January 13, 1994

Approved:_____
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Chairperson Richard Bond at 9:07 a.m. on January 12, 1994 in Room 529-S of the Capitol.

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

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

Conferees appearing before the committee: Richard Brock, Insurance Department

Others attending: See attached list

Senator Bond welcomed committee members and staff to the 1994 session.

Richard Brock, Insurance Department, appeared before the committee to request introduction of the legislation as described below, and introduced Ron Nitcher of the Insurance Commissioner's office who will be assisting Mr. Brock.

Senator Bond advised the committee and others present that the agenda for the week of January 18-24 will be published with the legislation identified by proposal number until the bills are published. Anyone wishing to review the Insurance Department proposals may do so in room 128S.

The proposals are:

Insurance Commissioner's Proposal #1: An amendment to the Standard Valuation Law. Mr. Brock advised that this proposal, along with numbers 2, 3, and 4 are regulatory bills which are necessary for Kansas to retain NAIC accreditation. (Attachment #1.)

Insurance Commissioner's Proposal #2: Risk based capital for life insurance companies, which is a new concept for insurance companies and is similar to requirements for financial institutions. (Attachment #2.)

Insurance Commissioner's Proposal #3: Reporting of material transactions. (Attachment #3.)

Insurance Commissioner's Proposal #4: Filing of quarterly financial statements by diskette. (Attachment #4.)

Insurance Commissioner's Proposal #5: An amendment to the Managing General Agents Act. Attachment#5.)

Insurance Commissioner's Proposal #6: Pertaining to persons or organizations that conduct utilization review. The Committee on Health Care Decisions for the 90's recommended this legislation. (Attachment #6.)

Insurance Commissioner's Proposal #16: Designation of statistical agent for accident and health data. Senator Praeger explained the need for this legislation which compliments the Regents' health care data collection system. (Attachment #7.)

Insurance Commissioner's Proposal #17: To allow mutual and capital stock property and casualty insurers to write homeowners and farmowners policies under the same type of arrangement permitted under the statutes governing mutual fire and tornado insurers. (Attachment #8.)

Insurance Commissioner's Proposal #20: To amend current law so that a domestic insurance company or fraternal benefit society may be organized and preserve its name despite the fact that it may not yet hold a Kansas certificate of authority. (Attachment #9.)

Insurance Commissioner's Proposal #22: An amendment intended to limit the payment of attorneys' fees for defense of the Health Care Stabilization Fund. (Attachment #10.)

Insurance Commissioner's Proposal #23: An amendment to the laws which govern the authorized investments of insurance companies domiciled in Kansas to permit investments in HMO's as well as insurance companies. (Attachment #11.)

Following brief discussion regarding the costs and regulatory burdens to insurance companies occasioned by the proposals, Senator Hensley made a motion to introduce the legislation. Senator Praeger seconded the motion. The motion carried.

Since there were no further requests for introduction of legislation, the meeting was adjourned at 9:37 a.m.

The committee will meet on Thursday, January 13, 1994 at 9:00 a.m. in room 529S.

GUEST LIST

SENATE

COMMITTEE: FINANCIAL INSTITUTIONS AND INSURANCE DATE: 1-12-94

NAME	ADDRESS	ORGANIZATION
Bill Sneed	Topeka	State Farm
Lee Wilt	Overland Park	Farmers Ins. Group
L.M. Cornish	Topeka	Domestic Ins. Cos
Roland Mason	"	KTLA
John J Federico	Topeka	Pete McGill

Legislative Proposal No. 1

Explanatory Memorandum

K.S.A. 40-409, the law this proposal would amend, is what is generally known as the Standard Valuation Law and is a statute which relates to life insurance, annuities and endowment policies. This body of law sets forth the minimum presumed interest rates, actuarial formulae and other requirements necessary to establish minimum reserve standards for the various products marketed by life insurance companies.

Legislative Proposal No. 1 amends the Standard Valuation Law to establish the requirements for an annual actuarial opinion and a memorandum to support such opinion including authority for the actuary to establish higher reserves if deemed necessary.

These amendments are incorporated in the Standard Valuation Law adopted by the National Association of Insurance Commissioners in December of 1990.

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Attachment #1

LEGISLATIVE PROPOSAL No. 1

AN ACT relating to insurance; policies of life and accident and sickness insurance; annuities; endowment benefits; minimum reserve requirements; valuation; regulations; confidentiality; amending K.S.A. 40-409 and K.S.A. 1992 Supp. 45-221 and repealing the existing section.

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

Section 1. K.S.A. 40-409 is hereby amended to read as follows: 40-409. (a) Every life insurance company transacting business in this state shall annually file, on or before March 1 of each year, with the commissioner of insurance a certified valuation of its policies in force as of December 31 of the preceding year, and it shall be the duty of the commissioner of insurance ~~once in three years~~ to annually make or cause to be made net valuations of all the outstanding policies and additions thereto of every life insurance company transacting business in this state, except that in the case of an alien company such valuation shall be limited to its insurance transactions in the United States. In making the valuations of life insurance companies organized under the laws of this state, the valuation shall include unpaid dividends, and all other policy obligations. Whenever the laws of any other state of the United States shall authorize the valuation of life insurance policies by some designated staff officer according to the same standard as herein provided, or some other standard which will require a reserve not less than the standard herein provided, the valuation made according to the standard by such officer of the policies and

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other obligations of any life insurance company not organized under the laws of this state, and certified by such officer, may be received as true and correct, and no further valuation of the same shall be required of such company by the commissioner of insurance. It shall be the duty of the commissioner of insurance, whenever requested so to do by any life insurance company organized under the laws of this state, to make annual valuations of all the outstanding policies and additions thereto of every such company and deliver to such company certificates of such valuation, specifying the amount of the company's reserve on policies thus valued. And for the performance of the duties prescribed by this section the commissioner of insurance shall be authorized to employ an actuary, whose compensation shall be paid by the company whose policies, additions, unpaid dividends or other outstanding policy obligations are valued, upon a certificate by the commissioner of insurance showing the compensation due therefor.

Any such company which at any time shall have adopted any standards of valuation producing greater aggregate reserves than those calculated according to the minimum standards hereinafter provided may, with the approval of the commissioner of insurance, adopt any lower standard of valuation, but not lower than the minimum herein provided.

(b) This subsection shall become operative for the year ending December 31, 1995 and each subsequent calendar year.

(1) Every life insurance company doing business in this state shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by regulation are computed appropriately, are based on assumptions which satisfy contractual

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provisions, are consistent with prior reported amounts and comply with applicable laws of this state. The commissioner shall adopt an administrative regulation defining the specific application, scope and content of this opinion.

(2) Except as otherwise provided by law or administrative regulation, every life insurance company shall also annually include in the opinion required by subsection (1) of this section, an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including but not limited to the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, making adequate provision for the company's obligations under the policies and contracts, including but not limited to the benefits under and expenses associated with the policies and contracts.

(3) The commissioner may provide for a transition period for establishing any higher reserves which the qualified actuary may deem necessary in order to render the opinion required by this section.

(4) Each opinion required by subsection (2) shall be governed by the following provisions:

(A) A memorandum, in form and substance acceptable to or prescribed by the commissioner shall be prepared to support each actuarial opinion.

(B) If the insurance company fails to provide a supporting memorandum within a period specified or the commissioner determines that the supporting memorandum provided by the insurance company fails to meet the prescribed standards or is otherwise unacceptable to the commissioner, the commissioner shall be authorized to employ an actuary whose compensation and expenses shall be paid by the company whose policies, additions, unpaid dividends, or

other outstanding policy or contractual obligations are valued upon a certificate by the commissioner showing the compensation and expenses due therefor.

(5) Every opinion shall be governed by the following provisions:

(A) The opinion shall be submitted with the annual statement required by K.S.A. 1992 Supp. 40-225 reflecting the valuation of such reserve liabilities for each year ending on or after December 31, 1995.

(B) The opinion shall apply to all business in force including individual and group health insurance plans.

(C) The opinion shall be based on standards adopted from time to time by the actuarial standards board and on such additional standards as the commissioner may prescribe.

(D) In the case of an opinion required to be submitted by a foreign or alien company, the commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.

(E) For the purposes of this section, "qualified actuary" means a member in good standing of the American academy of actuaries.

(F) Except in cases of fraud or willful misconduct, the qualified actuary shall not be liable for damages to any person, other than the insurance company and the commissioner, for any act, error, omission, decision or conduct with respect to the actuary's opinion required by this act.

(G) Any memorandum in support of the opinion, and any other material provided by the company to the commissioner in connection therewith, shall be kept confidential by the commissioner and shall not be made public and

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shall not be subject to subpoena, other than for the purpose of defending an action seeking damages from any person by reason of any action required by this section or by regulations promulgated hereunder. Notwithstanding the foregoing, the memorandum or other material may otherwise be released by the commissioner: (i) with the written consent of the company, or (ii) to the American academy of actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the commissioner for preserving the confidentiality of the memorandum or other material. Once any portion of the confidential memorandum is cited by the company in its marketing or is cited before any governmental agency other than a state insurance department or is released by the company to the news media, all portions of the confidential memorandum shall be no longer confidential.

~~(b)~~(c) ~~This subsection shall apply to only those policies and contracts issued prior to the operative date of K.S.A. 40-128, and amendments thereto, (the standard nonforfeiture law), except as provided in subsection (d) of this section.~~

~~For the purpose of such valuations and for making special examinations of the condition of life insurance companies, as provided by the laws of this state, and for valuing all outstanding policies of every life insurance company, the method and basis of valuation shall be the same as preseribed by the insurance code of this state in the valuation of such contracts before June 1, 1927. The legal minimum standard for the valuation of life insurance contracts issued on or after June 1, 1927, shall be the one-year preliminary term method of valuation, except as hereinafter modified, on the basis of the American experience table of mortality with interest at 4% per annum. If the premium charged for term insurance under limited payment life~~

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~~preliminary-term-policy-providing-for-the-payment-of-all-premiums-thereon-in less--than--20--years--from--the--date--of--policy,--or--under--an--endowment preliminary-term--policy,--exceeds--that--charged--for--life--insurance--under twenty-payment-life-preliminary-term-policy-of-the-same-company,-the-reserve thereon-at-the-end-of-any-year,-including-the-first,-shall-not-be-less-than the--reserve--on-a-twenty-payment--life--preliminary-term-policy--issued--in-the same--year--and--at--the--same--age,--together--with--an--amount--which--shall--be equivalent-to-the-accumulation-of-a-net-level-premium-sufficient-to-provide for-a-pure--endowment-at-the-end-of-the-premium-payment-period,-equal-to-the difference--between--the--value--at--the--end--of--such--period--of--such--a twenty-payment-life-preliminary-term-policy-and-the-full-net-level-premium reserve--at--such--time--of--such-a-limited-payment--life-or--endowment--policy. The--premium-payment---period--is--the--period--during--which--premiums--are concurrently-payable,-under-such-twenty-payment-life-preliminary-term-policy and--such--limited-payment--life-or--endowment--policy.---Policies--issued--on-the preliminary-term--method--shall--contain-a-clause-specifying--that--the-reserve thereof--shall--be-computed--in--accordance-with--the--modified-preliminary-term method--of--valuation--provided--therein.---Except--as--otherwise-provided--for group-annuity--and--pure--endowment-contracts-in-paragraphs--(1-a)--and-(1-b)-of subsection-(c)-of-this-section,-the-legal-minimum-standard-for-the-valuation of--annuities--shall--be--McClintock's--"table--of-mortality--among--annuitants," with-interest--at--4%-per-annum,--but-annuities-deferred-10-or-more-years-and written-in--connection-with-life-insurance-shall-be-valued-on-the-same-basis as--that--used-in--computing--the--consideration--or-premiums--therefor,--or-upon any--higher--standard--at--the--option--of--the--company.---The--commissioner--of insurance-may,-in-the-commissioner's-discretion,-vary-the-above-standard-of interest--and--mortality--in-cases--of--companies-organized-under--the--laws--of-a~~

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~~foreign--country--and--in--particular--cases--of--invalid--lives,--or--other--extra hazards.~~

Reserves for all ~~such~~ policies and contracts issued prior to the effective date of this act may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by this subsection.

~~(c)~~(d) Standard valuation law. This subsection shall apply to only those policies and contracts issued on or after the operative date of K.S.A. 40-428, and amendments thereto, (the standard nonforfeiture law), except as otherwise provided in paragraphs (1-a) and (1-b) of this subsection for group annuity and pure endowment contracts issued prior to such operative date, and except as provided in subsection ~~(d)~~ (e) of this section.

(1) Except as otherwise provided in paragraphs (1-a) and (1-b) of this subsection, the minimum standard for the valuation of all such policies and contracts shall be the commissioners' reserve valuation methods defined in paragraphs (2), (2-a) and (5) of this subsection, 3 1/2% interest or in the case of policies and contracts, other than annuity and pure endowment contracts, issued on or after July 1, 1973, 4% interest for such policies issued prior to July 1, 1978, 5 1/2% interest for single premium life insurance policies and 4 1/2% interest for all other such policies issued on or after July 1, 1978, and the following specified tables:

(i) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies -- the commissioners' 1941 standard ordinary mortality table for such policies issued prior to the operative date of K.S.A. 40-428 (d-1), and amendments thereto, the commissioners' 1958 standard ordinary mortality

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table and the commissioner's 1958 extended term insurance table, as applicable, for such policies issued on or after the operative date of K.S.A. 40-428 (d-1), and amendments thereto, and prior to the operative date of K.S.A. 40-428 (d-3), and amendments thereto, provided that for any category of such policies issued on female risks, the modified net premiums and present values, referred to in subsection (c)(2) of this section, may be calculated, according to an age not more than six years younger than the actual age of the insured; and for such policies issued on or after the operative date of K.S.A. 40-428 (d-3), and amendments thereto: (i) The commissioners' 1980 standard ordinary mortality table; or (ii) at the election of the company for any one or more specified plans of life insurance, the commissioners' 1980 standard ordinary mortality table with ten-year select mortality factors; or (iii) any ordinary mortality table, adopted after 1980 by the national association of insurance commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such policies..

(ii) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies -- the 1941 standard industrial mortality table for such policies issued prior to the operative date of K.S.A. 40-428 (d-2), and amendments thereto, and for such policies issued on or after such operative date the commissioners' 1961 standard industrial mortality table or any industrial mortality table, adopted after 1980 by the national association of insurance commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such policies.

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(iii) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, and excluding annuities involving life contingencies provided or available under optional modes of settlement in life insurance polices or annuity contracts -- the 1937 standard annuity mortality table, or, at the option of the company, the annuity mortality table for 1949, ultimate, or any modification of either of these tables approved by the commissioner.

(iv) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies -- the group annuity mortality table for 1951, any modification of such table approved by the commissioner, or at the option of the company, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts.

(v) For total and permanent disability benefits in or supplementary to ordinary policies or contracts -- for policies or contracts issued on or after January 1, 1961, either the tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the society of actuaries, with due regard to the type of benefit, any tables of disablement rates and termination rates, adopted after 1980 by the national association of insurance commissioners, that are approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such policies, or, at the option of the company, the class (3) disability table (1926); and for policies issued prior to January 1, 1961, the class (3) disability table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserve for life insurance policies.

(vi) For accidental death benefits in or supplementary to policies -- for policies issued on or after January 1, 1961, either the 1959 accidental death benefits table, any accidental death benefits table, adopted after 1980 by the national association of insurance commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such policies, or, at the option of the company, the inter-company double indemnity mortality table; and for policies issued prior to January 1, 1961, the inter-company double indemnity mortality table. Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(vii) For group life insurance, life insurance issued on the substandard basis, annuities involving life contingencies provided or available under optional modes of settlement in life insurance policies or annuity contracts and other special benefits -- such tables as may be approved by the commissioner of insurance.

