

Approved: March 5, 1996
Date

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Chairperson Bill Bryant at 3:30 p.m. on February 22, 1996 in Room 527S-of the Capitol.

All members were present except: Representative Delbert Crabb
Representative Tom Sawyer

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

Conferees appearing before the committee: Karen France, Kansas Association of Realtors
Mike Weigand, Realtor from Wichita
Delores Dalke, Hillsboro
Rich Henry, CEO, Prudential Summerson-Burrows
Roy Worthington, Legislative Chairman, Title Insurance Cos.
John M. Bell, Wichita

Others attending: See attached list

Hearing on HB 2244 - Title insurance, requiring certain disclosures and prohibiting certain transactions

Karen France, Director of Governmental Affairs for the Kansas Association of Realtors, explained that a "controlled business" title company is a business owned by persons in a position to produce business for that title company who cannot have more than 20% of its business come from its owners (Attachment 1). This legislation which was enacted in 1989 to protect "independent" title companies from competition, because one of those title companies which had been created to provide better, faster service to customers grabbed nearly 25% of the market share in Wichita. Competition is always in the best interest of the consumer and this legislation stifled that incentive. Research has shown that controlled businesses (title insurance) do not appear to charge significantly higher prices for services. Such controlled business arrangements in the marketplace has not reduced the number of title companies in other areas. Consumers are demanding value and convenience and are better served by offering brokerage, title and closing services under one roof rather than having to deal with multiple individuals. If one of the offered services is not of the best value or competence, all services offered by the business will suffer. A controlled business title company must have underwriters insure their title policies so shoddy title work would not be tolerated. Mrs. France requested that Kansas remove the percentage limitations completely either by phasing in the limitations over a four year period or all at once thus allowing the streamlining of home purchasing.

During Committee discussion the option of repealing the existing legislation was mentioned which would allow the marketplace to take over. Most CBA's are located in Sedgwick and Johnson Counties. Mrs. France agreed to pursue the question of how much title business is **not** produced by real estate people in the Wichita area.

Mike Weigand, realtor from Wichita, reminded the Committee that the "Controlled Business Bill" passed in January of 1989 caused the closure of seven title insurance companies in Johnson County. In response to this legislation an increase in rates of some of those companies which remained in business went into effect within 30 days in the Wichita area (Attachment 2). The federal government via RESPA endorses supplier-owned title companies. Kansas has the most restrictive laws in the United States regarding title insurance companies and their ownership. By eliminating these restrictions, purchasers could close on property within 1 week rather than in 30-45 days.

Delores Dalke, real estate broker from Hillsboro, stated that there is usually only one title company serving the counties with lower population which has created a monopoly in such areas (Attachment 3). These companies can charge whatever they wish as there is no competition in these rural areas. By allowing real estate companies to also furnish the product, competition would be developed and be of benefit to the consumers. She reminded the Committee that "one-stop shopping" was becoming the way of American life and real estate brokers are being singled out and not allowed to compete in this business arena.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,
Room 527S-Statehouse, at 3:30 a.m. on February 22, 1996.

Rich Henry, Chief Executive Officer of the Prudential Summerson-Burrows Realty Company in Overland Park, informed the Committee that the primary relationship in a real estate transaction is one established between the client/customer and an individual sales associate, an independent contractor (Attachment 4). The sales associate would not jeopardize the sale or future sales by dealing with a title insurance company which was not efficient and reputable. The sales people would not be influenced by the fact that the real estate company owned part of the business if they were not competitive and competent. Kansas does not have restrictions on realtors owning mortgage and property insurance businesses but they do restrict entrance by realtors in the title insurance business.

Roy Worthington, Legislative Chairman for the Kansas Land Title Association, reported that the existing legislation was the result of a 1988 study group formed to examine the problem of controlled business title insurance companies which were determined to be detrimental to the healthy function of competition in the title insurance industry (Attachment 5). There were conflicts of interest which resulted in collateral benefits flowing from the title company to the producer of the title business. Some government restriction is necessary to ensure that the consumer is protected and that the marketplace remains competitive.

John Bell, Secretary-Treasurer of the Kansas Land Title Association, informed the Committee that fees for title insurance have not been raised recently but closing costs have increased (Attachment 6). Title insurance rates are higher in the Wichita area than in other parts of the state. He presented the Committee with copies of letters from 28 realtors, lenders and attorneys from across the state who included their reasons for defeating this bill (Attachment 7).

Written testimony in opposition from Steven J. Martens, President of Martens Companies, was distributed to the Committee (Attachment 8).

The meeting was adjourned at 5:05 p.m. The next meeting is scheduled for March 4, 1996.

HOUSE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE GUEST LIST

DATE: 2/22/96

NAME	REPRESENTING
Roy Worthington	KLTA
John Neppard	KLTA
Steve Lewis	KLTA
Gary Schmitz	KLTA
Tom Wilder	Kansas Insurance Dept
Susan Porter	KU-intern
Jane Grant	Dist. 55
Bob Garcia	KLTA
Maureen Pearce	KLTA
Hayden St. John	Lawyers Title of Topeka
Julius M Bell	KLTA
Delores Hahn	Delphos Ks
John Call	Delphos Ks
George Barber	KAFS
Rich Henry	KAR
Mark Weigand	KAR
Jeff Otto	KLTA
Wm "Bill" Malone	KLTA
Whitney Samson	

HOUSE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE GUEST LIST

DATE: 2/22/96

NAME	REPRESENTING
John STAUFFER	Douglas County Title



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TO: MEMBERS OF THE HOUSE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

FROM: KAREN FRANCE, DIRECTOR OF GOVERNMENTAL AFFAIRS

DATE: FEBRUARY 22, 1996

RE: HB 2244, TITLE INSURANCE

Thank you for the opportunity to testify and thank you for having a hearing on this bill. On behalf of the Kansas Association of REALTORS®, I ask for your support of HB 2244.

First, I would like to provide you with a short summary of the bill. The current law provides that a "controlled business" title company, which is generally described as a company which is owned by persons in a position to produce business for that title company, i.e., a real estate licensee, or a banker or mortgage broker, cannot have more than 20% of its business come from its owners. It's real effect is to prevent business people like my members from owning a title company because the 20% requirement is very difficult, if not impossible to meet. A real estate broker is not going to refer title business to their competitors.

We would like to remove that portion of the bill and replace it with some reasonable guidelines for these types of title companies. The language which is to be stricken is on page 8 of the bill. The new language begins on page 1, with the pertinent parts on page 2 in New Sections 2,3 & 4. whereby the producers of business (my members) would be prohibited from referring a customer to their own title company unless they disclosed to the customer that they have a financial interest in the title company. Additionally, they would be prohibited from directly or indirectly requiring a customer to use their title company. It permits our members to refer business to their title companies, but they cannot receive a referral fee for doing so and any profits must be distributed on an ownership basis, not on the basis of the volume of referrals any one owner makes to the company.

Some of you were here when this legislation was passed and some were not. I would like to give you a brief overview of what has brought us here today. I have attached a copy of the timeline on the back of my testimony.

The opponents of this bill will present some of the same arguments today which they caused the legislators to enact the original legislation in 1989. The arguments which were made at the time legislation was passed indicated that the legislation was needed in order to protect consumers. But the real drive behind the legislation was a move to protect so called "independent" title companies from competition, because one of these title companies which

Karen France
Attachment 1

had been created in an effort to provide better, faster service to customers grabbed nearly 25% of the market share in Wichita. Rather than stepping up to the plate of competition in the marketplace and matching the quality and speed of the delivery of title services this new title company, they came to the legislature and got legislation passed to put their competition out of business. Wouldn't a lot of other companies like to have their competition legislated out of business? Once the new law went into effect and the controlled business title company was forced to dissolve, the two big market players in Wichita raised their rates 50-60%, depending upon the service offered.

We would like to review some of the information which was presented to the legislature when this legislation was passed in 1989 and continues to be spread around and we would like to correct the inaccuracies.

Because there had been very little market analysis of the controlled business arrangements in the marketplace in Kansas prior to the enactment of this statute and because there had been no consumer complaints filed against any of these companies, we researched what has happened in other states which have permit controlled business arrangements. Extensive research and analysis has been done in the state of Minnesota and the Twin City area of Minneapolis and St. Paul. While this is a metropolitan area larger than that found in Kansas, it is a market area in the Midwest rather than one of the coasts. Additionally, the area has a large number of title agencies, both independent and controlled arrangements and a market which has received much attention in the form of economic and regulatory research.

Argument # 1

Home buyers and sellers have little familiarity with title insurance service providers, are not knowledgeable shoppers and accordingly, are willing to accept the recommendations of the producers of the title business and the producer of the title business has a powerful incentive to refer his client's business to the title company in which he has a financial interest, even if other title companies offer better service, policy coverage and/or rates; the selection of the controlled business title insurance company may not be in the best interests of the consumer when a collateral benefit flows from the title company to the producer to the title business.

RESPONSE:

One of the basic tenets of the free enterprise system which our economy thrives upon is that competition is always in the best interest of the consumer. The more title companies the consumer has to choose from, the more competitive the rates are likely to be. A real estate broker's livelihood depends on repeat business from buyers and sellers over a long period of time. An agent is not going to refer business to title agents who offer poor service, reduced policy coverage or higher rates and thus put their long term real estate professional reputation at risk.

Argument # 2

Studies have shown that fees charged by controlled business companies usually start out at or below the competitive market and then rise in excess of competitive prices when a significant portion of the market is captured; the inevitable effect of the widespread growth of controlled business arrangements is to increase the prices paid by consumers for title insurance services.

RESPONSE:

In 1992, Paul Anton of Anton Financial Economics, Inc. researched the prices for typical settlement services in the Twin Cities area of Minneapolis and St. Paul Minnesota. Their survey sample included 16 firms which together operated 77 offices in the Twin Cities area, representing 70% of the title insurance offices in the marketplace. The sample included all eight firms in the market which operated five or more office locations. It included five firms which were part of controlled business arrangements and 11 which were not.

The research indicated that the controlled businesses do not appear to charge significantly higher prices for services. Of the 16 firms surveyed, controlled businesses placed fifth, sixth, seventh, thirteenth and sixteenth from the top in terms of list prices. In fact the prices at the controlled firms were somewhat lower, on average. Even after making adjustments for the volume done by the various offices (some of the entities surveyed had many more locations and handled many more transactions than others did in the sample) the results indicated that the independent firms tended to charge roughly \$13 more for the settlement services. (Paul Anton, "Economic Issues Relating to the Title Industry in Minnesota: Would Further Regulation be Helpful?", p. 6-8, Appendix A)

Argument #3

Independent title companies face an almost insurmountable obstacle in competing for the business controlled by the producers of title business, creating unfair competition; In a free and competitive consumer-oriented market, prices are restrained by competition, however there is no incentive for the controlled business company to reduce rates or improve policy coverage or service in order to attract business, because it's business is guaranteed as a result of referrals from the producers of title business

RESPONSE:

In 1981 there were eight title companies in the Twin Cities area of Minneapolis and St Paul Minnesota. Today, there are approximately 130-150, of which approximately 50% are controlled business arrangements. Thus, the presence of controlled business arrangements in the marketplace has not reduced the number of title companies. Conversely, the 1991 Controlled Business legislation in Kansas removed between five and seven companies from the marketplace, thus reducing the competition.

