may be primary over accident and sickness policy benefits.

LEGISLATIVE PROPOSAL No. 8

AN ACT relating to insurance; accident and sickness insurance; non-duplication of covered workers compensation benefits; amending K.S.A. 1992 Supp. 40-2203 and repealing the existing section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

Section 1. K.S.A. 1992 Supp. 40-2203 is hereby amended to read as follows: 40-2203. (A) Required provisions. Except as provided in paragraph (C) of this section every such policy delivered or issued for delivery to any person in this state shall contain the provisions specified in this subsection in the words in which the same appear in this section, but the insurer may, at its option, substitute for one or more of such provisions corresponding provisions of different wording approved by the commissioner of insurance which are in each instance not less favorable in any respect to the insured or the beneficiary. Such provisions shall be preceded individually by the caption appearing in this subsection or at the option of the insurer, by such appropriate individual or group captions or subcaptions as the commissioner of insurance may approve.

(1) A provision as follows: "Entire contract; changes: This policy, including the endorsement and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions."

(2) A provision as follows: "Time limit on certain defenses: (a) After two (2) years from the date of issue of this policy no misstatements, except fraudulent misstatement, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such two (2) year period."

The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial two (2) year period, nor to limit the application of subsections (B), (1), (2), (3), (4) and (5) in the event of misstatement with respect to age or occupation or other insurance.

A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium (1) until at least age 50, or (2) in the case of a policy issued after age 44, for at least five years from its date of issue, may contain in lieu of the foregoing the following provision (from which the clause in parentheses may be omitted at the insurer's option) under the caption "Incontestable": "After this policy has been in force for a period of two (2) years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application.

(b) "No claim for loss incurred or disability (as defined in the policy) commencing after two (2) years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss has existed prior to the effective date of coverage of this policy."

(3) A provision as follows: "Grace period: A grace period of _____" (insert a number not less than "7" for weekly premium policies, "10" for monthly premium policies and "31" for all other policies) "days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force." A policy which contains a cancellation provision may add, at the end of the above provision, "subject to the right of the insurer to cancel in accordance with the cancellation provision hereof." A policy in which the insurer reserves the right to refuse any renewal shall have, at the beginning of the above provision, "Unless not less than five (5) days prior to the premium due date the insurer has delivered to the insured or has mailed to his last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted."

(4) A provision as follows: "Reinstatement: If any renewal premium be not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept such premium without requiring in connection therewith an application for reinstatement shall reinstate the policy: Provided, however, That if the insurer or such agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of such application by the insurer or, lacking such approval, upon the forty-fifth (45th) day following the date such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of reinstatement and loss due to such sickness as

may begin more than ten (10) days after such date. In all other respects the insured and insurer shall have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than sixty (60) days prior to the date of reinstatement." The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least five years from its date of issue.

(5) A provision as follows: "Notice of claim: Written notice of claim must be given to the insurer within twenty (20) days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at _____" (insert the location of such office as the insurer may designate for the purpose), "or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer." In a policy providing a loss-of-time benefit which may be payable for at least two years, an insurer may at its option insert the following between the first and second sentences of the above provisions: "Subject to the qualification set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two (2) years, he shall, at least once in every six (6) months after having given notice of claim, give to the insurer notice of continuance of said disability, except in the event

of legal incapacity. The period of six (6) months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of six (6) months preceding the date on which such notice is actually given.

(6) A provision as follows: "Claim forms: The insurer, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within fifteen (15) days after the giving of such notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character and the extent of the loss for which claim is made."

(7) A provision as follows: "Proofs of loss: Written proof of loss must be furnished to the insurer at its said office in case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss within ninety (90) days after the termination of the period for which the insurer is liable and in case of claim for any other loss within ninety (90) days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than one year from the time proof is otherwise required."

(8) A provision as follows: "Time of payment of claims: Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment will be paid immediately upon receipt of due written proof of such loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid _____" (insert period for payment which must not be less frequently than monthly) "and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof."

(9) A provision as follows: "Payment of claims: Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to such beneficiary or to such estate. All other indemnities will be payable to the insured." The following provisions, or either of them, may be included with the foregoing provision at the option of the insurer: "If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay such indemnity, up to an amount not exceeding \$ _____" (insert an amount which shall not exceed \$1,000), "to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of such payment. Subject to any written

direction of the insured in the application or otherwise all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical, or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proofs of such loss, be paid directly to the hospital or person rendering such services; but it is not required that the service be rendered by a particular hospital or person."

(10) A provision as follows: "Physical examinations and autopsy: The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law."

(11) A provision as follows: "Legal actions: No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of five (5) years after the time written proof of loss is required to be furnished."

(12) A provision as follows: "Change of beneficiary: Unless the insured makes an irrevocable designation of beneficiary, the right to change of beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy."

The first clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option.

(13) A provision as follows: "Cancellation by insured: The insured may cancel this policy at any time by written notice delivered or mailed to the insurer, effective upon receipt of such notice or on such later date as may be specified in such notice. In the event of cancellation or death of the insured, the insurer will promptly return the unearned portion of any premium paid. The earned premium shall be computed by the use of the short-rate table last filed with the state official having supervision of insurance in the state where the insured resided when the policy was issued. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation." When approved by the commissioner the "cancellation" provision appearing in subsection (B)(8) may be substituted for the above.

(B) Other provisions: Except as provided in paragraph (C) of this section, no such policy delivered or issued for delivery to any person in this state shall contain provisions respecting the matters set forth below unless such provisions are in the words in which the same appear in this section, but the insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording approved by the commissioner of insurance which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the commissioner of insurance may approve.