(viii) For all credit life insurance having initial terms of 10 years or less, excluding any disability and accidental death benefits in such policies, the 1958 commissioners' extended term table.

(1-a) Except as provided in paragraph (1-b), the minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this paragraph (1-a), as defined herein, and for all annuities and pure endowments purchased on or after such operative date under group annuity and pure endowment contracts, shall be the commissioners' reserve valuation methods defined in paragraphs (2) and (2-a) and the following tables and interest rates:

(i) For individual annuity and pure endowment contracts issued prior to July 1, 1978, excluding any disability and accidental death benefits in such

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contracts -- the 1971 individual annuity mortality table, or any modification of this table approved by the commissioner of insurance, and 6% interest for single premium immediate annuity contracts, and 4% interest for all other individual annuity and pure endowment contracts.

(ii) For individual single premium immediate annuity contracts issued on or after July 1, 1978, excluding any disability and accidental death benefits in such contracts -- the 1971 individual annuity mortality table, or any individual annuity mortality table, adopted after 1980 by the national association of insurance commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such contracts, or any modification of these tables approved by the commissioner, and 7 1/2% interest.

(iii) For individual annuity and pure endowment contracts issued on or after July 1, 1978, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts -- the 1971 individual annuity mortality table, or any individual annuity mortality table, adopted after 1980 by the national association of insurance commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such contracts, or any modification of these tables approved by the commissioner, and 5 1/2% interest for single premium deferred annuity and pure endowment contracts and 4 1/2% interest for all other such individual annuity and pure endowment contracts.

(iv) For all annuities and pure endowments purchased prior to July 1, 1978, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts --

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the 1971 group annuity mortality table, or any modification of this table approved by the commissioner of insurance, and 6% interest.

(v) For all annuities and pure endowments purchased on or after July 1, 1978, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts -- the 1971 group annuity mortality table, or any group annuity mortality table, adopted after 1980 by the national association of insurance commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such annuities and pure endowments, or any modification of these tables approved by the commissioner, and 7 1/2% interest.

After July 1, 1973, any company may file with the commissioner of insurance a written notice of its election to comply with the provisions of this paragraph after a specified date before January 1, 1979, which shall be the operative date of this paragraph for such company. A company may elect a different operative date for individual annuity and pure endowment contracts from that elected for group annuity and pure endowment contracts. If a company makes no such election, the operative date of this paragraph for such company shall be January 1, 1979.

(1-b)(A) Applicability of this paragraph:

(1) The interest rates used in determining the minimum standard for the valuation of:

(a) All life insurance policies issued in a particular calendar year, on or after the operative date of K.S.A. 40-428(d-3), and amendments thereto;

(b) all individual annuity and pure endowment contracts issued in a particular calendar year on or after January 1, 1983;

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(c) all annuities and pure endowments purchased in a particular calendar year on or after January 1, 1983, under group annuity and pure endowment contracts; and

(d) the net increase, if any, in a particular calendar year after January 1, 1983, in amounts held under guaranteed interest contracts shall be the calendar year statutory valuation interest rates as defined in this paragraph (1-b).

(B) Calendar year statutory valuation interest rates:

(1) The calendar year statutory valuation interest rates, I, shall be determined as follows and the results rounded to the near 1/4%:

(a) For life insurance, I= .03 + W (R1 - .03) + W/2 (R2 - .09);

(b) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options, I = .03 + W (R - .03)

where R1 is the lesser of R and .09,

R2 is greater of R and .09,

R is the reference interest rate defined in this paragraph and W is the weighting factor defined in this paragraph.

(c) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in (b) above, the formula for life insurance stated in (a) above shall apply to annuities and guaranteed interest contracts with guarantee durations in excess of 10 years and the formula for single premium immediate annuities stated in (b) above shall apply to annuities and guaranteed interest contracts with guarantee duration of 10 years or less.

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(d) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities stated in (b) above shall apply.

(e) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities stated in (b) above shall apply.

(2) However, if the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year determined without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than 1/2%, the calendar year statutory valuation interest rate for such life insurance policies shall be equal to the corresponding actual rate for the immediate preceding calendar year. For purposes of applying the immediately preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for 1980 (using the reference interest rate defined for 1979) and shall be determined for each subsequent calendar year regardless of when K.S.A. 40-428(d-3), and amendments thereto, becomes operative.

(C) Weighting factors:

(1) The weighting factors referred to in the formulas stated above are given in the following tables:

(a) Weighting factors for life insurance:

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Guarantee Duration (Years)	Weighting Factors
10 or less	.50
More than 10, but not more than 20	.45
More than 20	.35

For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values, or both, which are guaranteed in the original policy;

(b) Weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options:

.80

(c) Weighting factors for other annuities and for guaranteed interest contracts, except as stated in (b) above, shall be as specified in tables (i), (ii) and (iii) below, according to the rules and definitions in (iv), (v) and (vi) below:

(i) For annuities and guaranteed interest contacts valued on an issue year basis:

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	Weighting Factor for Plan Type		
Guarantee Duration (Years)	A	B	C
5 or less.....	.80	.60	.50
More than five, but not more than 10.....	.75	.60	.50
More than 10, but not more than 20.....	.65	.50	.45
More than 20.....	.45	.35	.35

(ii)

	Plan Type		
	A	B	C
For annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in (i) above increased by.....	.15	.25	.05

(iii)

	Plan Type		
	A	B	C
For annuities and guaranteed interest contracts valued on an issue year basis (other than those with no cash settlement op-			

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tions) which do not guarantee interest on considerations received more than one year after issue or purchase and for annuities and guaranteed interest contracts valued on a change in fund basis which do not guarantee interest rates on considerations received more than 12 months beyond the valuation date, the factors shown in (i) or derived in (ii) increased by....	.05	.05	.05

(iv) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of 20 years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guarantee duration is the

number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

(v) Plan type as used in the above tables is defined as follows:

Plan type A: At any time policyholder may withdraw funds only: (1) With an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurer; or (2) without such adjustment but in installments over five years or more; or (3) as an immediate life annuity; or (4) no withdrawal permitted.

Plan type B: Before expiration of the interest rate guarantee, policyholder may withdraw funds only: (1) With an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurer; or (2) without such adjustment but in installments over five years or more; or (3) no withdrawal permitted. At the end of interest rate guarantee, funds may be withdrawn without such adjustment in a single sum or installments over less than five years.

Plan type C: Policyholder may withdraw funds before expiration of interest rate guarantee in a single sum or installments over less than five years either: (1) Without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or (2) subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

(vi) A company may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue year basis. As used in this paragraph (1-b), an issue year basis of valuation refers to a valuation

basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract, and the change in fund basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

(D) Reference interest rate:

(1) The reference interest rate referred to in paragraph (B) of this paragraph (1-b) shall be defined as follows:

(a) For all life insurance, the lesser of the average over a period of 36 months and the average over a period of 12 months, ending on June 30 of the calendar year next preceding the year of issue, of Moody's corporate bond yield average -- monthly average corporates, as published by Moody's investors service, inc.

(b) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of 12 months, ending on June 30 of the calendar year of issue or year of purchase, of Moody's corporate bond yield average -- monthly average corporates, as published by Moody's investors service, inc.

(c) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in (b) above, with guarantee duration in excess of

10 years, the lesser of the average over a period of 36 months and the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of Moody's corporate bond yield average -- monthly average corporates, as published by Moody's investors service, inc.

(d) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in (b) above, with guaranteed duration of 10 years or less, the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of Moody's corporate bond yield average -- monthly average corporates, as published by Moody's investors service, inc.

(e) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of Moody's corporate bond yield average -- monthly average corporates, as published by Moody's investors service, inc.

(f) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in (b) above, the average over a period of 12 months, ending on June 30 of the calendar year of the change in the fund, of Moody's corporate bond yield average -- monthly average corporates, as published by Moody's investors service, inc.

(E) Alternative method for determining reference interest rates:

(1) In the event that Moody's corporate bond yield average -- monthly average corporates is no longer published by Moody's investors service, inc., or in the event that the national association of insurance commissioners determines that Moody's corporate bond yield average --

monthly average corporates as published by Moody's investors service, inc., is no longer appropriate for the determination of the reference interest rate, then an alternative method for determination of the reference interest rate, which is adopted by the national association of insurance commissioners and approved by regulation promulgated by the commissioner, may be substituted.

(2) Commissioners' reserve valuation method. Except as otherwise provided in paragraphs (2-a) and (5) of this subsection, reserves according to the commissioners' reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums, shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor.

The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of (A) over (B), as follows:

(A) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due. Such net level annual premium shall not exceed the net level annual premium on the nineteen-year premium whole life plan for

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insurance of the same amount at an age one year higher than the age at issue of such policy.

(B) A net one-year term premium for such benefits provided for in the first policy year.

Except for any life insurance policy issued on or after January 1, 1985, for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the reserve according to the commissioners' reserve valuation method as of any policy anniversary occurring on or before the assumed ending date defined herein as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than such excess premium shall, except as otherwise provided in paragraph (5), be the greater of the reserve as of such policy anniversary calculated as described in this paragraph and the reserve as of such policy anniversary calculated as described in this paragraph, but with: (i) The value defined in subparagraph (A) of this paragraph being reduced by 15% of the amount of such excess first-year premium; (ii) all present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date; (iii) the policy being assumed to mature on such date as an endowment; and (iv) the cash surrender value provided on such date being considered as an endowment benefit. In making the above comparison the mortality and interest bases stated in paragraphs (1) and (1-b) shall be used.

Reserves according to the commissioners' reserve valuation method for: (i) Life insurance policies providing for a varying amount of insurance or

requiring the payment of varying premiums; (ii) group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the internal revenue code, as now or hereafter amended; (iii) disability and accidental death benefits in all policies and contracts; and (iv) all other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts, shall be calculated by a method consistent with the principles of this paragraph (2).

(2-a) This section shall apply to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the internal revenue code, as now or hereafter amended.

Reserves according to the commissioners' annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by such contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the

terms of such contract, that become payable prior to the end of such respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate, or rates, specified in such contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of such contracts to determine nonforfeiture values.

(3) In no event shall a company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, be less than the aggregate reserves calculated in accordance with the methods set forth in paragraphs (2), (2-a), (5) and (6) and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

(3-a) In no event shall the aggregate reserves for all policies, contracts and benefits be less than the aggregate reserves determined by the qualified actuary rendering the opinion required by subsection (b) of this section.

(4) Reserves for any category of policies, contracts or benefits as established by the commissioner of insurance may be calculated at the option of the company, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for therein.

(5) If in any contract year the gross premium charged by any life insurance company on any policy or contract is less than the valuation net

premium for the policy or contract calculated by the method used in calculating the reserve thereon but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for such policy or contract shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy or contract, or the reserve calculated by the method actually used for such policy or contract but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium.

The minimum valuation standards of mortality and rate of interest referred to in this section are those standards stated in paragraphs (1) and (1-b).

Except for any life insurance policy issued on or after January 1, ~~1986~~ 1998, for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the foregoing provisions of this paragraph (5) shall be applied as if the method actually used in calculating the reserve for such policy were the method described in paragraph (2), ignoring the third paragraph of paragraph (2). The minimum reserve at each policy anniversary of such a policy shall be the greater of the minimum reserve calculated in accordance with paragraph (2), including the third paragraph of paragraph (2), and the minimum reserve calculated in accordance with this paragraph (5).

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(6) In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of any plan of life insurance or annuity which is of such a nature that the minimum reserves cannot be determined by the methods described in paragraphs (2), (2-a) and (5), the reserves which are held under any such plan must:

(a) Be appropriate in relation to the benefits and the pattern of premiums for that plan, and

(b) be computed by a method which is consistent with the principles of this standard valuation law, as determined by regulations promulgated by the commissioner.

~~(d)~~ (e) Any company organized under the laws of this state, which shall desire to do business in any other states wherein it is not permitted to issue or deliver policies valued as provided in subsection ~~(c)~~ (d) of this section, may value its policies issued and delivered in such other states as provided in subsection ~~(b)~~ (c) of this section.

(f) The commissioner shall promulgate regulations establishing the minimum standards applicable to the valuation of accident and sickness insurance and may adopt such other regulations as may be necessary to administer the provisions of this act.

Sec. 2. K.S.A. 1992 Supp. 45-221 is hereby amended to read as follows: 45-221. (a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

(1) Records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or the disclosure of which is prohibited or restricted pursuant to specific

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authorization of federal law, state statute or rule of the Kansas supreme court to restrict or prohibit disclosure.

(2) Records which are privileged under the rules of evidence, unless the holder of the privilege consents to the disclosure.

(3) Medical, psychiatric, psychological or alcoholism or drug dependency treatment records which pertain to identifiable patients.

(4) Personnel records, performance ratings or individually identifiable records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries and lengths of service of officers and employees of public agencies once they are employed as such.

(5) Information which would reveal the identity of any undercover agent or any informant reporting a specific violation of law.

(6) Letters of reference or recommendation pertaining to the character or qualifications of an identifiable individual.

(7) Library, archive and museum materials contributed by private persons, to the extent of any limitations imposed as conditions of the contribution.

(8) Information which would reveal the identity of an individual who lawfully makes a donation to a public agency, if anonymity of the donor is a condition of the donation.

(9) Testing and examination materials, before the test or examination is given or if it is to be given again, or records of individual test or examination scores, other than records which show only passage or failure and not specific scores.

(10) Criminal investigation records, except that the district court, in an action brought pursuant to K.S.A. 45-222, and amendments thereto, may

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order disclosure of such records, subject to such conditions as the court may impose, if the court finds that disclosure:

(A) Is in the public interest;

(B) would not interfere with any prospective law enforcement action;

(C) would not reveal the identity of any confidential source or undercover agent;

(D) would not reveal confidential investigative techniques or procedures not known to the general public; and

(E) would not endanger the life or physical safety of any person.

(11) Records of agencies involved in administrative adjudication or civil litigation, compiled in the process of detecting or investigating violations of civil law or administrative rules and regulations, if disclosure would interfere with a prospective administrative adjudication or civil litigation or reveal the identity of a confidential source or undercover agent.

(12) Records of emergency or security information or procedures of a public agency, or plans, drawings, specifications or related information for any building or facility which is used for purposes requiring security measures in or around the building or facility or which is used for the generation or transmission of power, water, fuels or communications, if disclosure would jeopardize security of the public agency, building or facility.

(13) The contents of appraisals or engineering or feasibility estimates or evaluations made by or for a public agency relative to the acquisition of property, prior to the award of formal contracts therefor.

(14) Correspondence between a public agency and a private individual, other than correspondence which is intended to give notice of an action,

policy or determination relating to any regulatory, supervisory or enforcement responsibility of the public agency or which is widely distributed to the public by a public agency and is not specifically in response to communications from such a private individual.

(15) Records pertaining to employer-employee negotiations, if disclosure would reveal information discussed in a lawful executive session under K.S.A. 75-4319, and amendments thereto.

(16) Software programs for electronic data processing and documentation thereof, but each public agency shall maintain a register, open to the public, that describes:

(A) The information which the agency maintains on computer facilities; and

(B) the form in which the information can be made available using existing computer programs.

(17) Applications, financial statements and other information submitted in connection with applications for student financial assistance where financial need is a consideration for the award.

(18) Plans, designs, drawings or specifications which are prepared by a person other than an employee of a public agency or records which are the property of a private person.

(19) Well samples, logs or surveys which the state corporation commission requires to be filed by persons who have drilled or caused to be drilled, or are drilling or causing to be drilled, holes for the purpose of discovery or production of oil or gas, to the extent that disclosure is limited by rules and regulations of the state corporation commission.

(20) Notes, preliminary drafts, research data in the process of analysis, unfunded grant proposals, memoranda, recommendations or other

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records in which opinions are expressed or policies or actions are proposed, except that this exemption shall not apply when such records are publicly cited or identified in an open meeting or in an agenda of an open meeting.

