

**SENATE BILL No. 179**

By Committee on Financial Institutions and Insurance

2-10

1 AN ACT concerning the Kansas life and health insurance guaranty  
2 association act; amending K.S.A. 40-3009 and K.S.A. 2010 Supp. 40-  
3 3003, 40-3005 and 40-3008 and repealing the existing sections.

4  
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2010 Supp. 40-3003 is hereby amended to read as  
7 follows: 40-3003. (a) This act shall provide coverage, for the policies and  
8 contracts specified in subsection (b), for:

9 (1) Persons who, regardless of where they reside, except for  
10 nonresident certificate holders under group policies or contracts, are the  
11 beneficiaries, assignees, payees or providers of the persons covered under  
12 paragraph (2); and

13 (2) persons who are owners of or certificate holders under such  
14 policies or contracts *other than structured settlement annuities*, and  
15 who:

16 (A) Are residents;

17 (B) are not residents, but only with respect to an annuity contract  
18 awarded pursuant to K.S.A. 60-3407 or 60-3409, and amendments  
19 thereto, an annuity contract for future economic loss procured pursuant to  
20 a settlement agreement in a medical malpractice liability action, as  
21 defined by K.S.A. 60-3401, and amendments thereto, or fixed-return  
22 accounts of the Kansas public employees deferred compensation plan  
23 under ~~K.S.A. 75-5521 through 75-5529~~ *K.S.A. 2010 Supp. 74-49b08*  
24 *through 74-49b14*, and amendments thereto; or

25 (C) are not residents, but only under all of the following conditions:

26 (i) The insurers which issued such policies or contracts are  
27 domiciled in this state;

28 (ii) ~~such insurers never had a license or certificate of authority in the~~  
29 *states in which such persons reside have one or more associations similar*  
30 *to the association created by this act;*

31 (iii) ~~such states have associations similar to the association created~~  
32 *by this act; and*

33 (iv) ~~such~~ *the* persons are not eligible for coverage by ~~such~~  
34 ~~associations~~ *an association in any other state due to the fact that the*  
35 *insurer was not licensed in the state at the time specified in the state's*  
36 *guaranty association law.*

1       (3) (A) Paragraphs (1) and (2) of this subsection shall not apply to  
2       structured settlement annuities.

3       (B) Except as provided in paragraphs (4) and (5) of this subsection,  
4       this act shall provide coverage to a person who is a payee under a  
5       structured settlement annuity, or beneficiary of a payee if the payee is  
6       deceased, if the payee:

7       (i) (a) Is a resident, regardless of where the contract holder resides;  
8       or

9       (b) is not a resident, but only under both of the following conditions:

10      (1) The contract holder of the structured settlement annuity is a  
11      resident; or

12      (2) the contract holder of the structured settlement annuity is not a  
13      resident; but:

14      (A) The insurer that issued the structured settlement annuity is  
15      domiciled in this state; and

16      (B) the state in which the contract holder resides has an association  
17      similar to the association created by this act; and

18      (ii) neither the payee or beneficiary nor the contract holder is  
19      eligible for coverage by the association of the state in which the payee or  
20      contract holder resides.

21      (4) This act shall not provide coverage to a person who is a payee  
22      or beneficiary of a contract holder resident of this state, if the payee or  
23      beneficiary is afforded any coverage by the association of another state.

24      (5) This act is intended to provide coverage to a person who is a  
25      resident of this state and, in special circumstances, to a nonresident.  
26      In order to avoid duplicate coverage, if a person who would otherwise  
27      receive coverage under this act is provided coverage under the laws of  
28      any other state, the person shall not be provided coverage under this act.  
29      In determining the application of the provisions of this paragraph in  
30      situations where a person could be covered by the association of more  
31      than one state, whether as a contract holder, payee, beneficiary or  
32      assignee, this act shall be construed in conjunction with other state laws  
33      to result in coverage by only one association.

34      (b) This act shall provide coverage to the persons specified in  
35      subsection (a) for direct, nongroup life, health, ~~annuity and~~  
36      ~~supplemental~~ or annuity policies or contracts, ~~supplemental contracts or~~  
37      unallocated annuity contracts covering individuals participating in a  
38      governmental deferred compensation plan established under section 457  
39      of the U.S. internal revenue code pursuant to K.S.A. 75-5521 through 75-  
40      5529a2010 Supp. 74-49b08 through 74-49b14, and amendments thereto,  
41      whether or not a resident, or the beneficiaries of each such individual if  
42      deceased, and for certificates under direct group policies and contracts  
43      issued by member insurers, except as limited by this act.