(1) A provision as follows: "Change of occupation: If the insured be injured or contract sickness after having changed his occupation to one classified by the insurer as more hazardous than that stated in this policy

or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes his occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly, and will return the excess pro rata unearned premium from the date of change of occupation, or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change in occupation."

(2) A provision as follows: "Misstatement of age: If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age."

(3) A provision as follows: "Other insurance in this insurer: If an accident or sickness or accident and sickness policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for _____" (insert type of coverage or coverages) "in excess of \$ _____" (insert maximum limit of indemnity or

indemnities) "the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to his estate"; or, in lieu thereof: "Insurance effective at any one time on the insured under a like policy or policies in this insurer is limited to one such policy elected by the insured, his beneficiary or his estate, as the case may be, and the insurer will return all premiums paid for all other such policies."

(4) A provision as follows: "Insurance with other insurers: If there be other valid coverage, not with this insurer, providing benefits for the same loss on a provision of service basis or on an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability under any expense incurred coverage of this policy shall be for such proportion of the loss as the amount which would otherwise have been payable hereunder plus the total of the like amounts under all such other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for such loss, and for the return of such portion of the premiums paid as shall exceed the pro rata portion for the amount so determined. For the purpose of applying this provision when other coverage is on a provision of service basis, the 'like amount' of such other coverage shall be taken as the amount which the services rendered would have cost in the absence of such coverage." If the foregoing policy provision is included in a policy which also contains the next following policy provision there shall be added to the caption of the foregoing provision the phrase " expense incurred benefits." The insurer may, at its option, include in this provision a definition of "other valid coverage," approved as to form by the commissioner of insurance, which definition shall be limited in subject matter to coverage provided by organizations subject to

regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and by hospital or medical service organizations, and to any other coverage the inclusion of which may be approved by the commissioner of insurance. In the absence of such definition such term shall not include group insurance, automobile medical payments insurance, or coverage provided by hospital or medical service organizations or by union welfare plans or employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any only the amount of any benefit which is actually provided for or payable to such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third party liability coverage shall be included as "other valid coverage."

(5) A provision as follows: "Insurance with other insurers: If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all like indemnities for such loss, and the return of such portion of the premium paid as shall exceed the pro rata portion for the indemnities thus determined." If the foregoing policy provision is included in a policy which also contains the next preceding policy provision there shall be added

to the caption of the foregoing provision the phrase "_____ other benefits." The insurer may, at its option, include in this provision a definition of "other valid coverage," approved as to form by the commissioner of insurance, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and to any other coverage the inclusion of which may be approved by the commissioner of insurance. In the absence of such definition such term shall not include group insurance, or benefits provided by union welfare plans or by employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, ~~any~~ only the amount of any benefit which is actually provided for or payable to such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third party liability coverage shall be included as "other valid coverage."

(6) A provision as follows: "Relation of earnings to insurance: If the total monthly amount of loss of time benefits promised for the same loss under all valid loss of time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or his average monthly earnings for the period of two (2) years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears

to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such two (2) years as shall exceed the pro rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of two hundred dollars (\$200) or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time." The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (1) until at least age 50, or (2) in the case of a policy issued after age 44, for at least five years from its date of issue. The insurer may, at its option, include in this provision a definition of "valid loss of time coverage," approved as to form by the commissioner of insurance, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, or to any other coverage the inclusion of which may be approved by the commissioner of insurance or any combination of such coverages. In the absence of such definition such term shall not include any coverage provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute), or benefits provided by union welfare plans or by employer or employee benefit organizations.

(7) A provision as follows: "Unpaid premium: Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom."

(8) A provision as follows: "Cancellation: The insurer may cancel this policy at any time by written notice delivered to the insured, or mailed to his last address as shown by the records of the insurer, stating when, not less than five (5) days thereafter, such cancellation shall be effective; and after the policy has been continued beyond its original term the insured may cancel this policy at any time by written notice delivered or mailed to the insurer, effective upon receipt or on such later date as may be specified in such notice. In the event of cancellation, the insurer will return promptly the unearned portion of any premium paid. If the insured cancels, the earned premium shall be computed by the use of the short-rate table last filed with the state official having supervision of insurance in the state where the insured resided when the policy was issued. If the insurer cancels, the earned premium shall be computed pro rata. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation."

(9) A provision as follows: "Conformity with state statutes: Any provision of this policy which, on its effective date, is in conflict with the statutes of the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes."

(10) A provision as follows: "Illegal occupation: The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation."

(11) A provision as follows: "Intoxicants and narcotics: The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician."

(C) Inapplicable or inconsistent provisions: If any provision of this section is in whole or in part inapplicable to or inconsistent with the coverage provided by a particular form of policy the insurer, with the approval of the commissioner of insurance, shall omit from such policy any inapplicable provision or part of a provision, and shall modify any inconsistent provision or part of the provision in such manner as to make the provision as contained in the policy consistent with the coverage provided by the policy.

(D) Order of certain policy provisions: The provisions which are the subject of subsection (A) and (B) of this section, or any corresponding provisions which are used in lieu thereof in accordance with such subsections, shall be printed in the consecutive order of the provisions in such subsections or, at the option of the insurer, any such provision may appear as a unit in any part of the policy, with other provisions to which it may be logically related, provided the resulting policy, shall not be in whole or in part unintelligible, uncertain, ambiguous, abstruse, or likely to mislead a person to whom the policy is offered, delivered or issued.