(21) Records of a public agency having legislative powers, which records pertain to proposed legislation or amendments to proposed legislation, except that this exemption shall not apply when such records are:

(A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or

(B) distributed to a majority of a quorum of any body which has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain.

(22) Records of a public agency having legislative powers, which records pertain to research prepared for one or more members of such agency, except that this exemption shall not apply when such records are:

(A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or

(B) distributed to a majority of a quorum of any body which has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain.

(23) Library patron and circulation records which pertain to identifiable individuals.

(24) Records which are compiled for census or research purposes and which pertain to identifiable individuals.

(25) Records which represent and constitute the work product of an attorney.

(26) Records of a utility or other public service pertaining to individually identifiable residential customers of the utility or service, except that information concerning billings for specific individual customers named by the requester shall be subject to disclosure as provided by this act.

(27) Specifications for competitive bidding, until the specifications are officially approved by the public agency.

(28) Sealed bids and related documents, until a bid is accepted or all bids rejected.

(29) Correctional records pertaining to an identifiable inmate, except that:

(A) The name, sentence data, parole eligibility date, disciplinary record, custody level and location of an inmate shall be subject to disclosure to any person other than another inmate; and

(B) the ombudsman of corrections, the corrections ombudsman board, the attorney general, law enforcement agencies, counsel for the inmate to whom the record pertains and any county or district attorney shall have access to correctional records to the extent otherwise permitted by law.

(30) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.

(31) Public records pertaining to prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within or expanding within the state. This exception shall not include those records pertaining to application of agencies for permits or licenses necessary to do business or

to expand business operations within this state, except as otherwise provided by law.

(32) The bidder's list of contractors who have requested bid proposals for construction projects from any public agency, until a bid is accepted or all bids rejected.

(33) Engineering and architectural estimates made by or for any public agency relative to public improvements.

(34) Financial information submitted by contractors in qualification statements to any public agency.

(35) Records involved in the obtaining and processing of intellectual property rights that are expected to be, wholly or partially vested in or owned by a state educational institution, as defined in K.S.A. 76-711, and amendments thereto, or an assignee of the institution organized and existing for the benefit of the institution.

(36) Any report or record which is made pursuant to K.S.A. 65-4922, 65-4923 or 65-4924, and amendments thereto, and which is privileged pursuant to K.S.A. 65-4915 or 65-4925, and amendments thereto.

(37) Information which would reveal the precise location of an archeological site.

(38) Any financial data or traffic information from a railroad company, to a public agency, concerning the sale, lease or rehabilitation of the railroad's property in Kansas.

(39) Memoranda and related materials required used to support the annual actuarial opinions submitted pursuant to section 1, subsection (b) of 1994 Bill No. and amendments thereto. (Legislative Proposal No. 1)

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(b) Except to the extent disclosure is otherwise required by law or as appropriate during the course of an administrative proceeding or on appeal from agency action, a public agency or officer shall not disclose financial information of a taxpayer which may be required or requested by a county appraiser to assist in the determination of the value of the taxpayer's property for ad valorem taxation purposes; or any financial information of a personal nature required or requested by a public agency or officer, including a name, job description or title revealing the salary or other compensation of officers, employees or applicants for employment with a firm, corporation or agency, except a public agency. Nothing contained herein shall be construed to prohibit the publication of statistics, so classified as to prevent identification of particular reports or returns and the items thereof.

(c) As used in this section, the term "cited or identified" shall not include a request to an employee of a public agency that a document be prepared.

(d) If a public record contains material which is not subject to disclosure pursuant to this act, the public agency shall separate or delete such material and make available to the requester that material in the public record which is subject to disclosure pursuant to this act. If a public record is not subject to disclosure because it pertains to an identifiable individual, the public agency shall delete the identifying portions of the record and make available to the requester any remaining portions which are subject to disclosure pursuant to this act, unless the request is for a record pertaining to a specific individual or to such a limited group of individuals that the individuals' identities are reasonably

ascertainable, the public agency shall not be required to disclose those portions of the record which pertain to such individual or individuals.

(e) The provisions of this section shall not be construed to exempt from public disclosure statistical information not descriptive of any identifiable person.

(f) Notwithstanding the provisions of subsection (a), any public record which has been in existence more than 70 years shall be open for inspection by any person unless disclosure of the record is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or by a policy adopted pursuant to K.S.A. 72-6214, and amendments thereto.

Sec. 3. K.S.A. 40-409 and K.S.A. 1992 Supp. 45-221 are hereby repealed.

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

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Legislative Proposal No. 2

Explanatory Memorandum

Legislative Proposal No. 2 embodies a new regulatory concept with respect to insurance by providing a framework for the establishment of risk based capital and surplus requirements. All states, including Kansas, have minimum capital and surplus requirements which are appropriate for new insurance companies. However, the nature of current insurance products, investment strategies and other aspects of a modern insurance company operation literally demand a standardized but flexible means of establishing capital and surplus requirements that better recognize the operational characteristics of each insurance company. Legislative Proposal No. 2 would establish a structure that would facilitate this type of oversight in Kansas.

Risk-based capital requirements have been in place for a number of years with respect to banks and savings and loan institutions. Therefore, the concept itself is not new and Legislative Proposal No. 2 simply permits the extension of this concept to insurance companies.

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Attachment #2

LEGISLATIVE PROPOSAL NO. 2

AN ACT relating to insurance; life insurance companies; risk based capital requirements; definitions; procedures; reports; confidentiality; amending K.S.A. 1992 Supp. 45-221 and repealing the existing section.

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

Section 1. Definitions. As used in this act, these terms shall have the following meanings:

(a) "Adjusted RBC report" means an RBC report which has been adjusted by the commissioner in accordance with section 4 of this act.

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

(c) "Domestic insurer" means any life insurance company organized in this state pursuant to K.S.A. 1992 Supp. 40-401 and amendments thereto.

(d) "Foreign insurer" means any life insurance company not domiciled in this state which is licensed to do business in this state pursuant to K.S.A. 40-209 and amendments thereto.

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

(f) "Negative trend" means a negative trend over a period of time, as determined in accordance with the "trend test calculation" included in the RBC instructions defined in subsection (h) of this act.

(g) "RBC" means risk-based capital.

(h) "RBC instructions" means the risk-based capital instructions promulgated by the NAIC and adopted by the commissioner pursuant to K.S.A. 77-415 et seq.

(i) "RBC level" means an insurer's company action level RBC, regulatory action level RBC, authorized control level RBC, or mandatory control level RBC where:

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

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

(3) "authorized control level RBC" means the number determined under the risk-based capital formula in accordance with the RBC instructions; and

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

(j) "RBC plan" means a comprehensive financial plan containing the elements specified in section 6 of this act. If the commissioner rejects the RBC plan, and it is revised by the insurer, with or without the commissioner's recommendation, the plan shall be called the "revised RBC plan".

(k) "RBC report" means the report required by section 2 of this act.

(l) "Total adjusted capital" means the sum of:

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

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

Sec. 2. Every domestic insurer shall, concurrent with or prior to submission of the annual statement required by K.S.A. 1992 Supp. 40-225, prepare and submit to the commissioner a report of its RBC levels as of the

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end of the calendar year just ended in a form and containing such information as is required by the RBC instructions. In addition, every domestic insurer shall file its RBC report:

(a) With the NAIC in accordance with the RBC instructions; and

(b) with the insurance commissioner in any state in which the insurer is authorized to do business, if the insurance commissioner has notified the insurer of its request in writing, in which case the insurer shall file its RBC report not later than the later of:

(1) Fifteen days from the receipt of notice to file its RBC report with that state; or

(2) the filing date otherwise specified in this subsection.

Sec. 3. An insurer's RBC shall be determined in accordance with the formula set forth in the RBC instructions. The formula shall take into account and may adjust for the covariance between:

(a) The risk with respect to the insurer's assets;

(b) the risk of adverse insurance experience with respect to the insurer's liabilities and obligations;

(c) the interest rate risk with respect to the insurer's business; and

(d) all other business risks and such other relevant risks as are set forth in the RBC instructions;

determined in each case by applying the factors in the manner set forth in the RBC instructions.

Sec. 4. If a domestic insurer files an RBC report which in the judgment of the commissioner is inaccurate, the commissioner shall adjust the RBC report to correct the inaccuracy and shall notify the insurer of the adjustment. The notice shall contain a statement of the reason for the

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adjustment. An RBC report as so adjusted is referred to as an "adjusted RBC report".

Sec. 5. "Company action level event" means any of the following events:

(a) The filing of an RBC report by an insurer which indicates that:

(1) The insurer's total adjusted capital is greater than or equal to its regulatory action level RBC but less than its company action level RBC; or

(2) the insurer has total adjusted capital which is greater than or equal to its company action level RBC but less than the product of its authorized control level RBC and 2.5 and also has a negative trend.

(b) The notification by the commissioner to the insurer of an adjusted RBC report that indicates the event described in subsections (a)(1) or (2) of this section unless the insurer challenges the adjusted RBC report pursuant to section 19 of this act and such challenge has not been rejected by the commissioner.

Sec. 6. In the event of a company action level event, the insurer shall prepare and submit to the commissioner an RBC plan which shall:

(a) Identify the conditions in the insurer's operation which contribute to the company action level event;

(b) contain proposals of corrective actions which the insurer intends to take that would be expected to result in the elimination of the company action level event;

(c) provide projections of the insurer's financial results in the current year and at least the four succeeding years, both in the absence of the proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital and surplus or surplus only with respect to a mutual insurer. The

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projections for both new and renewal business may include separate projections for each major line of business and separately identify each significant income, expense and benefit component;

(d) identify the key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions; and

(e) identify the quality of, and problems associated with, the insurer's business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business and use of reinsurance in each case, if any.

Sec. 7. The RBC plan shall be submitted:

(a) Within 45 days of the company action level event; or

(b) within 45 days after notification to the insurer that the commissioner has rejected the insurer's challenge to an adjusted RBC report pursuant to section 19 of this act.

Sec. 8. Within 60 days after the submission by an insurer of an RBC plan to the commissioner, the commissioner shall notify the insurer whether the RBC plan shall be implemented or is, in the judgment of the commissioner, unsatisfactory. If the commissioner determines the RBC plan is unsatisfactory, the notification to the insurer shall set forth the reasons for the determination, and may set forth proposed revisions which, in the judgment of the commissioner, will render the RBC plan satisfactory. Upon notification from the commissioner, the insurer shall prepare a revised RBC plan and shall submit the revised RBC plan to the commissioner:

(a) Within 45 days after the notification from the commissioner; or

(b) within 45 days after a notification to the insurer that the commissioner has, pursuant to section 19 of this act, rejected the insurer's

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challenge to the commissioner's original findings as authorized by this section.

Sec. 9. In the event of a notification by the commissioner to an insurer that the insurer's RBC plan or revised RBC plan is unsatisfactory, the commissioner may, subject to the insurer's right to a hearing under section 19 of this act, specify in the notification that the notification constitutes a regulatory action level event.

Sec. 10. Every domestic insurer that files an RBC plan or revised RBC plan with the commissioner shall file a copy of the RBC plan or revised RBC plan with the insurance commissioner in any state in which the insurer is authorized to do business if:

(a) Such state has an RBC provision substantially similar to section 20 of this act; and

(b) the insurance commissioner of that state has notified the insurer of its request for the filing in writing, in which case the insurer shall file a copy of the RBC plan or revised RBC plan in that state no later than the later of:

(1) Fifteen days after the receipt of notice to file a copy of its RBC plan or revised RBC plan with the state; or

(2) the date on which the final RBC plan or revised RBC plan is filed under sections 7 and 8 of this act.

Sec. 11. "Regulatory action level event" means, with respect to any insurer, any of the following events:

(a) The filing of an RBC report by the insurer which indicates that the insurer's total adjusted capital is greater than or equal to its authorized control level RBC but less than its regulatory action level RBC;

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(b) the notification by the commissioner to an insurer of an adjusted RBC report that indicates the result described in subsection (a) of this section if the insurer does not challenge the adjusted RBC report pursuant to section 19 of this act;

(c) the filing of an adjusted RBC report that indicates the result described in subsection (a) of this section if the commissioner has rejected the insurer's challenge after a hearing held pursuant to section 19 of this act;

(d) the failure of the insurer to file an RBC report by the filing date, unless the insurer has provided an explanation for such failure which is satisfactory to the commissioner and has cured the failure within 10 days after the filing date;

(e) the failure of the insurer to submit an RBC plan to the commissioner within the time period set forth in section 7 of this act;

(f) notification by the commissioner to the insurer that:

(1) The RBC plan or revised RBC plan submitted by the insurer is, in the judgment of the commissioner, unsatisfactory; and

(2)(A) the insurer has not challenged the determination pursuant to section 19 of this act; or

(B) the commissioner has rejected such challenge.

(g) Notification by the commissioner to the insurer that the insurer has failed to adhere to its RBC plan or revised RBC plan, but only if such failure has a substantial adverse effect on the ability of the insurer to eliminate the regulatory action level event in accordance with its RBC plan or revised RBC plan and the commissioner has so stated in the notification, if:

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(1) The insurer has not challenged such determination pursuant to section 19 of this act; or

(2) the commissioner has rejected such challenge.

Sec. 12. In the event of a regulatory action level event, the commissioner shall:

(a) Require the insurer to prepare and submit a RBC plan or, if applicable, a revised RBC plan;

(b) perform such examination or analysis as the commissioner deems necessary of the assets, liabilities and operations of the insurer including a review of its RBC plan or revised RBC plan; and

(c) subsequent to the examination or analysis, issue a corrective order specifying such actions as the commissioner shall determine are required.

Sec. 13. In determining corrective actions, the commissioner may take into account such factors as are deemed relevant with respect to the insurer based upon the commissioner's examination or analysis of the assets, liabilities and operations of the insurer, including, but not limited to, the results of any sensitivity tests undertaken pursuant to the RBC instructions. The RBC plan or revised RBC plan shall be submitted:

(a) Within 45 days after the occurrence of the regulatory action level event;

(b) within 45 days after the notification to the insurer that the commissioner has rejected the insurer's challenge to an adjusted RBC report pursuant to section 19 of this act; or

(c) within 45 days after notification to the insurer that the commissioner has rejected the insurer's challenge to a revised RBC plan.

Sec. 14. The commissioner may retain actuaries and investment experts and other consultants as may be necessary in the judgment of the

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commissioner to review the insurer's RBC plan or revised RBC plan, examine or analyze the assets, liabilities and operations of the insurer and formulate the corrective order with respect to the insurer. The reasonable fees, costs and expenses relating to consultants shall be borne by the affected insurer or such other party as directed by the commissioner.

Sec. 15. "Authorized control level event" means any of the following events:

(a) The filing of an RBC report by the insurer which indicates that the insurer's total adjusted capital is greater than or equal to its mandatory control level RBC but less than its authorized control level RBC;

(b) the notification by the commissioner to the insurer of an adjusted RBC report that indicates the event described in subsection (a) of this section if:

(1) The insurer does not challenge the adjusted RBC report pursuant to section 19 of this act; or

(2) the commissioner has rejected such challenge;

(c) the failure of the insurer to respond, in a manner satisfactory to the commissioner, to a corrective order if the insurer has not challenged the corrective order under section 19 of this act; or

(d) if the commissioner has rejected the challenge or modified the corrective order, the failure of the insurer to respond, in a manner satisfactory to the commissioner, to the corrective order subsequent to rejection or modification by the commissioner.

