

Approved: 4-3-98
Date

MINUTES OF THE HOUSE COMMITTEE ON INSURANCE.

The meeting was called to order by Chairperson Dennis Wilson at 1:35 p.m. on February 19, 1998 in Room 527-S of the State Capitol.

All members were present except: Representative Cindy Empson, excused

Committee staff present: Bill Wolff, Legislative Research Department
Robert Nugent, Revisor of Statutes
Beth James, Committee Secretary

Conferees appearing before the committee: Tom Wilder, Kansas Insurance Department
Chris McKenzie, League of Kansas Municipalities

Others attending: See attached list

The meeting was called to order at 1:35 p.m. by Chairperson Dennis Wilson. He said there were some bills before the committee that needed discussion. The first bill was **HB2638**.

HB2638: Solvency requirements for group-funded municipal insurance pools.

The Chairperson called Tom Wilder to the speakers stand. (Attachment #1). Mr. Wilder handed out a balloon for **HB2638**. He said he would go over the amendments with the committee, and that there is some language that the School Board Association and the League of Municipalities had concerns about. The Insurance Department got together with these two groups and they have worked out all but one of the concerns, which the committee will have to make a decision on. After finishing the balloon amendments the Chairperson called Chris McKenzie to the podium.

Mr. McKenzie said he actually has two points of disagreement with the Insurance Department. They are outlined in his written testimony. (Attachment #2). One of these disagreements has to do with the insolvency statutes and the other is the proposal of a new subsection (l) to follow (k) on page two having to do with surplus funds. A discussion followed. It was decided that the committee would wait to work the bill until they received some additional language from the Insurance Department.

The Chairperson then turned the committees attention to **HB2966**.

HB2966: Title insurance reform.

Representative Myers said that this is a very good bill. Representative Myers made a motion to pass out **HB2966** favorably. The motion was seconded by Representative Gregory. A short discussion followed. Representative Tomlinson said that he agreed with Representative Myers and that he felt the other title bill **HB2692**, was also important.

HB2692: Title insurance, requiring certain disclosures and prohibiting certain actions.

Representative Tomlinson made a substitute motion to combine the two title bills. Representative Tomlinson passed out a "balloon" to the committee. (Attachment #3). Representative Tomlinson went through the balloon with the committee. The motion was seconded by Representative Myers. Some of the language in the change had been of concern to Chairperson Wilson, so he was asked to explain this. Representative Tomlinson finished going through the "balloon".

CONTINUATION SHEET
HOUSE COMMITTEE ON INSURANCE, FEBRUARY 19, 1998
ROOM 527 AT 1:30 P.M.

Representative Kirk commended Representative Tomlinson on his effort to reach a compromise in making this a more palatable bill. But, she asked the committee not to combine the two bills. She felt that if the committee did combine them there would be a good chance that they may jeopardize HB2966. She feels that HB2692 is incredibly controversial and deserves an independent debate and decision on its own merits.

A discussion followed. The Chairperson called for the vote. The committee voted against Representative Tomlinson's substitute motion.

Representative Kirk passed out to the committee a "balloon" for amendments to HB2966. (Attachment #4). She explained the amendments. Representative Kirk made a substitute motion to pass out HB2966 favorably with the amendments in her balloon. The motion was seconded by Representative McCreary. There was no further discussion. The vote was taken and the motion passed.

There was no further business for the day. The meeting was adjourned at 2:27 p.m. The next meeting was scheduled for February 23, 1998.

KID 2/19/98

HOUSE
INSURANCE
ATTACHMENT 1
2-19-98

Session of 1998

HOUSE BILL No. 2638

By Committee on Insurance

1-16

9 AN ACT concerning Kansas group-funded municipal pools, relating
10 solvency requirements; amending K.S.A. 12-2618 and 12-2620
11 K.S.A. 1997 Supp. 12-2621 and 44-584 and repealing the exist-
12 sections.
13

14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 12-2618 is hereby amended to read as follows:
16 12-2618. Application for a certificate of authority to operate a pool shall
17 be made to the commissioner of insurance not less than ~~30~~ 60 days prior
18 to the proposed inception date of the pool. The application shall include
19 the following:

20 (a) A copy of the bylaws of the proposed pool, a copy of the articles
21 of incorporation, if any, and a copy of all agreements and rules of
22 the proposed pool. If any of the bylaws, articles of incorporation, agree-
23 ments or rules are changed, the pool shall notify the commissioner within
24 30 days after such change.

25 (b) Designation of the initial board of trustees and administrator.
26 When there is a change in the membership of the board of trustees or
27 change of administrator, the pool shall notify the commissioner within
28 30 days after such change.