1 Sec. 2. K.S.A. 2010 Supp. 40-3005 is hereby amended to read as  
2 follows: 40-3005. As used in this act:

3 (a) "Account" means either of the three accounts created under  
4 K.S.A. 40-3006, and amendments thereto;

5 (b) "association" means the Kansas life and health insurance  
6 guaranty association created under K.S.A. 40-3006, and amendments  
7 thereto;

8 (c) "commissioner" means the commissioner of insurance of this  
9 state;

10 (d) "contractual obligation" means any obligation of a policy or  
11 contract or certificate under a group policy or contract, or portion thereof,  
12 for which coverage is provided under K.S.A. 40-3003, and amendments  
13 thereto;

14 (e) "covered policy" means any policy or contract within the scope  
15 of this act under K.S.A. 40-3003, and amendments thereto;

16 (f) "impaired insurer" means a member insurer which, after the  
17 effective date of this act, is not an insolvent insurer, and ~~which: (1) Is~~  
18 ~~deemed by the commissioner to be potentially unable to fulfill its~~  
19 ~~contractual obligations; or~~

20 ~~(2) is placed under an order of rehabilitation or conservation by a~~  
21 ~~court of competent jurisdiction;~~

22 (g) "insolvent insurer" means a member insurer which, after the  
23 effective date of this act, is placed under an order of liquidation by a court  
24 of competent jurisdiction with a finding of insolvency;

25 (h) "member insurer" means any insurer licensed or holding a  
26 certificate of authority to transact in this state any kind of insurance for  
27 which coverage is provided under K.S.A. 40-3003, and amendments  
28 thereto, and includes any insurer whose license or certificate of authority  
29 in this state may have been suspended, revoked, nonrenewed or  
30 voluntarily withdrawn, but does not include: (1) A ~~nonprofit~~ hospital or  
31 medical service organization *regardless of whether such hospital or*  
32 *medical service organization is organized for profit or not-for-profit;*

33 (2) a health maintenance organization;

34 (3) a fraternal benefit society;

35 (4) a mandatory state pooling plan;

36 (5) a mutual assessment company or any entity that operates on an  
37 assessment basis; ~~or~~

38 (6) an insurance exchange, except a reciprocal or interinsurance  
39 exchange governed by the provisions of article 16 of chapter 40 of the  
40 Kansas Statutes Annotated, and amendments thereto; *or*

41 *(7) any entity similar to any of the organizations listed in*  
42 *paragraphs (1) through (6) inclusive;*

43 (i) "Moody's corporate bond yield average" means the monthly

1 average corporates as published by Moody's investors service, inc., or any  
2 successor thereto;

3 *(j) "person" means any individual, corporation, partnership,*  
4 *association, voluntary organization or provider;*

5 *(k) "policyholder" and "contract holder" means the person who is*  
6 *identified as the legal owner under the terms of the policy or contract or*  
7 *who is otherwise vested with legal title to the policy or contract through a*  
8 *valid assignment completed in accordance with the terms of the policy or*  
9 *contract and properly recorded as the owner on the books of the insurer.*  
10 *The terms "policyholder" and "contract holder" do not include persons*  
11 *with a mere beneficial interest in a policy or contract;*

12 *(j) (l) "provider" means a person who is entitled to receive*  
13 *compensation for providing medical services to an insured covered under*  
14 *any health insurance contract or policy issued by a member insurer,*  
15 *regardless of whether the provider is obligated by statute or by agreement*  
16 *with the member insurer to hold any insured covered by any health*  
17 *insurance contract or policy harmless from liability for services;*

18 *(k) (m) "premiums" means amounts received on covered policies or*  
19 *contracts less premiums, considerations and deposits returned thereon,*  
20 *and less dividends and experience credits thereon. Premiums does not*  
21 *include any amounts received for any policies or contracts or for the*  
22 *portions of any policies or contracts for which coverage is not provided*  
23 *under subsection (b) of K.S.A. 40-3003, and amendments thereto, except*  
24 *that assessable premiums shall not be reduced on accounts for subsection*  
25 *(n)(3) of K.S.A. 40-3008, and amendments thereto, relating to interest*  
26 *limitations and subsection (o)(2) of K.S.A. 40-3008, and amendments*  
27 *thereto, relating to limitations with respect to any one life and any one*  
28 *contract holder. Premiums shall not include:*

29 *(1) Any premiums on any unallocated annuity contract; or*

30 *(2) any premiums in excess of \$5,000,000 with respect to*  
31 *multiple nongroup policies of life insurance owned by one policyholder,*  
32 *regardless of the number of policies or contracts held by the policyholder*  
33 *and regardless of whether:*

34 *(A) The policyholder is an individual, firm, corporation or*  
35 *other person; and*

36 *(B) the persons insured are officers, managers, employees or*

1 *other persons;*

2 ~~(l) "person" means any individual, corporation, partnership,~~  
3 ~~association, voluntary organization or provider;~~

