

Approved _____

3/27/89
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

The meeting was called to order by SENATOR RICHARD L. BOND at _____
Chairperson

9:00 a.m./~~p.m.~~ on WEDNESDAY, March 22, 1989 in room 529-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~: Senators Bond, Salisbury, Strick, McClure, Anderson, Parrish, Karr, Reilly, D. Kerr, and Yost.

Committee staff present:

Bill Wolff, Legislative Research
Bill Edds, Revisors Office
Myrta Anderson, Legislative Research
Louise Bobo, Committee Secretary

Conferees appearing before the committee:

Ron Todd, Assistant Commissioner of Insurance
Karen France, Kansas Association of Realtors
David Hanson, Wichita Title Association
Pat O'Rourke, O'Rourke Title Company
John McKenzie, Plaza Del Sol Real Estate
Greg Ek, Columbia Savings
Mark Meyerdirk, Meyerdirk Title Company
Jim Miner, Crown III Realty
George Burgett, Kansas Land Title Association
Bill Malone, Fidelity Title Company
Steve Shoemake, Overland Park

Chairman Bond called the meeting to order at 9:11 a.m.

HB 2497 and HB 2502

Ron Todd, Assistant Commissioner of Insurance, appeared before the committee in support of these two bills. Mr. Todd explained that the Department had received a number of complaints alleging violations of the Kansas Unfair Trade Practices Act in the sale or placement of title insurance. He further explained that, at the time, the rates for title insurance were not subject to rate regulation. As a result, legislation was introduced during the 1988 legislative session to remedy this problem. Because people in the title business were dubious that this legislation would take care of the problem, the Insurance Department worked with them in forming a Title Insurance Study Group which addressed the problems anticipated by the passage of the 1988 legislation. HB 2497 and 2502 are the result of the findings of this study group. Mr. Todd advised that either bill could stand alone but both of them are important components of the total package being developed. (attachment 1)

Karen France, Kansas Association of Realtors, appeared in qualified support of these two bills. She explained that her organization supported the provisions of HB 2497 which require rate filing of title insurance rates with the Kansas Department of Insurance. She also supports the provision of HB 2502 which requires producers of business to disclose to prospective title insurance purchasers, at the time they refer them to a title agency if they have a financial interest in the title agency to which they are referring. Ms. McClain further declared that her organization felt the 20% limitation in paragraph (f) did nothing but put illogical limits on reasonable persons who are trying to make an honest living. (attachment 2)

David Hanson, Wichita Title Associates, appeared before the committee and distributed letters from Anita Frey Real Estate, Inc., J. P. Weigand & Sons, Inc., and Matt Eck Real Estate, Inc., supporting HB 2502 in its current form--with paragraph (f) deleted. (attachments 3, 4, and 5.)

Pat O'Rourke, O'Rourke Title Company, informed the committee that if paragraph (f) were inserted back into HB 2502, it would put him out of business as he was an independently owned title insurance agency operating in Sedgwick and Butler counties. (attachment 6)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,

room 529-S, Statehouse, at 9:00 a.m./~~p.m.~~ on WEDNESDAY, MARCH 22, 1989, 19 .

John McKenzie, Plaza Del Sol Real Estate, appeared in support of HB 2502 as amended by the House. He stated that the Wichita Area Association of Realtors was in full support of the position taken by the Kansas Association of Realtors on "controlled business". Mr. McKenzie stated to the committee that the title insurance business does not want realtors in the title business. (attachment 7)

Gregory Ek, Columbia Savings, appeared in support of HB 2502 in its present form. He stated that section (f) is an attempt to limit competition in the title insurance business and that it does not benefit the consumer in any way. (attachment 8)

Mark Meyerdirk, Meyerdirk Title Company, presented to the committee written testimony of M.W. Perry, III, General Counsel of Meyerdirk Title Company. His organization supports the disclosure requirements included in HB 2502 but objects to the "controlled business" arrangements included in paragraph (f). Mr. Perry further stated in his testimony that certain terms should be clearly defined before HB 2502 is passed. (attachment 9)

Jim Miner, Crown III Realty, appeared before the committee briefly and stated that it would be unheard of "to jeopardize the sales commission on a house by doing something wrong in the title business." He further stated that his company was obligated to give full disclosure to a customer and the customer has the right to choose another company.

George Burkett, Kansas Land Title Association, announced to the committee that he supports HB 2497 and HB 2502 as originally presented with section (f) amended back into HB 2502. Mr. Burkett said some of the problems created by "controlled business" are: (1) increased costs to consumers, (2) small companies are driven out of business and (3) title companies pressure real estate closings to occur even though the title may be unmarketable. (attachment 10)

Bill Malone, Fidelity Title Company, appeared before the committee requesting the section (f) to be reinserted in HB 2502. Mr. Burkett feels that controlled business arrangements result in higher prices, major barriers for the entry of any new title business, and reducing the incentive to give good service to the customer in order to close the transaction. His organization supports these bills in their entirety and he further stated that the provisions set forth in section (f) were derived from the American Land Title Code. (attachment 11)

Steve Shoemake, Overland Park, appeared before the committee in support of HB 2502 as passed by the House. Mr. Shoemake said he understood that the Insurance Commissioner investigated the title business, not because of consumer complaints but because the title companies were upset at the new businesses being opened. Mr. Shoemake said that he had been in the title business 4½ years and "never had even one complaint." He further stated that the "controlled business" only fosters greater competition.

A brief discussion followed. A committee member requested a list of the members of the Title Insurance Study Group stating he thought that it would be helpful to the committee.

Chairman Bond announced the hearings close on HB 2497 and HB 2502. He further stated that hearings on HB 2381 and HB 2383 would be rescheduled.

The minutes of Monday, March 20, 1989 were approved on a motion of Senator Strick with Senator Salisbury seconding the motion. The motion carried.