29 (c) The address where the books and records of the pool will
30 be maintained at all times. If this address is changed, the pool shall notify
31 the commissioner within 30 days after such change.

32 (d) Evidence that the annual Kansas gross premium of the pool
33 shall be not less than \$250,000 for each of the categories described in sub-
34 sections (1) through (4) of this subsection: (1) All property insurance
35 under article 9 of chapter 40 of the Kansas Statutes Annotated except motor
36 vehicle physical damage; (2) motor vehicle liability and physical damage
37 insurance; (3) workers' compensation and employers' liability insurance;
38 (4) all casualty insurance under article 11 of chapter 40 of the Kansas
39 Statutes Annotated except insurance under categories (2) and (3) above;
40 (5) group sickness and accident insurance if at the date of issue the annual
41 gross premium for such coverage will be not less than \$1,000;
42 (6) group life insurance if at the date of issue the coverage insur-
43 ance is at least 60% of the eligible participants or the total number of persons

60

House Insurance
Attachment #1-1
2-19-98

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with an aggregate excess policy limit of not less than \$2,000,000 which attaches at no more than 125% of standard premium

or adequate surplus funds

, in the pool

lawful request for information

1-2

1 ered will exceed 600. The pool shall notify the commissioner within 30
2 days if the minimum premium qualification or participation requirement
3 is less than that specified in this subsection for any of the above categories
4 of insurance.

5 (e) An agreement binding the group and each member thereof to
6 comply with the provisions of the workers compensation act if such cover-
7 erage is to be provided by the pool. For all lines of coverage, all members
8 of the pool shall be jointly liable for the payment of claims to the extent
9 of the assets of the pool.

10 (f) A copy of the procedures adopted by the pool to provide services
11 with respect to underwriting matters and, with respect to the categories
12 identified in subsection (d)(1) through (4), safety engineering.

13 (g) A copy of the procedures adopted by the pool to provide claims
14 adjusting and accumulation of income and expense and loss data.

15 (h) A confirmation that specific and aggregate excess insurance pro-
16 vided by an insurance company holding a Kansas certificate of authority
17 is or will be in effect concurrent with the assumption of risk by the pool,
18 as selected by the board of trustees of the pool, ~~or adequate surplus funds~~
19 ~~in an amount and form as approved by the commissioner, in the pool. In~~
20 ~~addition, each pool shall maintain adequate surplus funds in the pool in~~
21 ~~an amount and form as approved by the commissioner.~~ The pool shall
22 notify the commissioner within 30 days of any change in the specific or
23 aggregate excess insurance carried by the pool. For the purposes hereof,
24 "surplus funds" shall mean retained earnings of the pool after reserves
25 have been established for all known and incurred but not reported losses
26 of the pool and after all other liabilities of the pool, including unearned
27 premium reserves, have been deducted from total assets. The term "ad-
28 equate surplus funds" shall mean the amount necessary for the pool to
29 fund its self-insured obligations.

30 (i) After evaluating the application the commissioner shall notify the
31 applicant if the plan submitted is inadequate, fully explaining to the ap-
32 plicant what additional requirements must be met. If the application is
33 denied, the applicant shall have 10 days to make an application for hearing
34 by the commissioner after the denial notice is received. A record shall be
35 made of such hearing, and the cost thereof shall be assessed against the
36 applicant requesting the hearing.

37 (j) Any other relevant factors the commissioner may deem necessary.

38 (k) ~~If any pool fails to file any report or other documentation or in-~~
39 ~~formation with the commissioner as required by this act or fails to respond~~
40 ~~to any proper inquiry of the commissioner, the commissioner, after notice~~
41 ~~and opportunity for hearing, may impose a penalty of up to \$500 f~~ ~~sch~~
42 ~~violation or act, along with an additional penalty of up to \$100,~~ ~~sh~~
43 ~~week thereafter that such report or other information is not provided to~~

wrong
bill.

1-3

40-3606

directions of the commission.

(d) Each public school district which has on its payroll persons participating in the public school district health care benefits program shall pay from any moneys available to the public school district for such purpose an amount specified by the Kansas state employees health care commission. All such payments shall continue on the behalf of employees otherwise eligible for participation in the public school district health care benefits program in accordance with the continuation provisions of the federal family and medical leave act of 1993, P.L. 103-03, 107 Stat. 6. The commission may charge each public school district a uniform amount per person as the cost to the public school district for the public school district's contribution for persons participating in the public school district health care benefits program. Such amounts may include the costs of administering the program.