In 1994, Lexecon Inc., a national economic consulting firm specializing in the application of economic data to legal and regulatory disputes, analyzed the title and closing costs of over 1000 home sales transactions involving diversified real estate services companies during September of 1994. The transactions occurred in seven states -- Florida, Minnesota, Tennessee, Wisconsin, Mississippi, Pennsylvania and California. In their analysis of the transactions, they came to this conclusion:

“Diversified settlement service providers may have lower costs for providing a package of services than the total costs incurred by a set of independent firms providing the same services. In competition with one another, they will tend to reduce the package price below that which prevailed before controlled business arrangements came into existence. This would explain the hostility to diversified firms by independent firms, who will be less effective competitors in the long run if they cannot match the cost of efficiencies of diversified firms.” (Lexecon, Inc., Economic Analysis of Restrictions on Diversified Real Estate Services Providers”, Footnote 3, page 3 Appendix B)

Argument # 4

The consumer loses the ability to obtain the disinterested judgment of the real estate professional as to which title company will best serve his interest.

RESPONSE:

The best interests of the consumer are served when they receive the service which they seek in a convenient format, at a price which is competitive. Everywhere in the marketplace we see businesses adjusting to consumer demand for value and convenience. A prime example is the advent of grocery “super stores” whereby grocery stores do not merely sell groceries but also contain branch banks, dry cleaners, post offices, pharmacies and even McDonald’s restaurants. In the fast changing real estate market, we see consumers demanding the same things--value and convenience. The consumer would be better served to be able to get brokerage, title and closing services under one roof, rather than having to deal with multiple individuals, making multiple phone calls in order to complete a transfer of real estate.

The Lexecon study concluded, “Critics of incentive compensation for referrals to controlled business arrangement affiliates claim that such payments induce persons, in whom consumers have invested their trust, to make referrals that are not in the best interest of their customers. In particular, they allege that the affiliate’s prices are higher and service quality lower than those provided by independent firms. Higher prices only benefit a firm if it does not lose its current and future customers. Diversified companies that develop a reputation for high prices or poor service will tend to sell less of all of the services they offer.”

Additionally, there are no limits on the amount of entertainment dollars which can be spent by title companies on the potential “producers of business”. The independent title companies continuously create a presence with agents by throwing parties for them, paying for

champagne luncheons, sponsoring golf tournaments etc., in order to influence the agent to refer business to their company. Their obvious conclusion is that real estate professionals are capable of exercising disinterested judgment only if they refer consumers to the independent title companies who court them.

Argument # 5

Title insurance underwriting standards drop and losses occur because the producer/owners of the controlled business title companies require real estate closings to occur, when prudent title industry standards would require a delay in closing to resolve title problems. The producer of the title business, having a financial interest in the title insurance company may face a definite conflict between his own interest in receiving a commission from a completed sale and the consumer's interest in receiving a clear and unencumbered title;

RESPONSE:

In a 1994 letter to the Working Group of National Association of Insurance Commissioners assigned to study the controlled business issue, the Commissioner of Commerce for the state of Minnesota wrote:

“We do not feel there is either a market share, solvency, or consumer abuse problem in Minnesota.

The residential real estate industry involves real estate brokers mortgage originators and title insurers. This industry has seen significant changes in the last ten years. I think its fair to say that during the next ten years we are going to see even more changes as technology drives new systems for delivering information and services be a single service provider. Where the industry will be in ten years we cannot accurately forecast, but we should not be adopting regulation which would hamper the ability of businesses to respond to changes in the marketplace and technology.

The proposed 20% rule on business from an affiliated company will inhibit and perhaps preclude businesses from providing fully integrated service by a single service provider in the residential real estate industry.”

(Letter, James Ulland, Minnesota Commissioner of Commerce - February 3, 1995, Appendix C)

A controlled business title company must have underwriters insure their title policies. Underwriters would not continue to write for CBA's who provide shoddy title work. There has been no evidence presented that CBA companies have any more title claims than independent title companies.

During the NAIC CBA Working Group deliberations, several underwriters sent correspondence to the committee regarding their experience in underwriting for CBA

companies. In a letter from Nations Title Insurance of New York Inc., (a national underwriter) to the Chairman of the NAIC Title Insurance Working Group the Regional Counsel wrote about their experience in underwriting for a large CBA in Minnesota, "Nations Title Insurance has found First Security Title (FST) to be an excellent title insurance agency. FST underwrites the issuance of a title insurance policy very conservatively. I have found that FST will not jeopardize future business (it, or its affiliated companies could obtain) with sloppy title insurance underwriting of the current transaction. FST employs more than 150 people, has the financial ability to provide a complete in-house training program and is able to afford a staff of title insurance experts." (Letter, Patrick J. Nolan, III, Regional Underwriting Counsel, Appendix D)

Charles Keith, Executive Vice President of Lawyers Title Insurance Corporation the third largest underwriter in Kansas writes, "The NAIC representatives appear to want higher solvency criteria for controlled business agents. We have stated to the NAIC that the risk of defalcation exists from all types of agents and we have had no worse experience from one type or another." (Appendix E)

No records of consumer complaints regarding CBA title companies were ever presented during the legislative debate in 1989. There were some other violations of the Unfair Trade Practices Act that occurred around this time, but the law in existence at the time was utilized to handle those situations--no new laws were required. In a 1992 speech to the Minnesota Land Title Association, the Minnesota Commissioner of the Department of Commerce said "1991 was a record year for calls received by the Department. A total of 75,000 calls from the public were received, including both complaints and inquiries. Of the 75,000 calls, 8,000 were complaints that warranted formal investigation by the Department. Of the 8,000 investigations, only 13 dealt with title insurance companies and three dealt with closers. None of these 16 investigations resulted in any formal actions by the Department." (Letter, Mark A. Ludwig, Minnesota Office of Commissioner of Commerce, August 4, 1993, Appendix F.)

SUMMARY:

One of the basic tenets of the free enterprise system is that consumers are better served when there is competition in the marketplace. CBA's increase, rather than decrease competition, as is exemplified in Minnesota. There is no evidence available in the states which permit CBA's to operate which indicate that CBA's generate more complaints from consumers than their independent counterparts. CBA's will always need underwriters. No underwriters presented complaints to the NAIC working committee that CBA's have more claims.

The state of Kansas was the first state to adopt the 20% limitation. Other states have higher limits. We ask that Kansas now be the first state to remove these artificial percentage limitations completely. Those states which permit CBA companies to operate did not report any problems to the NAIC Study Group studying the issue, and in fact many states reported

that CBA companies fill an important niche in the market place. When our neighboring state of Nebraska enacted their law, they grandfathered in the existing CBA companies. The NAIC study group that met last year proposed three different ways for states to handle these companies. The one which suggested the 20% proposal, recommends phasing the limitation in over a 4 year period rather than all in one fell swoop, the way our law did, giving little or no opportunity for our members who owned these companies to keep their doors open. We come today to ask your assistance in reopening those doors of free enterprise.

Controlled business arrangements permit stream lined home purchasing opportunities. The pressure for the packaging of real estate services is going to become more intense as technology advances and consumers demand greater efficiency in all aspects of their lives. The current 20% limitation puts businesses and consumers at a disadvantage in meeting the demands of modern life.

Thank you for the opportunity to testify.

Controlled Business Arrangement Legislation Timeline

- 1988** Legislation introduced requiring the regulation of title insurance rates. The Kansas Land Title Association opposed it. Final version had 1 year delayed effective date in order to allow time for Insurance Commissioner to study the issue.

Study group appointed, studied during the summer. Consisted primarily of title companies, included the Homebuilders Association of Kansas and the Kansas Real Estate Commission. Study topic began to turn from regulating rates to doing something about CBA's. The Committee was divided into subcommittees to study various aspects of title issues. The report of the Subcommittee KAR served on specifically said that CBA's were all right as long as there was full disclosure to consumers of the ownership interest.

The initial draft of the full committee report recommended passage of legislation with the 20% restriction. We sent a written dissenting opinion to that portion of the report. After that, KAR was no longer notified of Study Committee meetings.

- 1989** CBA legislation introduced in two bills. One required disclosure, the other contained the 20% restriction. KAR supported the disclosure bill and opposed the 20% restriction.

Since it was a House bill, it was heard first in House Financial Institutions and Insurance Committee. We were able to get the 20% restriction removed from the bill during committee discussion. The bill went to the floor of the House for debate without the 20% restriction and was passed by the full House on a ~~123-2~~ vote, ¹²⁴⁻¹

The bill was sent to the Senate Financial Institutions and Insurance Committee where Senator Yost got the 20% put back in the bill. The bill passed the Senate with the 20% provision in the bill.

When it was sent back to the House, the Chairman of the House Committee told the full House that the Senate amendments were technical in nature and recommended concurring in the Senate amendments, which the House did on a vote of ~~122~~ to 3. ¹²¹⁻² The Governor signed the bill into law in that form.

Wichita Title Associates (WTA) filed for an injunction against the Insurance Department to prevent enforcement of the new statute and asking that it be ruled unconstitutional on the basis of the Equal Protection Clause and/or that the statute was unconstitutionally vague. KAR filed an amicus brief in the case. WTA won at the trial court level.

- 1990** Court of Appeals overturns district court decision. CBA's forced to close their doors.

Mike Shea d

In January of 1989, when the Kansas Insurance Commissioner introduced HB 2502 commonly known as the "Controlled Business Bill" that limited the amount of business title insurance companies could obtain from their stockholders to 20%, this legislation effectively caused the closing of 7 title insurance companies in Johnson County alone.

In the Spring of 1989, a lawsuit was filed by a group in Johnson County, challenging the constitutionality of that bill.

In January of 1990, a Shawnee County District Judge ruled that that legislation was unconstitutional.

In 1991, the Kansas Supreme Court upheld that law, overriding the District Court Judge's ruling, however, the Supreme Court did not say that the law was fair or just.

In the Fall of 1992, HUD (the Department of Housing and Urban Development) issued a more clear definition of Section 8 of RESPA (Real Estate Settlement Procedures Act), which section controls the area in which the Federal Government felt that supplier-owned title companies were not only legal, but should be legal.

I would like to point out to you that the State of Kansas currently has the most restrictive laws in the total United States on title insurance companies and their ownership. Ladies and Gentlemen, I think this points out that this is definitely anti-free market.

*House P.D. A
Attachment 2*

2-22-96

The effect of this kind of legislation, and this law in particular, is that a few title insurance companies have been given a monopoly through legislation, and this monopoly has caused title insurance costs to be not as competitive as they were prior to 1990.

To further point this out, we were able to observe in one of our major metropolitan markets, a situation where one of the larger title companies that had operated for over 40 years with a stockholder who was in the real estate business, saw that some of its competition was forming companies with real estate principals as stockholders. At least one of these new companies began offering outstanding service as a title insurer and at a more competitive rate.