The meeting adjourned at 10:05 a.m.

TESTIMONY BY

RON TODD
ASSISTANT COMMISSIONER
KANSAS INSURANCE DEPARTMENT

BEFORE THE

SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE
HOUSE BILL NO. 2497 AND HOUSE BILL NO. 2502

MARCH 22, 1989

*Attachment 1
Sen. F. I & I
3/22/89*

House Bill No. 2497 and House Bill No. 2502 are separate bills that can easily stand alone. The Insurance Department supports both of them and would do so independently if, for some unknown reason, one of them does not receive favorable legislative consideration. Having said that and for reasons which I hope will become clear after I give you the background of these proposals I am going to treat them as companion bills.

The history of these bills really begins in late 1986 and early 1987 when the Department received a number of complaints alleging violations of the Kansas Unfair Trade Practices Act by persons offering or receiving special inducements, rebates, or other advantages in the sale or placement of title insurance that is not generally available to others similarly situated. These allegations were the subject of an extensive investigation by the Insurance Department which ultimately resulted in the issuance of various consent orders and in some cases the assessment of monetary penalties. All of the complaints at that time originated from the same area of the state and drew the attention of the news media which, in turn, generated some significant consumer interest. To make what could be a long story short, this interest evolved because the special inducements, advantages, rebates or whatever one wants to call them gave consumers the clear impression that if title insurance transactions were lucrative enough to attract this kind of competition it seemed logical to assume that the charges for title insurance were excessive.

It is also important to understand that at this point in time, the rates for title insurance -- unlike the rates for most kinds of property and casualty insurance -- were not subject to rate regulation. As a result, House Bill No. 2955 was introduced during the 1988 legislative session and after a rather circuitous journey through the legislative process its provisions were ultimately enacted as a part of Senate Bill No. 489. However, the story doesn't stop there. While persons engaged in the real estate and/or title insurance business generally agreed that a problem existed, they also were very dubious that subjecting title insurance

rates to prior approval rate regulation would effectively address the perceived problems. Because of these questions and the apparent willingness of the title insurance industry to work toward a constructive and effective solution, the effective date of the 1988 legislation was delayed to July 1, 1989. Needless to say, the purpose of this delay was to allow the industry time to develop an alternative to the 1988 legislation prior to the time it became effective. House Bill No. 2497 is the legislative proposal that deals directly with changing the 1988 legislation but this is really only one part of a several faceted program.

To develop this program, the Insurance Department served as a facilitator by creating a title insurance study group for the purpose of considering the development of recommendations that might be a more acceptable and effective alternative than prior approval regulation of title insurance rates. The study group was comprised of the many interests involved in real estate transactions. Realtors, lenders, abstractors, title agents, title companies and others participated. A list of the members is attached to my testimony although in one or two cases the person named did not personally serve but was represented by an associate. The study group met on several occasions -- at least four times -- and some of the subgroups formed to look at particular areas held separate meetings in addition to the general sessions. Because of the disparate interests represented on the study group unanimity on a precise set of recommendations was neither expected or received. On the other hand, the following components when viewed as a whole might be as close as we can come to addressing the problem in a way that should be reasonably equitable to all concerned.

The recommendations developed by the study group call for both administrative actions by the Insurance Department and -- as evidenced by the two bills being considered today -- two legislative proposals. In total there are five components that can briefly be described as follows:

1. Develop a consumer brochure that will give consumers an opportunity to be better informed title insurance buyers and serve as a shopper's guide by displaying the charges made for services by title insurance companies, agents and agencies.

2. (House Bill No. 2497) Amend the 1988 legislation to remove the prior approval rate regulation requirements that would be applicable to title insurance July 1, 1989 and require only that rates for services provided by title companies, agents and agencies be filed. These filings would be used as the basis of the charge comparisons included in the shopper's guide.

3. Adopt a regulation that would add specificity to the current statute (K.S.A. 40-2404(14)) dealing with unfair or special inducements. Such specificity would consist of enumerating various acts and arrangements that would be specifically prohibited.

4. (House Bill No. 2502) Enact basic controlled business prohibitions and disclosure requirements in the Kansas Unfair Trade Practices Act. This basic enabling legislation would then be complemented by necessary definitions and details by means of an administrative regulation. Other conferees will or can provide a more in-depth discussion of what we mean by the term "controlled business" but generally it is used to describe a situation where a person can direct or cause a prospective purchaser to be directed to a title insurance agent or company in which the person making the referral has a financial interest.

5. If House Bill No. 2502 is enacted, adopt an administrative regulation that would contain the definitions and details necessary to make the requirements and prohibitions relating to controlled business more effective.

As I said at the outset, each of the two bills you are considering can stand alone but both of them are important components of the total

package being developed. Consequently, we hope you will give both bills your favorable consideration.



Executive Offices:
3644 S. W. Burlingame Road
Topeka, Kansas 66611
Telephone 913/267-3610

TO: THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE
FROM: KAREN MCCLAIN FRANCE, DIRECTOR, GOVERNMENTAL AFFAIRS
DATE: MARCH 22, 1989
SUBJECT: HB 2497 and HB 2502

On behalf of the Kansas Association of REALTORS®, I appear today to support HB 2497 and HB 2502 and oppose part of it.

I represented our association as a member of the Title Insurance Study Group which examined this issue last summer and fall. The Kansas Association of REALTORS® feels that disclosure of information is the best solution to the problems which the Department of Insurance seeks to remedy here. We have begun to recognize that, if there was more disclosure of known, factual information in a lot of business transactions, then perhaps we could all save ourselves from a lot of headaches. The problems being addressed here seem to be no different.

We support the provisions of HB 2497 which require rate filing of title insurance rates with the Kansas Department of Insurance. Making the rates public information will assist in insuring that the buying public can shop around for title insurance if they choose to. They will also be able to shop comparable rates among companies with confidence that they are being treated the same way as the customer before or after them if they are buying title insurance in the same category.