(e) Payments from public funds for coverage under the public school district health care benefits program for persons participating in that program shall not be deemed a payment or supplement of wages of such person notwithstanding any other provision of law or rules and regulations relating to wages of any such person.

Sec. 4. K.S.A. 75-6504 is hereby amended to read as follows: 75-6504. (a) Subject to the provisions of appropriation acts relating thereto, in developing and providing for the implementation of a state health care benefits program and a public school district health care benefits program the Kansas state employees health care commission may:

(1) Enter into one or more group insurance contracts to provide coverage for all or part of the state health care benefits program and the public school district health care benefits program;

(2) establish a self-funded program on an actuarially sound basis to provide coverage for all or part of the state health care benefits program and the public school district health care benefits program and administer the self-funded program or contract for all or part of the administration of the self-funded program;

(3) provide for the self-administration of all or part of the state health care benefits program and the public school district health care benefits program;

(4) enter into contracts with one or more health care providers for the provision of health care services;

(5) enter into contracts in accordance with the provisions of K.S.A. 75-6505, and amendments thereto, with one or more health maintenance organizations for the provision of health care services; or

(6) any combination of the authority granted under this subsection

a).
(b) The Kansas state employees health care commission is hereby

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11

1 piate manual classification and rates, plus or minus applicable exper
 2 credits or debits, and minus any advance discount approved by the
 3 tees, not to exceed 25% of manual premium. The pool shall use
 4 classifications and rates as promulgated by an approved rating org
 5 tion for workers compensation if the pool has been in operation fo
 6 than five years. Such rates shall either be the rates effective June 1,
 7 ~~or the prospective loss costs, as defined in K.S.A. 40-1113c, and am~~
 8 ~~ments thereto, plus expenses necessary to administer the pool. For~~
 9 ~~poses of subsection (b), the prospective loss costs shall be presuma~~
 10 ~~be the 70% required to be deposited in the claims fund. If the poo~~
 11 ~~been in operation for more than five years, the board of trustees~~
 12 ~~determine such rates and discounts as approved by the commissi~~
 13 ~~Premium contributions to the pool for all other lines of insurance~~
 14 ~~be based on rates filed by a licensed rating organization or on rat~~
 15 ~~certain companies filing rates with the commissioner and approve~~
 16 ~~the commissioner for the pool. In lieu of the foregoing, the boar~~
 17 ~~trustees may determine such classification, rates and discounts as~~
 18 ~~proved by the commissioner.~~

40-955(b)

19 Premium contributions to any pool providing life insurance or any
 20 providing group sickness and accident insurance as described in K.
 21 12-2617, and amendments thereto, shall be based on sound actuarial p
 22 ciples.

23 *Not less than 30 days prior to any rate adjustment and not less t*
 24 *30 days prior to the end of each plan year, all municipal group-fun*
 25 *pools which provide accident and sickness coverage shall file an actua*
 26 *certification with the commissioner which states:*

27 (1) *that the underwriting and rating methods of the pool comply v*
 28 *accepted actuarial principles;*

29 (2) *that the premiums charged by the pool are adequate to fund*
 30 *plan year; and*

31 ~~(3) the projections of earned premiums and incurred claims for~~
 32 ~~entire period for which the ~~rate~~ were calculated.~~

33 (b) An amount equal to at least 70% of the annual premium shall
 34 maintained in a designated depository for the purpose of paying clai
 35 in a claims fund account. The remaining annual premium shall be plac
 36 into a designated depository for the payment of taxes, fees and admin
 37 trative and other operational costs in an administrative fund account.

38 (c) Any moneys for a fund year in excess of the amount necessary
 39 fulfill all obligations of the pool for that fund year, including any obligati
 40 to retain adequate surplus funds, as defined by subsection (h) of K.S.
 41 12-2618, and amendments thereto, in lieu of specific and aggr exce
 42 insurance, may be declared to be refundable by the trustees. ~~As th~~
 43 12 months after the end of the fund year. Any such refund shall be pa

(3) that any surplus held by the plan is adequate to fund the next plan year;
 and

(4)

rates

H

5
1

lawful request for information

1 only to those members who remained participants in the pool for a full
2 year. Payment of previously earned refunds shall not be contingent on
3 continued membership in the pool.

4 New Sec. 4. If any pool fails to file any report or other documenta-
5 tion or information with the commissioner as required by this act or fails
6 to respond to any proper inquiry of the commissioner, the commissioner,
7 after notice and opportunity for hearing, may impose a penalty of up to
8 \$500 for each violation or act, along with an additional penalty of up to
9 \$100 for each week thereafter that such report or other information is
10 not provided to the commissioner.