As a result, the first title company went to its 40 year stockholder and forced that stockholder to sell back to them his stock in order that they could pursue legislation that would no longer allow stockholders in his position to hold ownership. This title insurance company then came to this legislature and told them that, in effect, what they had themselves been doing for 40 years, all of a sudden, was not in the best interest of the consumer. Therefore, legislation was needed to ban this type of ownership. But Ladies and Gentlemen, within 30 days after the legislature granted them this legislation that put much of its competition out of business, this very same company raised its prices for title insurance. I wonder what consumer they were referring to.



Real Estate Center, Inc.

116 NORTH MAIN ST. • HILLSBORO, KANSAS 67063 316/947-2321 • FAX 316/947-5616

February 22, 1996

My name is Delores Dalke from Hillsboro, I have been a Real Estate Broker since 1979. I am here to talk to you about House Bill # 2244 regarding Affiliated Businesses.

Hillsboro is a town of 3,000 population located in Marion County with a population of 13,000.

We have one title insurance company in our county and I will be the first to say they do an excellent job in providing title insurance for those who wish to buy or sell property or need to mortgage their property. I believe there are quite a number of rural areas in our state that have only one title company. What this situation does is create a monopoly for those offices. This is not necessarily in the best interest of the consumer. I know that our state leaders believed they were assisting the public when the bill to control affiliated businesses was passed, which effectively stopped Real Estate Brokers from having ownership interest in title companies.

I am here to point out that this bill was not in the interest of the consumer. For instance, I did my own telephone survey as to the cost of title insurance in several areas. I focused on a home sale of \$47,500



*Delores Dalke
Attachment 3
Feb. 22, 1996*

which is a very affordable home to a low to moderate income home buyer in our area. I found that the cost of providing an owner's title policy on this sale in our county is \$335. I reviewed a sale of the same price in one neighboring county from a few years ago at a time that county had only one title company and the cost was the same. Since that time a second company has opened and the from the competing company was \$267, a savings of 20%. I called another neighboring county where we had also done business with the same results only they were even more dramatic. The original cost was the same but now with a second company the cost was \$333. However, they said, if the property is in Sedgwick County, the cost would be only \$276. Why? Competition!!!

Why must the consumers in small counties suffer because there's only one company? If restrictions were erased, perhaps some of us who work in the area could invest in this industry and provide the consumers a choice and a chance to save money when they need title work.

If we are going to keep competition out of this industry, what will happen should the insurance agents come to you and say, "don't let Real Estate Brokers own insurance agencies..." It isn't fair!!! What if a group of Home Builders come in and say, "Don't let Real Estate Brokers develop property....." This could go on and on.....

I believe if those of you that represent smaller population areas of our state will help me verify that title company owners are involved in many other businesses, such as land development, and in quite a number of communities, these same people are also agents for Commercial Federal Bank, formerly Railroad Savings, originating mortgage loans so that buyers and those needing mortgages can have "one stop shopping"!!! I have no problem with this.... It is the American Way that we look for opportunities and become involved. Why are Real Estate Brokers singled out?

Those of us in small communities need the opportunity to expand our business opportunities so that we can better serve our clients as well as save them money.

Please consider that when government protects one business from competition, the consumer is the one who suffers.

Respectfully submitted



DELORES DALKE, CRB
BROKER

2-22-96

Analysis Of Controlled Business Arguments As
They Pertain To The Proposed House Bill No. 2244

Rich Henry
Chief Executive Officer
The Prudential Summerson-Burrows, Realtors
Overland Park, Kansas

February 22, 1996

*House PDF
Attachment 4
Feb. 22, 1996*

Asking for your support of HB2244 which allows member Realtors to own their own title companies without the artificial 20% restriction on controlled business arrangement.

Controlled business arrangements as they pertain to Realtors and this particular bill would lead you to believe that we, as brokers, exert enough control of the real estate transaction to direct affiliated business, i.e. homeowner's insurance, mortgage originations, title insurance, to a particular company or provider of these services without competing with other suppliers. And, indeed, if we owned one of these providers, we would be able to direct that business to the possible detriment of a home buyer or home seller.

Nothing could be further from reality.

The primary relationship in a real estate transaction is one established between the client/customer and an individual sales associate, an independent contractor. This primary relationship is guarded very jealously by the independent contractor because that agent's very livelihood depends directly on the transaction being handled smoothly and expeditiously and, if not, that agent will not only lose the customer and an income source but will also stand to lose referral business from that customer for future transactions -- his/her very lifeblood.

With the advent of buyer's agency and all the legal responsibilities the laws of agency place upon the agent, the last thing an agent would do is refer his/her clients to a service provider who would not operate in the customer's best interest -- whether it be price or service or both.

In fact, those of us who have mortgage companies and property insurance companies have to be better than the competition or our own agents will not direct their business our way. Since the agents cannot, by law, be compensated for said referral, in many respects, they can only lose if their company fails to satisfy their customers. Hence, many won't even take the chance and even refuse to allow us a chance at quoting the business.

To think that the person who probably directs the most control in the transaction - the agents / independent contractors - will continue to risk their livelihood and reputation by referring business to a service provider who is not competitive in terms of price and service is not only

naive but ludicrous. Someone once said that managing or directing independent contractors is a little like trying to herd cats! A truer statement has never been made!

The independent contractors are looking to a service provider primarily to assist them in effectively closing the transactions so, quite frankly, they get paid. They are not going to risk their livelihood on their broker if that broker/owner is not performing in such a way as to insure the protection of their customers and, indeed, themselves. It's really that simple.

Home buyers and home sellers do not have to be knowledgeable of various service providers. The laws of agency protect them when they endorse a buyer's or seller's agency agreement with an independent contractor. That agent, by law, is obligated to represent their best interests, and recommending a service provider that does not operate in a customer's best interest would be contrary to their fiduciary responsibility.

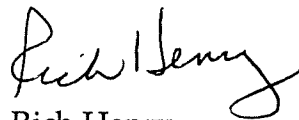
I find it a bit unusual that states such as Missouri, our neighbor, and Minnesota place no restrictions to entrance to ancillary businesses such as title, mortgage and property insurance; and, indeed, Kansas places no restriction on Realtors owning mortgage and property insurance businesses but Kansas does restrict entrance by Realtors in the title insurance business. Basically, the laws of economics will apply – competition tends to promote better service and lower prices. Deregulation has proven that point. There is no reason why the title business would not be impacted in the same manner with more entrants in the field. In the recent past, The National Association of REALTORS has conducted surveys with consumers that indicated that a primary need which buyers and sellers have is to simplify the transaction. There's no reason to complicate the real estate transaction, both in terms of time and energy, by separating all of the buying components rather than essentially dealing from one point of sale provider. The customer wants it and we have to figure a way to provide it or we won't be in business. I find it ironic that anyone can enter our business with a minimum of investment and can negotiate any fee, but we are not allowed to enter an ancillary business.

And that's exactly why we're here today. If we don't provide the customers with what they want, someone else will. Profit margins are declining in most businesses throughout the country, and the real estate brokerage business is no exception. We must be allowed to play on a level playing field in Kansas, as other states allow, or we won't stay in business.

Free enterprise demands competition – the consumer demands it. The service providers who do not respond to the customers' needs, in terms of price, service and efficiency, quite frankly, won't stay around. As it relates to the title insurance business, Realtor-owned companies will have to provide better, faster and less expensive service or we won't get that business! We will not jeopardize our core business, namely sales commission income for the sake of the profit in a title policy. We'd be cutting our throats – our independent contractors would set up shop across the street. And our underwriters would drop us like a hot potato if we didn't perform and protect everyone's interest.

In closing, I'd like to thank you for the opportunity to present our case. The title companies that support us now do an excellent job and serve a vital role in our business. Rather than fear our joining them in providing this service, I would hope that they would proactively compete with us in insuring that the buying and selling public are truly served.

Respectfully submitted,



Rich Henry
Chief Executive Officer
The Prudential Summerson-Burrows, Realtors

PRESENTATION TO HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

RE: House Bill 2244 - Controlled Business in the Kansas Title Insurance Industry

DATE: February 22, 1996

**FROM: Kansas Land Title Association
Roy H. Worthington, Legislative Chairman**

1. The current law, K.S.A. 40-2404b (14) (e) and (f), was passed in 1989 and its provisions are derived from Model Title Code approved by the National Association of Insurance Commissioners. The current law is the result of a 1988 study group formed by the Kansas Department of Insurance to study a significant problem involving controlled business title insurance companies existing at the time which were detrimental to the healthy functioning of competition in the title insurance industry.

2. The reasons for the current law set forth at K.S.A. 40-2404 (14) (e) and (f), which addresses and places certain controls on "controlled business" arrangements in the title insurance industry in the State of Kansas, are summarized as follows:

a. Home buyers and sellers have little familiarity with title insurance service providers, are not knowledgeable shoppers, and accordingly, are willing to accept the recommendations of the producers of the title business, **AND** the producer of the title business has a powerful incentive to refer his client's business to the title company in which he has a financial interest, even if other title companies offer better service, policy coverage and/or rates; **the selection of the controlled business title insurance company may not be in the best interest of the consumer when a collateral benefit flows from the title company to the producer of the title business; in fact the selection of the controlled business title insurance company will most likely be in the best financial interest of the real estate professional providing the recommendation;**

b. Many federal and state studies (3 examples attached) have shown that the growth of controlled business arrangements in the title insurance industry has created serious anti-competitive and conflict of interest problems that adversely affect the interests of consumers. In fact it has been documented that fees charged by controlled business

*House J.D.S.D.
Attachment 5
Feb. 22, 1996*

companies usually start out at or below the competitive market and then rise in excess of competitive prices when a significant portion of the market is captured; **the inevitable effect of the widespread growth of controlled business arrangements is to increase the prices paid by consumers for title insurance services;**

c. Independent title companies face an almost insurmountable obstacle in competing for the business controlled by the producers of title business, **creating unfair competition.** The current restrictions do not prohibit a producer of title business from selling title insurance, only that the controlled business title insurance company actively compete in the marketplace for title insurance and to obtain at least 80 percent of its business from sources other than referrals from its owners. With such restrictions, the playing field is leveled and the consumer does not suffer the consequences of a controlled marketplace;

d. The consumer loses the ability to obtain the disinterested judgment of the real estate professional as to which title company will best serve his interest. According to a 1995 law entitled the "Brokerage Relationships in Real Estate Transactions Act", a real estate agent is to "promote the interests of the client with the utmost good faith, loyalty and fidelity." If the agent is compelled by a financial motive to steer the client to the controlled business title insurance company, a conflict of interest may arise;

e. In a free and competitive consumer-oriented market, prices are restrained by competition, however there is no incentive for the controlled business company to reduce rates or improve policy coverage or service in order to attract business, because its business is "guaranteed" as a result of referrals from the producers of the title business;

f. The Kansas Supreme Court in its January 18, 1991 decision on the current law stated as follows: "The purpose of 14(e) and (f) is to stimulate competition by decreasing vertical integration between producers of title business and title insurers;"

g. Title insurance underwriting standards drop and losses occur because the producer/owners of the controlled business title companies have strong financial motive to see that real estate closings occur, when prudent title industry standards would require a delay in closing to resolve title problems. **The producer of the title business, having a financial interest in the title insurance company, may face a definite conflict between his own interest in receiving a commission from a completed sale and the consumer's interest in receiving a clear and unencumbered title;**

3. House Bill 2244 is an attempt to change the current law and in its place substitute certain disclosure requirements the proponents of the bill believe will protect the consumer. **To believe that the disclosures proposed by House Bill 2244 will protect the consumer is naive indeed. Because consumers generally purchase title insurance only in connection with a real estate transaction and title related charges are a small portion of the costs involved, consumers do not typically have the knowledge, time, or incentive to become effective shoppers for title insurance. Rather, they tend to rely on the recommendations or referrals of those real estate professionals in the transaction. With all the forms required to be signed by a buyer of real estate, another disclosure form will be meaningless to a buyer.**

4. In 1991 House Bill 2413, which attempted to accomplish the same result as the current House Bill 2244, was killed in the House Insurance Committee.