We also support the provision in HB 2502 on page 7 paragraph (e) which requires producers of business to disclose to prospective title insurance purchasers, at the time they refer them to a title agency, if they have a

*Attachment 2
Sen. F. I. + I
3/22/89*

financial interest in the title agency which they are referring. This puts purchasers on notice of any financial connection between the two entities and if it bothers the purchaser that there is a financial connection, then they can choose to go somewhere else.

In conjunction with the rate filing requirement of HB 2497, we feel this disclosure process will prevent the problems which precipitated the legislation last year from occurring.

We feel the provision in paragraph (f) on page 7 was appropriately stricken by the House committee. We feel it did nothing to solve the problems being addressed here and, in fact, it was an unnecessary restraint of trade. In the meetings I attended this summer, there was no evidence presented from which a reasonable person could draw the conclusion that consumers were somehow being ripped off or paying higher prices simply because a producer of business has an interest in a title insurance agency. The practice of producers of business having a financial interest in the title business is perfectly legal, yet it seems some are trying to make it out to be dangerous to the public. This kind of relationship is only a matter of two businesses having a business relationship which is mutually beneficial.

We feel that the filing and disclosure requirements will go far in making it easier for title insurance shoppers to shop. If title companies where controlled businesses are involved charge more than whatever the going rate is in town, it will be blatantly obvious and the purchasers can go somewhere else for a better rate if they choose to. The 20% limitation in paragraph (f) did nothing but put illogical limits on reasonable men who are trying to make an honest living.

We ask that you pass HB 2497 and HB 2502 as presented to you today.

Thank you for your consideration.

March 21, 1989

Chairman, Vice-Chairperson and Members
Senate Financial Institutions and Insurance Committee
State of Kansas

This letter is to urge you to pass House Bill No.2502 in it's present form.

If sub paragraph F should be reinstated in this bill, the results will certainly be restraint of trade and force Wichita Title Associates out of business.

Wichita Title Associates was formed by two lending institutions, a title company and five real estate sales companies (of which we are one). Before the formation of this corporation, attorneys' opinions regarding the legality on both state and federal levels were obtained along with an informal letter of opinion from the Kansas Insurance Department which approved the structure of Wichita Title Associates.

This company was formed as an extension of service that we now provide to both buyers and sellers. All sales agents are independent contractors, and as such, are at liberty to direct business wherever they desire; consequently, business will be placed where the best service is rendered and cannot be controlled.

I respectfully request that you vote against including sub paragraph F in House Bill No. 2502.

Very truly yours,

ANITA FREY REAL ESTATE, INC.
BETTER HOMES AND GARDENS



Anita Frey
President

AF:lls

J.P. Weigand & Sons, Inc. - Realtors

East Office: 650 N. Carriage Parkway Suite 170 Wichita, Kansas 67208
(316) 666-7281

March 20, 1989

Chairman, Vice Chairperson & Members,
Senate Financial Institutions & Insurance
Committee State of Kansas

Please accept this letter as our company's position regarding House Bill #2502. We DO NOT OPPOSE House Bill #2502 in its present form. We would be in opposition to this bill if paragraph 14, subparagraph F, restricting outside businesses from entering the title business. We strongly feel paragraph 14, subparagraph F, a restraint of trade.

Thank you for your consideration.

Sincerely,



Barry West
Vice President and General Manager
J.P. Weigand & Sons, Inc.
Residential Services Division
Wichita, Kansas 67208

Attachment 4
Sen. FF + I
3/22/89



RESIDENTIAL • COMMERCIAL • INDUSTRIAL • INVESTMENT • FARM & RANCH • COUNSELING

ESTABLISHED 1902



MATT ECK REAL ESTATE, INC.

5512 W. Central
Wichita, Kansas 67212
(316) 942-7402

March 20, 1989

Chairman, Vice-Chairperson and Members
State Financial Institutions and Insurance Committee
State of Kansas
Topeka, Kansas

Please accept this letter as our company's position regarding House Bill #2502. We DO NOT OPPOSE House Bill #2502 in its current form. Prior to passing the House of Representatives (when it was originally submitted) paragraph 14, subparagraph F would have virtually eliminated an existing title company in the Wichita area, in which I have invested and own stock. Before subparagraph F was deleted, House Bill #2502 clearly restricted (to a very small cross section) those^{who} could be in the title insurance business. It was an obvious and blatant restraint of trade, and furthermore, almost insured that no more title insurance companies could ever be formed; consequently the consumer would pay more for title insurance premiums because of a lack of competition. Therefore, if subparagraph F were reinserted, the title company I invested in, Wichita Title Associates, would be driven out of business just because of this legislation.

Prior to my investing in this title company, numerous attorneys' opinions were obtained with regard to the legality on both the state and federal level of a company of this type. We also submitted lengthy documentation to the Kansas Insurance Department and received an informal written opinion letter which approved the structure of this company. Without this approval letter, Wichita Title Associates would never have been formed nor would the investment have been made.

In it's prior form, passage of House Bill #2502 would have resulted in an unconstitutional taking of one's property without due process of law. Wichita Title Company does not charge any more for its services than any other independently owned title agency. It is my opinion that the involvement of the real estate and lending community in Wichita Title Associates enhances the service level to the consumer because of their rapport with the buyers and sellers of real property in this area.

Chairman, Vice-Chairperson and Members
State Financial Institutions and Insurance Committee
March 20, 1989
Page 2

The only people wanting subparagraph F reinserted into this bill are a few existing title companies who want to legislate away any future competition. That most certainly goes against the good "American" way of "Free Enterprise" and the very healthy, competitive business environment.

For the above reasons, we strongly urge you to pass House Bill #2502 in its present form.

Respectfully submitted

CENTURY 21 MATT ECK REAL ESTATE, INC.