4 ~~(m)~~ (n) "resident" means any person who resides in this state at the  
5 time a member insurer is determined *by court order* to be an impaired or  
6 insolvent insurer and to whom a contractual obligation is owed. A person  
7 may be a resident of only one state which, in the case of a person other  
8 than a natural person, shall be its principal place of business. *Citizens of*  
9 *the United States that are either residents of foreign countries or*  
10 *residents of United States possessions, territories or protectorates that do*  
11 *not have an association similar to the association created by this act,*  
12 *shall be deemed residents of the state of domicile of the insurer that*  
13 *issued the policies or contracts;*

14 (o) "*structured settlement annuity*" means an annuity purchased in  
15 order to fund periodic payments for a plaintiff or other claimant in  
16 payment for or with respect to personal injury suffered by the plaintiff or  
17 other claimant, but excludes an annuity policy or contract awarded  
18 pursuant to K.S.A. 60-3407 or 60-3409, and amendments thereto;

19 ~~(n) "unallocated annuity contract" means any annuity contract or~~  
20 ~~group annuity certificate which is not issued to and owned by an~~  
21 ~~individual, except to the extent of any annuity benefits guaranteed to an~~  
22 ~~individual by an insurer under such contract or certificate; and~~

23 ~~(o)~~ (p) "supplemental contract" means any written agreement  
24 entered into for the distribution of ~~policy or contract~~ proceeds *under a*  
25 *life, health or annuity policy or contract; and*

26 (q) "*unallocated annuity contract*" means any annuity contract or  
27 group annuity certificate which is not issued to and owned by an  
28 individual, except to the extent of any annuity benefits guaranteed to an  
29 individual by an insurer under such contract or certificate.

30 Sec. 3. K.S.A. 2010 Supp. 40-3008 is hereby amended to read as  
31 follows: 40-3008. (a) If a member insurer is an impaired ~~domestic~~ insurer,  
32 the association may, in its discretion and subject to any conditions  
33 imposed by the association that do not impair the contractual obligations  
34 of the impaired insurer; *and that are approved by the commissioner and*  
35 *that are, except in cases of court-ordered conservation or rehabilitation,*  
36 *also approved by the impaired insurer:*

37 (1) Guarantee, assume or reinsure, or cause to be guaranteed,  
38 assumed or reinsured, any or all of the policies or contracts of the  
39 impaired insurer; *and*

40 (2) provide such moneys, pledges, *loans*, notes, guarantees or other  
41 means as are proper to effectuate the provisions of paragraph (1) ~~of this~~  
42 ~~subsection~~ and assure payment of the contractual obligations of the

1 impaired insurer pending action under paragraph (1); ~~or~~

2 ~~(3) lend money to the impaired insurer.~~

3 ~~(b) (1) If a member insurer is an impaired insurer, whether domestic,~~  
4 ~~foreign or alien, and the insurer is not paying claims timely, then subject~~  
5 ~~to the preconditions specified in paragraph (2) of this subsection, the~~  
6 ~~association shall, in its discretion, either: (A) Take any of the actions~~  
7 ~~specified in subsection (a), subject to the conditions therein; or~~

8 ~~(B) provide substitute benefits in lieu of the contractual obligations~~  
9 ~~of the impaired insurer solely for health claims, periodic annuity benefit~~  
10 ~~payments, death benefits, supplemental benefits and cash withdrawals for~~  
11 ~~policy or contract owners who petition therefor under claims of~~  
12 ~~emergency or hardship in accordance with standards proposed by the~~  
13 ~~association and approved by the commissioner.~~

14 ~~(2) The association shall be subject to the requirements of paragraph~~  
15 ~~(1) of this subsection only if: (A) The laws of the impaired insurer's state~~  
16 ~~of domicile provide that: (i) The delinquency proceeding shall not be~~  
17 ~~dismissed;~~

18 ~~(ii) neither the impaired insurer nor its assets shall be returned to the~~  
19 ~~control of its shareholders or private management; and~~

20 ~~(iii) it shall not be permitted to solicit or accept new business or~~  
21 ~~have any suspended or revoked license restored; and until all payments of~~  
22 ~~or on account of the impaired insurer's contractual obligations by all~~  
23 ~~guaranty associations, along with all expenses thereof and interest on all~~  
24 ~~such payments and expenses, shall have been repaid to the guaranty~~  
25 ~~associations or a plan of repayment by the impaired insurer shall have~~  
26 ~~been approved by the guaranty associations; and~~

27 ~~(B) (i) with respect to the impaired insurer who is a domestic~~  
28 ~~insurer, it has been placed under an order of rehabilitation by a court of~~  
29 ~~competent jurisdiction in this state; or~~

30 ~~(ii) with respect to the impaired insurer who is a foreign or alien~~  
31 ~~insurer: (aa) It has been prohibited from soliciting or accepting new~~  
32 ~~business in this state;~~

33 ~~(bb) its certificate of authority has been suspended or revoked in this~~  
34 ~~state; and~~

35 ~~(cc) a petition for rehabilitation or liquidation has been filed in a~~  
36 ~~court of competent jurisdiction in its state of domicile by the~~  
37 ~~commissioner of the state.~~