Sec. 16. In the event of an authorized control level event with respect to an insurer, the commissioner shall:

(a) Take such actions as are required under sections 11, 12, 13, and 14 of this act regarding an insurer with respect to which a regulatory action level event has occurred; or

(b) if the commissioner deems it to be in the best interests of the policyholders and creditors of the insurer and of the public, take such actions as are necessary to cause the insurer to be placed under regulatory control pursuant to K.S.A. 1992 Supp. 40-3605 et seq. In the event the commissioner takes such actions, the authorized control level event shall be deemed sufficient grounds for the commissioner to take action under K.S.A. 1992 Supp. 40-3605 et seq, and the commissioner shall have the rights, powers and duties with respect to the insurer as are set forth in K.S.A. 1992 Supp. 40-3605 et seq. In the event the commissioner takes actions under this subparagraph pursuant to an adjusted RBC report, the insurer shall be entitled to such protections as are afforded to insurers under the provisions of K.S.A. 77-601 et seq. pertaining to summary proceedings.

Sec. 17. "Mandatory control level event" means any of the following events:

(a) The filing of an RBC report which indicates that the insurer's total adjusted capital is less than its mandatory control level RBC;

(b) notification by the commissioner to the insurer of an adjusted RBC report that indicates the event described in subsection (a) of this section if:

(1) The insurer does not challenge the adjusted RBC report pursuant to section 19 of this act; or

(2) the commissioner has rejected such challenge.

Sec. 18. In the event of a mandatory control level event, the commissioner shall take actions as are necessary to cause the insurer to be

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placed under regulatory control under K.S.A. 1992 Supp. 40-3605 et seq. In that event, the mandatory control level event shall be deemed sufficient grounds for the commissioner to take action under K.S.A. 1992 Supp. 40-3605 et seq., and the commissioner shall have the rights, powers and duties with respect to the insurer as are set forth in K.S.A. 1992 Supp. 40-3605 et seq. In the event the commissioner takes actions pursuant to an adjusted RBC report, the insurer shall be entitled to such protections as are afforded to insurers under the provisions of K.S.A. 77-601 et seq. pertaining to summary proceedings. Notwithstanding any of the foregoing, the commissioner may forego action for up to 90 days after the mandatory control level event if there is a reasonable expectation that the mandatory control level event may be eliminated within the 90 day period.

Sec. 19 (a) Upon notification to an insurer by the commissioner of an adjusted RBC report; or

(b) upon notification to an insurer by the commissioner that:

(1) The insurer's RBC plan or revised RBC plan is unsatisfactory; and

(2) such notification constitutes a regulatory action level event with respect to such insurer; or

(c) upon notification to any insurer by the commissioner that the insurer has failed to adhere to its RBC plan or revised RBC plan and that such failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event with respect to the insurer in accordance with its RBC plan or revised RBC plan; or

(d) upon notification to an insurer by the commissioner of a corrective order with respect to the insurer,

the insurer shall have the right to an administrative hearing, at which the insurer may challenge any determination or action by the commissioner.

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The insurer shall notify the commissioner of its request for a hearing within five days after the notification by the commissioner under subsections (a), (b), (c) or (d) of this section. Upon receipt of the insurer's request for a hearing, the commissioner shall set a date for the hearing, which date shall be no less than 10 nor more than 30 days after receipt of the insurer's request. Such hearing shall be governed by K.S.A. 77-513 through 77-532 and amendments thereto.

Sec. 20. All RBC reports, RBC plans and any corrective orders, including the working papers and the results of any analysis of an insurer performed pursuant hereto shall be kept confidential by the commissioner. This information shall not be made public or subject to subpoena, other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner pursuant to this act or any other provision of the insurance laws of this state.

Sec. 21. The comparison of an insurer's total adjusted capital to any of its RBC levels is a regulatory tool, and shall not be used to rank insurers generally. Therefore, except as otherwise required under the provisions of this act, the making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing an assertion, representation or statement with regard to the RBC levels of any insurer, or of any component derived in the calculation, by any insurer, agent, broker or other person engaged in any manner in the insurance business is prohibited. Notwithstanding the foregoing, if any

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materially false statement with respect to the comparison regarding an insurer's total adjusted capital to any of its RBC levels or an inappropriate comparison of any other amount to the insurer's RBC levels is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity or misrepresentative nature of such statement, the insurer may publish a rebuttal if the sole purpose of such publication is to rebut the materially false or improper statement.

Sec. 22. The provisions of this act are supplemental to any other provisions of the laws of this state, and shall not preclude or limit any other powers or duties of the commissioner under such laws, including, but not limited to K.S.A. 1992 Supp. 40-222b and 40-3605 et seq.

Sec. 23. Any foreign insurer shall, upon the written request of the commissioner, submit to the commissioner an RBC report as of the end of the calendar year just ended the later of:

(a) The date an RBC report would be required to be filed by a domestic insurer under this act; or

(b) fifteen days after the request is received by the foreign insurer.

Any foreign insurer shall, at the written request of the commissioner, promptly submit to the commissioner a copy of any RBC plan that is filed with the insurance commissioner of any other state.

Sec. 24. In the event of a company action level event or regulatory action level event with respect to any foreign insurer as determined under the RBC statute applicable in the state of domicile of the insurer or, if no RBC provision is in force in that state, under the provisions of this act, if the insurance commissioner of the state of domicile of the foreign insurer fails to require the foreign insurer to file an RBC plan in the

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manner specified under the RBC statute or, if there are no RBC provisions in force in the state, under section 5 of this act, the commissioner may require the foreign insurer to file an RBC plan with the commissioner. In such event, the failure of the foreign insurer to file an RBC plan with the commissioner shall be grounds to order the insurer to cease and desist from writing new insurance business in this state.

Sec. 25. In the event of a mandatory control level event with respect to any foreign insurer, if no domiciliary receiver has been appointed with respect to the foreign insurer under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign insurer, the commissioner may make application to the district court permitted under K.S.A. 1992 Supp. 40-3605 et seq. with respect to the liquidation of property of foreign insurers found in this state, and the occurrence of the mandatory control level event shall be considered adequate grounds for the application.

Sec. 26. If any provisions of this act, or the application of it to any person or circumstance, is held invalid, such determination shall not affect the provisions or applications of this act which can be given effect without the invalid provision or application, and to that end the provisions of this act are severable.

Sec. 27. All notices by the commissioner to an insurer which may result in regulatory action hereunder shall be effective upon dispatch if transmitted by registered or certified mail, or in the case of any other transmission shall be effective upon the insurer's receipt of such notice.

Sec. 28. K.S.A. 1992 Supp. 45-221 is hereby amended to read as follows: 45-221. (a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

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(1) Records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or the disclosure of which is prohibited or restricted pursuant to specific authorization of federal law, state statute or rule of the Kansas supreme court to restrict or prohibit disclosure.

(2) Records which are privileged under the rules of evidence, unless the holder of the privilege consents to the disclosure.

(3) Medical, psychiatric, psychological or alcoholism or drug dependency treatment records which pertain to identifiable patients.

(4) Personnel records, performance ratings or individually identifiable records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries and lengths of service of officers and employees of public agencies once they are employed as such.

(5) Information which would reveal the identity of any undercover agent or any informant reporting a specific violation of law.

(6) Letters of reference or recommendation pertaining to the character or qualifications of an identifiable individual.

(7) Library, archive and museum materials contributed by private persons, to the extent of any limitations imposed as conditions of the contribution.

(8) Information which would reveal the identity of an individual who lawfully makes a donation to a public agency, if anonymity of the donor is a condition of the donation.

(9) Testing and examination materials, before the test or examination is given or if it is to be given again, or records of individual test or

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examination scores, other than records which show only passage or failure and not specific scores.

(10) Criminal investigation records, except that the district court, in an action brought pursuant to K.S.A. 45-222, and amendments thereto, may order disclosure of such records, subject to such conditions as the court may impose, if the court finds that disclosure:

(A) Is in the public interest;

(B) would not interfere with any prospective law enforcement action;

(C) would not reveal the identity of any confidential source or undercover agent;

(D) would not reveal confidential investigative techniques or procedures not known to the general public; and

(E) would not endanger the life or physical safety of any person.

(11) Records of agencies involved in administrative adjudication or civil litigation, compiled in the process of detecting or investigating violations of civil law or administrative rules and regulations, if disclosure would interfere with a prospective administrative adjudication or civil litigation or reveal the identity of a confidential source or undercover agent.

(12) Records of emergency or security information or procedures of a public agency, or plans, drawings, specifications or related information for any building or facility which is used for purposes requiring security measures in or around the building or facility or which is used for the generation or transmission of power, water, fuels or communications, if disclosure would jeopardize security of the public agency, building or facility.

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(13) The contents of appraisals or engineering or feasibility estimates or evaluations made by or for a public agency relative to the acquisition of property, prior to the award of formal contracts therefor.

(14) Correspondence between a public agency and a private individual, other than correspondence which is intended to give notice of an action, policy or determination relating to any regulatory, supervisory or enforcement responsibility of the public agency or which is widely distributed to the public by a public agency and is not specifically in response to communications from such a private individual.

(15) Records pertaining to employer-employee negotiations, if disclosure would reveal information discussed in a lawful executive session under K.S.A. 75-4319, and amendments thereto.

(16) Software programs for electronic data processing and documentation thereof, but each public agency shall maintain a register, open to the public, that describes:

(A) The information which the agency maintains on computer facilities; and

(B) the form in which the information can be made available using existing computer programs.

(17) Applications, financial statements and other information submitted in connection with applications for student financial assistance where financial need is a consideration for the award.

(18) Plans, designs, drawings or specifications which are prepared by a person other than an employee of a public agency or records which are the property of a private person.

(19) Well samples, logs or surveys which the state corporation commission requires to be filed by persons who have drilled or caused to be

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drilled, or are drilling or causing to be drilled, holes for the purpose of discovery or production of oil or gas, to the extent that disclosure is limited by rules and regulations of the state corporation commission.

(20) Notes, preliminary drafts, research data in the process of analysis, unfunded grant proposals, memoranda, recommendations or other records in which opinions are expressed or policies or actions are proposed, except that this exemption shall not apply when such records are publicly cited or identified in an open meeting or in an agenda of an open meeting.

(21) Records of a public agency having legislative powers, which records pertain to proposed legislation or amendments to proposed legislation, except that this exemption shall not apply when such records are:

(A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or

(B) distributed to a majority of a quorum of any body which has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain.

(22) Records of a public agency having legislative powers, which records pertain to research prepared for one or more members of such agency, except that this exemption shall not apply when such records are:

(A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or

(B) distributed to a majority of a quorum of any body which has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain.

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(23) Library patron and circulation records which pertain to identifiable individuals.

(24) Records which are compiled for census or research purposes and which pertain to identifiable individuals.

(25) Records which represent and constitute the work product of an attorney.

(26) Records of a utility or other public service pertaining to individually identifiable residential customers of the utility or service, except that information concerning billings for specific individual customers named by the requester shall be subject to disclosure as provided by this act.

(27) Specifications for competitive bidding, until the specifications are officially approved by the public agency.

(28) Sealed bids and related documents, until a bid is accepted or all bids rejected.

(29) Correctional records pertaining to an identifiable inmate, except that:

(A) The name, sentence data, parole eligibility date, disciplinary record, custody level and location of an inmate shall be subject to disclosure to any person other than another inmate; and

(B) the ombudsman of corrections, the corrections ombudsman board, the attorney general, law enforcement agencies, counsel for the inmate to whom the record pertains and any county or district attorney shall have access to correctional records to the extent otherwise permitted by law.

(30) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.

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(31) Public records pertaining to prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within or expanding within the state. This exception shall not include those records pertaining to application of agencies for permits or licenses necessary to do business or to expand business operations within this state, except as otherwise provided by law.

(32) The bidder's list of contractors who have requested bid proposals for construction projects from any public agency, until a bid is accepted or all bids rejected.

(33) Engineering and architectural estimates made by or for any public agency relative to public improvements.

(34) Financial information submitted by contractors in qualification statements to any public agency.

(35) Records involved in the obtaining and processing of intellectual property rights that are expected to be, wholly or partially vested in or owned by a state educational institution, as defined in K.S.A. 76-711, and amendments thereto, or an assignee of the institution organized and existing for the benefit of the institution.

(36) Any report or record which is made pursuant to K.S.A. 65-4922, 65-4923 or 65-4924, and amendments thereto, and which is privileged pursuant to K.S.A. 65-4915 or 65-4925, and amendments thereto.

(37) Information which would reveal the precise location of an archeological site.

(38) Any financial data or traffic information from a railroad company, to a public agency, concerning the sale, lease or rehabilitation of the railroad's property in Kansas.

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(39) Risk based capital reports, risk based capital plans and corrective orders including the working papers and the results of any analysis filed with the commissioner of insurance pursuant to 1994 Bill No. and amendments thereto.

(b) Except to the extent disclosure is otherwise required by law or as appropriate during the course of an administrative proceeding or on appeal from agency action, a public agency or officer shall not disclose financial information of a taxpayer which may be required or requested by a county appraiser to assist in the determination of the value of the taxpayer's property for ad valorem taxation purposes; or any financial information of a personal nature required or requested by a public agency or officer, including a name, job description or title revealing the salary or other compensation of officers, employees or applicants for employment with a firm, corporation or agency, except a public agency. Nothing contained herein shall be construed to prohibit the publication of statistics, so classified as to prevent identification of particular reports or returns and the items thereof.

(c) As used in this section, the term "cited or identified" shall not include a request to an employee of a public agency that a document be prepared.

(d) If a public record contains material which is not subject to disclosure pursuant to this act, the public agency shall separate or delete such material and make available to the requester that material in the public record which is subject to disclosure pursuant to this act. If a public record is not subject to disclosure because it pertains to an identifiable individual, the public agency shall delete the identifying portions of the record and make available to the requester any remaining portions which are subject to disclosure pursuant to this act, unless the

request is for a record pertaining to a specific individual or to such a limited group of individuals that the individuals' identities are reasonably ascertainable, the public agency shall not be required to disclose those portions of the record which pertain to such individual or individuals.

(e) The provisions of this section shall not be construed to exempt from public disclosure statistical information not descriptive of any identifiable person.

(f) Notwithstanding the provisions of subsection (a), any public record which has been in existence more than 70 years shall be open for inspection by any person unless disclosure of the record is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or by a policy adopted pursuant to K.S.A. 72-6214, and amendments thereto.

Sec. 29. K.S.A. 1992 Supp. 45-221 is hereby repealed.

Sec. 30. This act shall take effect and be in force from and after its publication in the statute book.

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Legislative Proposal No. 3

Explanatory Memorandum

Legislative Proposal No. 3 would require domestic insurance companies to report material transactions to the Commissioner which relate to the acquisition or disposal of assets or nonrenewal, cancellation or revision of ceded reinsurance arrangements. The proposal would also require relevant transactions to be reported to the National Association of Insurance Commissioners in order that the information would be available to other states in which a Kansas domiciled insurer may transact business.

This proposal embodies a model act developed by the National Association of Insurance Commissioners and adopted by that organization in December of 1992.

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Attachment #3

LEGISLATIVE PROPOSAL NO. 3

AN ACT relating to insurance; acquisition and disposition of assets; termination or revision of reinsurance contracts; disclosure required; amending K.S.A. 1992 Supp. 45-221 and repealing the existing section.

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

Section 1. (a) Every insurer domiciled in this state shall file a report with the commissioner disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations or revisions of ceded reinsurance agreements unless such acquisitions and dispositions of assets or material nonrenewals, cancellations or revisions of ceded reinsurance agreements have been submitted to the commissioner for review, approval or information purposes pursuant to other provisions of the insurance code, laws, regulations, or other requirements.

(b) The report required in subsection (a) is due within 15 days after the end of the calendar month in which any of the foregoing transactions occur.

(c) One complete copy of the report, including any exhibits or other attachments filed as part thereof, shall be filed with:

(1) The insurance department of the insurer's state of domicile; and

(2) the national association of insurance commissioners.