Matt Eck
President

ME:pe

O'ROURKE TITLE COMPANY

March 16, 1989

Chairman, Vice-Chairperson and Members
Senate Financial Institutions and Insurance Committee
State of Kansas

Please accept this letter as our company's written position regarding House Bill #2502. We do not oppose House bill #2502 in it's current form. Prior to passing the House of Representatives (when it was originally submitted) paragraph 14, subparagraph F would have virtually eliminated an existing title agency in the Wichita area which is an affiliate of ours. O'Rourke Title Company is an idependently owned title insurance agency operating in Sedgwick and Butler County, Kansas. While I have been in the title business since 1975 in both Kansas and Texas, O'Rourke Title Company was formed in April of 1987. Before subparagraph F was deleted, House Bill #2502 clearly restricted (to a very small cross section) those who can be in the title insurance business. It was an obvious and blatant restraint of trade.

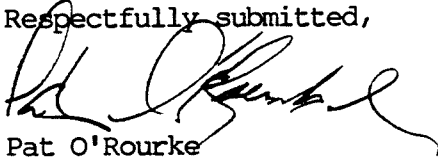
O'Rourke Title Company has an ownership interest in Wichita Title Associates, Inc. which is a title agency operating in Sedgwick County, Kansas with eight shareholders. O'Rourke Title Company has made a substantial investment in title plants, computerization, furniture and fixtures, long-term leases, and other assets necessary to operate a title agency based on it's relationship with Wichita Title Associates, Inc. If subparagraph F were reinserted, Wichita Title Associates, Inc. would be driven out of business through this legislation and it would in turn have a devastating affect on O'Rourke Title Company. While the two previously mentioned companies are in essence competitors for business, they are affiliated through a title production service agreement and ownership. Prior to the formation of Wichita Title Associates, Inc. numerous attorney opinions were procured with regard to the legality on both the state and federal level of a company of this kind. We also submitted lengthy documentation to the Kansas Insurance Department and received an informal written opinion letter which approved the structure of this company (copy attached). Without this approval letter, Wichita Title Associates, Inc. would never have been formed nor would the investment have been made. There has been close to \$500,000.00 invested by the shareholders of Wichita Title Associates, Inc. and O'Rourke Title Company which would no doubt be lost of subparagraph were reinstated. In it's prior form, passage of this law would have resulted in an unconstitutional taking of one's property without due process of law.

*Attachment 6
Sen. F. I. & I
3/22/89*

Wichita Title does not charge any more for it's services than any other independently owned title agency. Attached is a composite of the local charges. It is my opinion that the involvement of the real estate and lending community in Wichita Title Associates enhances the service level to the consumer because of their repoire with the buyers and sellers in this area. O'Rourke Title Company has no objection with filed rates, full disclosure of all charges, disclosure of ownership, and the ability of the buying and selling public to choose the company of their preference.

For the above reasons, we strongly urge you pass House Bill #2502 in it's present form.

Respectfully submitted,



Pat O'Rourke
President

Enc.

PEO/dl



STATE OF KANSAS

KANSAS INSURANCE DEPARTMENT

420 S.W. 9th
Topeka 66612-1678 913-296-3071

1-800-432-2484
Consumer Assistance
Division calls only

FLETCHER BELL
Commissioner

June 21, 1988

Mr. Mark Meyerdirk
O'Rourke Title Company
Centre City Plaza
151 N. Maine, Suite 150
Wichita, KS 67202

Wichita Title Associates

Dear Mr. Meyerdirk:

This will acknowledge receipt of your proposed Title Production Service Agreement submitted with your letter of explanation dated June 13, 1988, relative to the above captioned matter.

As advised in our letter of January 25, 1988, this Department has offered to review your proposed business plan, the structure of the proposed ownership group, and the proposed Title Production Service Agreement and provide an informal opinion relative to whether or not your proposal violates K.S.A. 40-2403 as defined by K.S.A. 40-2404(14). We wish to advise that such arrangements, at this time, are not subject to our review and approval in the same manner as forms and rates for many lines of insurance. (See e.g. K.S.A. 40-216 and K.S.A. 40-1113.) We are currently performing this service in an effort to provide additional clarification with respect to the relevant portion of the Kansas Unfair Trade Practices Act. This letter is not intended to be interpreted as an administrative regulation or rule. Rather, it is an informal expression of our opinion of your proposed arrangement based upon the information submitted. As an administrative agency, we do not have authority to make a legally binding determination with respect to a proposed arrangement as opposed to a determination based upon investigated facts. Should the activities outlined in your letter correspond to actual subsequent facts, this letter would be a reflection of our probable position regarding investigation and enforcement of the Act.

According to our understanding of your proposal, Wichita Title Associates would be owned by a combination of real estate companies, lending institutions and O'Rourke Title Company ("O'Rourke"). Thus, the owners of Wichita Title Associates are in a position to refer or otherwise influence the purchase of title insurance. You have indicated that Wichita Title Associates would do business either as a corporation or limited partnership. As discussed in our telephone conversation of June 21, 1988, we are declining to provide an opinion with respect to a limited partnership without the identity of the proposed general partner. Therefore, this opinion is based upon the assumption that Wichita Title Associates will be formed either as a corporation or a general partnership. Stock or partnership interests would be issued

INSURANCE DEPARTMENT

Topeka

Mr. Mark Meyerdirk

Page 2

June 21, 1988

based upon the percentages indicated in Exhibit No. 1 to your letter, and the entity would be capitalized on the basis of cash contributions from the respective owners according to these same percentages.