5. The sponsors of House Bill 2244 are likely to take the position that 1992 rules and regulations to the federal Real Estate Settlement Procedures Act, commonly referred to as RESPA, give the federal government's blessing on controlled business arrangements and that any state law which places controls on controlled business arrangements is pre-empted by the federal law. In fact, HUD did pass rules and regulations in 1992 to implement a determination Congress made in 1983 not to prohibit controlled business arrangements provided certain disclosure requirements and other conditions were met. **THE 1992 REGULATIONS ARE AN EXAMPLE OF A FEDERAL LAW WHICH IS OUT OF TOUCH WITH THE ABUSES WHICH OCCUR IN THE REAL ESTATE SERVICES MARKETPLACE**

6. The 1992 rules and regulations dealing with controlled business indicate that state laws that are inconsistent with RESPA are preempted to the extent of the inconsistency. However, the regulations go on to indicate that the Secretary of HUD may not determine that a state law or regulation is inconsistent with any provision of RESPA if the Secretary determines that such a law or regulation gives greater protection to the consumer, and further, that the Secretary may not construe those provisions that impose

more stringent limitations on controlled business arrangements as inconsistent with RESPA so long as they give more protection to consumers and/or competition.

Further, the attempted pre-emption of state controlled business laws is a matter of great controversy because such pre-emption regulations are so clearly contrary to the language of RESPA and congressional intent. Section 8(d)(6) of RESPA unequivocally states that "No provision of state law or regulation that imposes more stringent limitations on controlled business arrangements shall be construed as being inconsistent with this section." In fact, the House Banking, Finance and Urban Affairs Committee report states in part: "...the controlled business amendments to Section 8 of RESPA should in no way inhibit the individual states in which controlled business may be a significant problem from adopting those additional measures that they believe will protect consumers and competition."

Many feel that it is impossible to imagine that any Secretary of HUD would ever actually use the pre-emption provisions of the regulations to declare a state controlled business statute pre-empted by RESPA.

7. Some other states with controlled business statutes similar to Kansas are:

	Percentage Limitation on Controlled Business
*California	50%
Connecticut	20%
Nebraska	20%
Tennessee	40%
Utah	33%

*For instance, California's law requires that any applicant for title insurance indicate the applicant's intent to actively compete in the marketplace for title insurance in each county in which the applicant seeks to or does conduct business. The failure to do so will constitute grounds for denial of the license. Further, the company must demonstrate that its business conduct will not involve reliance for than 50 percent of its closed title orders from controlled business sources.

8. The historical purpose of RESPA was to eliminate kickbacks and referral fees, because they had the ultimate effect of driving up the cost of the settlement services to the end consumer, i.e., the homebuyer.

9. Originally RESPA took a definitive and strong stand against referrals and kickbacks, including controlled business arrangements, and the new regulations still provide that "kickbacks" involving settlement services are in violation of RESPA.

10. The problem with the new RESPA regulation is that it provides, among other things, that an employer's payment to his own employee for any referral activity is not an act prohibited by RESPA (i.e. a real estate broker may pay his agent a fee for the agent referring title insurance business to a title insurance company owned by the broker). **The allowance of such payments for referral activity is clearly "anti-consumer" and "anti-competition" and indicates a total lack of understanding by Congress of the settlement services marketplace and the abuses that may exist.**

Due to the unique nature of the title insurance business and due to the lack of knowledge that the consumer has regarding that business, some government restriction is necessary to ensure that the consumer is protected and that the marketplace remains competitive. Your assistance in preserving the existing Kansas law regulating controlled business in the title insurance industry, which was sponsored by and is presently enforced by the Kansas Insurance Department, which was overwhelmingly passed by the 1989 Legislature, and which was upheld by the Kansas Supreme Court in 1991, will be greatly appreciated.

Respectfully submitted by,

Roy H. Worthington
Legislative Chairman
Kansas Land Title Assn.

ATTACHMENT ON CONTROLLED BUSINESS:

Controlled business in the title insurance industry is not new. It has appeared in other states and in each case has been met with varying degrees of state regulation. The United States Department of Justice in its 1977 report entitled The Pricing and Marketing of Insurance indicated the following: "To sum up the major evils of controlled title companies, where a real estate settlement producer is able to direct the purchaser of title insurance to a particular title company and at the same time that producer owns the title company, the purchaser is likely to end up (1) paying unreasonably high premiums, (2) accepting unusually poor service, or (3) accepting faulty title examinations and policies from the controlled title company."

The Michigan Insurance Commissioner, in June of 1977, summarized the impact of controlled business arrangements as follows: "The findings and conclusions by various executive, legislative, and judicial branches of the Federal and State Governments and the results of the Insurance Bureaus investigations 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."

A 1981 study performed for the Department of Housing and Urban Development by Peat, Marwick, Mitchell & Company, stated the following: ".... a fundamental characteristic, generally referred to as reverse competition, serves to create a market in which traditional economic principles of a competitive market do not apply. Since the consumer has no significant role in the selection process, there is little incentive to keep prices low or otherwise be concerned about the consumer...."



KANSAS LAND TITLE ASSOCIATION



Gary E. Schmitz
President
P.O. Box 98
Mound City, KS 66056

Charles Stewart
Vice President
P.O. Box 725
Oakley, KS 67748

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

TESTIMONY OF JOHN M. BELL, WICHITA

We are giving each of you a packet of 28 letters from Realtors, lenders and attorneys from across the state who feel this bill should be defeated. The letters come from Wichita, Derby, Dodge City, Kansas City, Manhattan, Olathe, Overland Park and Shawnee Mission.

They certainly reinforce the fact that this bill is not supported by all who belong to the Kansas Association of Realtors. The pressure to enact this legislation comes from a few large real estate companies.

Authors of the enclosed letters represent six (6) past presidents of the Wichita Board of Realtors and three (3) past presidents of the Kansas Association of Realtors.

I would like to call your attention to some important points made by the following in their letters to this committee:

John Arnold of Wichita states "My concern for and support of the free enterprise system dictates that the buyer/seller title business should be controlled by professionals rather than Realtors who are looking for additional profit.

We, as a national organization, are in opposition at the federal level to bankers who are attempting to invade our business. Therefore, I can not support the argument against bankers, and at the same time, support an action allowing real estate brokers to own and control title companies.

In our business, most buyers and sellers rely upon the professional integrity of the real estate broker when selecting vendors and/or title insurance companies. My concern is that, if a Realtor has a financial interest in an abstract and title company, his or her decisions may be influenced by the financial reward of using his or her own company."

John Todd of Wichita feels that: "If real estate companies are allowed to create their own title insurance companies and funnel "captive" business through these entities, in my view, large real estate companies will dominate the title insurance business to the detriment of their smaller competitors, title insurance competition will be reduced, resulting in higher insurance premiums for the consumer, which is not in the public's best interest."

William Powell of Wichita states: "I believe that when a real estate agent or broker has the ability to direct buyers and sellers to a particular title insurance company for his or her own profit, it is inherent with potential problems and does not serve the best interest of the consumer."

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EDITOR,
KANSAS ABSTRACTER
John M. Bell

John M. Bell
Attachment to
Feb. 22, 1996

Gary Snyder of Wichita notes: "The assumption that buyers of real estate using title insurance are experts, or even knowledgeable enough to protect themselves in these ever increasing complex issues, is very naive and fails to provide consumers the protection they deserve."

As a commercial real estate company, we find most purchasers of title insurance do not even know why they are getting title insurance. They think it is required in order to close a real estate transaction.

Do the real estate people represent the buyer, seller or the title company?

This country was built on free enterprise, but it should not be at the expense of consumer protection rights."

Jim Ryan of Manhattan states: "I do not think that it is in the best interest of the consumer nor the real estate industry in general to allow controlled business title insurance companies to capture the marketplace through referrals of title business from the same realtors and agents who own the controlled business title company. Such referrals may constitute a conflict of interest and subject the consumer to higher prices and lesser service than can be obtained in a competitive marketplace."

Herb Ashner of Overland Park notes: "Studies have shown that fees charged by controlled business companies usually start out at or below the competitive market and then rise in excess of competitive prices when a significant portion of the market is captured; the inevitable effect of the widespread growth of controlled business arrangements is to increase the prices paid by consumers for title insurance services."

Dennis Coleman of Shawnee Mission relates: "In a competitive consumer oriented market, prices are restrained by competition, however there is no incentive for the controlled business company to reduce rates or improve policy coverage or service in order to attract business because it's business is guaranteed as a result of 'locked' referrals."

Dean Bussart of Wichita states: "Not being acquainted with title insurance providers, the average buyers and sellers generally accept the advise and recommendations from their respective agents. If the agent has any interest whatsoever, then the spirit of competition would no longer exist. In a free and competitive consumer-oriented market, prices are controlled by competition. In a controlled "guaranteed" business company, rates would undoubtedly be increased in the long run, thus not being in the best interests of the consumer. Independent title companies would face an almost insurmountable unfair task in competition for the business in the marketplace."



February 8, 1996

Mr. Bill Bryant, Chairman
Committee of Financial Institutions and Insurance
House of Representatives
State Capitol Building
Topeka, KS 66612

Good Morning Mr. Bryant:

This correspondence is in opposition to House Bill 2244. John T. Arnold Associates, Inc., is one of the leading commercial/industrial real estate brokerage firms in Wichita, Kansas. As Chairman and CEO of our company, I have served several terms on the Board Of Directors and as Vice President of the Wichita Area Association of Realtors, and I chaired the committee which funded The Wichita State University's Kansas Chair in Real Estate and Land Use Economics for both our local board and the University. In addition, I have served on a number of advisory committees within our industry. There are several reasons for my opposition to House Bill 2244, and I have listed same below for your consideration.

1. In my 25+ years of representing buyers and sellers in this market, I have found that the five Wichita title companies have more than adequately handled our real estate transactions in a timely and professional manner. A survey of most of my friends in the industry overwhelmingly supports my position.

2. My concern for and support of the free enterprise system dictates that the buyer/seller title business should be controlled by professionals rather than Realtors who are looking for additional profit.