(d) All reports obtained by or disclosed to the commissioner pursuant to this act, shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the commissioner, the national

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association of insurance commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer who would be affected thereby, notice and an opportunity to be heard, determines that the interest of policyholders, shareholders or the public will be served by the publication thereof, in which event the commissioner may publish all or any part thereof in such manner as he or she may deem appropriate.

Sec. 2. (a) Acquisitions or dispositions of assets need not be reported pursuant to subsection (a), section 1 of this act if the acquisitions or dispositions are not material. For purposes of this act, a material acquisition or disposition is one, or the aggregate of a series of related acquisitions or dispositions in a 30 day period, that is non-recurring, not in the ordinary course of business, and involves more than 5% of the reporting insurer's total admitted assets as reported in its most recent statement of financial condition filed with the commissioner.

(b)(1) Asset acquisitions subject to this act include every purchase, lease, exchange, merger, consolidation, succession, or other acquisition other than the construction or development of real property by or for the reporting insurer or the acquisition of materials for such purpose.

(2) Asset dispositions subject to this act include every sale, lease, exchange, merger, consolidation, mortgage, hypothecation, assignment (whether for the benefit of creditors or otherwise), abandonment, destruction, or other disposition.

(c) The following information is required to be disclosed in any report of a material acquisition or disposition of assets:

(1) Date of the transaction;

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(2) manner of acquisition or disposition;

(3) description of the assets involved;

(4) nature and amount of the consideration given or received;

(5) purpose of, or reason for, the transaction;

(6) manner by which the amount of consideration was determined;

(g) gain or loss recognized or realized as a result of the transaction; and

(h) name(s) of the person(s) from whom the assets were acquired or to whom they were disposed.

Sec. 3. (a) Nonrenewals, cancellations or revisions of ceded reinsurance agreements need not be reported pursuant to subsection (a) of section 1 if the nonrenewals, cancellations or revisions are not material. For purposes of this act, a material nonrenewal, cancellation or revision is one that affects for property and casualty business, including accident and sickness insurance, when written as such, more than 50% of an insurer's ceded written premium, or for life, annuity and accident and sickness business, more than 50% of the total reserve credit taken for business ceded, on an annualized basis as indicated in the insurer's more recently filed statement of financial condition. Notwithstanding the foregoing, no filing is required if the insurer's ceded written premium or the total reserve credit taken for business ceded represents, on an annualized basis, less than 10% of direct plus assumed written premium or 10% of the statutory reserve requirement prior to any cession, respectively.

(b) Subject to the criteria outlined above, a report shall be filed without regard to which party has initiated the nonrenewal, cancellation or revisions of ceded reinsurance whenever one or more of the following conditions exist:

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(1) The entire cession has been canceled, nonrenewed or revised and ceded indemnity and loss adjustment expense reserves after any nonrenewal, cancellation or revision represent less than 50% of the comparable reserves that would have been ceded had the nonrenewal, cancellation or revision not occurred;

(2) an authorized or accredited reinsurer has been replaced on an existing cession by an unauthorized reinsurer; or

(3) collateral requirements previously established for unauthorized reinsurers have been substantially reduced or eliminated.

Subject to the materiality criteria, for purposes of subsections (2) and (3) above, a report shall be filed if the result of the revision affects more than 10% of the cession.

(c) The following information is required to be disclosed in any report of a material nonrenewal, cancellation or revision of ceded reinsurance agreements:

(1) Effective date of the nonrenewal cancellation or revision;

(2) the description of the transaction with an identification of the initiator thereof;

(3) purpose of, or reason for, the transaction; and

(4) if applicable, the identity of the replacement reinsurers.

Sec. 4. Insurers are required to report all material acquisitions and dispositions of assets and all material nonrenewals, cancellations or revisions of ceded reinsurance agreements on a non-consolidated basis unless the insurer is part of a consolidated group of insurers which utilizes a pooling arrangement or 100 percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An

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insurer is deemed to have ceded substantially all of its direct and assumed business to a pool if the insurer has less than $1,000,000 total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent of the insurer's capital and surplus.

Sec. 5. K.S.A. 1992 Supp. 45-221 is hereby amended to read as follows: 45-221. (a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

(1) Records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or the disclosure of which is prohibited or restricted pursuant to specific authorization of federal law, state statute or rule of the Kansas supreme court to restrict or prohibit disclosure.

(2) Records which are privileged under the rules of evidence, unless the holder of the privilege consents to the disclosure.

(3) Medical, psychiatric, psychological or alcoholism or drug dependency treatment records which pertain to identifiable patients.

(4) Personnel records, performance ratings or individually identifiable records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries and lengths of service of officers and employees of public agencies once they are employed as such.

(5) Information which would reveal the identity of any undercover agent or any informant reporting a specific violation of law.

(6) Letters of reference or recommendation pertaining to the character or qualifications of an identifiable individual.

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(7) Library, archive and museum materials contributed by private persons, to the extent of any limitations imposed as conditions of the contribution.

(8) Information which would reveal the identity of an individual who lawfully makes a donation to a public agency, if anonymity of the donor is a condition of the donation.

(9) Testing and examination materials, before the test or examination is given or if it is to be given again, or records of individual test or examination scores, other than records which show only passage or failure and not specific scores.

(10) Criminal investigation records, except that the district court, in an action brought pursuant to K.S.A. 45-222, and amendments thereto, may order disclosure of such records, subject to such conditions as the court may impose, if the court finds that disclosure:

(A) Is in the public interest;

(B) would not interfere with any prospective law enforcement action;

(C) would not reveal the identity of any confidential source or undercover agent;

(D) would not reveal confidential investigative techniques or procedures not known to the general public; and

(E) would not endanger the life or physical safety of any person.

(11) Records of agencies involved in administrative adjudication or civil litigation, compiled in the process of detecting or investigating violations of civil law or administrative rules and regulations, if disclosure would interfere with a prospective administrative adjudication or civil litigation or reveal the identity of a confidential source or undercover agent.

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(12) Records of emergency or security information or procedures of a public agency, or plans, drawings, specifications or related information for any building or facility which is used for purposes requiring security measures in or around the building or facility or which is used for the generation or transmission of power, water, fuels or communications, if disclosure would jeopardize security of the public agency, building or facility.

(13) The contents of appraisals or engineering or feasibility estimates or evaluations made by or for a public agency relative to the acquisition of property, prior to the award of formal contracts therefor.

(14) Correspondence between a public agency and a private individual, other than correspondence which is intended to give notice of an action, policy or determination relating to any regulatory, supervisory or enforcement responsibility of the public agency or which is widely distributed to the public by a public agency and is not specifically in response to communications from such a private individual.

(15) Records pertaining to employer-employee negotiations, if disclosure would reveal information discussed in a lawful executive session under K.S.A. 75-4319, and amendments thereto.

(16) Software programs for electronic data processing and documentation thereof, but each public agency shall maintain a register, open to the public, that describes:

(A) The information which the agency maintains on computer facilities; and

(B) the form in which the information can be made available using existing computer programs.

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(17) Applications, financial statements and other information submitted in connection with applications for student financial assistance where financial need is a consideration for the award.

(18) Plans, designs, drawings or specifications which are prepared by a person other than an employee of a public agency or records which are the property of a private person.

(19) Well samples, logs or surveys which the state corporation commission requires to be filed by persons who have drilled or caused to be drilled, or are drilling or causing to be drilled, holes for the purpose of discovery or production of oil or gas, to the extent that disclosure is limited by rules and regulations of the state corporation commission.

(20) Notes, preliminary drafts, research data in the process of analysis, unfunded grant proposals, memoranda, recommendations or other records in which opinions are expressed or policies or actions are proposed, except that this exemption shall not apply when such records are publicly cited or identified in an open meeting or in an agenda of an open meeting.

(21) Records of a public agency having legislative powers, which records pertain to proposed legislation or amendments to proposed legislation, except that this exemption shall not apply when such records are:

(A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or

(B) distributed to a majority of a quorum of any body which has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain.

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(22) Records of a public agency having legislative powers, which records pertain to research prepared for one or more members of such agency, except that this exemption shall not apply when such records are:

(A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or

(B) distributed to a majority of a quorum of any body which has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain.

(23) Library patron and circulation records which pertain to identifiable individuals.

(24) Records which are compiled for census or research purposes and which pertain to identifiable individuals.

(25) Records which represent and constitute the work product of an attorney.

(26) Records of a utility or other public service pertaining to individually identifiable residential customers of the utility or service, except that information concerning billings for specific individual customers named by the requester shall be subject to disclosure as provided by this act.

(27) Specifications for competitive bidding, until the specifications are officially approved by the public agency.

(28) Sealed bids and related documents, until a bid is accepted or all bids rejected.

(29) Correctional records pertaining to an identifiable inmate, except that:

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(A) The name, sentence data, parole eligibility date, disciplinary record, custody level and location of an inmate shall be subject to disclosure to any person other than another inmate; and

(B) the ombudsman of corrections, the corrections ombudsman board, the attorney general, law enforcement agencies, counsel for the inmate to whom the record pertains and any county or district attorney shall have access to correctional records to the extent otherwise permitted by law.

(30) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.

(31) Public records pertaining to prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within or expanding within the state. This exception shall not include those records pertaining to application of agencies for permits or licenses necessary to do business or to expand business operations within this state, except as otherwise provided by law.

(32) The bidder's list of contractors who have requested bid proposals for construction projects from any public agency, until a bid is accepted or all bids rejected.

(33) Engineering and architectural estimates made by or for any public agency relative to public improvements.

(34) Financial information submitted by contractors in qualification statements to any public agency.

(35) Records involved in the obtaining and processing of intellectual property rights that are expected to be, wholly or partially vested in or owned by a state educational institution, as defined in K.S.A. 76-711, and

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amendments thereto, or an assignee of the institution organized and existing for the benefit of the institution.

(36) Any report or record which is made pursuant to K.S.A. 65-4922, 65-4923 or 65-4924, and amendments thereto, and which is privileged pursuant to K.S.A. 65-4915 or 65-4925, and amendments thereto.

(37) Information which would reveal the precise location of an archeological site.

(38) Any financial data or traffic information from a railroad company, to a public agency, concerning the sale, lease or rehabilitation of the railroad's property in Kansas.

(39) Disclosure reports filed with the commissioner of insurance pursuant to section 1, subsection (a) of 1994 Bill No. and amendments thereto. (Legislative Proposal No. 3)

(b) Except to the extent disclosure is otherwise required by law or as appropriate during the course of an administrative proceeding or on appeal from agency action, a public agency or officer shall not disclose financial information of a taxpayer which may be required or requested by a county appraiser to assist in the determination of the value of the taxpayer's property for ad valorem taxation purposes; or any financial information of a personal nature required or requested by a public agency or officer, including a name, job description or title revealing the salary or other compensation of officers, employees or applicants for employment with a firm, corporation or agency, except a public agency. Nothing contained herein shall be construed to prohibit the publication of statistics, so classified as to prevent identification of particular reports or returns and the items thereof.

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(c) As used in this section, the term "cited or identified" shall not include a request to an employee of a public agency that a document be prepared.

(d) If a public record contains material which is not subject to disclosure pursuant to this act, the public agency shall separate or delete such material and make available to the requester that material in the public record which is subject to disclosure pursuant to this act. If a public record is not subject to disclosure because it pertains to an identifiable individual, the public agency shall delete the identifying portions of the record and make available to the requester any remaining portions which are subject to disclosure pursuant to this act, unless the request is for a record pertaining to a specific individual or to such a limited group of individuals that the individuals' identities are reasonably ascertainable, the public agency shall not be required to disclose those portions of the record which pertain to such individual or individuals.

(e) The provisions of this section shall not be construed to exempt from public disclosure statistical information not descriptive of any identifiable person.

(f) Notwithstanding the provisions of subsection (a), any public record which has been in existence more than 70 years shall be open for inspection by any person unless disclosure of the record is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or by a policy adopted pursuant to K.S.A. 72-6214, and amendments thereto.

Sec. 6. K.S.A. 1992 Supp. 45-221 is hereby repealed.

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

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Legislative Proposal No. 4

Explanatory Memorandum

Legislative Proposal No. 4 simply authorizes the Commissioner to adopt regulations requiring annual and quarterly financial statements of insurers to be filed in machine readable form.

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Attachment #4

LEGISLATIVE PROPOSAL NO. 4

AN ACT relating to insurance; statement of financial condition; machine-readible diskette; regulations; amending K.S.A. 1993 Supp. 40-225 and repealing the existing section.

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

Section 1. K.S.A. 1993 Supp. 40-225 is hereby amended to read as follows: 40-225. Every insurance company or fraternal benefit society doing business in this state shall, if the statement of condition required below is compatible, participate in the insurance regulatory information system administered by the national association of insurance commissioners and shall annually, on January 1 or within 60 days thereafter, file with the commissioner of insurance a statement of its condition as of the preceding December 31. The commissioner may upon request, and for good cause shown grant a reasonable extension of time within which such statement may be filed. Such statement shall be made upon the form and be prepared in accordance with the instructions and accounting practices and procedures prescribed and adopted from time to time by the national association of insurance commissioners with such additions or amendments thereto as shall seem to the commissioner of insurance best adapted to elicit from such companies a true exhibit of their condition.

The commissioner may require any insurer, fraternal benefit society, mutual nonprofit hospital and medical service corporation, health maintenance organization or any prepaid service plan operating under

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articles 19a, 19b or 19d of chapter 40 of the Kansas Statutes Annotated to have an annual audit by an independent certified public accountant and file an audited financial report in accordance with rules and regulations adopted to effectuate such requirement.

The commissioner of insurance shall, on or before December 1 of each year, furnish, upon request, to each company required to make such report two or more printed forms as herein prescribed. The commissioner may also at any time address any proper inquiries to any such insurance company or fraternal benefit society or its officers in relation to its condition or any other matter connected with its transactions. Each company, society or officer addressed shall promptly and truthfully reply in writing to all such inquiries, and such replies shall be verified if the commissioner of insurance requires. If the national association of insurance commissioners does not prescribe such a form as is contemplated by this section for any insurance company or fraternal benefit society doing business in this state, the commissioner of insurance shall prescribe and adopt a form to be used by such companies. The statement of any insurance company organized under the laws of a country other than the United States may, in the discretion of the commissioner of insurance, include only its assets, liabilities and transactions in the United States.

In accordance with such administrative regulations as may be adopted by the commissioner of insurance, the information contained on the statement of condition required by this section shall be provided the commissioner, or the national association of insurance commissioners or both on a machine-readible diskette.

Sec. 2. K.S.A. 1993 Supp. 40-225 is hereby repealed.

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

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Legislative Proposal No. 5

Explanatory Memorandum

Legislative Proposal No. 5 would amend the statutes enacted by the 1990 Kansas Legislature which provide for licensure and regulation of managing general agents.

The proposed amendment would exempt persons registered as a third-party administrator in Kansas from the requirements applicable to managing general agents.

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Attachment #5

LEGISLATIVE PROPOSAL NO. 5

AN ACT relating to insurance; managing general agents; definitions; requirements; amending K.S.A. 1992 Supp. 40-2,130 and 40-2,135 and repealing the existing sections.

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

Section 1. K.S.A. 1992 Supp. 40-2,130 is hereby amended to read as follows: 40-2,130. As used in this act:

(a) "Actuary" means a person who is a member in good standing of the American academy of actuaries.

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

(c) "Insurer" means any person, firm, association or corporation duly licensed in this state as an insurance company.

(d) "Managing general agent" or "MGA" means any person, firm, association or corporation who manages all or part of the insurance business of an insurer, including the management of a separate division, department or underwriting office, and acts as an agent for such insurer whether known as a managing general agent, manager or other similar term, who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross written premium equal to or more than 5% of the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year together with one or more of the following: (a) Adjusts or pays claims in excess of

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an amount determined by the commissioner, or (2) negotiates reinsurance on behalf of the insurer.