We also understand that O'Rourke would enter into a Title Production Service Agreement with Wichita Title Associates, upon its qualifying to do business through licensed title insurance agents (as a licensed agency subsequent to May 1, 1989), to perform those services outlined in Section 1 of the Agreement. Specifically, O'Rourke would contract to perform delivery service, title chaining, preliminary title examination, and recording services in exchange for compensation based upon the fixed fee in the amount of \$225 per title search package. In addition, O'Rourke would also lease certain computer services to Wichita Title Associates in connection with performing the services described above. Since specific financial information has not been provided with respect to the internal cost of maintaining the computer equipment and software, this letter does not address that particular aspect of your proposed plan.

According to your letter of June 13, 1988, the following services represent the indicated percentages of O'Rourke's expenses:

<u>Function</u>	<u>Percentage</u>
Chain of Title	25%
Preliminary Title Exam	15%
Recordation	10%
Delivery Service	5%
Total	<u>55%</u>

You have indicated that O'Rourke's average cost per title order associated with policies issued directly to the public equals approximately \$242 for the period from April 1, 1987, through March 31, 1988, and your projected average profit per policy equals approximately \$115.98 (exclusive of premiums, as defined by K.A.R. 40-1-9(a)(1)(D), and nonproduction expenses such as taxes, depreciation, interest, travel and entertainment, dues and subscriptions, and advertising and promotion).

It is our position that the charges for performing services under this type of arrangement must be consistent with the expenses and profit associated with performing those same services in connection with policies issued directly to the public. Thus, using the figures you have supplied us, it appears the minimum average charge for O'Rourke under the Title Production Service agreement would equal 55% of \$242 plus 55% of \$115.98, or \$196.89 per title search package.

INSURANCE DEPARTMENT

Topeka

Mr. Mark Meyerdirk

Page 3

June 21, 1988

Based upon the financial information, services listed in the proposed Title Production Service Agreement, and the percentages assigned to each individual function, it appears your proposed plan does not violate K.S.A. 40-2403 as defined by K.S.A. 40-2404(14), provided the charges for the services set forth in the agreement are not less than \$196.89 per title search package. The contractual arrangement you have proposed would appear to fall within the "safe harbor" exception to the Kansas Unfair Trade Practices Act, as provided in K.S.A. 40-2404(14)(c)(i). Obviously, any material changes in O'Rourke's expense or profit factors or any material change in the relative percentages assigned to these functions will necessarily affect the appropriate minimum charges under the Title Production Service Agreement.


It appears that lending institutions and real estate companies fall within the respective definitions of "mortgage lender" and "real estate broker" described in K.S.A. 40-2404(14)(b). It further appears that the proposed ownership structure of Wichita Title Associates, and the distribution of dividends or general partnership profits, would not per se violate K.S.A. 40-2404(14)(a) and (b) provided, and to the extent, the Title Production Service Agreement does not change and dividends or general partnership profits are paid as a return on ownership and not in any way related to or otherwise based upon referrals of title insurance business. Distribution of dividends or general partnership profits related to or otherwise based upon the referral of title insurance business would probably result in a violation of the Act.

As we have discussed, the confidentiality of the information contained in this file is controlled by the Kansas Open Records Act, K.S.A. 45-215 through K.S.A. 45-223.

We trust the above comments are responsive to your inquiry.

Very truly yours,

Fletcher Bell
Commissioner of Insurance



Timothy G. Elliott
Supervisor and Attorney
Consumer Assistance Division

TGE:dbc
3821



STATE OF KANSAS

KANSAS INSURANCE DEPARTMENT

420 S.W. 9th
Topeka 66612-1678 913-296-3071

1-800-432-2484
Consumer Assistance
Division calls only

FLETCHER BELL
Commissioner

July 21, 1988

Mr. Mark A. Meyerdirk
O'Rourke Title Company
Centre City Plaza
151 North Main, Suite 150
Wichita, KS 67202

Wichita Title Associates, Inc.

Dear Mark:

This will acknowledge receipt of your letters dated July 18, 1988, and attachments in regard to the captioned matter.

As requested, we have reviewed the executed Title Production Service Agreement dated July 15, 1988, and have formed the opinion that it does not differ materially from the proposed Title Production Service Agreement which accompanied your letter dated June 13, 1988. Therefore, the comments contained in our letter dated June 21, 1988, are also applicable to the executed Agreement.

We appreciate this opportunity to be of service.

Very truly yours,

Fletcher Bell
Commissioner of Insurance

Timothy G. Elliott
Supervisor & Attorney
Consumer Assistance Division

TGE:dbc
3671

COMPOSITE TITLE INSURANCE RATES

WICHITA TITLE COMPANIES

	<u>\$30,000</u>	<u>\$60,000</u>	<u>\$100,000</u>	<u>\$175,000</u>
COLUMBIAN TITLE	\$280.00	\$420.00	\$575.00	\$740.00
FIDELITY TITLE	\$282.00	\$422.00	\$577.00	\$744.00
LAWYERS TITLE	\$278.00	\$424.00	\$578.00	\$751.00
O'ROURKE TITLE	\$282.00	\$422.00	\$577.00	\$744.00
REALTY TITLE	\$282.00	\$422.00	\$577.00	\$744.00
SECURITY TITLE	\$282.00	\$422.00	\$577.00	\$744.00
WICHITA TITLE	\$282.00	\$422.00	\$577.00	\$744.00

John McKenzie

March 16, 1989

Senate Financial Institutions and Insurance Committee
State Capital Building
900 Jackson Street
Topeka, KS 66612-1220

The Honorable Richard L. Bond, Chairman
The Honorable Alicia L. Salisbury, Vice-Chairperson

The Honorable: Dave Kerr
Jerry Moran
Ed Reilly, Jr.
Eric Yost
Gene Anderson
Jerry Karr
Janice McClure
Nancy Parrish

RE: HB 2502 (amended)

My name is John McKenzie and I am President of the Wichita Area Association of Realtors and Co-Owner of Plaza Del Sol Real Estate, Inc. in Wichita. I would like to encourage your support of HB 2502 as amended eliminating paragraph 14 subparagraph F of previous unamended house bill. First, let me say, I speak for the Wichita Association in full support of the Kansas Association of Realtors' position on "controlled business". For arguments sake, I prefer to use the term "supplier of business". "Controlled business" has a negative connotation meaning "forced or co-erced". In both instances, such is not the case. If a supplier of business has a financial interest in a title insurance company, he or she should disclose that interest. Additionally, the consumer should be given an opportunity to make a choice of where that insurance should go, and all charges associated with the cost should be disclosed. We wholeheartedly agree on this premise.