3. We, as a national organization, are in opposition at the federal level to bankers who are attempting to invade our business. Therefore, I can not support the argument against bankers, and at the same time, support an action allowing real estate brokers to own and control title companies.

4. In our business, most buyers and sellers rely upon the professional integrity of the real estate broker when selecting vendors and/or title insurance companies. My concern is that, if a Realtor has a financial interest in an abstract and title company, his or her decisions may be influenced by the financial reward of using his or her own company.

There are numerous reasons, other than those mentioned above, which cause me to ask for the defeat of House Bill 2244; however, I believe that free enterprise, professionalism and concern for the consumer are reason enough to oppose the proposed bill. I, therefore, respectfully suggest that we not attempt to fix something that works, and works well, with a new program that places the consumer at risk.

Thank you for your time and consideration. If I can be of further service, please do not hesitate to contact me.

Sincerely,

John Arnold

John Arnold
Attachment 7
Feb. 23, 1996

JTA:ad

JOHN TODD & ASSOCIATES

REAL ESTATE
805 SOUTH MAIN, SUITE 103
WICHITA, KANSAS 67213

(316) 262-3681

February 21, 1996

The Honorable Dr. Bill Bryant, Chairman
House Financial Institutions and Insurance Committee
House of Representatives
State Capitol Building
Topeka, Kansas 66612

Re: My **OPPOSITION** to **HB 2244**

Dear Dr. Bryant:

I am a member of the Kansas Association of Realtors and want to let you know of my personal *opposition* to the above referenced bill.

If real estate companies are allowed to create their own title insurance companies, and funnel "captive" business through these entities, in my view, large real estate companies will dominate the title insurance business to the detriment of their smaller competitors, title insurance competition will be reduced, resulting in higher insurance premiums for the consumer, which is *not* in the *public's best interest*.

Please *oppose passage* of HB 2244.

Sincerely,



John R. Todd

February 19, 1996

Bill Bryant
Chairman: Financial Institutions and Ins.
House of Representatives
State Capital Building
Topeka, Ks. 66612


Dear Mr. Bryant,

I am writing in opposition to House Bill 2244 regarding "Controlled Business" which is pending before your committee.

I am a residential Real Estate Broker in the Wichita area with over 18 years of experience. I am a member of the National, State and Local Association of Realtors and am a Past President of the Kansas Association of Realtors.

I believe that when a real estate agent or broker has the ability to direct buyers and sellers to a particular title insurance company for his or her own profit, it is inherent with potential problems and does not serve the best interests of the consumer.

I feel the system, as it now operates, is the most efficient and affords the customer the most protection. I urge you to vote down House Bill 2244 as the House did in 1991 and which was upheld by the Kansas Supreme Court. I believe in "free enterprise", but I do not believe controlled business which could be unfair to the buying and selling public.

Sincerely,

William C. Powell
Broker/Manager
Camelot Realty, Inc.





February 8, 1996

Honorable William Bryant, Chairman
House Committee on Financial
Institutions and Insurance
State Capitol Building
Topeka, Kansas 66612

Dear Chairman Bryant:

I feel compelled to share my views regarding House Bill 2244 with your committee. I am sure not all members of the committee have knowledge of the history of this particular issue; but there were many concerns addressed by the Legislature in 1989 when the current law was adopted for the protection of the real estate consumer.

I think it quite important to reflect on that session of the Kansas Legislature when the current law was adopted by a nearly unanimous vote by both the House and the Senate to stop the abuses and conflicts of interest posed by controlled business relationships. Once a market is controlled, prices will rise, services will diminish and very serious conflicts of interest will occur. We, in the real estate industry, need the support and services provided by the local full-service title companies so that real estate transactions will close smoothly and professionally; and there is a sincere concern that these good services we presently enjoy would be unable to be maintained by the independent title insurance agencies and companies, if the large realtors were allowed to open controlled business limited service agencies with a mere ineffective disclosure.

Again, after several years of debate, this matter was put to rest by the Legislature in 1989, and there is only a handful that are interested in returning our state to the conflicts that existed prior to the adoption of the current legislation for their own financial benefit.

I, as a member of the real estate industry in the state of Kansas, strongly urge your committee not consider HB 2244. It should be defeated.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry W. Davis", is written over a large, stylized flourish that extends to the left and loops back under the signature.

Larry W. Davis
Broker/Owner

LWD:cm

**COLDWELL
BANKER** 

HANCOCKS OF
DODGE CITY, INC.

2300 FIRST AVENUE
DODGE CITY, KS 67801
BUS. (316) 227-2129
FAX (316) 227-2408

February 6, 1996

Honorable Bill Bryant
Chairman, Committee of Financial Institutions and Insurance
House of Representatives
State Capitol Building
Topeka, KS 66612

Dear Representative Bryant:

This letter is written in opposition to House Bill No. 2244. I have been in the real estate profession for 15 years and have seen each year bring more regulations concerning disclosure. It is a difficult line to walk with buyers and sellers and would be more complicated with the passage of this bill.

Our profession, as any other, has those who are experts in their field, and others who just "dabble". Title insurance is a serious component of a real estate transaction, and deserves to have qualified individuals and companies issuing the product. I want my clients and customers to be served by the best title companies and send business accordingly. Would I do this if my company had a financial interest at stake?

The legislature has had concerns about the real estate industry and disclosure and it seems incompatible to consider HB 2244.

Sincerely,



Roger DeVoss
Vice-President



COMMERCIAL REAL ESTATE

February 6, 1996

Mr. Bill Bryant, Chairman
Financial Institution & Insurance Committee
House of Representatives
State Capitol Building
Topeka, Kansas 66612

RE: House Bill 2244

Dear Mr. Bryant:

This letter shall serve as my request for the denial and defeat of House Bill 2244.

The practice of a principal or proprietor of a real estate company, or its agents, being involved in a title insurance company, a controlled business, raises definite issues of "Conflict of Interest". While disclosure laws attempt to inform the public of involvement, it does not eliminate the conflict of interest issue.

The assumption that buyers of real estate using title insurance are experts, or even knowledgeable enough to protect themselves in these ever increasing complex issues, is very naive and fails to provide consumers the protection they deserve.

As a commercial real estate company, we find most purchasers of title insurance do not even know why they are getting title insurance. They think it is required in order to close a real estate transaction.

Even the more sophisticated real estate buyers only know that title insurance is required to get a loan in order to close the transaction.

Seeing how an attorney's opinion of abstract is still an option, although seldom used, when asked if a real estate buyer would like title insurance, the comment quite often is "Do I need it?", and "What for?". This automatically puts the real estate agent as the person educating the public to the kind, type and need for title insurance.

This may put the public at the mercy of the real estate agent, or more importantly at the agent's full discretion, particularly if any ownership or association of a title company would provide the agent any benefit, i.e. time or other economic or non-economic value.

Mr. Bill Bryant, Chairman
Financial Institution & Insurance Committee

February 6, 1996
Page Two

While purchasers of real estate may know in layman's terms that title insurance can be reimbursed to them in the amount of the policy or purchase price of the property in the event of a defect, most do not understand the types, kinds, exclusions, and the title matters a buyer may object to. This is usually left to the buyer's attorney.

In summary, the idea that any licensed real estate person would have the power to negotiate, manipulate, or request a particular title insurance toward their benefit treads very dangerous waters in our constitutional right to own private property as a citizen of the United States of America, without malice, misrepresentation or by error of omissions. Do the real estate people represent the buyer, seller, or the title company?

This country was built on free enterprise, but it should not be at the expense of consumer protection rights.

While in the real estate industry, full disclosure laws have been in existence for several years now, the natural human emotion and desire to succeed crosses the line daily - to who's benefit are we looking out for?

Mr. Bryant, I ask that for the above reasons and other grey areas not mentioned, you do not support House Bill 2244.

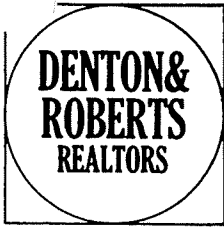
If you have any questions, please feel free to contact me at your convenience.

Best regards,

Gary Snyder, CCIM
Principal/Broker

GS:slw

cc: Mr. John Bell
Security Abstract & Title Co.



1225 NORTH 78TH STREET
KANSAS CITY, KANSAS 66112
913-299-1600
FAX 913-299-1607



February 8, 1996

Honorable William Bryant
House Committee on Insurance
and Financial Institutions
State Capitol Building
Topeka, Kansas 66612

Dear Chairman Bryant:

This letter is being written to voice my concern regarding House Bill 2244. I strongly urge you and your committee to not consider this bill and keep it in committee.

I have been in the real estate business several years, and during that time have used the services of various title companies. I have found the competition for my business to be very keen; and I feel it is my right and the right of my clients to use any title company we choose. The choice should not be made by a realtor or the lender that stands to gain monetarily from that choice.

HB 2244 is very much anti-consumer. If passed, prices will rise, products and services will become inferior, and many conflicts of interest issues will arise.

I thought this matter had been put to rest by the legislature in 1989, but apparently a few interests did not get the message. I, again, urge that HB 2244 not be considered, but defeated.

Thank you for your consideration in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rusty Roberts".

Rusty Roberts
Realtor

RR:jh



RYAN & SONS

REALTORS ESTABLISHED 1965

February 7, 1996

House Committee on Financial Institutions
and Insurance
State Capitol
Topeka, KS 66601

Re: House Bill 2244 - Controlled Business in Title
Insurance Industry

Dear Committee Members:

I have been a licensed real estate broker in the State of Kansas and a member of the Kansas Association of Realtors for many years and have always used independent title insurance and abstract companies to assist me in my real estate activities.

I do not think that it is in the best interest of the consumer nor the real estate industry in general to allow controlled business title insurance companies to capture the marketplace through referrals of title business from the same realtors and agents who own the controlled business title company. Such referrals may constitute a conflict of interest and subject the consumer to higher prices and lesser service than can be obtained in a competitive marketplace.

I fully support the current restrictions on controlled business in the title insurance industry and would request that you vote against passage of House Bill 2244.

Sincerely,



Tim Ryan
REALTOR/BROKER, CRS

RW/meft

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The Honorable William Bryant, Chairman
House Financial Institutions and Insurance Committee
House of Representatives
State Capital Building
Topeka KS 66612

Dear Representative Bryant:

I am writing in opposition to HB 2244 on the following grounds:

- a. Homebuyers and sellers have little familiarity with title insurance service providers, are not knowledgeable shoppers, and accordingly, are willing to accept the recommendations of the producers of the title business, AND the producer of the title business has a powerful incentive to refer his client's business to the title company in which he has a financial interest, even if other title companies offer better service, policy coverage and/or rates; the selection of the controlled business title insurance company may not be in the best interest of the consumer when a collateral benefit flows from the title company to the producer of the title business;
- b. Studies have shown that fees charged by controlled business companies usually start out at or below the competitive market and then rise in excess of competitive prices when a significant portion of the market is captured; the inevitable effect of the widespread growth of controlled business arrangements is to increase the prices paid by consumers for title insurance services;
- c. The consumer loses the ability to obtain the disinterested judgment of the real estate professional as to which title company will best serve his interest;
- d. In a free and competitive consumer-oriented market, prices are restrained by competition, however there is no incentive for the controlled business company to reduce rates or improve policy coverage or service in order to attract business, because its business is "guaranteed" as a result of referrals from the producers of the title business;

e. Title insurance underwriting standards drop and losses occur because the producer/owners of the controlled business title companies require real estate closings to occur, when prudent title industry standards would require a delay in closing to resolve title problems. The producer of the title business, having a financial interest in the title insurance company, may face a definite conflict between his own interest in receiving a commission from a completed sale and the consumer's interest in receiving a clear and unencumbered title;

In my opinion the interests of our industry and its customers would best be served with the defeat of HB 2244. Thank you for your consideration of this matter.