(e) Notwithstanding the above, the following persons shall not be considered as MGAs for the purposes of this act:

(1) An employee of the insurer;

(2) a United States manager of the United States branch of an alien insurer;

(3) an underwriting manager which, pursuant to contract, manages all the insurance operations of the insurer, is under common control with the insurer, subject to the holding company regulatory act, and whose compensation is not based on the volume of premiums written; ~~and~~

(4) an attorney-in-fact of a reciprocal exchange or inter-insurance exchange as described in K.S.A. 40-1602 and amendments thereto~~.~~ ; and

(5) an administrator registered in accordance with K.S.A. 40-3810.

(f) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

Sec. 2. K.S.A. 1992 Supp. 40-2,135 is hereby amended to read as follows: 40-2,135. (a) If the commissioner finds after a hearing conducted in accordance with the provisions of the Kansas administrative procedure act that any person has violated any provision of this act, the commissioner may order:

(1) For each separate violation, a penalty in an amount of $5,000;

(2) revocation or suspension of the agent's or broker's license; ~~and~~

(3) the MGA to reimburse the insurer, the rehabilitator or liquidator of the insurer for any losses incurred by the insurer caused by a violation of this act committed by the MGA.

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(b) Nothing contained in this act is intended to or shall in any manner limit or restrict the rights of policyholders, claimants and auditors.

Sec. 3. K.S.A. 1992 Supp. 40-2,130 and 40-2,135 are hereby repealed.

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

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Legislative Proposal No. 6

Explanatory Memorandum

Legislative Proposal No. 6 pertains to persons and organizations that conduct utilization review with respect to health care services being delivered or proposed for delivery to Kansas residents.

The proposal requires such organizations to obtain a certificate from the Commissioner of Insurance as a prerequisite to performing such services in Kansas or that affect Kansas citizens. In addition, the proposal would require the Commissioner to promulgate and adopt regulations establishing standards governing the conduct of utilization review activities.

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Attachment #6

LEGISLATIVE PROPOSAL No. 6

AN ACT relating to health care services; utilization review organizations; certificate required; exemptions; regulations.

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

Section 1. This act shall be known and may be cited as the utilization review organization act.

Sec. 2. The legislature finds that in order to promote the delivery of quality health care services in a cost effective manner, it is necessary to encourage greater coordination between health care providers and those agencies performing utilization review of health care services. Effective standards for utilization review activities will protect patients while reducing administrative costs associated with the review and approval of health care services provided to patients.

Sec. 3. For the purposes of this act: (a) "Commissioner" means the commissioner of insurance.

(b) "Utilization review" means the evaluation of the necessity, appropriateness, and efficiency of the use of health care services, procedures, and facilities.

(c) "Utilization review organization" means any entity which conducts utilization review and determines certification of an admission, extension of stay, or other health care service.

(d) "Health care provider" shall have the same meaning as in K.S.A. 1992 Supp. 60-513d and any amendments thereto.

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Sec. 4. (a) The commissioner shall prepare and adopt rules and regulations, with the advice and approval of the advisory committee created by section 5 of this act, establishing standards governing the conduct of utilization review activities performed in this state or affecting residents of this state by utilization review organizations. Unless granted an exemption pursuant to section 6 of this act, no utilization review organization may conduct utilization review services in this state or affecting residents of this state on or after May 1, 1995 without first having obtained a certificate from the commissioner.

(b) The commissioner shall not issue a certificate to a utilization review organization until:

(1) It files a formal application for certification in such form and detail as the commissioner may require, executed under oath by its chief executive officer;

(2) a certified copy of its charter or articles of incorporation and bylaws, if any;

(3) the location of the office or offices of the utilization review organization where utilization review affecting residents or health care providers of this state will be principally performed;

(4) a summary of the qualifications and experience of persons performing utilization review affecting the persons and at the locations identified pursuant to paragraph (3) of this subsection;

(5) payment of a certification fee of $100; and

(6) such other information or documentation as the commissioner may require.

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(c) Certificates issued by the commissioner pursuant to the provisions of this act shall remain effective until suspended, surrendered or revoked subject to payment of an annual continuation fee of $50.

(d) The commissioner with the advice of the advisory committee may suspend or revoke the certificate or any exemption from certification requirements upon determination that the interests of Kansas insureds are not being properly served under such certificate or exemption. Any such action shall be taken only after a hearing conducted in accordance with the provisions of the Kansas administrative procedures act.

Sec. 5. (a) There is hereby created an advisory committee to assist the commissioner in establishing rules and regulations to implement the provisions of this act. The committee shall consist of eleven persons appointed by the commissioner of insurance as follows:

(1) The commissioner, or the designee of the commissioner, who shall act as chairperson;

(2) one member appointed from the public at large;

(3) four members who are representatives of utilization review organizations; and

(4) five members who are representatives of health care providers, one of which must be a representative of a Kansas hospital, and two of which must be persons licensed to practice medicine and surgery in Kansas.

(b) Members of the advisory committee shall be appointed for a term of office of three years, except that the first term of office of two members representing utilization review organizations and two members representing health care providers shall be for a term of office of two years, and the first term of office for two members representing health care providers and

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one member representing utilization review organizations shall be for a term of office of one year.

(c) The advisory committee shall be attached to the insurance department, and all administrative functions of the advisory committee shall be under the direction and supervision of the commissioner. Within available appropriations therefore, members of the advisory committee may be paid subsistence allowances, mileage, and other expenses as provided in K.S.A. 75-3223 and amendments thereto.

(d) In developing and adopting rules and regulations to carry out the provisions of this act, the commissioner with the advice of the advisory committee shall:

(1) Establish utilization review standards which provide for uniformity in the procedures for interaction between utilization review organizations and health care providers, payors and consumers of health care;

(2) establish utilization review procedures that prevent unnecessary and inappropriate disruption to the health care delivery system;

(3) strive to achieve an efficient process for the certification of utilization review organizations; and

(4) specify the kinds of insurance or types of insurance products to which the standards apply and the scope of such application.

(e) This act shall not apply to:

(1) Utilization review of health care services provided to patients under the authority of the Kansas workers compensation act (K.S.A. 44-501, et seq.); or

(2) reviews conducted by any insurance company, health maintenance organization, prepaid service plan, group funded self-insured plan or similar entity solely for the purpose of determining compliance with the

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specific terms and conditions of an insurance policy, agreement or contract as a part of the normal claim settlement process.

Sec. 6. (a) No certificate shall be required for utilization review activities conducted by or on behalf of:

(1) An agency of the federal government;

(2) a person, agency or utilization review organization acting on behalf of the federal government, but only to the extent such person, agency or organization is providing services under federal regulation;

(3) a federally qualified health maintenance organization authorized to transact business in Kansas which is administering a quality assurance program and performing utilization review activities for its own members as required by 42 U.S.C. 300e(c)(8) and 42 U.S.C. 300e(c)(6) respectively;

(4) an individual person employed or used by a utilization review organization authorized to perform utilization review in Kansas, including, but not limited to, individual nurses and other health care providers. This exemption shall not apply with respect to individual persons performing utilization review activities in conjunction with any insurance contract or health benefit plan pursuant to a direct contractual relationship with a health maintenance organization, group funded self-insurance plan or insurance company;

(5) a health benefit plan that is self-insured and qualified under the federal employee retirement income security act of 1974 as amended; or

(6) hospitals, home health agencies, clinics, private health care provider offices or any other authorized health care facility or entity conducting general, in-house utilization review unless such review is for the purpose of approving or denying payment for hospital or medical services in a particular case.

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(b) The provisions of section 4(b)(2), (3), (4), (5), (6) and (c) of this act shall not apply to:

(1) Utilization review organizations accredited by and adhering to the national utilization review standards approved by the utilization review accreditation commission (URAC); or

(2) utilization review organizations presenting evidence satisfactory to the commissioner that they subscribe and are adhering to the voluntary guidelines established by the Kansas City private review group. This exemption shall apply only to Kansas City private review group participants located within the Kansas City, Missouri and Kansas Metropolitan Statistical Area established by the federal Office of Management and Budget as of June 30, 1993; and

(3) such other utilization review organizations as the advisory committee may recommend and the commissioner approves.

Sec. 7. (a)(1) It shall be unlawful for any person or utilization review organization to perform utilization review activities in this state except in accordance with the provisions of this act.

(2) No utilization review organization nor any individual performing utilization review activities may agree to be compensated or receive compensation which is contingent in any way upon frequency of certification denials, costs avoided by denial or reduction in payment of claims or other results which may be adverse to the needs of the patient as determined by the attending health care provider.

(b) Whenever the commissioner has reason to believe a utilization review organization subject to this act has been or is engaged in any conduct which violates the provisions of this act or any regulation promulgated pursuant to section 9 of this act, the commissioner may, after a

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hearing conducted in accordance with the Kansas administrative procedures act:

(1) Issue and cause to be served upon the utilization review organization an order requiring such organization to cease and desist from engaging in such violations;

(2) suspend or revoke the utilization review organization's certificate to perform utilization review affecting residents of this state;

(3) assess a monetary penalty of not less than $500 and not more than $1,000 for each violation; or

(4) apply any combination of the above provisions as the commissioner may, by written order, deem appropriate.

Sec. 8. Whenever the insurance commissioner deems it to be prudent for the benefit of the insureds, health care providers, or insurers, the commissioner or any person designated by the commissioner may visit and examine the affairs of any utilization review organization to determine if the organization is in compliance with the provisions of this act or any rules adopted or orders issued pursuant thereto.

Any person or entity examined pursuant to the provisions of this section shall pay the reasonable and proper charges incurred for such examination, including the actual expenses of the insurance commissioner or the expenses and compensation of his or her authorized representative and the expenses and compensation of assistants and examiners employed therein.

Sec. 9. Each UR organization shall have written procedures for assuring that patient-specific information obtained during the process of utilization review will be:

(a) Kept confidential in accordance with applicable federal and state laws; and

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(b) used solely for the purposes of utilization review, quality assurance, discharge planning and catastrophic case management.

Sec. 10. Any records, charts or other information exchanged between a health care provider or patient and a utilization review organization shall not be subject to discovery, subpoena or other means of legal compulsion for their release to any person or entity and shall not be admissible in evidence in any judicial or administrative proceeding other than a disciplinary proceeding by the state board of healing arts or other agency of the state which regulates health care providers.

Sec. 11. The commissioner shall promulgate all necessary rules and regulations, not inconsistent herewith, for carrying out the provisions of this act.

Sec. 12. If any provision or clause of this act or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application. To this end, the provisions of this act are declared to be severable.

Sec. 13. This act shall take effect and be in force from and after its publication in the statute book.

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Legislative Proposal No. 16

Explanatory Memorandum

Legislative Proposal No. 16 relates to a 1990 statute which authorizes the Commissioner of Insurance to promulgate a statistical plan for the reporting and compiling of accident and sickness insurance premium, loss and expense data. This statute has not been implemented because of the unavailability of an organization that would serve as a statistical agent to collect, accumulate and compile the information. This proposal would amend this 1990 statute by designating the health care data base administrator created by 1993 Senate Bill No. 118 as the statistical agent.

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Attachment 7

LEGISLATIVE PROPOSAL NO. 16

AN ACT relating to insurance; accident and sickness loss and expense data; statistical plan; health care data base administrator as statistical agent; fees; amending K.S.A. 1992 Supp. 40-2251 and 40-2252 and repealing the existing sections.

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

Section 1. K.S.A. 1992 Supp. 40-2251 is hereby amended to read as follows: 40-2251. (a) The commissioner of insurance shall develop or approve statistical plans which shall be used by each insurer in the recording and reporting of its premium, accident and sickness insurance loss and expense experience, in order that the experience of all insurers may be made available at least annually in such form and detail as may be necessary to aid the commissioner and other interested parties in determining whether rates and rating systems utilized by insurance companies, mutual nonprofit hospital and medical service corporations, health maintenance organizations and other entities designated by the commissioner produce premiums and subscriber charges for accident and sickness insurance coverage on Kansas residents, employers and employees that are reasonable in relation to the benefits provided and to identify any accident and sickness insurance benefits or provisions that may be unduly influencing the cost. Such plans may also provide for the recording and reporting of expense experience items which are specifically applicable to the state. In promulgating such plans, the commissioner shall give due consideration to the rating systems,

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classification criteria and insurance and subscriber plans on file with the commissioner and, in order that such plans may be as uniform as is practicable among the several states, to the form of the plans and rating systems in other states. ~~The commissioner may designate one or more recognized trade associations or other agencies to assist the commissioner in gathering such experience and making compilations thereof. Such compilations~~ (b) The administrator of the health care data base created by 1993 Senate Bill No. 118 shall serve as the statistical agent for the purpose of gathering, receiving and compiling the data required by the statistical plan or plans developed or approved under this act. Expenses incurred by the health care data base administrator in accumulating and processing such data shall be paid by the reporting insurance companies, health maintenance organizations, group self-funded pools, and other reporting entities. Such payment shall be in the form of an annual fee established by the health care data base administrator charged to each reporting entity in proportion to their respective shares of total health insurance premiums, subscriber charges and member fees received during the preceding calendar year. Compilations of aggregate data gathered under the statistical plan or plans required by this act shall be made available~~, by the commissioner,~~ to insurers, trade associations and other interested parties.

(c) The administrator of the health care data base shall, in writing, report to the commissioner of insurance any insurance company, health maintenance organization, group self-funded pool, nonprofit hospital and medical service corporation and any other reporting entity who fails to report the information required in the form, manner or time prescribed by the administrator. Upon receipt of such report, the commissioner of

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insurance shall impose an appropriate penalty in accordance with K.S.A. 1992 Supp. 40-2,125.

Sec. 2. K.S.A. 1992 Supp. 40-2252 is hereby amended to read as follows: 40-2252. The commissioner or the administrator, or both, may make reasonable rules and regulations necessary to effect the purposes of this act.

Sec. 3. K.S.A. 1992 Supp. 40-2251 and 40-2252 are hereby repealed.

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

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Legislative Proposal No. 17

Explanatory Memorandum

Legislative Proposal No. 17 amends the current statutes relating to property insurance companies. Such proposal would allow such companies to issue contracts that include legal liability coverage without meeting the minimum financial requirements generally applicable to multiple line insurers. The authorization would be limited to residential properties involving not more than two families and would be conditioned in that all or most liability risk would have to be reinsured.

In summary, this proposal would allow mutual and capital stock property and casualty insurers to write homeowners and farmowners policies under the same type of arrangement as permitted under the statutes governing mutual fire and tornado insurers.

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Attachment #8

LEGISLATIVE PROPOSAL NO. 17

AN ACT relating to insurance; mutual insurance companies other than life; limited authority; minimum surplus and deposit requirements.

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

Section 1. (a) Any insurance company organized and existing under article 12, chapter 40, Kansas Statutes Annotated, shall have the authority and right to make and issue contracts of insurance, in addition to the kinds of insurance specified in K.S.A. 40-1203, which include such amount and kind of insurance against legal liability for injury, damage or loss to the person or property of others, and for medical, hospital, and surgical expense related to such injury, as the commissioner of insurance deems to be reasonably incidental to insurance of real or personal property against fire or other perils under policies covering residential properties involving not more than two families with or without incidental office, professional, private school or studio occupancy by an insured, whether or not the premium or rate charged for certain perils so covered is specified in the policy. Any provision of K.S.A. 40-1204 and amendments thereto, to the contrary notwithstanding: (1) No insurer having a bona fide net surplus of at least $1,000,000 but less than $1,500,000 authorized as to property insurance only shall, pursuant to this subsection, retain risk as to any one subject of insurance as to hazards other than property insurance hazards in an amount exceeding 3% of its surplus to policyholders; and (2) no insurer having a bona fide net surplus of less than $1,000,000 but at least $750,000

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authorized as to property insurance only shall, pursuant to this subsection, retain any risk other than property insurance hazards, and all such companies shall reinsure all such risks as to hazards other than property insurance hazards.