*Attachment 7
Sen 7 I & I
3/22/89*

Currently, we at Wichita Title Associates in Wichita abide by all of the above, and in no way mandate to the consumer on what they should do. HB 2497 mandates the filing of rates with the state insurance commission and that no person shall be allowed to charge rates that have not otherwise been approved by the state. We applaud this bill and again wholeheartedly support it.

HB 2502 has some components of agreement, namely that any financial interest should be disclosed. On that subject, we agree. We totally disagree on the previous insertion of subparagraph F with the mystical figure of no more than 20% of the gross operating revenue generated by a supplier of business can come from the supplier of that business. Are we to understand that it is "OK" to produce 20% or less of that business but no more! Are we to understand that "suppliers of business" who have a financial interest in a title company must be restricted on how much they can contribute to that business because it protects the consumer. Ladies and gentlemen, who are we kidding? Because of those who have taken a position of trying to keep us from entering this business, they and only they are threatened by our existence, NOT the consumer.

In September of 1988, Wichita Title Associates, Inc., were approved to operate in the State of Kansas by the Kansas Insurance Department. The composite make up of this corporation consists of suppliers of business. If HB 2502 is approved with the reemergence of subparagraph F, it would eliminate the very existence of Wichita Title Associates, Inc. Any approval of this bill placing an arbitrary restriction of 20%, 30%, 40% or 98% would be a restraint of trade.

We ask that you vote YES to HB 2502 as amended and approved
by the House of Representatives.

Thank you,

John McKenzie, CRB
Plaza Del Sol Real Estate, Inc.
President, Wichita Area Association of Realtors

Columbia Savings

A F E D E R A L A S S O C I A T I O N

March 22, 1989

Distinguished Members of the
Senate Financial Institutions/Insurance Committee
State of Kansas
Topeka, Kansas

Dear Senators:

I am writing to you today urging you to vote in favor of House Bill #2502 in its present form. Columbia Savings is a stockholder of an existing title insurance company (Wichita Title Associates), and we believe this bill reinforces federal law (The Real Estate Settlement Procedures Act) which protects the consumer from being forced into a controlled business arrangement. We strongly support legislation to disclose properly to the consumer the financial interest of the producer of title business or associate referring the title insurance business. Attached is a copy of our disclosure form we use whenever our customer desires using Wichita Title Associates for their title insurance needs.

There has been an attempt by some existing title companies in Kansas to add language to this bill limiting the amount of business referred to a title company by its stockholders. We believe this effort is an attempt to limit competition in the title insurance business. If service and pricing is competitive and the consumer has the right to select their title insurance company, then why should limits be placed on a title company for referrals from their stockholders? If a person owns a real estate company as well as an insurance agency, does Kansas law prevent that individual from selling insurance to a consumer who also purchased a home from that same person? The answer is obviously, no.

We believe House Bill #2502 is good legislation in its present form. Any attempt to add language to change the purpose of the bill (protecting the consumer) should be avoided. Thank you for your consideration of our position.

Sincerely,



Gregory E. Ek, Senior Vice President
Wichita Region Manager

GEE/mkn
attachment

*Attachment 8
Sen FI + I
3/22/89*

NOTICE OF FINANCIAL INTEREST
(Pursuant to 24CFR Sec. 3500.15(b))

Please be advised that Columbia Savings Association, F.A. is the sole owner of Financial Insurance Services Limited which has an ownership and financial interest in Wichita Title Associates, Inc. The charges generally made by Wichita Title Associates, Inc. for owner's and loan policies of title insurance as described on lines 1108 and 110 of the HUD-1 Settlement Statement are approximately the same as shown on the written estimate of charges provided with this disclosure, which is being made prior to the time of the referral of the title insurance order. You are not required to use any particular provider of title insurance, and may designate the provider of your choice. Unless otherwise specified in writing Columbia Savings Association, F.A. is authorized to secure title insurance from Wichita Title Associates, Inc. on the basis of the estimated charges.

Borrower's Initials

Borrower's Initials

WITNESSED:

Loan Officer's Initials

STATEMENT OF M. W. PERRY, III TO HOUSE
COMMITTEE ON INSURANCE CONCERNING
HOUSE BILL NO. 2502

Ladies and Gentlemen:

I am currently Senior Vice President and General Counsel of Meyerdirk Title Company, an agent for Stewart Title Guaranty Company in Kansas City. Over the last ten years I have served as Vice President and General Counsel of Coldwell Banker Residential Real Estate in Kansas City and President of Coldwell Banker Title Services, Inc., a wholly owned subsidiary of Coldwell Banker Residential Real Estate. I also served as a member of the Kansas Real Estate Commission from 1982 to 1986. I am currently a licensed attorney and real estate broker in the State of Kansas.

In these various capacities I have had the opportunity to observe the phenomenon known as "controlled business" from the points of view of an attorney, a real estate broker, a real estate commissioner and a title insurance agent.

House Bill No. 2502 would amend K.S.A 1988 supp. 40-2404 by adding subparagraphs 14(e), (f) and (g). Paragraph 14(e) provides for disclosure of certain financial interests and paragraph 14(f) contains restrictions on title business derived from "controlled business" arrangements.

Before proceeding further I would like to point out that the proposed amendments contain several terms which are not defined. Those are:

1. "Producer of Title Business"
2. "Associate"
3. "Financial Interest"
4. "Controlled Business"

If this legislation is to be passed I would suggest that the above terms need to be clearly defined.