38 ~~(e) (b) If a member insurer is an insolvent insurer, the association~~  
39 ~~shall, in its discretion, either: (1) (A) (i) Guarantee, assume or reinsure, or~~  
40 ~~cause to be guaranteed, assumed or reinsured, the policies or contracts of~~  
41 ~~the insolvent insurer; or~~

42 ~~(B) (ii) assure payment of the contractual obligations of the~~  
43 ~~insolvent insurer; and~~

1       ~~(C)~~ (B) provide such moneys, pledges, *loans, notes*, guarantees or  
2 other means as are reasonably necessary to discharge such duties; or

3       (2) with respect ~~only~~ to life and health ~~policies~~*insurance policies*  
4 *and annuities*, provide benefits and coverages in accordance with  
5 subsection ~~(d)~~(c).

6       ~~(d)~~ (c) When proceeding under ~~subsection (b)(1)(B) or (e)~~  
7 ~~(2) paragraph (2) of subsection (b)~~, the association shall, ~~with respect~~  
8 ~~only to life and health insurance policies~~: (1) Assure payment of benefits  
9 for premiums identical to the premiums and benefits, except for terms of  
10 conversion and renewability, that would have been payable under the  
11 policies *or contracts* of the insolvent insurer, for claims incurred: (A)  
12 With respect to group policies *and contracts*, not later than the earlier of  
13 the next renewal date under such policies or contracts or 45 days, but in  
14 no event less than 30 days, after the date on which the association  
15 becomes obligated with respect to such policies *and contracts*;

16       (B) with respect to *nongroup* policies, *contracts and annuities* not  
17 later than the earlier of the next renewal date, if any, under such policies  
18 *or contracts* or one year, but in no event less than 30 days, from the date  
19 on which the association becomes obligated with respect to such policies  
20 *or contracts*;

21       (2) make diligent efforts to provide all known insureds, *annuitants*  
22 or group policyholders with respect to group policies *and contracts*, 30  
23 days' notice of the termination of the benefits provided; and

24       (3) with respect to ~~individual policies~~*nongroup life and health*  
25 *insurance policies and annuities*, make available to each known insured  
26 *or annuitant*, or owner if other than the insured *or annuitant*, and with  
27 respect to an individual formerly ~~insured~~*an insured or an annuitant* under  
28 a group policy who is not eligible for replacement group coverage, make  
29 available substitute coverage on an individual basis in accordance with  
30 the provisions of paragraph (4) ~~of this subsection~~, if the insureds *or*  
31 *annuitants* had a right under law or the terminated policy *or annuity* to  
32 convert coverage to individual coverage or to continue an individual  
33 policy *or annuity* in force until a specified age or for a specified time,  
34 during which the insurer had no right unilaterally to make changes in any  
35 provision of the policy *or annuity* or had a right only to make changes in  
36 premium by class;

37       (4) (A) in providing the substitute coverage required under  
38 paragraph (3) ~~of this subsection~~, the association may offer either to  
39 reissue the terminated coverage or to issue an alternative policy;

40       (B) alternative or reissued policies shall be offered without requiring  
41 evidence of insurability, and shall not provide for any waiting period or  
42 exclusion that would not have applied under the terminated policy; and

43       (C) the association may reinsure any alternative or reissued policy;

1 (5) (A) alternative policies adopted by the association shall be  
2 subject to the approval of the commissioner. The association may adopt  
3 alternative policies of various types for future issuance without regard to  
4 any particular impairment or insolvency;

5 (B) alternative policies shall contain at least the minimum statutory  
6 provisions required in this state and provide benefits that shall not be  
7 unreasonable in relation to the premiums charged. The association shall  
8 set the premiums in accordance with a table of rates which it shall adopt.

9 The premiums shall reflect the amount of insurance to be provided and  
10 the age and class of risk of each insured, but shall not reflect any changes  
11 in the health of the insured after the original policy was last underwritten;

12 (C) any alternative policy issued by the association shall provide  
13 coverage of a type similar to that of the policy issued by the impaired or  
14 insolvent insurer, as determined by the association;

15 (6) if the association elects to reissue the insured's terminated  
16 coverage at a premium rate different from that charged under the  
17 terminated policy, the premium shall be set by the association in  
18 accordance with the amount of insurance provided and the age and class  
19 of risk, subject to approval ~~by the~~ *of the domiciliary insurance*  
20 *commissioner and by a court of competent jurisdiction; the receivership*  
21 *court.*

22 ~~(7)~~ (d) The association's obligations with respect to coverage under  
23 any policy of the impaired or insolvent insurer or under any reissued or  
24 alternative policy shall cease on the date such coverage or policy is  
25 replaced by another similar policy by the policyholder, the insured or the  
26 association.