(E) Third party ownership: The word "insured," as used in this act, shall not be construed as preventing a person other than the insured with a proper insurable interest from making application for and owning a policy covering the insured or from being entitled under such a policy to any indemnities, benefits and rights provided therein.

(F) Requirements of other jurisdictions: (1) Any policy of a foreign or alien insurer, when delivered or issued for delivery to any person in this state, may contain any provision which is not less favorable to the insured or the beneficiary than the provisions of this act and which is prescribed or required by the law of the state under which the insurer is organized.

(2) Any policy of a domestic insurer may, when issued for delivery in any other state or country, contain any provision permitted or required by the laws of such other state or country.

(G) Filing procedure: The commissioner of insurance may make such reasonable rules and regulations concerning the procedure for the filing or submission of policies subject to this act as are necessary, proper or advisable to the administration of this act. This provision shall not abridge any other authority granted the commissioner of insurance by law.

New Sec. 2. No policy of accident and sickness insurance delivered or issued for delivery in this state shall contain any provision excluding or restricting coverage due to benefits which may be provided pursuant to K.S.A. 44-501 et seq. unless such benefits are actually paid or payable to the person covered by the accident and sickness insurance policy.

Sec. 3. K.S.A. 1992 Supp. 40-2203 is hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

Legislative Proposal No. 9

Explanatory Memorandum

Legislative Proposal No. 9 is designed to address problems which arise when accident and sickness insurers cease marketing a particular product but market other very similar products and impose underwriting requirements which preclude purchase of the "new" products by all existing insureds. When this occurs, existing insureds who do not meet the underwriting requirements for the new policy are subject to significant and perpetual premium increases. Legislative Proposal No. 9 is intended to correct this problem by prohibiting insurers' ability to deny access to any product they offer by any existing policyholder and by requiring the rates for the discontinued to be based on the aggregate claims experience of all similar policies.

LEGISLATIVE PROPOSAL No. 9

AN ACT relating to insurance; accident and sickness insurance; individual contracts, discontinuance; requirements; prohibitions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

Section 1. (a) This act shall apply to individual contracts covering hospital, medical, or surgical expenses or providing long-term care coverage, which are issued, amended, delivered, or renewed on or after the effective date of this act but shall not apply to any block of business already in force in Kansas on such effective date.

(b) As used in this act:

(1) "Block of business" means a particular individual policy form or contract providing hospital, medical or surgical expense or long-term care coverage issued by a carrier to one or more individuals which includes distinct benefits, services, and terms.

(2) "Closed block of business" means a block of business which a carrier ceases to actively offer or sell to new applicants.

(3) "Carrier" means any insurance company, nonprofit medical and hospital service corporation, nonprofit optometric, dental, and pharmacy service corporations, municipal group-funded pool, fraternal benefit society or health maintenance organization, as these terms are defined by the Kansas Statutes Annotated, that offers any individual hospital, surgical or medical expense policy. "Carrier" does not include those entities identified above with respect to the sale or issuance of policies or certificates covering

only accident, credit, dental, disability income, hospital indemnity, specified disease, vision care, coverage issued as a supplement of liability insurance, insurance arising out of a workers compensation or similar law, automobile medical-payment insurance, or insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(c) No block of business shall be closed by a carrier unless:

(1) The carrier permits existing contractholders to purchase a contract from any block of business that is not closed and which provides comparable benefits, services, and terms, with no additional underwriting requirement or waiting period; and

(2) the carrier pools the experience of the closed block of business with all appropriate blocks of business that are not closed for the purpose of determining the premium rate of any contract within the closed block, with no rate penalty or surcharge beyond that which reflects the experience of the combined pool.

(d) A block of business shall be presumed closed if either of the following circumstances exist:

(1) There has been an overall reduction in that block of 12 percent in the number of in force contracts for a period of 12 months; or

(2) that block has less than 500 in force contracts in this state. This presumption shall not apply to a block of business initiated within the previous 24 months, but notification of that block shall be provided to the commissioner pursuant to subsection (e).

The fact that a block of business does not meet one of the presumptions set forth in this subsection shall not preclude a determination that it is closed as defined in subsection (b).

(e) A carrier shall notify the commissioner in writing within 30 days of its decision to close a block of business or, in the absence of an actual decision to close a block of business, within 30 days of its determination that a block of business is within the presumption set forth in subsection (d). When the carrier decides to close a block, the written notice shall fully disclose all information necessary to demonstrate compliance with the requirements of subsection (c). When the carrier determines that a block is within the presumption, the written notice shall fully disclose all information necessary to demonstrate that the presumption is applicable. In the case of either notice, the carrier shall provide additional information within 15 business days after any request of the commissioner.

(f) A carrier shall preserve for a period of not less than five years in an identified location and readily accessible for review by the commissioner all books and records relating to any action taken by a carrier pursuant to subsection (c).

(g) No carrier shall offer or sell any contract, or provide misleading information about the active or closed status of a block of business, for the purpose of evading this act.

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

Legislative Proposal No. 10

Explanatory Memorandum

Legislative Proposal No. 10 accommodates requirements contained in the federal Omnibus Budget Reconciliation Act of 1993 relating to the relationship of medicaid to private health insurance programs. In summary, the legislation would preclude insurers and self-funded plans from imposing underwriting restrictions based solely on an individual's eligibility for medicaid; preclude the payment of benefits because of the availability of medicaid; and preclude the imposition of any assignment rights that vary from the norm because an individual is or may be eligible for medicaid.

This proposal was developed in cooperation with the Department of Social and Rehabilitation Services.