*Attachment 9
Sen. F. I. I*

3/22/89

HOUSE BILL 2502

We favor the disclosure requirements contained in paragraph 14(e). These are very similar to the disclosures required by the Federal Real Estate Settlement Procedures Act (RESPA) which as a practical matter applies to a great majority of today's real estate transactions because they involve federally insured or administered loans. The addition of this provision would extend RESPA type disclosure requirements to all transactions in which title insurance is involved.

We oppose the restrictions on so called controlled business arrangements contained in paragraph 14(f) of House Bill 2502. Before passing legislation which restricts or prohibits certain classes of persons or entities from engaging in certain types of businesses, one would hope that the sponsors of the legislation and the legislature would have determined that there is something occurring which is either clearly illegal, or detrimental to such a degree, that it must be made illegal. This determination should be based upon facts, not mere speculation.

Numerous theoretical arguments have been offered as support for prohibitions on controlled business arrangements. The most frequent are:

1. Prices to consumers will be increased.
2. The quality of the product will be lowered.
3. The quality of the service will be lowered.
4. There will be market foreclosure to existing competitors and barriers to entry.

I would submit to you that there is absolutely no evidence to support any of these propositions.

HOUSE BILL 2502

There has been no evidence either on a national level or in Kansas to support the conclusion that prices to consumers will be increased or that the quality of the product or service will be lowered. Indeed, a Pete, Marwick and Mitchell study completed in connection with a HUD Report to Congress in 1981 rejected as unpersuasive, the American Land Title Association's contention that controlled business arrangements lead to higher prices and a lower quality of title insurance product. This conclusion came after an intensive three year study on the subject. This report also found that consumers would not necessarily benefit from the elimination of controlled business arrangements. Here in Kansas there is certainly no evidence of higher prices or lower quality of product or service as a result of controlled business arrangements. To the contrary the prices of the controlled business agencies would appear to be very competitive.

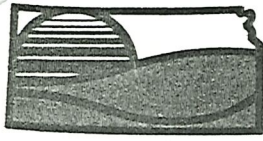
The arguments that there will be market foreclosure to existing competitors by controlled business arrangements is somewhat ironic. Market foreclosure to lenders, brokers and all other real estate professionals is what passage of this bill would accomplish. There are many professional opinions stating that controlled businesses are not anti-competitive, but rather have a positive effect on competition. You need only look at the yellow pages in the Kansas City phone book to see that there are over 20 title insurance agencies engaged in business in Johnson County, Kansas today. This number has grown steadily over the last ten years despite the existence of controlled business entities.

The suggestion has been made that the anticipated domination of the marketplace by controlled business arrangements has forced other agencies to violate the current laws prohibiting rebates and other inducements in title insurance. Those other agencies would have you believe that if you outlaw some of their competition they will start abiding by the current laws. This suggestion is ludicrous. The way to deal with those violating current laws is to enforce those laws, not appease the violators by removing a restricting healthy competition.

HOUSE BILL 2502

It is up to you, the lawmakers, to determine how business is to be conducted in this State. In doing so you must consider the impact of your actions on existing legitimate business operations. There are numerous controlled business arrangements currently operating in Kansas which are perfectly legal under the present law. The owners and operators of these businesses have invested their time and money in reliance upon the law as it has existed for many years. Were you to put them out of business completely by the passage of this bill it would be tantamount to taking their property without due process of law. If you decide that a prohibition or restriction of controlled business arrangements is appropriate, I would suggest that you consider a grandfathering provision which would permit continuation of those legitimate existing controlled business arrangements.

Thank you for the opportunity to speak to this issue.



KANSAS LAND TITLE ASSOCIATION

George E. Burket III
President
P.O. Box 375
Kingman, KS 67068

Wilmetta Anderson
Vice-President
P.O. Box 1508
Garden City, KS 67846

John M. Bell
Secretary-Treasurer
434 N. Main
Wichita, KS 67202



March 22, 1989

PRESENTATION TO THE SENATE FINANCE AND INSURANCE COMMITTEE
March 22, 1989

By: George E. Burket III, President
Kingman Abstract and Title Co., Inc.
221 North Main Street
Kingman, Kansas 67068

and,

President of The Kansas Land Title Association,
The Professional Trade Association for Licensed Abstracters,
Title Insurance Agents, and Title Insurance Underwriters
operating in the State of Kansas.

The Kansas Land Title Association SUPPORTS House Bill 2497, and House Bill 2502 as originally introduced and without section (f) being deleted. It is our opinion that both of the bills should be treated as companion bills and that section (f) should be amended back into House Bill 2502 and that both should be enacted into law, along with the Administrative Regulations proposed by the Kansas Insurance Commissioner and the Title Insurance Study Group.

The foregoing bills are an outgrowth of numerous complaints made to the Kansas Insurance Commissioner by consumers and title industry representatives about certain consumer abuses taking place in the marketplace and certain unfair trade practices taking place in the title industry.

It is the opinion of our Association that most, if not all of the complaints stem from, and are related to, certain controlled business activities being engaged in by a very small, but increasing number of title insurance agencies and title insurance underwriters operating in Sedgwick and Johnson County, Kansas.

Controlled Business in the title insurance industry is not new. It has appeared in various other states and in each case has been met with varying degrees of state regulation. It typically arises and originates whenever a title insurance agent or title insurance underwriter seeks to enter a given marketplace very rapidly and capture a major portion of the title insurance business, and does so by discounting established ethical standards and induces producers of title insurance business,-- that is real estate brokers, lenders, etc., to purchase an interest in the title company with the understanding that financial rewards and dividends will accrue from business given the title company and essentially, the more business delivered, the more income derived.