27 (e) When proceeding under ~~subsection (b)(1)(B) or (c) paragraph (2)~~  
28 *of subsection (b)* with respect to any policy or contract carrying  
29 guaranteed minimum interest rates, the association shall assure the  
30 payment or crediting of a rate of interest consistent with subsection (n)  
31 (3).

32 (f) Nonpayment of premiums within 31 days after the date required  
33 under the terms of any guaranteed, assumed, alternative or reissued  
34 policy or contract or substitute coverage shall terminate the association's  
35 obligations under such policy or coverage under this act with respect to  
36 such policy or coverage, except with respect to any claims incurred or  
37 any net cash surrender value which may be due in accordance with the  
38 provisions of this act.

39 (g) Premiums due after entry of an order of liquidation of an  
40 insolvent insurer shall belong to and be payable at the direction of the  
41 association, and the association shall be liable for unearned premiums due  
42 to policy or contract owners arising after the entry of such order.

43 (h) The protection provided by this act shall not apply where any

1 guaranty protection is provided to residents of this state by the laws of the  
2 domiciliary state or jurisdiction of the impaired or insolvent insurer other  
3 than this state.

4 (i) In carrying out its duties under ~~subsections (b) and (c)~~ *subsection*  
5 *(b)*, the association may, subject to approval by ~~the court~~ *a court in this*  
6 *state*: (1) Impose permanent policy or contract liens in connection with  
7 any guarantee, assumption or reinsurance agreement, if the association  
8 finds that the amounts which can be assessed under this act are less than  
9 the amounts needed to assure full and prompt performance of the  
10 association's duties under this act, or that the economic or financial  
11 conditions as they affect member insurers are sufficiently adverse to  
12 render the imposition of such permanent policy or contract liens to be in  
13 the public interest; and

14 (2) impose temporary moratoriums or liens on payments of cash  
15 values and policy loans, or any other right to withdraw funds held in  
16 conjunction with policies or contracts, in addition to any contractual  
17 provisions for deferral of cash or policy loan value.

18 (j) If the association fails to act within a reasonable period of time as  
19 provided in ~~subsections (b)(1)(B), (c) and (d) of this section~~ *(b) and (c)*,  
20 the commissioner shall have the powers and duties of the association  
21 under this act with respect to impaired or insolvent insurers.

22 (k) The association may render assistance and advice to the  
23 commissioner, upon request, concerning rehabilitation, payment of  
24 claims, continuance of coverage or the performance of other contractual  
25 obligations of any impaired or insolvent insurer.

26 (l) (1) The association shall have standing to appear *or intervene*  
27 before any court in this state with jurisdiction over:

28 (A) An impaired or insolvent insurer concerning which the  
29 association is or may become obligated under this act; *or*

30 (B) *any person or property against which the association may have*  
31 *rights through subrogation or otherwise.*

32 (2) Such standing shall extend to all matters germane to the powers  
33 and duties of the association, including, but not limited to, proposals for  
34 reinsuring or guaranteeing the covered policies of the impaired *or*  
35 *insolvent* insurer and the determination of the covered policies or  
36 contracts and contractual obligations.

37 (3) The association shall also have the right to appear or intervene  
38 before a court in another state with jurisdiction over an impaired or  
39 insolvent insurer for which the association is or may become obligated or  
40 with jurisdiction over a third party against whom the association may  
41 have rights through subrogation of the insurer's policyholders.

42 (m) (1) Any person receiving benefits under this act shall be deemed  
43 to have assigned the rights under any cause of action relating to the

1 covered policy or contract to the association to the extent of the benefits  
2 received because of this act, whether the benefits are payments of or on  
3 account of contractual obligations, continuation of coverage or provision  
4 of substitute or alternative coverages. The association may require an  
5 assignment to it of such rights and cause of action by any payee, policy or  
6 contract owner, beneficiary, insured or annuitant as a condition precedent  
7 to the receipt of any right or benefits conferred by this act upon such  
8 person.

9 (2) The subrogation rights of the association under this subsection  
10 shall have the same priority against the assets of the impaired or insolvent  
11 insurer as that possessed by the person entitled to receive benefits under  
12 this act.

13 (3) In addition to paragraphs (1) and (2), the association shall have  
14 all common-law rights of subrogation and any other equitable or legal  
15 remedy which would have been available to the impaired or insolvent  
16 insurer or holder of a policy or contract with respect to such policy or  
17 contracts.