LEGISLATIVE PROPOSAL NO. 10

AN ACT relating to insurance; accident and sickness insurance; underwriting; assignment of rights; application to medicaid eligibility and coverage; amending K.S.A. 1992 Supp. 40-19a10, 40-19b10, 40-19c09 and 40-19d10 and repealing the existing sections.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

New Sec. 1. No insurance company, health maintenance organization, nonprofit medical and hospital, dental, optometric, or pharmacy corporations, or self-funded health benefit plan whether an employee welfare benefit plan pursuant to section 607(1) of the Employee Retirement Income Security Act of 1974 as amended (ERISA) or not, shall:

- (a)(1) Refuse to insure, refuse to continue to insure;
- (2) limit the amount, extent or kind of coverage available; or
- (3) charge a different rate for the same coverage;

to any individual solely because of medicaid eligibility of the individual covered or applying for coverage or any relative of such individual.

(b) Impose requirements on any agency or official assigned the rights of any individual eligible for or covered by medicaid that are different from requirements applicable to an agent or assignee of any other individual.

(c) Exclude, limit or otherwise restrict coverage because medicaid benefits as permitted by Title XIX of the social security act of 1965 are or may be available for the same accident or illness.

Sec. 2. K.S.A. 1992 Supp. 40-19a10 is hereby amended to read as follows: 40-19a10. Such corporations shall be subject to the provisions of K.S.A. 1992 Supp. 40-2253 and to the provisions of K.S.A. 40-214, 40-215, 40-216, 40-218, 40-219, 40-222, 40-223, 40-224, 40-225, 40-226, 40-229, 40-230, 40-231, 40-235, 40-236, 40-237, 40-247, 40-248, 40-249, 40-250, 40-251, 40-252, 40-254, 40-2,102, 40-2a01 et seq., 40-2215 to 40-2220, inclusive, 40-2401 to 40-2421, inclusive, 40-3301 to 40-3313, inclusive, Section 1. of 1994 Bill No. _____, and amendments thereto, except as the context otherwise requires, and shall not be subject to any other provisions of the insurance code except as expressly provided in this act.

Sec. 3. K.S.A. 1992 Supp. 40-19b10 is hereby amended to read as follows: 40-19b10. Such corporations shall be subject to the provisions of K.S.A. 1992 Supp. 40-2253 and to the provisions of K.S.A. 40-214, 40-215, 40-216, 40-218, 40-219, 40-222, 40-223, 40-224, 40-225, 40-226, 40-229, 40-230, 40-231, 40-235, 40-236, 40-237, 40-247, 40-248, 40-249, 40-250, 40-251, 40-252, 40-254, 40-2,102, 40-2a01 et seq., 40-2215, 40-2401 to 40-2421, inclusive, and 40-3301 to 40-3312, inclusive, Section 1. of 1994 Bill No. _____, and amendments thereto, except as the context otherwise requires, and shall not be subject to any other provisions of the insurance code except as expressly provided in this act.

Sec. 4. K.S.A. 1992 Supp. 40-19c09 is hereby amended to read as follows: 40-19c09. Corporations organized under the nonprofit medical and hospital service corporation act shall be subject to the provisions of the Kansas general corporation code, articles 60 to 74, inclusive, of chapter 17 of the Kansas Statutes Annotated, applicable to nonprofit corporations, to the provisions of K.S.A. 1992 Supp. 40-2253, to the provisions of K.S.A. 40-214, 40-215, 40-216, 40-218, 40-219, 40-222, 40-223, 40-224, 40-225,

40-226, 40-229, 40-230, 40-231, 40-235, 40-236, 40-237, 40-247, 40-248, 40-249, 40-250, 40-251, 40-252, 40-254, 40-2,100, 40-2,101, 40-2,102, 40-2,103, 40-2,104, 40-2,105, 40-2,116, 40-2,117, 40-2a01 et seq., 40-2111 to 40-2116, inclusive, 40-2215 to 40-2220, inclusive, 40-2401 to 40-2421, inclusive, and 40-3301 to 40-3313, inclusive, and amendments thereto, and to the provisions of K.S.A. 1992 Supp. 40-2221a, 40-2221b, 40-2229, 40-2230, 40-2250 and 40-2251, Section 1. of 1994 Bill No. _____, and amendments thereto, except as the context otherwise requires, and shall not be subject to any other provisions of the insurance code except as expressly provided in this act.

Sec. 5. K.S.A. 1992 Supp. 40-19d10 is hereby amended to read as follows: 40-19d10. Such corporations shall be subject to the provisions of K.S.A. 1992 Supp. 40-2253 and to the provisions of K.S.A. 40-214, 40-215, 40-216, 40-218, 40-219, 40-222, 40-223, 40-224, 40-225, 40-226, 40-229, 40-230, 40-231, 40-235, 40-236, 40-237, 40-247, 40-248, 40-249, 40-250, 40-251, 40-252, 40-254, 40-2,102, 40-2a01 et seq., 40-2215 to 40-2220, inclusive, 40-2401 to 40-2421, inclusive, 40-3301 to 40-3313, inclusive, Section 1. of 1994 Bill No. _____, and amendments thereto, except as the context otherwise requires, and shall not be subject to any other provisions of the insurance code except as expressly provided in this act.

Sec. 6. K.S.A. 1992 Supp. 40-19a10, 40-19b10, 40-19c09 and 40-19d10 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

Legislative Proposal No. 11

Explanatory Memorandum

Legislative Proposal No. 11 would impose limitations on an insurance company's ability to cancel or nonrenew property insurance coverage on an owner-occupied 1 to 4 family dwelling.

LEGISLATIVE PROPOSAL No. 11

AN ACT relating to insurance; property insurance; cancellation; denial of renewal; notice; restrictions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS: . . .