(b) It shall be requisite to so acting under subsection (a) of this section, for its board of directors to authorize the same by the affirmative vote of at least 2/3 of its membership. Any company having taken action as herein provided shall certify such action to the commissioner of insurance, together with a statement showing its financial status and a net surplus sufficient to warrant such action.

(c) Any company operating hereunder shall maintain unearned premium reserves equal to a pro rata amount of the premiums received on all unexpired risks and such unearned premium reserves shall be held and regarded as an absolute liability of the company.

Sec. 2. (a) Any insurance company organized under article 3, chapter 40, Kansas Statutes Annotated, shall have the authority and right to make and issue contracts of insurance, in addition to those specified in subsections (a) through (g) of K.S.A. 40-901, which include such amount and kind of insurance against legal liability for injury, damage or loss to the person or property of others, and for medical, hospital, and surgical expense related to such injury, as the commissioner of insurance deems to be reasonably incidental to insurance of real or personal property against fire or other perils under policies covering residential properties involving not more than two families with or without incidental office, professional, private school or studio occupancy by an insured, whether or not the premium or rate charged for certain perils so covered is specified in the policy. Any provision of K.S.A. 40-901 or 40-902 and amendments thereto, to the

contrary notwithstanding: (1) No insurer having paid-up capital stock of at least $600,000 and a bona fide net surplus of at least $400,000 but less than $1,500,000 paid-up capital and surplus combined authorized as to property insurance only shall, pursuant to this subsection, retain risk as to any one subject of insurance as to hazards other than property insurance hazards in an amount exceeding 3% of its surplus to policyholders; and (2) no insurer having at least paid-up capital stock of $450,000 and a bona fide net surplus of at least $300,000 but less than $1,000,000 paid-up capital stock and surplus combined authorized as to property insurance only shall, pursuant to this subsection, retain any risk other than property insurance hazards, and all such companies shall reinsure all such risks as to hazards other than property insurance hazards.

(b) It shall be requisite to so acting, for its board of directors to authorize the same by the affirmative vote of at least 2/3 of its membership. Any company having taken action as herein provided shall certify such action to the commissioner of insurance, together with a statement showing its financial status and a net surplus sufficient to warrant such action.

(c) Any company operating hereunder shall maintain unearned premium reserves equal to a pro rata amount of the premiums received on all unexpired risks and such unearned premium reserves shall be held and regarded as an absolute liability of the company.

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

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Legislative Proposal No. 20

Explanatory Memorandum

Legislative Proposal No. 20 amends current law so that a domestic insurance company or fraternal benefit society may be organized and can preserve its name despite the fact that it may not yet hold a Kansas certificate of authority.

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Attachment #9

LEGISLATIVE PROPOSAL NO. 20

AN ACT relating to insurance; insurance companies, fraternal benefit societies; similarity of names; amending K.S.A. 40-203 and repealing the existing section.

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

Section 1. K.S.A. 40-203 is hereby amended to read as follows: 40-203. No insurance company or fraternal benefit society organized under the laws of this state shall adopt the name of any existing company or society ~~transacting a similar business in this state~~, or any name so similar as to mislead the public; nor shall any foreign insurance company or society be licensed in this state which bears the name of any company or society already licensed in this state, or of any insurance company or fraternal benefit society organized under the laws of this state, or any name so similar as to mislead the public. The commissioner shall require the name of every domestic insurer to be submitted to him prior to commencement of business and may reject any name so submitted to him prior to commencement of business and may reject any name so submitted when it is so similar to that of any other corporation as to mislead or tend to mislead the public.

Sec. 2. K.S.A. 40-203 is hereby repealed.

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

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Legislative Proposal No. 22

Explanatory Memorandum

Legislative Proposal No. 22 amends the Health Care Provider Insurance Act. Such amendments are intended to limit the payment of attorneys' fees for defense of the Health Care Stabilization Fund to not more than the hourly rate approved by the Board of Governors.

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Attachment #10

LEGISLATIVE PROPOSAL NO. 22

AN ACT relating to insurance; health care providers; professional liability insurance; health care stabilization fund; defense; attorney fees; amending K.S.A. 1992 Supp. 40-3403, K.S.A. 40-3411 and 7-121b and repealing the existing sections.

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

Section 1. K.S.A. 1992 Supp. 40-3403 is hereby amended to read as follows: 40-3403. (a) For the purposes of paying damages for personal injury or death arising out of the rendering of or the failure to render professional services by a health care provider, self-insurer or inactive health care provider subsequent to the time that such health care provider or self-insurer has qualified for coverage under the provisions of this act, there is hereby established the health care stabilization fund. The fund shall be held in trust in a segregated fund in the state treasury. The commissioner shall administer the fund or contract for the administration of the fund with an insurance company authorized to do business in this state.

(b)(1) There is hereby created a board of governors. The board of governors shall:

(A) Provide technical assistance with respect to administration of the fund;

(B) provide such expertise as the commissioner may reasonably request with respect to evaluation of claims or potential claims;

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(C) provide advice, information and testimony to the appropriate licensing or disciplinary authority regarding the qualifications of a health care provider;

(D) prepare and publish, on or before October 1 of each year, a summary of the fund's activity during the preceding fiscal year, including but not limited to the amount collected from surcharges, the highest and lowest surcharges assessed, the amount paid from the fund, the number of judgments paid from the fund, the number of settlements paid from the fund and the amount in the fund at the end of the fiscal year; and

(E) have the authority to grant exemptions from the provisions of subsection (m) of this section when a health care provider temporarily leaves the state for the purpose of obtaining additional education or training or to participate in religious, humanitarian or government service programs. Whenever a health care provider has previously left the state for one of the reasons specified in this paragraph and returns to the state and recommences practice, the board of governors may refund any amount paid by the health care provider pursuant to subsection (m) of this section if no claims have been filed against such health care provider during the provider's temporary absence from the state.

(2) The board shall consist of 14 persons appointed by the commissioner of insurance, as follows: (A) The commissioner of insurance, or the designee of the commissioner, who shall act as chairperson; (B) two members appointed from the public at large who are not affiliated with any health care provider; (C) three members licensed to practice medicine and surgery in Kansas who are doctors of medicine; (D) three members who are representatives of Kansas hospitals; (E) two members licensed to practice medicine and surgery in Kansas who are doctors of osteopathic medicine; (F)

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one member licensed to practice chiropractic in Kansas; (G) one member who is a licensed professional nurse authorized to practice as a registered nurse anesthetist; and (H) one member of another category of health care providers. Meetings shall be called by the chairperson or by a written notice signed by three members of the board. The board, in addition to other duties imposed by this act, shall study and evaluate the operation of the fund and make such recommendations to the legislature as may be appropriate to ensure the viability of the fund.

(3) The board shall be attached to the insurance department and shall be within the insurance department as a part thereof. All budgeting, purchasing and related management functions of the board shall be administered under the direction and supervision of the commissioner of insurance. All vouchers for expenditures of the board shall be approved by the commissioner of insurance or a person designated by the commissioner.

(c) Subject to subsections (d), (e), (f), (i), (k), (m), (n), and (o), the fund shall be liable to pay: (1) Any amount due from a judgment or settlement which is in excess of the basic coverage liability of all liable resident health care providers or resident self-insurers for any personal injury or death arising out of the rendering of or the failure to render professional services within or without this state; (2) subject to the provisions of subsection (m), any amount due from a judgment or settlement which is in excess of the basic coverage liability of all liable nonresident health care providers or nonresident self-insurers for any such injury or death arising out of the rendering or the failure to render professional services within this state but in no event shall the fund be obligated for claims against nonresident health care providers or nonresident self-insurers who have not complied with this act or for claims against

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nonresident health care providers or nonresident self-insurers that arose outside of this state; (3) subject to the provisions of subsection (m), any amount due from a judgment or settlement against a resident inactive health care provider, or an optometrist or pharmacist who purchased coverage pursuant to subsection (n), for any such injury or death arising out of the rendering of or failure to render professional services; (4) subject to the provisions of subsection (m), any amount due from a judgment or settlement against a nonresident inactive health care provider, or an optometrist or pharmacist who purchased coverage pursuant to subsection (n), for any injury or death arising out of the rendering or failure to render professional services within this state, but in no event shall the fund be obligated for claims against: (A) Nonresident inactive health care providers who have not complied with this act; or (B) nonresident inactive health care providers for claims that arose outside of this state, unless such health care provider was a resident health care provider or resident self-insurer at the time such act occurred; (5) subject to the provisions of K.S.A. 40-3411(b), reasonable and necessary expenses for attorney fees incurred in defending the fund against claims; (6) any amounts expended for reinsurance obtained to protect the best interests of the fund purchased by the commissioner, which purchase shall be subject to the provisions of K.S.A. 75-3738 through 75-3744, and amendments thereto, but shall not be subject to the provisions of K.S.A. 75-4101 and amendments thereto; (7) reasonable and necessary actuarial expenses incurred in administering the act, including expenses for any actuarial studies contracted for by the legislative coordinating council, which expenditures shall not be subject to the provisions of K.S.A. 75-3738 through 75-3744, and amendments thereto; (8) periodically to the plan or plans, any amount due pursuant to subsection

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(a)(3) of K.S.A. 40-3413 and amendments thereto; (9) reasonable and necessary expenses incurred by the insurance department and the board of governors in the administration of the fund; (1) return of any unearned surcharge; (11) reasonable and necessary expenses for attorney fees and other costs incurred in defending a person engaged or who was engaged in residency training or the private practice corporations or foundations and their full-time physician faculty employed by the university of Kansas medical center from claims for personal injury or death arising out of the rendering of or the failure to render professional services by such health care provider; (12) notwithstanding the provisions of subsection (m), any amount due from a judgment or settlement for an injury or death arising out of the rendering of or failure to render professional services by a person engaged or who was engaged in residency training or the private practice corporations or foundations and their full-time physician faculty employed by the university of Kansas medical center; (13) reasonable and necessary expenses for the development and promotion of risk management education programs; (14) notwithstanding the provisions of subsection (m), any amount, but not less than the required basic coverage limits, owed pursuant to a judgment or settlement for any injury or death arising out of the rendering of or failure to render professional services by a person, other than a person described in clause (12) of this subsection, who was engaged in a postgraduate program of residency training approved by the state board of healing arts but who, at the time the claim was made, was no longer engaged in such residency program; and (15) <u>subject to the provisions of K.S.A. 40-3411(b),</u> reasonable and necessary expenses for attorney fees and other costs incurred in defending a person described in clause (14) of this subsection.

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(d) All amounts for which the fund is liable pursuant to subsection (c) shall be paid promptly and in full except that, if the amount for which the fund is liable is $300,000 or more, it shall be paid, by installment payments of $300,000 or 10% of the amount of the judgment including interest thereon, whichever is greater, per fiscal year, the first installment to be paid within 60 days after the fund becomes liable and each subsequent installment to be paid annually on the same date of the year the first installment was paid, until the claim has been paid in full. Any attorney fees payable from such installment shall be similarly prorated.

(e) In no event shall the fund be liable to pay in excess of $3,000,000 pursuant to any one judgment or settlement against any one health care provider relating to any injury or death arising out of the rendering of or the failure to render professional services on and after July 1, 1984, and before July 1, 1989, subject to an aggregate limitation for all judgements or settlements arising from all claims made in any one fiscal year in the amount of $6,000,000 for each provider.

(f) The fund shall not be liable to pay in excess of the amounts specified in the option selected by the heath care provider pursuant to subsection (1) for judgments or settlements relating to injury or death arising out of the rendering of or failure to render professional services by such health care provider on or after July 1, 1989.

(g) A health care provider shall be deemed to have qualified for coverage under the fund: (1) One and after the effective date of this act if basic coverage is then in effect; (2) subsequent to the effective date of this act, at such time as basic coverage becomes effective; or (3) upon qualifying as a self-insurer pursuant to K.S.A. 40-3413 and amendments thereto.

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(h) A health care provider who is qualified for coverage under the fund shall have no vicarious liability or responsibility for any injury or death arising out of the rendering of or the failure to render professional services inside or outside this state by any other health care provider who is also qualified for coverage under the fund. The provisions of this subsection shall apply to all claims filed on or after the effective date of this act.

(i) Notwithstanding the provisions of K.S.A. 40-3402 and amendments thereto, if the board of governors determines due to the number of claims filed against a health care provider or the outcome of those claims that an individual health care provider presents a material risk of significant future liability to the fund, the board of governors is authorized by a vote of a majority of the members thereof, after notice and an opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act, to terminate the liability of the fund for all claims against the health care provider for damages for death or personal injury arising out of the rendering of or the failure to render professional services after the date of termination. The date of termination shall be 30 days after the date of the determination by the board of governors. The board of governors, upon termination of the liability of the fund under this subsection, shall notify the licensing or other disciplinary board having jurisdiction over the health care provider involved of the name of the health care provider and the reasons for the termination.

(j)(1) Upon the payment of moneys from the health care stabilization fund pursuant to subsection (c)(11), the commissioner shall certify to the director of accounts and reports the amount of such payment, and the director of accounts and reports shall transfer an amount equal to the

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amount certified, reduced by any amount transferred pursuant to paragraph (3) of this subsection, from the state general fund to the health care stabilization fund.

(2) Upon the payment of moneys from the health care stabilization fund pursuant to subsection (c)(12), the commissioner shall certify to the director of accounts and reports the amount of such payment which is equal to the basic coverage liability of self-insurers, and the director of accounts and reports shall transfer an amount equal to the amount certified, reduced by any amount transferred pursuant to paragraph (3) of this subsection, from the state general fund to the health care stabilization fund.

(3) The university of Kansas medical center private practice foundation reserve fund is hereby established in the state treasury. On July 1, 1989, or as soon thereafter as is practicable, the private practice corporations or foundations referred to in subsection (c) of K.S.A. 40-3402, and amendments thereto, shall remit $500,000 to the state treasurer, and the state treasurer shall credit the same to the university of Kansas medical center private practice foundation reserve fund. If the balance in such reserve fund is less than $500,000 on July 1 of any succeeding year, the private practice corporations or foundations shall remit the amount necessary to increase such balance to $500,000 to the state treasurer for credit to such fund as soon after such July 1 date as is practicable. When compliance with the foregoing provisions of this paragraph have been achieved on or after July 1 of any year in which the same are applicable, it shall be the duty of the state treasurer to certify to the commissioner that the reserve fund has been funded for the year in the manner required by law. Moneys in such reserve fund may be invested or reinvested in

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accordance with the provisions of K.S.A. 40-3406, and amendments thereto, and any income or interest earned by such investments shall be credited to the reserve fund. Upon payment of moneys from the health care stabilization fund pursuant to subsection (c)(11) or (c)(12) with respect to any private practice corporation or foundation or any of its full-time physician faculty employed by the university of Kansas, the director of accounts and reports shall transfer an amount equal to the amount paid from the university of Kansas medical center private practice foundation reserve fund to the health care stabilization fund or, if the balance in such reserve fund is less than the amount so paid, an amount equal to the balance of the fund.

(4) Upon payment of moneys from the health care stabilization fund pursuant to subsection (c)(14) or (15), the commissioner shall certify to the director of accounts and reports the amount of such payment, and the director of accounts and reports shall transfer an amount equal to the amount certified from the state general fund to the health care stabilization fund.

(k) Notwithstanding any other provision of the health care provider insurance availability act, no psychiatric hospital licensed under K.S.A. 75-3307b and amendments thereto shall be assessed a premium surcharge or be entitled to coverage under the fund if such hospital has not paid any premium surcharge pursuant to K.S.A. 40-3404 and amendments thereto prior to January 1, 1988.