18 (n) The contractual obligations of the impaired or insolvent insurer  
19 for which the association becomes, or may become, liable shall be as  
20 great as but no greater than the contractual obligations of the impaired or  
21 insolvent insurer would have been in the absence of an impairment or  
22 insolvency unless such obligations are reduced as permitted by ~~subsection~~  
23 ~~(e)~~ *this act* but the association shall not provide coverage for: (1) Any  
24 portion of a policy or contract not guaranteed by the insurer, or under  
25 which the risk is borne by the policy or contract holder;

26 (2) any policy or contract of reinsurance, unless assumption  
27 certificates have been issued;

28 (3) any portion of a policy or contract to the extent that the rate of  
29 interest on which it is based, *or the interest rate, crediting rate or similar*  
30 *factor determined by use of an index or other external reference stated in*  
31 *the policy or contract employed in calculating returns or changes in*  
32 *value:* (A) Averaged over the period of four years prior to the date on  
33 which the association becomes obligated with respect to such policy or  
34 contract, exceeds a rate of interest determined by subtracting two  
35 percentage points from Moody's corporate bond yield average averaged  
36 for that same four-year period or for such lesser period if the policy or  
37 contract was issued less than four years before the association became  
38 obligated; and

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

43 (4) any plan or program of an employer, association or similar entity

1 to provide life, health or annuity benefits to its employees or members to  
2 the extent that such plan or program is self-funded or uninsured,  
3 including but not limited, to benefits payable by an employer, association  
4 or similar entity under: (A) A multiple employer welfare arrangement as  
5 defined in section ~~514 of the employee retirement income security act of~~  
6 ~~1974, as amended~~ *3 (40) of the employee retirement income security act of*  
7 *1974 (29 U.S.C. § 1002(40));*

8 (B) a minimum premium group insurance plan;

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

10 (D) an administrative services only contract;

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

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

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

21 (8) a policy or contract providing any hospital, medical, prescription  
22 drug or other health care benefits pursuant to part C or part D of  
23 subchapter XVIII, chapter 7 of title 42 of the United States code  
24 (commonly known as medicare part C & D) or any regulations issued  
25 pursuant thereto; or

26 (9) (A) *Any portion of a policy or contract:*

27 (i) *To the extent it provides for interest or other changes in value to*  
28 *be determined by the use of an index or other external reference stated in*  
29 *the policy or contract, but which have not been credited to the policy or*  
30 *contract; or*

31 (ii) *as to which the policy or contract owner's rights are subject to*  
32 *forfeiture, as of the date the member insurer becomes an impaired or*  
33 *insolvent insurer under this act; whichever is earlier.*

34 (B) *If a policy's or contract's interest or changes in value are*  
35 *credited less frequently than annually, then for purposes of determining*  
36 *the values that have been credited and which are not subject to forfeiture*  
37 *under this paragraph, the interest or change in value determined by*  
38 *using the procedures defined in the policy or contract shall be credited as*  
39 *if the contractual date of crediting interest or changing values was the*  
40 *date of impairment or insolvency, whichever is earlier, and shall not be*  
41 *subject to forfeiture.*

42 (o) The benefits for which the association may become liable shall  
43 in no event exceed the lesser of: (1) The contractual obligations for which

1 the insurer is liable or would have been liable if it were not an impaired  
2 or insolvent insurer; or

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

7 ~~(B) \$100,000 in health insurance benefits, including any net cash~~  
8 ~~surrender and net cash withdrawal values in health insurance benefits:~~

9 *(i) \$100,000 for coverages not defined as disability insurance or*  
10 *basic hospital, medical and surgical insurance or major medical*  
11 *insurance or long-term care insurance including any net cash surrender*  
12 *and net cash withdrawal values;*

13 *(ii) \$300,000 for disability insurance and \$300,000 for long-term*  
14 *care insurance;*

15 *(iii) \$500,000 for basic hospital, medical and surgical insurance or*  
16 *major medical insurance; or*

17 (C) \$250,000 in the present value of annuity benefits, including net  
18 cash surrender and net cash withdrawal values;

19 ~~(D) In no event shall the association be liable to expend more than~~  
20 ~~\$300,000 in the aggregate with respect to any one life as provided in~~  
21 ~~paragraph (A), (B) or (C) of this subsection.~~

22 (D) *with respect to each payee of a structured settlement annuity (or*  
23 *beneficiary or beneficiaries of the payee if deceased), \$250,000 in*  
24 *present value annuity benefits, in the aggregate, including net cash*  
25 *surrender and net cash withdrawal values;*

26 (E) *however, in no event shall the association be obligated to*  
27 *cover more than:*

28 *(1) An aggregate of \$300,000 in benefits with respect to any one life*  
29 *as provided in paragraphs (A), (B), (C) and (D) of this subsection except*  
30 *with respect to benefits for basic hospital, medical and surgical insurance*  
31 *and major medical insurance under (o)(2)(B)(iii) of this subsection, in*  
32 *which case the aggregate liability of the association shall not exceed*  
33 *\$500,000 with respect to any one individual; or*

34 *(2) with respect to one owner of multiple nongroup policies of life*  
35 *insurance, whether the policy owner is an individual, firm, corporation*  
36 *or other person, and whether the persons insured are officers, managers,*  
37 *employees or other persons, more than \$5,000,000 in benefits, regardless*  
38 *of the number of policies and contracts held by the owner;*