11 Sec. 5. K.S.A. 1997 Supp. 44-584 is hereby amended to read as fol-
12 lows: 44-584. (a) The application for a new certificate shall be signed by
13 the trustees of the trust fund created by the pool. Any application for a
14 renewal of an existing certificate shall meet at least the standards estab-
15 lished in subsections (f), (g), (h), (i), (j), (k), (l), (m) and (n) of K.S.A.
16 44-582 and amendments thereto. After evaluating the application the
17 commissioner shall notify the applicant that the plan submitted is ap-
18 proved or conversely, if the plan submitted is inadequate, the commis-
19 sioner shall then fully explain to the applicant what additional require-
20 ments must be met. If the application is denied, the applicant shall have
21 15 days to make an application for hearing by the commissioner after
22 service of the denial notice. The hearing shall be conducted in accordance
23 with the provisions of the Kansas administrative procedure act.

24 (b) An approved certificate of authority shall remain in full force and
25 effect until such certificate is suspended or revoked by the commissioner.
26 An existing pool operating under an approved certificate of authority must
27 file with the commissioner, within 120 days following the close of the
28 pool's fiscal year, a current financial statement on a form approved by the
29 commissioner showing the financial ability of the pool to meet its obli-
30 gations under the worker compensation act and confirmation of specific
31 and aggregate excess insurance as required by law for the pool. If an
32 existing pool's certificate of authority is suspended or revoked, such pool
33 shall have the same rights to a hearing by the commissioner as for appli-
34 cants for new certificates of authority as set forth in subsection (a) above.

35 (c) Whenever the commissioner shall deem it necessary the commis-
36 sioner may make, or direct to be made, an examination of the affairs and
37 financial condition of any pool, except that once every five years the com-
38 missioner shall conduct an examination of the affairs and financial con-
39 dition of each pool. Each pool shall submit a certified independent au-
40 dited financial statement no later than 90 days after the end of the pool's
41 fiscal year. The financial statement shall include outstanding reserves for
42 claims and for claims incurred but not reported. Each pool shall file per-
43 sonnel records, accident experience and compensation reports and such

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1 other reports and statements at such times and in such manner as
 2 commissioner shall require. Whenever it appears to the commissi
 3 from such examination or other satisfactory evidence that the solven
 4 any such pool is impaired, or that it is doing business in violation of
 5 of the laws of this state, or that its affairs are in an unsound conditio
 6 as to endanger its ability to pay or cause to be paid the compensatio
 7 the amount, manner and time due as provided for in the Kansas wor
 8 compensation act, the commissioner shall, before filing such repor
 9 making the same public, grant such pool upon reasonable notice a hea
 10 in accordance with the provisions of the Kansas administrative proces
 11 act, and, if on such hearing the report be confirmed, the commissi
 12 shall suspend the certificate of authority for such pool until its solve
 13 shall have been fully restored and the laws of the state fully comp
 14 with. The commissioner may, if there is an unreasonable delay in resto
 15 the solvency of such pool and in complying with the law, revoke
 16 certificate of authority of such pool to do business in this state. U
 17 revoking any such certificate the commissioner shall communicate
 18 fact to the attorney general, whose duty it shall be to commence
 19 prosecute an action in the proper court to dissolve such pool or to en
 20 the same from doing or transacting business in this state. The com
 21 sioner of insurance may call a hearing under K.S.A. 40-222b, and am
 22 ments thereto, and the provisions shall apply to group workers comp
 23 sation pools.

24 *(d) In the event of an insolvency of any pool, such insolvency sha*
 25 *handled in the same manner as that of an insolvent insurance comp*
 26 *as provided in K.S.A. 40-3605 et seq. and amendments thereto.*

27 ~~Sec. 7 K.S.A. 12-2618 and 12-2620, and K.S.A. 1997 Supp. 12-2~~
 28 ~~and 44-584, are hereby repealed.~~ 40-3606

29 Sec. 7. This act shall take effect and be in force from and afte
 30 publication in the Kansas register.

Section 6. K.S.A. 40-3606 is hereby amended to read as follows. 40-3606. This
 act shall apply to all insurance companies, fraternal benefit societies, mutual nonprofit
 hospital and medical service corporations, captive insurance companies, group funded
 pools ~~except~~ including municipal group funded pools governed by K.S.A. 12-2616
through 12-2629 and amendments thereto and employer group funded workers
compensation pools governed by K.S.A. 44-581 through 44-593, prepaid service plans
 operating under ~~articles~~ article 19a, 19b or 19d of chapter 40 of the Kansas Statutes
 notated, regardless of whether such entities are authorized to do business in this state,
 and such entities which are in the process of organization.