*Attachment 10
Sen. F I + I
3/22/89*

EXECUTIVE COMMITTEE

FIRST DISTRICT
Betty Jean Elliott
Hill City

Charles G. Stewart
Oakley

SECOND DISTRICT
John W. Dozier, Jr.
Topeka

John E. Kerwin
Olathe

THIRD DISTRICT
Gary E. Schmitz
Mound City

Jim A. Marshall
Independence

FOURTH DISTRICT
Richard Knowles
El Dorado

Bill Regier
Newton

FIFTH DISTRICT
Janice S. Tittel
Ness City

H.T. Taylor
Larned

EX-OFFICIO
Steven Lewis
Oswego

DISTRICT CHAIRMEN

FIRST DISTRICT
Robert Schibi
Hays

Karen Metcalf
Oberlin

SECOND DISTRICT
Mary Rogge
Topeka

Steven Kimball
Westmoreland

THIRD DISTRICT
Carol Foltz
Garnett

Virginia Banning
Sedan

FOURTH DISTRICT
R.J. Uplinger, Jr.
Great Bend

Randall Barbour
Winfield

FIFTH DISTRICT
David Taylor
Dodge City

Joan M. Shirley
Scott City

**EDITOR,
KANSAS ABSTRACTER**
John M. Bell

The problems created by controlled business arrangements are many, but the most obvious and well recognized are:

1. Increased costs to consumers. Studies have shown that fees charged by controlled business entities usually start out, at or below competitive market prices and then, in very short time, rise far in excess of competitive prices when the producer-investors desire a higher return on their investment and no incentive is present to keep the prices down.

2. Title companies that do operate in the competitive market place are either driven out of business or forced into engaging in unfair trade practices in order to survive as competition against a controlled business entity is virtually impossible.

3. Title insurance underwriting standards drop and losses occur because the producer owners of the title companies require real estate closings to occur, for their own economic interests, when often time prudent industry standards would require that closings not occur due to unmarketability of title.

THE KANSAS LAND TITLE ASSOCIATION strongly endorses and supports the AMERICAN LAND TITLE ASSOCIATION's position that CONTROLLED BUSINESS PRACTICES are harmful and highly detrimental to consumers and title industry representatives. I would like to offer as support for my testimony, the American Land Title Association "White Papers Report" entitled "The Controlled Business Problem in the Title Insurance Industry", dated November, 1979. On page 51 of this report, it is stated---The conclusions that have been reached regarding the impact of controlled business arrangements were best summarized by the Michigan Insurance Commissioner following a review of the same by his Department and are as follows:

"The findings and conclusions by various executive, legislative, and judicial branches of Federal and State Governments and the results of the Insurance Bureaus investigation have caused me to recognize that permitting real estate brokers to own or control a licensed title insurance agency for the purpose of channeling title insurance business is detrimental both to the consumer of title insurance and to actual and potential competition in the title insurance market. . .The anti-competitive nature of such arrangement is obvious and widely acknowledged. Its effect on the title insurance industry and consumers can only be harmful."

The ALTA White Papers Report concludes with the following comment:

"The title industry is at an important crossroad. If the problems posed by the growth of controlled business arrangements are not effectively confronted in the near future, competition in the industry will take a turn---perhaps irreversible---away from the consumer and in a direction that will primarily serve the interests of controllers of business. The inevitable consequences of the failure to channel competition into consumer-oriented directions will be a less competitive, highly concentrated, vertically integrated industry---a consequence that clearly is not in the national interest."

IN CONCLUSION, I would like to thank you for having the opportunity to appear before you today in a matter which we believe is very important to the real estate consumer and the title insurance industry. We ask that you amend section (f) back into House Bill 2502 and then pass both House Bill 2502 and 2497 out of Committee. The provisions set forth in section (f) are derived from the American Land Title Association Model Title Code which has been approved by the National Association of Insurance Commissioners (NAIC). The enactment of this proposed legislation will not force those engaged in controlled business activities out of business, but will only cause them to compete in the marketplace on a level playing field and allow the consumer a fair deal.

My name is William G. Malone of Wichita, Kansas. I am a licensed Asbtracter in Sedgwick County and Butler County for over 30 years. I am President of Fidelity Title Company which was founded in 1925 by my Father, Frank T. Malone, about the time of my birth.

So I can state I have been in the land title business all my life.

Fidelity Title is not owned, controlled or indebted to any title insurance underwriter. In fact, we are a multi-agency company representing today three major title insurance companies.

Attachment 11
Sen. F.I. & I
3/22/89

The Honorable Fletcher Bell, Commissioner of Insurance, invited me together with other industry people to assist his office in a study group for the purpose of more acceptable and effective regulations as mandated by the Legislature.

From my knowledge and experience, it is common knowledge that buyers and sellers of real estate properties, particularly residential properties, who must pay for the required commercial title insurance seldom make a conscious selection of a title insurance based upon comparisons of product cost, quality, service or protection. But the selection is made by their Agent or representative. Now, while this Agent has a fiduciary relationship to his client, the opportunity for enrichment may put a higher order of priority on the placement of the title order than the best product in terms of cost, protection or service.

Controlled business arrangements inevitably result in higher prices for the title services.

The Controlled Agency is effectively insulated against any competition; therefore, no incentive to reduce prices.

The competitors among the title insurance underwriters to secure the controlled agencies foster more non-competitive agencies with no incentive to reduce prices or even hold prices level.

The controlled business arrangements create major barriers for the entry of any new title insurance underwriter or agency even if they provide a better product, service or lower price.

Lastly, the growth of controlled business arrangements lead to increased prices for the independent agency as it must charge higher prices for its services to survive or it must let its service decline or its product decline.

My knowledge and experience has shown me over the years that controlled business arrangements have reduced the incentive to provide continuous high quality services. In fact, the incentive is to minimize title related problems in order to consummate the transaction.

I respectfully request your support for reinsertion of the Section 14, paragraph (f) into the House Bill 2502 before you now.