39 (F) *the limitations set forth in this paragraph are limitations on the*  
40 *benefits for which the association is obligated before taking into account*  
41 *either its subrogation and assignment rights or the extent to which those*

1 *benefits could be provided out of the assets of the impaired or insolvent*  
2 *insurer attributable to covered policies. The costs of the association's*  
3 *obligations under this act may be met by the use of assets attributable to*  
4 *covered policies or reimbursed to the association pursuant to its*  
5 *subrogation and assignment rights;*

6 ~~(E)~~ (G) the guaranty association's limits of liability with respect to  
7 the obligations of any impaired or insolvent insurer shall be the limits of  
8 liability in effect under this act on the date the guaranty association  
9 became liable for that impaired or insolvent insurer.;

10 (H) *in performing its obligations to provide coverage under this*  
11 *section, the association shall not be required to guarantee, assume,*  
12 *reinsure or perform, or cause to be guaranteed, assumed, reinsured or*  
13 *performed, the contractual obligations of the insolvent or impaired*  
14 *insurer under a covered policy or contract that do not materially affect*  
15 *the economic values or economic benefits of the covered policy or*  
16 *contract.*

17 The provisions of subsection (o) shall not apply to annuity contracts  
18 for future economic loss procured pursuant to a judgment or settlement  
19 agreement in a medical malpractice liability action.

20 (p) The association may: (1) Enter into such contracts as are  
21 necessary or proper to carry out the provisions and purposes of this act;

22 (2) sue or be sued, including taking any legal actions necessary or  
23 proper to recover any unpaid assessments under K.S.A. 40-3009, and  
24 amendments thereto, and to settle claims or potential claims against it;

25 (3) borrow money to effect the purposes of this act. Any notes or  
26 other evidence of indebtedness of the association not in default shall be  
27 legal investments for domestic insurers and may be carried as admitted  
28 assets;

29 (4) employ or retain such persons as are necessary to handle the  
30 financial transactions of the association, and to perform such other  
31 functions as become necessary or proper under this act;

32 (5) take such legal action as may be necessary to avoid payment of  
33 improper claims; or

34 (6) exercise, for the purposes of this act and to the extent approved  
35 by the commissioner, the powers of a domestic life or health insurer, but  
36 in no case may the association issue insurance policies or annuity  
37 contracts other than those issued to perform its obligations under this act.

38 (q) The association may join an organization of one or more other  
39 state associations of similar purposes to further the purposes and  
40 administer the powers and duties of the association.

41 (r) The association shall pay any and all persons who, as a provider,  
42 may have claims as a result of a member insurer being found insolvent  
43 between March 1, 1999 and June 1, 1999.

1       (s) *Regarding covered policies for which the association becomes*  
2 *obligated after an entry of an order of liquidation, to the extent such*  
3 *contract provides coverage for losses occurring after the date of the*  
4 *order of liquidation, the association may elect to succeed to the rights of*  
5 *the insolvent insurer arising after the order of liquidation under any*  
6 *contract of reinsurance to which the insolvent insurer was a party. As a*  
7 *condition to making such election, the association must pay all unpaid*  
8 *premiums due under the contract for coverage relating to periods before*  
9 *and after the date on which the order of liquidation was entered.*

10       (t) *In carrying out its duties in connection with guaranteeing,*  
11 *assuming or reinsuring policies or contracts under subsections (a) or (b),*  
12 *subject to approval of the receivership court, the association may issue*  
13 *substitute coverage for a policy or contract that provides an interest rate,*  
14 *crediting rate or similar factor determined by use of an index or other*  
15 *external reference stated in the policy or contract employed in*  
16 *calculating returns or changes in value by issuing an alternative policy*  
17 *or contract in accordance with the following provisions:*

18       (1) *In lieu of the index or other external reference provided for in*  
19 *the original policy or contract, the alternative policy or contract provides*  
20 *for:*

21       (i) *A fixed interest rate;*

22       (ii) *payment of dividends with minimum guarantees; or*

23       (iii) *a different method for calculating interest or changes in value.*

24       (2) *There is no requirement for evidence of insurability, waiting*  
25 *period or other exclusion that would not have applied under the replaced*  
26 *policy or contract; and*

27       (3) *the alternative policy or contract is substantially similar to the*  
28 *replaced policy or contract in all other material terms.*

29       Sec. 4. K.S.A. 40-3009 is hereby amended to read as follows: 40-  
30 3009. (a) For the purpose of providing the funds necessary to carry out  
31 the powers and duties of the association, the board of directors shall  
32 assess the member insurers, separately for each account, at such time and  
33 for such amounts as the board finds necessary. Assessments shall be due  
34 not less than 30 days after prior written notice to the member insurers and  
35 shall accrue interest at 15% per annum on and after the due date.