Section 1. As used in this act, "policy of property insurance" means a policy insuring against loss of or damage to an owner occupied, one to four family dwelling, or its contents or both caused by fire, lightning, windstorm, hailstorm or any other risk usually insured against by such policies. Notwithstanding the foregoing, "policy of property insurance" does not include policies issued under apportionment agreements entered into by insurers pursuant to K.S.A. 40-2101.

Sec. 2. After a policy of property insurance has been in effect for 60 days, or if the policy is a renewal, effective immediately, no insurance company shall exercise any contractual right to cancel such policy unless:

The named insured fails to:

(a) Discharge when due any obligations in connection with the payment of premium;

(b) the insurance was obtained through fraudulent misrepresentation;

(c) the insured has violated any of the material terms and conditions of the policy; or

(d) unfavorable underwriting factors, within the reasonable control of the insured and pertinent to the risk, are existent and of a substantial

nature, which could not have reasonably been ascertained by the insurer at the initial issuance of the policy or the last renewal thereof.

Sec. 3. (a) Any insurance company that refuses to renew a policy of property insurance shall give at least 30 days written notice to the named insured at the address of the insured property or cause such notice to be given by a licensed agent of its intention not to renew the policy. Such notice shall not be given and a refusal to renew shall not be effected unless:

(1) The commissioner has, by written order, required or permitted the insurance company to reduce its premium volume in order to preserve the financial integrity of the insurer;

(2) the insurance company has ceased to transact business in this state and has complied with all laws relevant to such cessation;

(3) the policy has been continuously in effect for a period of five years beginning with the first annual policy anniversary date following the effective date of this act. If the policy is renewed or continued in force after the expiration of the initial five year period or any subsequent five year period, the provisions of this subsection shall apply to any such subsequent period; or

(4) any of the reasons for cancellation specified in section 2 of this act are present.

(b)(1) When, except for these restrictions, failure to renew would be based upon termination of agency contract, the obligation to renew will be satisfied if the insurer has manifested its willingness to renew;

(2) the obligation to renew is terminated on the effective date of any other policy of property insurance procured by the named insured with respect to any property that would otherwise be covered by both policies; and

(3) the renewal of a policy of property insurance shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of such renewal.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

Legislative Proposal No. 12

Explanatory Memorandum

Legislative Proposal No. 12 would amend the existing laws relating to cancellation or nonrenewal of private passenger automobile insurance policies. The existing provisions apply only to automobile liability insurance policies. The proposed amendments would make it applicable to all coverages and would extend the restrictions and prohibitions to unilateral reductions in coverage by the insurer.

LEGISLATIVE PROPOSAL NO. 12

AN ACT relating to insurance; private passenger automobile insurance; physical damage coverages; reduction in limits of liability; amending K.S.A. 40-276, 40-276a and 40-277 and repealing the existing sections.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

Section 1. K.S.A. 40-276 is hereby amended to read as follows: 40-276. As used in this act: "Policy of automobile ~~liability~~ insurance" means a policy insuring against the liability of the insured for the death, disability or damages of another and against loss or damage to the property of another, or loss of or damage to, or destruction of the insured's automobile or both, arising from the use of an automobile that is issued to cover the following types of automobiles owned by an individual or by husband and wife, including automobiles hired under a long term contract and written on a specified car basis:

(a) A motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance for passengers, nor rented to others;

(b) Any other four-wheel motor vehicle with a load capacity of one thousand five hundred (1,500) pounds or less which is not used in the occupation, profession or business of the named insured, other than farming; ~~---Provided,--That~~ but the term "policy of automobile ~~liability~~ insurance" shall not include policies of automobile ~~liability~~ insurance (1) issued through the Kansas automobile ~~assigned-risk~~ insurance plan, (2)

insuring more than four automobiles, nor (3) insuring the automobile hazard of garages, automobile sales agencies, repair shops, service stations or public parking places.

Sec. 2. K.S.A. 40-276a is hereby amended to read as follows: 40-276a. Any insurance company that denies renewal of an automobile ~~liability~~ insurance policy in this state shall give at least thirty (30) days written notice to the named insured, at his or her last known address, or cause such notice to be given by a licensed agent of its intention not to renew such policy; ~~---Provided, however, That~~ but no insurance company shall deny the renewal of an automobile ~~liability~~ insurance policy except in one or more of the following circumstances:

(a) When such insurance company is required or has been permitted by the commissioner of insurance, in writing, to reduce its premium volume in order to preserve the financial integrity of such insurer;

(b) when such insurance company ceases to transact such business in this state;

(c) when such insurance company is able to show competent medical evidence that the insured has a physical or mental disablement that impairs his ability to drive in a safe and reasonable manner;

(d) when unfavorable underwriting factors, pertinent to the risk, are existent, and of a substantial nature, which could not have reasonably been ascertained by the company at the initial issuance of the policy or the last renewal thereof;

(e) when the policy has been continuously in effect for a period of five (5) years: Provided, That such five-year period shall begin at the first policy anniversary date following the effective date of this act: Provided further, That if such policy is renewed or continued in force after

the expiration of such period or any subsequent five-year period, the provisions of this subsection shall apply in any such subsequent period; or

(f) when any of the reasons specified as reasons for a unilateral reduction or cancellation of coverage in K.S.A. 40-277 are existent+.