9



League
of Kansas
Municipalities

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL 300 S.W. 8TH TOPEKA, KS 66603-3896 (785) 354-9565 FAX (785) 354-4186

TO: House Committee on Insurance
FROM: Chris McKenzie, Executive Director
DATE: February 19, 1998
SUBJECT: Proposed Amendments to HB 2638

Thank you for the opportunity to present the League's proposals for amendments to HB 2638. We have already indicated our agreement with suggestions made by Tom Wilder of the Kansas insurance Department for amendments to new subsection (k) of K.S.A. 12-2619, striking "property inquiry" in line 40 (p. 2) and inserting "lawful request for information made by". Further, we support the Department's proposal to record the language found in lines 31-32 on page 4, to read: "(3) that any surplus held by the plan is adequate fund the next plan year."

We also recommend the following alternative language for subsection (h) and a new subsection (l) [page 2, lines 15-29 of HB 2638], as follows:

■ (h) A confirmation that specific and aggregate excess insurance with an aggregate excess policy limit of not less than \$2,000,000 which attaches at no more than 125% of standard premium¹ provided by an insurance company holding a Kansas certificate of authority is or will be in effect concurrent with the assumption of risk by the pool, as selected by the board of trustees of the pool, or adequate surplus funds as approved by the commissioner. For purposes hereof, "surplus funds" shall mean retained earnings of the pool after reserves have been established for all known and incurred but not reported losses of the pool and after all other liabilities of the pool, including unearned premium reserves, have been deducted from total assets. The term "adequate surplus funds" shall mean the amount necessary for the pool to fund its self-insured obligations.

■ (l) Any surplus funds from any plan year may be applied to fund losses sustained by any pool operating under this act in any subsequent year.

Note: This amendment clarifies what has been the common understanding of pools that prior year's surpluses may be applied to cover losses in future years.

Finally, we strongly oppose proposed new subsection (c) on page 3, referencing the 24 pages of insurance company insolvency statutes. We believe the authority already conferred on page 3, lines 32-35 (making K.S.A. 40-222b applicable to pools already) is adequate. This statute allows the commissioner to order companies which have "hazardous" financial condition to follow the director orders of the commissioner to rectify the situation.

Thanks for your consideration of these changes.

¹ Borrowed from K.S.A. 44-582(m) for private group funded workers comp. pools.

House Insurance
Attachment #2
2-19-98

HOUSE BILL No. 2966

By Representatives Wagle and Sawyer, Boston, Farmer, Flaharty, Gilbert, Gregory, Horst, Johnston, Landwehr, Mayans, McCreary, Myers, Palmer, E. Peterson, Pottorff, Powell, Powers, Shriver, Swenson, Thimesch, Vining and Welshimer

2-13

12 AN ACT concerning title insurance and escrow accounts

13

14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. The purpose of this act is to provide the state of Kansas
16 with a comprehensive body of law for the effective regulation and super-
17 vision of title insurance agencies engaged in settlement and closing of the
18 sale of an interest in real estate.

19 Sec. 2. As used in this act, unless the context otherwise requires:

20 ~~(a)~~ ^b (a) "Escrow" means written instruments, money or other items de-
21 posited by one party with a depository, escrow agent or escrow for deliv-
22 ery to another party upon the performance of a specified condition or the
23 happening of a certain event.

24 ~~(d)~~ ^(a) (d) "Person" means a natural person, partnership, association, coop-
25 erative, corporation, trust or other legal entity.

26 ~~(e)~~ ^(a) (e) "Qualified financial institution" means an institution that is:

27 (1) Organized or (in the case of a U.S. branch or agency office of a
28 foreign banking organization) licensed under the laws of the United States
29 or any state and has been granted authority to operate with fiduciary
30 powers;

31 (2) regulated, supervised and examined by federal or state authorities
32 having regulatory authority over banks and trust companies;

33 (3) insured by the appropriate federal entity; and

34 (4) qualified under any additional rules established by the commis-
35 sioner.