36       (b) There shall be two classes of assessments, as follows: (1) Class A  
37 assessments shall be made for the purpose of meeting administrative and  
38 legal costs and other expenses and examinations conducted under the  
39 authority of subsection (e) of K.S.A. 40-3012, and amendments thereto.  
40 Class A assessments may be made whether or not related to a particular  
41 impaired or insolvent insurer.

42       (2) Class B assessments shall be made to the extent necessary to  
43 carry out the powers and duties of the association under K.S.A. 40-3008,

1 and amendments thereto, with regard to an impaired or an insolvent  
2 insurer.

3 (c) (1) The amount of any class A assessment shall be determined by  
4 the board and may be made on a pro rata or non-pro rata basis. If pro rata,  
5 the board may provide that it be credited against future class B  
6 assessments. A non-pro rata assessment shall not exceed ~~\$150~~\$300 per  
7 member insurer in any one calendar year. The amount of any class B  
8 assessment shall be allocated for assessment purposes among the  
9 accounts pursuant to an allocation formula which may be based on the  
10 premiums or reserves of the impaired or insolvent insurer or any other  
11 standard deemed by the board in its sole discretion as being fair and  
12 reasonable under the circumstances.

13 (2) Class B assessments against member insurers for each account  
14 shall be in the proportion that the premiums received on business in this  
15 state by each assessed member insurer on policies or contracts covered by  
16 each account for the three most recent calendar years for which  
17 information is available preceding the year in which the insurer became  
18 impaired or insolvent, as the case may be, bears to such premiums  
19 received on business in this state for such calendar years by all assessed  
20 member insurers.

21 (3) Assessments for funds to meet the requirements of the  
22 association with respect to an impaired or insolvent insurer shall not be  
23 made until necessary to implement the purposes of this act. Classification  
24 of assessments under subsection (b) and computation of assessments  
25 under this subsection shall be made with a reasonable degree of accuracy,  
26 recognizing that exact determinations may not always be possible.

27 (d) The association may abate or defer, in whole or in part, the  
28 assessment of a member insurer if, in the opinion of the board, payment  
29 of the assessment would endanger the ability of the member insurer to  
30 fulfill its contractual obligations. In the event an assessment against a  
31 member insurer is abated, or deferred in whole or in part, the amount by  
32 which such assessment is abated or deferred may be assessed against the  
33 other member insurers in a manner consistent with the basis for  
34 assessments set forth in this section.

35 (e) (1) The total of all assessments upon a member insurer for each  
36 account shall not in any one calendar year exceed 2% of such insurer's  
37 average premiums received in this state on the policies and contracts  
38 covered by the account during the three calendar years preceding the  
39 years in which the insurer became an impaired or insolvent insurer.

40 (2) *If two or more assessments are authorized in one calendar year*  
41 *with respect to insurers that become impaired or insolvent in different*  
42 *calendar years, the average annual premiums for purposes of the*  
43 *aggregate assessment percentage limitation referenced in this subsection*

1 *shall be equal and limited to the higher of the three-year average annual*  
2 *premiums for the applicable account as calculated pursuant to this*  
3 *section.*

4 (3) If the maximum assessment, together with the other assets of the  
5 association in any account does not provide in any one year in either  
6 account an amount sufficient to carry out the responsibilities of the  
7 association, the necessary additional funds shall be assessed as soon  
8 thereafter as permitted by this act.

9 (4) The board may provide in the plan of operation a method of  
10 allocating funds among claims, whether relating to one or more impaired  
11 or insolvent insurers, when the maximum assessment will be insufficient  
12 to cover anticipated claims.

13 (f) The board, by an equitable method as established in the plan of  
14 operation, may refund to member insurers, in proportion to the  
15 contribution of each insurer to that account, the amount by which the  
16 assets of the account exceed the amount the board finds is necessary to  
17 carry out during the coming year the obligations of the association with  
18 regard to that account, including assets accruing from assignment,  
19 subrogation, net realized gains and income from investments. A  
20 reasonable amount may be retained in any account to provide funds for  
21 the continuing expenses of the association and for future losses.

22 (g) It shall be proper for any member insurer, in determining its  
23 premium rates and policyowner dividends as to any kind of insurance  
24 within the scope of this act, to consider the amount reasonably necessary  
25 to meet its assessment obligations under this act.

26 (h) The association shall issue to each insurer paying an assessment  
27 under this act, other than a class A assessment, a certificate of  
28 contribution, in a form prescribed by the commissioner, for the amount of  
29 the assessment paid. All outstanding certificates shall be of equal dignity  
30 and priority without reference to amounts or dates of issue. A certificate  
31 of contribution may be shown by the insurer in its financial statement as  
32 an asset in such form and for such amount, if any, and period of time as  
33 the commissioner may approve.

34 Sec. 5. K.S.A. 40-3009 and K.S.A. 2010 Supp. 40-3003, 40-3005  
35 and 40-3008 are hereby repealed.

36 Sec. 6. This act shall take effect and be in force from and after its  
37 publication in the statute book.

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