Respectfully Submitted,

Herb Ahner, Broker-Owner

Robert G. (Bob) Wilson
 (913) 494-2552
 Realtor-Auctioneer



WILSON REALTY

REAL ESTATE • AUCTIONEERING • APPRAISAL

Tuttle Creek Plaza • 314 Tuttle Creek Blvd., Suite A
 P.O. Box 1312, Manhattan, Kansas 66502
 (913) 776-9237

BRANCH OFFICE
 Margery Kuhn, Broker 293-5780
 116 S. Arizona, Leonardville
 State Licensed Appraiser

February 8, 1996

House Committee on Financial Institutions
 and Insurance
 State Capitol
 Topeka, Kansas 66612

Re: House Bill 2244 Controlled Business in Title Insurance
 Industry

Dear Committee Members:

I have been a licensed real estate broker in the State of Kansas and a member of the Kansas Association of Realtors for many years and I have always used independent title insurance and abstract companies to assist me in my real estate activities.

I do not think that it is in the best interest of the consumer nor the real estate industry in general to allow controlled business title insurance companies to capture the marketplace through referrals of title business from the same realtors and agents who own the controlled business title company. Such referrals may constitute a conflict of interest and subject the consumer to higher prices and lesser service than can be obtained in a competitive marketplace.

I fully support the current restrictions on controlled business in the title insurance industry and would re-quest that you vote against passage of House Bill 2244.

Sincerely,

Robert G. Wilson
 Robert G Wilson



7-12

LANDAU DEVELOPMENT Co.

9535 CANTERBURY
OVERLAND PARK, KANSAS 66206

(913) 648-2987

The Honorable William Bryant, Chairman
House Financial Institutions and Insurance Committee
House of Representatives
State Capital Building
Topeka, KS 66612

Dear Representative Bryant:

I am writing in opposition to HB 2244 on the following grounds:

This bill would not be in the public interest. It is of interest and benefit only to a few real estate companies. The desire of these real estate companies to have this bill passed is that they can demand that all title insurance be run through their own office.

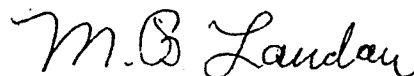
At present, customers are free to select their own title insurance companies, but if this bill passes that freedom would be greatly restricted. Within a short period of time, these companies will demand payments of 1% or 2% of the mortgage to be placed on the property for closing costs.

The large real estate companies close a minimum of three sales per day, resulting in potential closing costs of five to six thousand dollars per day, which would be a windfall profit to those engaged in this practice.

Independent title companies perform a public service at a reasonable price. This practice should not be inhibited.

These are my reasons for opposing HB 2244.

Respectfully Yours,



M.B. Landau

Paul R. Brown & associates, inc.

400 Sutton Place / 209 East William / Wichita, Kansas 67202-4009 / (316) 264-0394

Paul R. Brown, M.A.I.
Betty M. Spingler

February 1, 1996

The Honorable Dr. Bill Bryant
Chairman
Financial Institutions & Insurance Committee
House of Representatives
State Capitol Building
Topeka, Kansas 66612

Re: Controlled Business Legislation

Dear Representative Bryant:

I am requesting that you give serious consideration to the defeat of HB 2244.

I am a realtor, entering the real estate business May 2, 1952, tenure has been continuous with the same firm. I have been active in the Wichita Area Association of Realtors, Inc., serving as president in 1982; I have been active with the Kansas Association of Realtors, in the capacity of director and chairman of Professional Standards Committee.

In my opinion Wichita is privileged to have the availability of service from several title companies. Over the years, I can speak to the fine quality service. Competition between the title companies has been wholesome. Fees have been competitive and increases only when the economy warranted.

In general the title companies have provided many benefits and certainly extended a hand of fellowship to realtors and the community in areas where there was no compensation for them. They have been "team players" with the realtors. To my knowledge the title companies have no ownership in the real estate business.

In my opinion it would be difficult to suggest to anyone the use of another title company if you had financial interest in one. The involvement alone would cause explanation to be made which could easily be an unfair judgment.

Realtors of long tenure have witnessed the transition from public skepticism to full-fledged respect. It would seem difficult for a realtor to justify without reservation advising the public in two areas.

The old adage "do what you do best" is usually successful and respectful.

Sincerely yours,

Betty M. Spingler

bms:s



Insurance...

Management - Appraisals - Real Estate



7-14



14813 West 91st Street * Shawnee Mission, Kansas 66215 * (913) 888-4864

The Honorable William Bryant, Chairman
House Financial Institutions and Insurance Committee
House of Representatives
State Capital Building
Topeka, KS 66612

Dear Representative Bryant:

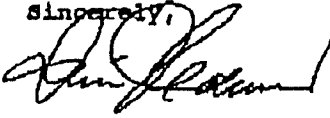
I am writing in opposition to HB 2244 for the following reasons:

- a. Homebuyers and sellers generally have little or no knowledge of Title Insurance matters. Therefore, they most normally depend upon their real estate broker for recommendation of a insurance provider. Assuming that disclosure will be required, the general public has little if any understanding of the concept of a "controlled business".
- b. Studies have shown that fees charged by controlled business companies usually start marketing at or below the competitive market and then rise in excess of competitive prices when a significant portion of the market is captured; the effect of the widespread growth of controlled business arrangements is to increase the prices paid by consumers of title insurance services.
- c. The consumer loses the ability to obtain the disinterested third party judgement as to which title insurance will best serve his/her interests;
- d. In a competitive consumer oriented market, prices are restrained by competition, however there is no incentive for the controlled business company to reduce rates or improve policy coverage or service in order to attract business because it's business is guaranteed as a result "locked" referrals.
- e. Title insurance underwriting standards will drop and losses will occur. Underwriting standards will drop because the real estate sales commission will be all important. With the increase in loss occurrence, the premiums will increase with the increase in risk.



In my opinion, the interests of the public and the real estate industry will best be served with the defeat of HB 2244. Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dennis J. Coleman".

Dennis J. Coleman

AJ Long Property Management

A Division of AJ Long Associates, Inc.

202 North Chestnut Suite A
Olathe, KS 66061

The Honorable William Bryant, Chairman
House Financial Institutions and Insurance Committee
House of Representatives
State Capital Building
Topeka KS 66612

Dear Representative Bryant:

I am writing in opposition to HB 2244 on the following grounds:

- a. Homebuyers and sellers have little familiarity with title insurance service providers, are not knowledgeable shoppers, and accordingly, are willing to accept the recommendations of the producers of the title business, AND the producer of the title business has a powerful incentive to refer his client's business to the title company in which he has a financial interest, even if other title companies offer better service, policy coverage and/or rates; the selection of the controlled business title insurance company may not be in the best interest of the consumer when a collateral benefit flows from the title company to the producer of the title business;
- b. Studies have shown that fees charged by controlled business companies usually start out at or below the competitive market and then rise in excess of competitive prices when a significant portion of the market is captured; the inevitable effect of the widespread growth of controlled business arrangements is to increase the prices paid by consumers for title insurance services;
- c. The consumer loses the ability to obtain the disinterested judgment of the real estate professional as to which title company will best serve his interest;
- d. In a free and competitive consumer-oriented market, prices are restrained by competition, however there is no incentive for the controlled business company to reduce rates or improve policy coverage or service in order to attract business, because its business is "guaranteed" as a result of referrals from the producers of the title business;

Voice: 913-782-5252 FAX/Service: 913-764-8456

AJ Lang Property Management

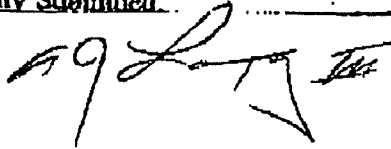
A Division of AJ Lang Associates, Inc.

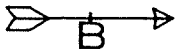
202 North Chestnut Suite A
Olathe, KS 66061

f. Title insurance underwriting standards drop and losses occur because the producer/owners of the controlled business title companies require real estate closings to occur, when prudent title industry standards would require a delay in closing to resolve title problems. The producer of the title business, having a financial interest in the title insurance company, may face a definite conflict between his own interest in receiving a commission from a completed sale and the consumer's interest in receiving a clear and unencumbered title;

In my opinion the interests of our industry and its customers would best be served with the defeat of HB 2244. Thank you for your consideration of this matter.

Respectfully Submitted,





BUSSART REALTY & AUCTION SERVICE, INC.

5050 E. CENTRAL WICHITA, KANSAS 67208
 TELEPHONE: 684-3531 — 684-0211



GARY DEAN BUSSART, GRI.,
 BROKER — AUCTIONEER

- RESIDENTIAL AND COMMERCIAL
 - SALES AND APPRAISALS
 - INVESTMENT COUNSELING
- "THE DEAN'S OF REAL ESTATE"

DEAN L. BUSSART, RM
 FEE APPRAISER Appraisal
 MEMBER AMERICAN INSTITUTE
 FOR REAL ESTATE APPRAISERS

February 1, 1996

House Financial Institutions & Insurance Committee
 Dr. Bill Bryant, Chairman
 House of Representatives
 State Capitol Building
 Topeka, Kansas 66612

Dear Dr. Bryant,

I feel compelled to express to you my views regarding House Bill 2244 which was introduced during the 1995 legislative session, by Realtors hoping to control the title business in the marketplace. Its sole purpose is to remove necessary safeguards existing in KSA 40-24046 (14) (e) (f).

There are many reasons why this bill should not pass. It is very apparent that sales personnel which are associated with a broker, who is aligned with a title company, would be obligated to use said title company. Not being acquainted with title insurance providers, the average buyers and sellers generally accept the advise and recommendations from their respective agents. If the agent has any interest whatsoever, then the spirit of competition would no longer exist. In a free and competitive consumer- oriented market, prices are controlled by competition. In a controlled "guaranteed" business company, rates would undoubtedly be increased in the long run, thus



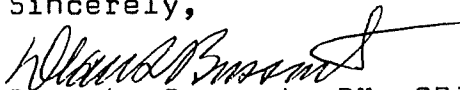
7-19

not being in the best interests of the consumer. Independent title companies would face an almost insurmountable unfair task in competition for the business in the marketplace. The present law does not prevent Realtors or lenders from entering the title business, but merely requires controlled title companies compete on a fair and just manner with other title companies. The Kansas Supreme Court unanimously upheld the constitutionality of the present law (KSA-40-2404 (14)(e)(f)) by a decision rendered January 18, 1991. They stated: "The purpose of the Unfair Trade Practises Act is to prevent unfair methods of competition and unfair or deceptive acts or practises in the business of insurance. The purpose of (14)(e)(f) is to stimulate competition by decreasing vertical integration between producers of title business and title insurers.