36 ~~(d)~~ ^(a) (d) "Title insurance producer" or "producer" means an authorized
37 person, other than a bona fide employee of the title insurer who, on behalf
38 of the title insurer, performs the following acts, in conjunction with the
39 issuance of a title insurance report or policy:

40 (1) Determines insurability and issues title insurance reports or pol-
41 icies, or both, based upon the performance or review of a search, or an
42 abstract of title;

43 (2) collects or disburses premiums, escrow or security deposits or

(a) partnership, association, organization, partner-
ship, business trust, corporation or other legal entity organized for profit
in which a producer of title business is a director, officer or partner
thereof, or owner of a financial interest; the spouse or any relative within
the second degree by blood or marriage of a producer of title business
who is a natural person; any director, officer or employee of a producer
of title business or associate; any legal entity that controls, is controlled
by, or is under common control with a producer of title business or as-
sociate; and any natural person or legal entity with whom a producer of
title business or associate has any agreement, arrangement or understand-
ing or pursues any course of conduct, the purpose or effect of which is
to evade the provisions of this section.

HB2692

; amending K.S.A. 1995 Supp. 40-2404 and repealing the existing section.

or unless otherwise provided

(b) "Financial interest" means any direct or indirect interest, legal or beneficial, where the holder thereof is or will be entitled to 1% or more of the net profits or net worth of the entity in which such interest is held. Notwithstanding the foregoing, an interest of less than 1% or any other type of interest shall constitute a "financial interest" if the primary purpose of the acquisition or retention of that interest is the financial benefit to be obtained as a consequence of that interest from the referral of title business.

As used in sections 7 through 11 producer

(d) "Producer of title business" or "producer" means any person, including any officer, director or owner of 5% or more of the equity or capital or both of any person, engaged in this state in the trade, business, occupation or profession of:

- (1) Buying or selling interests in real property;
- (2) Making loans secured by interests in real property; or

(3) Acting as broker, agent, representative or attorney for a person who buys or sells any interest in real property or who lends or borrows money with such interest as security.

of insurance

agent

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2-19-98 House Insurance Attachment 3

"Refer" means to direct or cause to be directed or to exercise any power or influence over the direction of title insurance business, whether or not the consent or approval of any other person is sought or obtained with respect to the referral.

- 1 other funds;
- 2 (3) handles escrow, settlements or closings;
- 3 (4) solicits or negotiates title insurance business; or
- 4 (5) records closing documents.

5 (e) "Title insurer" or "insurer" means a company organized under
6 laws of this state for the purpose of transacting the business of title in-
7 surance and any foreign or non-U.S. title insurer licensed in this state to
8 transact the business of title insurance.

9 (f) "Title insurance policy" or "policy" means a contract insuring or
10 indemnifying owners of, or other persons lawfully interested in, real or
11 personal property or any interest in real property, against loss or damage
12 arising from any or all of the following conditions existing on or before
13 the policy date and not excepted or excluded:

- 14 (1) Defects in or liens or encumbrances on the insured title;
- 15 (2) unmarketability of the insured title;
- 16 (3) invalidity, lack of priority, or unenforceability of liens or encum-
- 17 brances on the stated property;
- 18 (4) lack of legal right of access to the land; or
- 19 (5) unenforceability of rights in title to the land.

As used in sections 2 through 6 title

agent

20 Sec. 3. A title insurance agency may operate as an escrow, settlement
21 or closing agent, provided that:

22 (a) All funds deposited with the title insurance agency in connection
23 with an escrow, settlement or closing shall be submitted for collection to
24 or deposited in a separate fiduciary trust account or accounts in a qualified
25 financial institution no later than the close of the next business day, in
26 accordance with the following requirements:

invested

27 (1) The funds shall be the property of the person or persons entitled
28 to them under the provisions of the escrow, settlement or closing agree-
29 ment and shall be segregated for each depository by escrow, settlement
30 or closing in the records of the title insurance agent in a manner that
31 permits the funds to be identified on an individual basis; and

32 (2) the funds shall be applied only in accordance with the terms of
33 the individual instructions or agreements under which the funds were
34 accepted.

(3) an agent shall not retain any interest on any money held in an interest-bearing account without the written consent of all parties to the transaction.

35 (b) Funds held in an escrow account shall be disbursed only pursuant
36 to a written instruction or agreement specifying how and to whom such
37 funds may be disbursed.

- only:
- (1) Pursuant to written authorization of buyer and seller;
 - (2) pursuant to a court order; or
 - (3) when a transaction is closed according to the agreement of the parties.

38 (c) An escrow agent shall not commingle the escrow agent's personal
39 funds or other moneys with escrow funds. In addition, the escrow agent
40 shall not use escrow funds to pay or to indemnify against the debts of the
41 escrow agent or of any other party. The escrow funds shall be used only
42 to fulfill the terms of the individual escrow and none of the funds shall
43 be utilized until the necessary conditions of the escrow have been met.