(l) On or after July 1, 1989, every health care provider shall make an election to be covered by one of the following options provided in this subsection which shall limit the liability of the fund with respect to judgments or settlements relating to injury or death arising out of the rendering of or failure to render professional services on or after July 1,

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1989. Such election shall be made at the time the health care provider renews the basic coverage in effect on the effective date of this act or, if basic coverage is not in effect, such election shall be made at the time such coverage is acquired pursuant to K.S.A. 40-3402, and amendments thereto. Notice of the election shall be provided by the insurer providing the basic coverage in the manner and form prescribed by the commissioner and shall continue to be effective from year to year unless modified by a subsequent election made prior to the anniversary date of the policy. The health care provider may at any subsequent election reduce the dollar amount of the coverage for the next and subsequent fiscal years, but may not increase the same, unless specifically authorized by the board of governors. Such election shall be made for persons engaged in residency training and persons engaged in other postgraduate training programs approved by the state board of healing arts at medical care facilities or mental health centers in this state by the agency or institution paying the surcharge levied under K.S.A. 40-3404, and amendments thereto, for such persons. Such options shall be as follows:

(1) OPTION 1. The fund shall not be liable to pay in excess of $100,000 pursuant to any one judgment or settlement for any party against such health care provider, subject to an aggregate limitation for all judgments or settlements arising from all claims made in the fiscal year in an amount of $300,000 for such provider.

(2) OPTION 2. The fund shall not be liable to pay in excess of $300,000 pursuant to any one judgment or settlement for any party against such health care provider, subject to an aggregate limitation for all judgments or settlements arising from all claims made in the fiscal year in an amount of $900,000 for such provider.

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(3) OPTION 3. The fund shall not be liable to pay in excess of $800,000 pursuant to any one judgment or settlement for any party against such health care provider, subject to an aggregate limitation for all judgments or settlements arising from all claims made in the fiscal year in an amount of $2,400,000 for such provider.

(m) The fund shall not be liable for any amounts due from a judgment or settlement against resident or nonresident inactive health care providers who first qualify as an inactive health care provider on or after July 1, 1989, unless such health care provider has been in compliance with K.S.A. 40-3402, and amendments thereto, for a period of not less than five years. If a health care provider has not been in compliance for five years, such health care provider may make application and payment for the coverage for the period while they are nonresident health care providers, nonresident self-insurers or resident or nonresident inactive health care providers to the fund. Such payment shall be made within 30 days after the health care provider ceases being an active health care provider and shall be made in an amount determined by the commissioner to be sufficient to fund anticipated claims based upon reasonably prudent actuarial principles. The provisions of this subsection shall not be applicable to any health care provider which becomes inactive through death or retirement, or through disability or circumstances beyond such health care provider's control, if such health care provider notifies the board of governors and receives approval for an exemption from the provisions of this subsection. Any period spent in a postgraduate program of residency training approved by the state board of healing arts shall not be included in computation of time spent in compliance with the provisions of K.S.A. 40-3402, and amendments thereto.

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(n) Notwithstanding the provisions of subsection (m) or any other provision in article 34 of chapter 40 of the Kansas Statutes Annotated to the contrary, the fund shall not be liable for any claim made on or after July 1, 1991, against a licensed optometrist or pharmacist relating to any injury or death arising out of the rendering of or failure to render professional services by such optometrist or pharmacist prior to July 1, 1991, unless such optometrist or pharmacist qualified as an inactive health care provider prior to July 1, 1991, and obtained coverage pursuant to subsection (m). Optometrists and pharmacists not qualified as inactive providers prior to July 1, 1991, may purchase coverage from the fund for periods of prior compliance by making application prior to August 1, 1991, and payment within 30 days from notice of the calculated amount as determined by the commissioner to be sufficient to fund anticipated claims based on reasonably prudent actuarial principles.

(o) Notwithstanding anything in article 34 of chapter 40 of the Kansas Statues Annotated to the contrary, the fund shall in no event be liable for any claims against any health care provider based upon or relating to the health care provider's sexual acts or activity, but in such cases the fund may pay reasonable and necessary expenses for attorney fees incurred in defending the fund against such claim. The fund may recover all or a portion of such expenses for attorney fees if an adverse judgment is returned against the health care provider for damages resulting from the health care provider's sexual acts or activity.

Sec. 2. K.S.A. 40-3411 is hereby amended to read as follows: 40-3411. (a) In any claim in which the insurer of a health care provider or inactive health care provider covered by the fund has agreed to settle its liability on a claim against its insured or when the self-insurer has agreed to settle

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liability on a claim and the claimant's demand is in an amount in excess of such settlement, to which the commissioner does not agree, or where the claim is against an inactive health care provider covered by the fund who does not have liability insurance in effect which is applicable to the claim and the claimant and commissioner cannot agree upon a settlement, an action must be commenced by the claimant against the health care provider or inactive health care provider in a court of appropriate jurisdiction for such damages as are reasonable in the premises. If an action is already pending against the health care provider or inactive health care provider, the pending action shall be conducted in all respects as if the insurer or self-insurer had not agreed to settle.

(b) Any such action against a health care provider covered by the fund or inactive health care provider covered by the fund who has liability insurance in effect which is applicable to the claim shall be defended by the insurer or self-insurer in all respects as if the insurer or self-insurer had not agreed to settle its liability. Notwithstanding any other provision of law, the insurer or self-insurer shall be reimbursed from the fund for the costs of such defense incurred after the settlement agreement was reached, including a reasonable attorney's fee not to exceed the maximum hourly rate established by the commissioner. The commissioner is authorized to employ independent counsel in any such action against a health care provider or an inactive health care provider covered by the fund. If the primary carrier or self-insurer determines that the policy limits or the self-insured amount of basic coverage should be tendered to the fund in order to relieve itself of further costs of defense, it may do so in the manner specified by the commissioner. In the event of such a tender, the fund shall become responsible for the conduct of the defense.

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The commissioner may employ the attorney retained by the primary carrier or self-insurer or appoint other counsel to represent such health care provider. In any event, the commissioner shall pay attorney's fees at a rate not to exceed the maximum hourly rate established by the commissioner. Under such circumstances, the fund shall have no liability for attorney's fees to any attorney not so appointed.

(c) In any such action the health care provider of the inactive health care provider against whom claim is made shall be obligated to attend hearings and trials, as necessary, and to give evidence.

(d) The costs of the action shall be assessed against the fund if the recovery is in excess of the amount offered by the commissioner to settle the case and against the claimant if the recovery is less than such amount.

Sec. 3. K.S.A. 7-121b is hereby amended to read as follows: 7-121b. (a) Subject to the provisions of K.S.A. 40-3411(b), whenever a civil action is commenced by filing a petition or whenever a pleading states a claim in a district court for damages for personal injuries or death arising out of the rendering of or the failure to render professional services by any health care provider, compensation for reasonable attorney fees to be paid by each litigant in the action shall be approved by the judge after an evidentiary hearing and prior to final disposition of the case by the district court. Compensation for reasonable attorney fees for services performed in an appeal of a judgment in any such action to the court of appeals shall be approved after an evidentiary hearing by the chief judge or by the presiding judge of the panel hearing the case. Compensation for reasonable attorney fees for services performed in an appeal of a judgment in any such action to the supreme court shall be approved after an evidentiary hearing by the departmental justice for the department in which the appeal originated. In

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determining the reasonableness of such compensation, the judge or justice shall consider the following:

(1) The time and labor required, the novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly.

(2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the attorney.

(3) The fee customarily charged in the locality for similar legal services.

(4) The amount involved and the results obtained.

(5) The time limitations imposed by the client or by the circumstances.

(6) The nature and length of the professional relationship with the client.

(7) The experience, reputation and ability of the attorney or attorneys performing the services.

(8) Whether the fee is fixed or contingent.

(b) As used in this section:

(1) "Health care provider" means a person licensed to practice any branch of the healing arts, a person who holds a temporary permit to practice any branch of the healing arts, a person engaged in a postgraduate training program approved by the state board of healing arts, a licensed medical care facility, a health maintenance organization, a licensed dentist, a licensed professional nurse, a licensed practical nurse, a licensed optometrist, a licensed podiatrist, a licensed pharmacist, a professional corporation organized pursuant to the professional corporation law of Kansas by persons who are authorized by such law to form such a corporation and who are health care providers as defined by this subsection,

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a registered physical therapist or an officer, employee or agent thereof acting in the course and scope of such person's employment or agency; and

(2) "professional services" means those services which require licensure, registration or certification by agencies of the state for the performance thereof.

Sec. 4. K.S.A. 1992 Supp. 40-3403 and K.S.A. 40-3411 and 7-121b are hereby repealed.

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

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Legislative Proposal No. 23

Explanatory Memorandum

Legislative Proposal No. 23 amends the body of Kansas law which governs the authorized investments of insurance companies domiciled in Kansas. Current statutes permit domestic insurers to invest in the stock of other insurance companies subject to certain requirements and restrictions.

A Kansas Attorney General Opinion has held that a health maintenance organization (HMO) is not an insurance company. This distinction is meaningful with respect to the organization, structure and operation of HMOs but only causes confusion when applied to the investment statutes which permit investments in insurers but do not do so with respect to HMOs. Legislative Proposal No. 23 would correct this inconsistency by permitting investments in HMOs as well as insurance companies.

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Attachment #11

LEGISLATIVE PROPOSAL NO. 23

AN ACT relating to insurance; authorized investments; domestic insurance companies; amending K.S.A. 1992 Supp. 40-2a09 and 40-2b23 and repealing the existing sections.

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

Section 1. K.S.A. 1992 Supp. 40-2a09 is hereby amended to read as follows: 40-2a09. Any insurance company other than life heretofore or hereafter organized under any law of this state may invest with the direction or approval of a majority of its board of directors or authorized committee thereof, any of its funds, or any part thereof in:

(a) Stock in any insurance company or health maintenance organization, notwithstanding subsection (e) of K.S.A. 40-2a08, and amendments thereto. Before more than 5% of any outstanding shares of stock of any insurance company or health maintenance organization is acquired, or a tender offer made therefor, prior written approval of the commissioner of insurance must be secured;

(b) stock in an incorporated insurance agency: (1) If 5% or less of the outstanding shares of stock of such agency is acquired, the provisions of K.S.A. 40-2a08, and amendments thereto, shall apply; (2) if more than 5% of the outstanding shares of such incorporated agency is acquired, or a tender offer is made therefor, the prior approval of the commissioner of insurance shall be required and the provisions of subsection (d) of K.S.A. 40-2a08, and amendments thereto, shall apply. In valuing the stock of the

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agency, the assets of the agency shall be valued as if held directly by an insurance company; and (3) if majority interest in an incorporated insurance agency results from the organization of an agency by the insurance company to which this act applies, such investments shall be subject to the provisions of K.S.A. 40-2a16, and amendments thereto, until it has produced earnings for three out of five consecutive years. Such stock shall not be eligible for deposit with the commissioner of insurance as part of the legal reserve of such insurance company;

(c) stock in a holding corporation: (1) If 5% or less of the outstanding shares of stock of such holding corporation is acquired, the provisions of K.S.A. 40-2a08, and amendments thereto, shall apply; (2) if at least 55% of the holding corporation's voting stock is acquired, the prior approval of the commissioner shall be required and the provisions of K.S.A. 40-2a08, and amendments thereto, shall not apply. No insurer may purchase in excess of 5% of the outstanding voting stock of a holding corporation unless such insurer acquires at least 55% of such stock, nor shall the officers and directors of an insurer collectively own or control, directly or indirectly, more than 25% of such stock. The commissioner may direct an insurer to divest of its ownership in a holding corporation acquired pursuant to this subsection if it appears to the commissioner that the continued ownership or operation of the holding corporation is not in the best interest of the policyholders, or if the insurer's ownership in the holding corporation is less than 55% of the outstanding voting stock of the holding corporation, or if the officers and directors of the insurer collectively own or control, directly or indirectly, more than 25% of such stock. A holding corporation acquired pursuant to this subsection shall not acquire any investment not permitted for insurance companies other than life

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pursuant to article 2a of chapter 40 of the Kansas Statutes Annotated, and amendments thereto. In valuing the stock of any holding corporation acquired under this subsection in the annual financial statement of the insurer, value shall be assigned to the holding corporation's assets as though the assets were owned directly by the insurer. A percentage of the holding corporation's assets exactly equal to the insurer's ownership interest in the holding corporation will be added to the assets of the insurer in application of the insurer's investment limitations set forth in article 2a of chapter 40 of the Kansas Statutes Annotated, and amendments thereto. Stock in a holding corporation acquired under this subsection shall not be eligible for deposit with the commissioner of insurance as part of the legal reserves of such insurer.

Sec. 2. K.S.A. 1992 Supp. 40-2b23 is hereby amended to read as follows: 40-2b23. Any life insurance company heretofore or hereafter organized under any law of this state may invest with the direction or approval of a majority of its board of directors or authorized committee thereof, any of its funds, or any part thereof in:

(a) Stock in any insurance company or health maintenance organization, notwithstanding subsection (e) of K.S.A. 40-2b07, and amendments thereto. Before more than 5% of the outstanding shares of stock of any insurance company or health maintenance organization is acquired, or a tender offer made therefor, prior written approval of the commissioner of insurance must be secured;

(b) stock in an incorporated insurance agency: (1) If 5% or less of the outstanding shares of such incorporated agency is acquired, the provisions of K.S.A. 40-2b07, and amendments thereto, shall apply; (2) if more than 5% of the outstanding shares of such incorporated agency is

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acquired, or a tender offer is made therefor, the prior approval of the commissioner of insurance shall be required and the provisions of subsection (d) of K.S.A. 40-2b07, and amendments thereto, shall apply. In valuing the stock of the agency, the assets of the agency shall be valued as if held directly by an insurance company; and (3) if majority interest in an incorporated insurance agency results from the organization of an agency by the insurance company to which this act applies, such investments shall be subject to the provisions of K.S.A. 40-2b13, and amendments thereto, until they have produced earnings for three out of five consecutive years. Such stock shall not be eligible for deposit with the commissioner of insurance as part of the legal reserve of such insurance company;

(c) stock in a holding corporation: (1) If 5% or less of the outstanding shares of stock of such holding corporation is acquired, the provisions of K.S.A. 40-2b07, and amendments thereto, shall apply; (2) if at least 55% of the holding corporation's voting stock is acquired, the prior approval of the commissioner of insurance shall be required and the provisions of K.S.A. 40-2b07, and amendments thereto, shall not apply. No insurer may purchase in excess of 5% of the outstanding voting stock of a holding corporation unless such insurer acquires at least 55% of such stock, nor shall the officers and directors of an insurer collectively own or control, directly or indirectly, more than 25% of such stock. The commissioner of insurance may direct an insurer to divest of its ownership in a holding corporation acquired pursuant to this subsection if it appears to the commissioner that the continued ownership or operation of the holding corporation is not in the best interest of the policyholders, or if the insurer's ownership in the holding corporation is less than 55% of the outstanding voting stock of the holding corporation, or if the officers and

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directors of the insurer collectively own or control, directly or indirectly, more than 25% of such stock. A holding corporation acquired pursuant to this subsection shall not acquire any investment not permitted for life insurance companies pursuant to article 2b of chapter 40 of the Kansas Statutes Annotated, and amendments thereto. In valuing the stock of any holding corporation acquired under this subsection in the annual financial statement of the insurer, value shall be assigned to the holding corporation's assets as though the assets were owned directly by the insurer. A percentage of the holding corporation's assets exactly equal to the insurer's ownership interest in the holding corporation will be added to the assets of the insurer in application of the insurer's investment limitations set forth in article 2b of chapter 40 of the Kansas Statutes Annotated, and amendments thereto. Stock in a holding corporation acquired under this subsection shall not be eligible for deposit with the commissioner of insurance as part of the legal reserves of such insurer.

Sec. 3. K.S.A. 1992 Supp. 40-2a09 and 40-2b23 are hereby repealed.

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

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