I feel, as do my associates, that House Bill 2244 creates a "captive" type situation that would be totally inappropriate. I respectfully ask your consideration for its defeat. As a matter of my credibility, I tender the following credentials:

I have been exclusively in the business of real estate since 1951. I was named Wichita Realtor of the Year in 1967; was Board President in 1973; was President of the Kansas Association of Realtors in 1976 and was named Kansas Realtor of the Year for 1978. I have served on many National Committees, having been a National Director from 1976 through 1980, at which time I chaired the Kansas Political Affairs Committee. Again, I ask your consideration in this vital matter.

Sincerely,


Dean L. Bussart, RM, GRI
DLB/rb

Paul R. Brown & associates, inc.

400 Sutton Place / 209 East William / Wichita, Kansas 67202-4009 / (316) 264-0394

Paul R. Brown, M.A.I.
Betsy M. Spingler

February 1, 1996

The Honorable Dr. Bill Bryant
Chairman
Financial Institutions & Insurance Committee
House of Representatives
State Capitol Building
Topeka, Kansas 66612

Re: Controlled Business Legislation

Dear Representative Bryant:

I am a realtor and appraiser here in Sedgwick County. My career began on June 5, 1938. I have been continuous with the same firm for nearly fifty-eight years. I earned the MAI designation in 1959 from the American Institute of Real Estate Appraisers, now known as Appraisal Institute.

As an MAI, I was thoroughly schooled against advocacy practices, or any business ethic that was purely self-serving or that in any way denied full openness and choice to the client.

I have served as President of the Board of Realtors here in Wichita in 1952 and as President of the Kansas Chapter #45 of the American Institute of Real Estate Appraisers in 1966.

This letter is to respectfully urge the defeat of HB2244 because I believe it enables real estate representatives to unfairly control the client in the matter of choice, when title insurance is to be purchased.

Most respectfully yours,

Paul R. Brown, MAI

prb:s



Insurance..

Management — Appraisals — Real Estate



7:21

COURTLEY JACKSON COMPANY
REAL ESTATE APPRAISERS & CONSULTANTS

Courtley A. Jackson, SRA
Joel Jackson

February 15, 1996

Chairman Bill Bryant
Financial Institutions and Insurance Committee
State Capitol Building
Topeka, Ks 66612

Re: HB 2244
Controlled Business

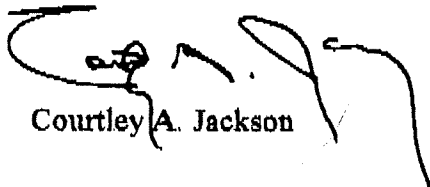
Dear Mr. Bryant,

I am opposed to HB 2244 which allows a real estate agent involved in a transaction to direct the title work to a title company for personal gain. If an agent suggests a company in which they have a financial interest, it is not necessarily promoting the most efficient, or best, but simply promoting personal financial gain.

There are seven title companies serving the Wichita area. Their prices are competitive and service is good. However, that would change under this bill. These seven companies would not have the opportunity to direct business to themselves, since they are not real estate agents. The real estate agent would not "compete" for the title business, they would only take what they could control.

Thank you for considering my perspective.

Sincerely,



Courtley A. Jackson

February 16, 1996

Mr. Bill Bryant, Chairman
Financial and Insurance Committee
House Of Representatives
State Capitol Building
Topeka, Ks. 66612

Honorable Chairman:

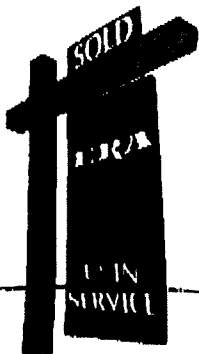
REF: H B 2244

As you undoubtedly know, H B 2413 was introduced in 1991 when Rep. Turnquist was Chairperson. In my view, the option to pick a title company lies with the two parties to a contract ie, Buyer and Seller. The present law allows for 20 per cent of one's business to be referred when the referring agent has a financial interest in the title company to whom business is referred. Any split larger than that limits option. Today, we also have more than 1 or 2 long distance telephone companys don't we?

Sincerely,

F. Patrick Egan, JR.

FPE/wr



EGAN, REALTORS™

211 East Madison
Topeka, Kansas 66612

17-23
316 233 4112

Each office independently owned and operated

END

February 6, 1996

Bill Bryant
Chmn Financial Institutions & Insurance
House of Representatives
State Capitol Building
Topeka, KS 66612

Dear Sir:

The purpose of my letter is to inform you of my position to the concept of controlled business, (re: HB #2244). I started Estates Unlimited Realtors in 1984 and have grown to be the largest Real Estate firm in Derby, Kansas.

I feel the system as it now operates is the most efficient and affords the customer the most protection. I urge you to maintain the Real Estate business as it now functions. When something works this effectively we do not need to modify or change it.

Sincerely,

K.O. LaVergne,
Owner/Broker
Estates Unlimited Realtors

27-24

AJ Long Property Management

A Division of AJ Long Associates, Inc.

202 North Chestnut Suite A
Olathe, KS 66061

The Honorable William Bryant, Chairman
House Financial Institutions and Insurance Committee
House of Representatives
State Capital Building
Topeka KS 66612

Dear Representative Bryant:

I am writing in opposition to HB 2244 on the following grounds:

- a. Homebuyers and sellers have little familiarity with title insurance service providers, are not knowledgeable shoppers, and accordingly, are willing to accept the recommendations of the producers of the title business, AND the producer of the title business has a powerful incentive to refer his client's business to the title company in which he has a financial interest, even if other title companies offer better service, policy coverage and/or rates; the selection of the controlled business title insurance company may not be in the best interest of the consumer when a collateral benefit flows from the title company to the producer of the title business;
- b. Studies have shown that fees charged by controlled business companies usually start out at or below the competitive market and then rise in excess of competitive prices when a significant portion of the market is captured; the inevitable effect of the widespread growth of controlled business arrangements is to increase the prices paid by consumers for title insurance services;
- c. The consumer loses the ability to obtain the disinterested judgment of the real estate professional as to which title company will best serve his interest;
- d. In a free and competitive consumer-oriented market, prices are restrained by competition, however there is no incentive for the controlled business company to reduce rates or improve policy coverage or service in order to attract business, because its business is "guaranteed" as a result of referrals from the producers of the title business;

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AJ Long Property Management

A Division of AJ Long Associates, Inc.

202 North Chestnut Suite A
Olathe, KS 66061

e. Title insurance underwriting standards drop and losses occur because the producer/owners of the controlled business title companies require real estate closings to occur, when prudent title industry standards would require a delay in closing to resolve title problems. The producer of the title business, having a financial interest in the title insurance company, may face a definite conflict between his own interest in receiving a commission from a completed sale and the consumer's interest in receiving a clear and unencumbered title:

In my opinion the interests of our industry and its customers would best be served with the defeat of HB 2244. Thank you for your consideration of this matter.

Respectfully Submitted,

George W. Anthony Broken

*P.S. I have 27 years Real Estate experience I know
what this Bill could do to the Public*

Voice: 913-782-5252 FAX/Service: 913-764-8456

REALTORS

CARL CHUZY COMPANY BLDG. 1, SUITE 200, 555 N. WOODLAWN, WICHITA, KS 67208 (316) 686-7274 FAX: (316) 686-8333

February 2, 1996

Representative JoAnn Pottorff
House of Representatives
Topeka, Ks. 66612

Re: HB2244

Dear Representative Pottorff;

House Bill 2244 should be defeated if it comes out of the Insurance Committee.

The current statute (KSA 2404 b (14) (e) and (f)) contains important public safeguards. It was enacted by wide margins in both Houses and upheld by the Kansas Supreme Court. Repeal of this statute will eliminate competition in the title insurance industry.

Please help defeat HB2244 if it comes out of committee.

Cordially


Carl Chuzy

cc: Chairman Bill Bryant
House of Representatives
Topeka, KS. 66612

7-27





BARBARA JEAN PICKENS, GRI, CRS
BROKER ASSOCIATE
REALTY EXECUTIVES OF WICHITA



10300 W. Central
Wichita, KS 67212
Bus: (316) 722-9393
FAX: (316) 722-6210

February 6, 1996

Representative Bill Bryant
House of Representatives
Topeka, KS 66612

Dear Rep. Bryant:

HOUSE BILL 2244 SHOULD BE DEFEATED!!!

House Bill 2244 seeks to remove important consumer protection safeguards that currently exist in KSA 40-2404B (14) (e) and (f).

1. The current statute was based on recommendations from a Kansas Insurance Department study group consisting of realtors, lenders, lawyers, title agents and Insurance Department personnel;

2. The current statute was passed in 1989 on a vote of 39-0 in the Senate and 122-2 in the House;

3. The Kansas Supreme Court unanimously upheld the current statute saying:

"The purpose of the Unfair Trade Practices Act is to prevent unfair methods of competition and unfair or deceptive acts or practices in the business of insurance. The purpose of (14) (e) and (f) is to stimulate competition by decreasing vertical integration between producers of title business and title insurers."

4. In 1991, a bill identical to HB2244 was killed in the ~~House~~ Insurance Committee;

5. In 1995, the House Committee on Financial Institutions and Insurance did not think it necessary to revisit this issue;

6. In 1995, the House defeated a motion to remove the bill from committee for a floor vote.

How many times must the Legislature and Judiciary speak on this subject??!!

The current law doesn't prevent realtors, lenders or other

The current law doesn't prevent realtors, lenders or other producers of title business from entering the title business, but merely requires controlled business title insurance companies to compete on a "level playing field" with independent title companies.

The consumer will eventually suffer from a "rigged" marketplace.

Please help defeat HB2244.

Respectively,



Barbara Jean Pickens
Broker Associate GRI CRS ABR

February 15, 1996

Rep. Bill Bryant
House of Representatives
State Capitol Building
Topeka, KS 66612

Dear Representative Bryant:

I am writing to address my professional concerns about the possible legislative review of K.S.A. 1989 Supp. 40-2404(14)(e), (f) and (g) commonly known as the "controlled business" provisions of the Unfair Trade Practices Act pertaining specifically to title insurance companies and producers of title business.

When representing clients in real estate transactions, it is important for the attorney and client to direct their focus on the many details of the transaction including environmental questions, structural inspections, termite inspections, title questions and financing. Clients routinely have many questions and concerns surrounding a prospective purchase of real estate, particularly if that transaction involves the clients purchase of their first residence.

The statute in question is one of many statutes in Kansas designed to protect consumers of this state when dealing with persons or companies in a position of superior knowledge and experience in that particular field or subject involved. The consumers should be free from concerns about possible unfair or deceptive acts or practices of those with whom they deal. More particularly, in real estate transactions, that would involve the interaction between the title insurance companies and producers of title business. When the producer of the title business controls the insurer of that title, the relationship opens the door to opportunities of unfair or deceptive acts or practices. The statute in question should remain in place to protect the consumers of this state. In short, HB2244 should be defeated. Thank you.