~~Provided,--That~~ (g) (1) when failure to renew is based upon termination of agency contract, obligation to renew will be satisfied if the insurer has manifested its willingness to renew, and (2) obligation to renew is terminated on the effective date of any other similar automobile ~~liability~~ insurance procured by the named insured with respect to any automobile designated in both policies+--~~Provided-further,--That.~~

(h) Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of such renewal+--~~Provided-further,--That.~~

(i) Nothing in this section shall require an insurance company to renew an automobile ~~liability~~ insurance policy if such renewal would be contrary to restrictions of membership in the company which are contained in the articles of incorporation or the bylaws of such company.

Sec. 3. K.S.A. 40-277 is hereby amended to read as follows: 40-277. No insurance company shall issue a policy of automobile ~~liability~~ insurance in this state unless the cancellation condition of the policy or endorsement thereon includes the following limitations pertaining to cancellation by the insurance company:

After this policy has been in effect for 60 days, or if the policy is a renewal, effective immediately, the company shall not unilaterally reduce or exercise its right to cancel the insurance afforded ~~under--(here--insert--the appropriate-coverage-references)~~ hereunder solely because of age or unless

1. The named insured fails to discharge when due any obligations in connection with the payment of premium for this policy or any installment thereof whether payable directly or under any premium finance plan; or

2. the insurance was obtained through fraudulent misrepresentation; or

3. the insured violates any of the terms and conditions of the policy;
or

4. the named insured or any other operator, either resident in the same household, or who customarily operates an automobile insured under the policy,

(a) has had such person's driver's license suspended or revoked during the policy period, or

(b) is or becomes subject to epilepsy or heart attacks, and such individual cannot produce a certificate from a physician testifying to such person's ability to operate a motor vehicle, or

(c) is or has been convicted during the 36 months immediately preceding the effective date of the policy or during the policy period, for:

(1) Any felony, or

(2) criminal negligence, resulting in death, homicide or assault, arising out of the operation of a motor vehicle, or

(3) operating a motor vehicle while in an intoxicated condition or while under the influence of drugs, or

(4) leaving the scene of an accident without stopping to report, or

(5) theft of a motor vehicle, or

(6) making false statements in an application for a driver's license, or

(7) a third moving violation, committed within a period of 18 months, of (i) any regulation limiting the speed of motor vehicles, (ii) any of the provisions in the motor vehicle laws of any state, the violation of which

constitutes a misdemeanor or traffic infraction, or (iii) any ordinance traffic infraction, or ordinance which prohibits the same acts as a misdemeanor statute of the uniform act regulating traffic on highways, whether or not the violations were repetitious of the same offense or were different offenses.

Sec. 4. K.S.A. 40-276, 40-276a and 40-277 are hereby repealed.

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

Legislative Proposal No. 13

Explanatory Memorandum

Legislative Proposal No. 13 is intended to improve the servicing of policies issued through the workers compensation residual market mechanism. Specifically, such proposal would incorporate various performance standards and time-lines in the statute that servicing carriers would generally be required to meet.

LEGISLATIVE PROPOSAL NO. 13

AN ACT relating to insurance; workers compensation; apportionment or assignment of risk; servicing carriers; performance standards.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

Section 1. (a) Any plan submitted pursuant to K.S.A. 40-2111 may permit or require necessary workers compensation insurance to be provided and administered through a contractual servicing carrier arrangement.

(b) When a servicing carrier arrangement is used to facilitate the apportionment of risks, servicing carriers shall, in addition to any contractual obligations and in the absence of reasonable extenuating circumstances as determined by the commissioner of insurance, be subject to the following requirements:

(1) New policies shall be issued within 30 calendar days after receipt of the premium and a properly completed application;

(2) renewal policies shall be issued within 30 calendar days after the receipt of deposit premium.

Servicing carriers shall have procedures in place to compare prior and current final audit reports and determine if an additional premium endorsement is necessary. If it is determined that an additional premium endorsement is necessary, the carrier shall issue the endorsement within 60 days of making the determination.

(3)(A) servicing carriers shall verify the annual exposure base through interim audit or comparable means when there is reason to doubt the accuracy of the relevant information otherwise presented;

(B) servicing carriers shall consider the effects of inflation and employment level changes in the insured's operation, and utilize the latest available audit information to develop the deposit premium but shall not arbitrarily or unilaterally adjust the exposure base in the absence of credible and verifiable justification.

(4) endorsements shall be issued within 30 calendar days after receipt of request;

(5) requests for cancellations shall be processed within five working days after receipt of request;

(6) requests for reinstatements shall be accepted or denied and communicated to the insured within five working days after receipt of request;

(7) certificates of insurance shall be issued within five working days after receipt of request.

(8) additional and return premium adjustments shall be mailed within 10 working days of recording on company records. If an adjustment requires additional premium and such premium is not received within 45 days from date of mailing, cancellation procedures may be implemented;

(9) audits shall be completed and the final premium determined, billed and recorded on the company records within 90 days of policy expiration;

(10) audits shall be completed and the final premium determined, billed and recorded on the company records within 90 days of the effective date of cancellation if initiated by the company and within 90 days of notification of cancellation if initiated by the insured; and

(11) servicing carriers shall comply with or adhere to such other requirements and guidelines as the governing board with the approval of the commissioner of insurance may prescribe.

(c) Physical audits shall be made whenever requested by the insured when there are reasonable grounds for such request.

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

Legislative Proposal No. 14

Explanatory Memorandum

Legislative Proposal No. 14 would correct an inconsistency in the current statutes that relate to the conversion of group life insurance to individual coverage. Specifically, K.S.A. 40-435 entitles individuals insured under a group policy to issuance of an individual policy without evidence of insurability. However, this statute explicitly states that it is not to be construed as continuing coverage beyond the time stated in the group policy. K.S.A. 40-434 (10) provides that if the individual dies within the period allowed to apply for a conversion policy, the amount of insurance under the group policy is payable. This may be a later time than the termination time or date stated in the group policy which raises a question as to which statutory provision applies. Legislative Proposal No. 14 is intended to clarify application of these inconsistent provisions.