A title insurance agent

1 (d) Each title insurance agent shall have an audit made of its escrow,
2 settlement and closing deposit accounts, conducted by a certified public
3 accountant or by a title insurer for which the title insurance agent has a
4 licensing agreement, according to the following schedule. Audits shall be
5 considered current if dated within the 12 months prior to submission of
6 the audit as required herein. The title insurance agent shall provide a
7 copy of the audit report to the commissioner and to each title insurance
8 company which it represents within 160 days after the close of the cal-
9 endar year for which an audit is required. Title insurance agents who are
10 attorneys and who issue title insurance policies as part of their legal rep-
11 resentation of clients are exempt from the requirements of this paragraph.
12 However, the title insurer, at its expense, may conduct or cause to be
13 conducted an annual audit of the escrow, settlement and closing accounts
14 of the attorney. Attorneys who are exclusively in the business of title
15 insurance are not exempt from the requirements of this paragraph. Audits
16 shall be required as follows:

17 (1) Annual audit required in counties having a population of 90,001
18 and over;

19 (2) biennial audit required in counties having a population of 40,001
20 - 90,000;

21 (3) triennial audit required in counties having a population of 20,001
22 - 40,000;

23 (4) quadrennial audit required in counties having a population of
24 20,000 and under.

25 (e) The commissioner may promulgate rules and regulations setting
26 forth the standards of the audit and the form of audit report required.

27 (f) If the title insurance agent is appointed by two or more title in-
28 surers and maintains fiduciary trust accounts in connection with providing
29 escrow and closing settlement services, the title insurance agent shall
30 allow each title insurer reasonable access to the accounts and any or all
31 of the supporting account information in order to ascertain the safety and
32 security of the funds held by the title insurance agent.

33 (g) Nothing in this section is intended to amend, alter or supersede
34 other laws of this state or the United States, regarding an escrow holder's
35 duties and obligations.

36 Sec. 4. The title insurance agent shall maintain sufficient records of
37 its escrow operations and escrow trust accounts so that the commissioner
38 may adequately ensure that the title insurance agent is in compliance with
39 all provisions of this act. The commissioner may prescribe the specific
40 record entries and documents to be kept and the length of time for which
41 the records must be maintained.

42 Sec. 5. The commissioner may issue rules, regulations and orders
43 necessary to carry out the provisions of this act.

1 Sec. 6. If the commissioner determines that the title insurance agent
2 or any other person has violated this act, or any rules and regulation or
3 order promulgated thereunder, after notice and opportunity to be heard,
4 the commissioner may order that such person be subject to the penalties
5 provided in K.S.A. 40-2406 *et seq.*

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

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7 (a)
 8 New Sec. 2. No title insurer or title agent may accept any title in-
 9 surance order or issue a title insurance policy to any person if it knows
 10 or has reason to believe that such person was referred to it by any pro-
 11 ducer of title business or by any associate of such producer, where the
 12 producer, the associate, or both, have a financial interest in the title in-
 13 surer or title agent to which business is referred unless the producer has
 14 disclosed to the person so referred the fact that such producer or associate
 15 has a financial interest in the title insurer or title agent.

16 [New Sec. 3] (a) No producer of title business or associate of such
 17 producer shall require, directly or indirectly, as a condition to selling or
 18 furnishing any other person any loan or extension thereof, credit, sale,
 19 property, contract, lease or service, that such other person shall purchase
 20 title insurance of any kind through any title agent or title insurer if such
 21 producer has a financial interest in such title agent or title insurer.

22 (b) Any producer of title business or associate of such producer who
 23 violates the provisions of this section, or any title insurer or title agent
 24 who accepts an order for title insurance knowing that it is in violation of
 25 this section, in addition to any other action which may be taken by any
 26 regulatory authority having jurisdiction, shall be liable to the purchaser
 27 of such title insurance in an amount equal to the premium for the title
 28 insurance.

29 (c) Nothing in this act shall prohibit any producer of title business or
 30 associate of such producer from referring title business to any title insurer
 31 or title agent of such producer's or associate's choice, and, if such pro-
 32 ducer or associate of such producer has any financial interest in the title
 33 insurer, from receiving income, profits or dividends produced or realized
 34 from such financial interest, so long as:

35 (1) Such financial interest is disclosed to the purchaser of the title
 36 insurance in accordance with section 2;

37 (2) the payment of income, profits or dividends is not in exchange
 38 for the referral of business; and

39 (3) the receipt of income, profits or dividends constitutes only a re-
 40 turn on the investment of the producer or associate.

41 New Sec. 4. The commissioner of insurance may adopt rules and
 42 regulations necessary to carry out the provisions of this act.