Yours very truly,

Milo M. Unruh, Jr., of
ARN, MULLINS, UNRUH, KUHN & WILSON, LLP

MMU:rmw
cc: JoAnn Pottorff

LAW OFFICES

YOUNG, BOGLE, MCCAUSLAND, WELLS & CLARK

A PROFESSIONAL ASSOCIATION

G. ENN D. YOUNG, JR.
JERRY C. BOGLE
PAUL S. MCCAUSLAND
WILLIAM A. WELLS
KEN M. CLARK
PATRICK C. BLANCHARD
MARK R. MALONEY

FIRST NATIONAL BANK BUILDING
106 WEST DOUGLAS, SUITE 923
WICHITA, KANSAS 67202-3392

TELEPHONE (316) 266-7841

TELECOPIER (316) 255-3956

February 20, 1996

STANLEY & VERMILION 1886 - 1897
STANLEY, VERMILION,
& EVANS 1897 - 1905
STANLEY, VERMILION,
EVANS & CAREY 1909 - 1913
VERMILION, EVANS,
CAREY & LILLESTON 1913 - 1946
CAREY, LILLESTON,
SPRADLING & GOTT 1946 - 1950
LILLESTON, SPRADLING,
GOTT & STALLWITZ 1950 - 1958
LILLESTON, SPRADLING,
GOTT, STALLWITZ &
HOPE 1958 - 1974
GOTT, HOPE, GOTT,
YOUNG & SAFFELS 1975 - 1979
GOTT, YOUNG & BOGLE 1979 - 1989

ORLIN L. WAGNER
OF COUNSEL

Post-It™ brand fax transmittal memo 7671 # of pages 2

To	JEFF OTTO	From	ORLIN WAGNER
Co.		Co.	
Dept.		Phone #	265-7841
Fax #	682-4495	Fax #	265-3956

Mr. Bill Bryant, Representative
House of Representatives
Topeka, Kansas 66612

Dear Mr. Bryant:

This letter is written to you to register my objection to House Bill No. 2244, which is pending, having been introduced during the 1995 legislative sessions. The bill seeks to remove important safeguards existing under the K.S.A. 40-2404(14) (e) and (f) that I am sure were passed for the purpose of protecting Kansas consumers. These paragraphs of 40-2404(14) were enacted by the 1989 legislature by unanimous vote in the Senate and an overwhelming 122 - 2 vote in the House.

This legislation was enacted to protect the individuals who buy or sell a residence through real estate firms from some realtors and title insurance companies.

You are probably aware of such corporations as Wichita Title Associates, Inc. and Guardian Title Company who were attempting to corner the title insurance business prior to the 1989 legislative session. You are probably aware that Wichita Title Associates, Inc. was owned by one or more title insurance companies and one or more major real estate sales companies in the Wichita area. The sole purpose was to direct title insurance business through Wichita Title Associates, Inc. or similar companies where real estate firms owned stock or substantial amounts of stock and would receive benefits from such title insurance business as well as sales commissions.

Guardian Title Company and Wichita Title Associates, Inc. rather promptly brought suit against the Commissioner of Insurance following the enactment of these paragraphs by the 1989 legislature. This case is memorialized in 248 Kan. 146, 805 P.2d 33 (1991) and found these provisions to be constitutional and further discussed the purpose of such legislation was to prevent unfair methods of competition under the Unfair Trade Practices Act (UTTA).

C
O
P
Y

Mr. Bill Bryant, Representative
February 20, 1996
Page 2

This writer has no interest in this legislation except fairness and protection of so-called amateur buyers and sellers of property. It is my understanding that your committee, at this time, is being visited by interests in title insurance or realtor business(es), lobbying for repeal of these sections which are protective to individual buyers and sellers of real estate property.

I would be willing to discuss this matter further with you at your convenience. I would surely hope that you could assist in defeating this House Bill 2244, which is surely a self-serving bill for the benefit of cornering the market in the title insurance business to the benefit of realtors and selective title insurance company(s).

Very truly yours,

Orlin L. Wagner
of YOUNG, BOGLE, MCCAUSLAND,
WELLS & CLARK, P.A.

OLW:jb

bcc: Jeff Otto

J. EDWARD TAYLOR
1524 WEST 34TH STREET SOUTH
WICHITA, KANSAS 67217

Representative Bill Bryant
House of Representatives
Topeka, Kansas 66612

Dear Representative Bryant:

House Bill 2244

How many times must the Legislature and Judiciary speak?

House Bill 2244 seeks to remove important consumer protection safeguards that currently exist in K.S.A. 40-2404b (14) (e) and (f).

1. The current statute was based on recommendations from a Kansas Insurance Department study group consisting of realtors, lenders, lawyers, title agents and Insurance Department personnel;
2. The current statute was passed in 1989 on a vote of 39-0 in the Senate and 122-2 in the house.
3. The Kansas Supreme Court unanimously upheld the current statute saying:

"The purpose of the Unfair Trade Practices Act is to prevent unfair methods of competition and unfair or deceptive acts or practices in the business of insurance. The purpose of (14) (e) and (f) is to stimulate competition by decreasing vertical integration between producers of title business and title insurers."
4. In 1991, a bill identical to HB2244 was killed in the House Insurance Committee;
5. In 1995 the House Committee on Financial Institutions and Insurance did not think it necessary to revisit this issue;
6. In 1995 the House defeated a motion to remove the bill from committee for a floor vote.

The current law doesn't prevent realtors, lenders or other producers of title business from entering the title business, but merely requires controlled business title insurance companies to compete on a "level playing field" with independent title companies.

Page -2-
Representative Bill Bryant

The consumer will eventually suffer from a "rigged" marketplace.

I am eager to discuss this matter with you at any time.

Respectfully,

J. Edward Taylor
JET:bjt
cc: Representative George Dean
House of Representatives
Topeka, Kansas 66612

Representative Bill Bryant
House of Representatives
State House
Topeka, KS 66612

Dear Rep. Bill Bryant:

HOUSE BILL 2244 SHOULD BE DEFEATED
House Bill 2244 seeks to remove important consumer protection safeguards that currently exist in KSA 40-2404b (14) (e) and (f).

1. The current statute was based on recommendations from a Kansas Insurance Department study group consisting of realtors, lenders, lawyers, title agents and Insurance Department personnel;
2. The current statute was passed in 1989 on a vote of 39-0 in the Senate and 122-2 in the House;
3. The Kansas Supreme Court unanimously upheld the current statute saying:
"The purpose of the Unfair Trade Practices Act is to prevent unfair methods of competition and unfair or deceptive acts or practices in the business of insurance. The purpose of (14) (e) and (f) is to stimulate competition by decreasing vertical integration between producers of title business and title insurers."
4. In 1991, a bill identical to HB2244 was killed in the House Insurance Committee;
5. In 1995, the House Committee on Financial Institutions and Insurance did not think it necessary to revisit this issue;
6. In 1995, the House defeated a motion to remove the bill from committee for a floor vote.

How many times must the Legislature and Judiciary speak on this subject?!

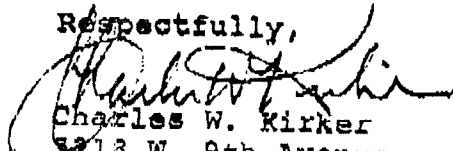
The current law doesn't prevent realtors, lenders, or other producers of title business from entering the title business, but merely requires controlled business title insurance companies to compete on a "level playing field" with independent title companies.

The consumer will eventually suffer from a "rigged" marketplace.

Please help defeat HB2244!

I am eager to discuss this matter with you at any time.

Respectfully,



Charles W. Kirker
3213 W. 9th Avenue
Wichita, Ks 67212
cc

(Asst. Vice Pres. Mid Continent Federal
Savings Bank
P.O. Box 2639
Wichita, Ks. 67201

Representative Brenda Landwehr



LARRY UNDERHILL
Multi-Million Dollar Producer
10300 W. Central, Suite 200
Wichita, Kansas 67212
Bus: (316) 722-9393
Res: (316) 721-5979



February 6, 1996

Representative Bill Bryant
House of Representatives
Topeka, KS 66612

Dear Representative Bryant:

HOUSE BILL 2244 SHOULD BE DEFEATED

House Bill 2244 seeks to remove important consumer protection safeguards that currently exist in KSA 40-2404b (14) (e) and (f).

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PLEASE HELP DEFEAT HB2244!

I am eager to discuss this matter with you at any time.

Sincerely,



Larry G. Underhill,
Associate/Broker
316-722-9393-off
316-721-5979-res.

LGU/jaa

cc: Representative Carlos Mayans
Senator Mike Harris

February 21, 1996

The Honorable Bill Bryant, Chairman
Committee of Financial Institutions
and Insurance
Kansas House of Representatives
State Capitol Building
Topeka, Kansas 66612

Re: House Bill 2244

Dear Representative Bryant:

I am writing in opposition to HB 2244. Our firm is a family owned commercial real estate company, located in Wichita. As a past president of the Wichita Area Association of Realtors and the Kansas Association of Realtors, I have visited with many in the real estate industry regarding this issue. There are three main reasons for my opposition to this legislation.

(1) The consumer and general public are at a distinct disadvantage if HB 2244 passes. Most buyers of real estate do not have contact with title companies and rely on their real estate agent to provide "objective" advise on which title company to use. How can a real estate agent remain objective regarding which title company to use if he or she, or the agency they work for has a financial interest in a particular title company?

(2) The free enterprise system is already working. Page 761 of the Southwestern Bell Yellow Pages for Wichita has several advertisements for real estate title firms. I count seven (7) firms (excluding Wichita Title Associates) advertising in the Yellow Pages, that are independently owned and operated. Those companies more than adequately handle the volume of real estate transactions in Sedgwick County.

Hauser F.D.S.
Attachment 8



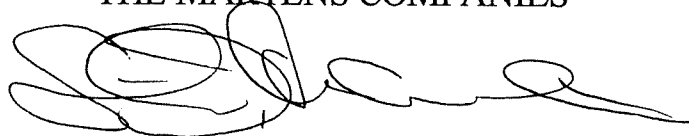
The Honorable Bill Bryant, Chairman
Committee of Financial Institutions
and Insurance
February 21, 1996
Page Two

(3) Real estate brokers who support HB 2244 are guilty of the old saying "...eating your cake and having it to!!" The National Association of Realtors has periodically opposed the banking industry expanding its powers into the area of real estate brokerage. A major article on this topic was the feature on the front page of the February 25, 1991, edition of *Realtor News*. It is inconsistent for real estate lobbyists and practitioners to argue on one hand to that banks should be kept out of the real estate brokerage business and on the other hand argue that real estate firms should be able to own title companies.

We ask that you do what is best to ensure that a fair and competitive market exist for the consumer and general public. We ask that the House Insurance Committee of Financial Institutions and Insurance not support HB 2244. Thank you for your consideration of this matter.

If we can answer any questions or provide additional information, please do not hesitate to contact me.

Sincerely,
THE MARTENS COMPANIES



Steven J. Martens, CPM
President