LEGISLATIVE PROPOSAL NO. 14

AN ACT relating to insurance; life insurance; conversion privileges; amending K.S.A. 40-435 and repealing the existing section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

Section 1. K.S.A. 40-435 is hereby amended to read as follows: 40-435. If any individual insured under a group life insurance policy hereafter delivered in this state becomes entitled under the terms of such policy to have an individual policy of life insurance issued to him without evidence of insurability, subject to making of application and payment of the first premium within the period specified in such policy, and if such individual is not given notice of the existence of such right at least fifteen (15) days prior to the expiration date of such period, then, in such event the individual shall have an additional period within which to exercise such right, but, except as provided in K.S.A. 40-434(10), nothing herein contained shall be construed to continue any insurance beyond the period provided in such policy. The additional period shall expire fifteen (15) days next after the individual is given such notice but in no event shall such additional period extend beyond sixty (60) days next after the expiration date of the period provided in such policy. Written notice presented to the individual or mailed by the policyholder to the last known address of the individual or mailed by the insurer to the last known address of the individual as furnished by the policyholder shall constitute notice for the purpose of this paragraph.

Legislative Proposal No. 14
(Continued)

Sec. 2. K.S.A. 40-435 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the Kansas Register.

Legislative Proposal No. 15

Explanatory Memorandum

Legislative Proposal No. 15 would address a problem identified by a Kansas Supreme Court decision which has made it difficult for both insureds and insurers to identify the insurance company which is responsible for covered damage to real property when there has been a change in insurance carriers. Essentially, the proposal would require insurers to inspect real property prior to issuance of the policy to determine not only the existence and location of the premises or property but also to ascertain its condition. As a result, insurers would have an opportunity to detect damage existing at the time coverage becomes effective and the insured would have an opportunity to submit a claim to his or her previous insurer. Conversely, lack of an inspection or failure to detect existing damage would not support denial of a claim on the basis that the damage was sustained when a previous policy with a different insurer was in effect.

LEGISLATIVE PROPOSAL NO. 15

AN ACT relating to insurance; property insurance; inspection required; amending K.S.A. 40-906 and repealing the existing section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

Section 1. K.S.A. 40-906 is hereby amended to read as follows: 40-906. It shall be the duty of every person, corporation, association, partnership, company or individual issuing any policy insuring real property of any description against loss by fire or any of the risks usually insured against in their insurance policies, by itself or its agents, to make careful examination of the physical condition and location of the premises insured, and to place in such policy a full, complete and correct description of the property or premises insured thereby; and no failure to properly and fully describe such property or premises and its condition, nor any erroneous statement in the description of such property or premises, shall be a defense in any action to collect for loss thereon or thereunder when such description shall be sufficient to enable a person of ordinary intelligence to find and fully identify the property or premises upon which said insurance was written and upon which premiums have been paid, and this notwithstanding any provisions contained in the policy.

Sec. 2. K.S.A. 40-906 is hereby repealed.

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

Legislative Proposal No. 18

Explanatory Memorandum

Legislative Proposal No. 18 simply amends current law regarding the duties, rights and obligations of insurers, insureds and applicants in the event of an adverse underwriting decision. The amendment would make these statutory provisions applicable to health maintenance organizations.

LEGISLATIVE PROPOSAL NO. 18

AN ACT relating to insurance; adverse underwriting decisions; health maintenance organizations; amending K.S.A. 1992 Supp. 40-2,112 and repealing the existing section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

Section 1. K.S.A. 1992 Supp. 40-2,112 is hereby amended to read as follows: 40-2,112. (a) In the event of an adverse underwriting decision the insurance company, health maintenance organization or agent responsible for the decision shall either provide the applicant, policyholder or individual proposed for coverage with the specific reason or reasons for the adverse underwriting decision in writing or advise such persons that upon written request they may receive the specific reason or reasons in writing.

(b) Upon receipt of a written request within 60 business days from the date of the mailing of notice or other communication of an adverse underwriting decision to an applicant, policyholder or individual proposed for coverage, the insurance company or agent shall furnish to such person within 21 business days of the receipt of such written request:

(1) The specific reason or reasons for the adverse underwriting decision, in writing, if such information was not initially furnished in writing pursuant to subsection (a); or

(2) if specific items of medical-record information are supplied by a health care institution or health care provider it shall be disclosed either directly to the individual about whom the information relates or to a health

care provider designated by the individual and licensed to provide health care with respect to the condition to which the information relates, whichever the insurance company or agent prefers; and

(3) the names and addresses of the institutional sources that supplied the specific items of information given pursuant to subsection (b)(2) if the identity of any health care provider or health care institution is disclosed either directly to the individual or to the designated health care provider, whichever the insurance company or agent prefers.

(c) The obligations imposed by this section upon an insurance company or agent may be satisfied by another insurance company or agent authorized to act on its behalf.

(d) The company or the agent, whichever is in possession of the money, shall refund to the applicant or individual proposed for coverage, the difference between the payment and the earned premium, if any, in the event of a declination of insurance coverage, termination of insurance coverage, or any other adverse underwriting decision.

(1) If coverage is in effect, such refund shall accompany the notice of the adverse underwriting decision, except such refund obligation shall not apply if:

(A) Material underwriting information requested by the application for coverage is clearly misstated or omitted and the company attempts to provide coverage based on the proper underwriting information; or

(B) the company includes with the notice of the adverse underwriting decision an offer of coverage to an applicant for life insurance under a different policy or at an increased premium. If such a counter-offer is made by the insurer, the insured or the insured's legal representative shall have 10 business days after receipt thereof in which to notify the company

of acceptance of the counter-offer, during which time coverage will be deemed to be in effect under the terms of the policy for which application has been made, but such coverage shall not extend beyond 30 calendar days following the date of issuance of the counter-offer by the insurer. The insurer shall promptly refund the premium upon notice of the insured's refusal to accept the counter-offer or upon expiration of such 30 calendar day period, whichever occurs first.

(2) If coverage is not in effect and payment therefore is in the possession of the company or the agent, the underwriting decision shall be made within 20 business days from receipt of the application by the agent unless the underwriting decision is dependent upon substantive information available only from an independent source. In such cases, the underwriting decision shall be made within 10 business days from receipt of the external information by the party that makes the decision. The refund shall accompany the notice of an adverse underwriting decision.

Sec. 2. K.S.A. 1992 Supp. 40-2,112 is hereby repealed.

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

Legislative Proposal No. 19

Explanatory Memorandum

Legislative Proposal No. 19 amends various statutes as necessary to permit the payment of insurance premiums by credit card.

LEGISLATIVE PROPOSAL NO. 19

AN ACT relating to insurance; extension of credit; payment of premiums by credit card permitted; amending K.S.A. 40-282 and 40-283 and repealing the existing sections.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

Section 1. K.S.A. 40-282 is hereby amended to read as follows:

40-282. (a) Any insurance agent, as defined in K.S.A. 40-239 and amendments thereto, may extend credit to policyholders in connection with the issuance or servicing of policies procured or negotiated by such agent but any such credit so extended shall satisfy one of the following conditions, unless otherwise authorized by law:

(1) If credit is extended to policyholders for a period of not more than 30 days from the date the premium is due, and such credit is not evidenced by a written instrument, there shall be no interest charged for such credit; or

(2) if credit is extended to policyholders for a period of more than 30 days from the date the premium is due, and such credit is not evidenced by a written instrument, interest may be charged for credit extended after 30 days at a rate not exceeding 1 1/2% per month on the unpaid balance; or

(3) if the extension of credit to a policyholder is evidenced by a written instrument setting forth the terms, and signed by the policyholder, any interest charged for such credit shall be clearly stated in the

instrument but it shall not exceed the legal rate of interest authorized in K.S.A. 16-207 and amendments thereto.

(b) Any insurance agent extending credit to policyholders as provided in subsection (a)(1) or (2) of this section may request the company to cancel such insurance according to the terms of the policies for nonpayment of the policyholders' accounts, except as provided in K.S.A. 40-277 and amendments thereto, and except for policies paid by an escrow agent, or paid direct by an insured to an insurance company, or where the insured specified that payment apply to a specific policy and all premiums due on that policy have been paid, or where the unearned premium is collateral for a loan under K.S.A. 40-2601 et seq., and amendments thereto.

The insurance agent shall notify the policyholder of the requested cancellation in writing at the time the request is made to the insurance company.

Such insurance agent shall have a lien on any return premium for all policies of the same policyholder to the extent of amounts owed by the policyholder.

(c) Notwithstanding any other provision of Kansas law, insurance companies, insurance agents and insurance brokers may provide for the payment of premiums through the use of a credit card as defined in K.S.A. 16-844. As used in this subsection, the term "insurance company" shall have the meaning ascribed to it in K.S.A. 40-201.

Sec. 2. K.S.A. 40-283 is hereby amended to read as follows: 40-283. The provisions of K.S.A. 40-252, 40-928 and 40-1113 shall not apply to any interest or other charges permitted or required by this act; nor shall such interest or charges be subject to the provisions of any rules or

regulations, adopted pursuant to or to carry out the foregoing statutory provisions, and which are in conflict with the provisions of this act.

Sec. 3. K.S.A. 40-282 and 40-283 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

Legislative Proposal No. 21

Explanatory Memorandum

Legislative Proposal No. 21 would authorize the Commissioner to adopt a regulation extending the notice period which must be completed before an insurer can cease writing or renewing a kind(s) or class of property or casualty insurance.

LEGISLATIVE PROPOSAL NO. 21

AN ACT relating to insurance; property or casualty insurance; discontinuance of certain business; extension of required notice; regulations; amending K.S.A. 1992 Supp. 40-2,123 and repealing the existing section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

Section 1. K.S.A. 1992 Supp. 40-2,123 is hereby amended to read as follows: 40-2,123. From and after January 1, 1989, an insurer may cease to transact insurance in this state, or discontinue the writing or renewal of one or more kinds of property or casualty insurance specified in K.S.A. 40-901 and 40-1102, and amendments thereto, or classes of property or casualty insurance risks which were actively solicited or written, (1) after 60 days' notice to the commissioner, or (2) upon loss of adequate reinsurance, or (3) when deemed to be in hazardous financial condition, or (4) when deemed to be insolvent or potentially insolvent. The commissioner is authorized to extend the notice period required by subparagraph (1) of this section by adoption of a regulation establishing such longer period of time, not exceeding 120 additional days, as may be necessary to maintain adequate insurance markets following severe or repetitive wind, hailstorms or other unusual events that affect the insurance environment. Enforcement of the provisions of this section shall be in accordance with article 24 of chapter 40 of the Kansas Statutes Annotated, and acts amendatory thereof and supplemental thereto.

Sec. 2. K.S.A. 1992 Supp. 40-2,123 is hereby repealed.

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