43 Sec. 5. (K.S.A. 1997 Supp. 40-2404 is hereby amended to read as

, the nature of the financial interest and a written estimate of the charge or range of charges generally made by the title insurer or agent for the title services. Such disclosure shall include language stating that the consumer is not obligated to use the title insurer or agent in which the referring producer associate has a financial interest and should include the names and telephone numbers of not less than three other title insurers or agents which operate in the county in which the property is located. If fewer than three insurers or agents operate in that county, the disclosure shall include all title insurers or agents operating in that county. Such written disclosure shall be signed by the person so referred and must have occurred prior to any commitment having been made to such title insurer.

, including, but not limited to the commissioner of insurance and the Kansas real estate commission,

(c) No title insurer or title agent may accept any title insurance order or issue a title insurance policy to any person it knows or has reason to believe that the name of the title company was pre-printed in the sales contract, prior to the buyer or seller selecting that title company.

New Section 8. Any title insurer or title agent that is a competitor of any title insurer or title agent that, subsequent to the effective date of this act, has violated or is violating the provisions of this act, shall have a cause of action against such title insurer or title agent and, upon establishing the existence of a violation of any such provision, shall be entitled, in addition to any other damages or remedies provided by law, to such equitable or injunctive relief as the court deems proper. In any such action under this subsection, the court may award to the successful party the court costs of the action together with reasonable attorney's fees.

New Sec. 9 The commissioner shall also require each title insurer to provide core title services as required by the real estate settlement procedures act.

1 follows: 40-2404. The following are hereby defined as unfair methods of
2 competition and unfair or deceptive acts or practices in the business of
3 insurance:

4 (1) *Misrepresentations and false advertising of insurance policies.*
5 Making, issuing, circulating or causing to be made, issued or circulated,
6 any estimate, illustration, circular, statement, sales presentation, omission
7 or comparison which:

8 (a) Misrepresents the benefits, advantages, conditions or terms of any
9 insurance policy;

10 (b) misrepresents the dividends or share of the surplus to be received
11 on any insurance policy;

12 (c) makes any false or misleading statements as to the dividends or
13 share of surplus previously paid on any insurance policy;

14 (d) is misleading or is a misrepresentation as to the financial condition
15 of any person, or as to the legal reserve system upon which any life insurer
16 operates;

17 (e) uses any name or title of any insurance policy or class of insurance
18 policies misrepresenting the true nature thereof;

19 (f) is a misrepresentation for the purpose of inducing or tending to
20 induce the lapse, forfeiture, exchange, conversion or surrender of any
21 insurance policy;

22 (g) is a misrepresentation for the purpose of effecting a pledge or
23 assignment of or effecting a loan against any insurance policy; or

24 (h) misrepresents any insurance policy as being shares of stock.

25 (2) *False information and advertising generally.* Making, publishing,
26 disseminating, circulating or placing before the public, or causing, directly
27 or indirectly, to be made, published, disseminated, circulated or placed
28 before the public, in a newspaper, magazine or other publication, or in
29 the form of a notice, circular, pamphlet, letter or poster, or over any radio
30 or television station, or in any other way, an advertisement, announce-
31 ment or statement containing any assertion, misrepresentation or state-
32 ment with respect to the business of insurance or with respect to any
33 person in the conduct of such person's insurance business, which is un-
34 true, deceptive or misleading.

35 (3) *Defamation.* Making, publishing, disseminating or circulating, di-
36 rectly or indirectly, or aiding, abetting or encouraging the making, pub-
37 lishing, disseminating or circulating of any oral or written statement or
38 any pamphlet, circular, article or literature which is false, or maliciously
39 critical of or derogatory to the financial condition of any person, and which
40 is calculated to injure such person.

41 (4) *Boycott, coercion and intimidation.* Entering into any agreement
42 to commit, or by any concerted action committing, any act of boycott,
43 coercion or intimidation resulting in or tending to result in unreasonable

1 restraint of the business of insurance, or by any act of boycott, coercion
2 or intimidation monopolizing or attempting to monopolize any part of the
3 business of insurance.

4 (5) *False statements and entries.* (a) Knowingly filing with any super-
5 visory or other public official, or knowingly making, publishing, dissemi-
6 nating, circulating or delivering to any person, or placing before the pub-
7 lic, or knowingly causing directly or indirectly, to be made, published,
8 disseminated, circulated, delivered to any person, or placed before the
9 public, any false material statement of fact as to the financial condition
10 of a person.

11 (b) Knowingly making any false entry of a material fact in any book,
12 report or statement of any person or knowingly omitting to make a true
13 entry of any material fact pertaining to the business of such person in any
14 book, report or statement of such person.

15 (6) *Stock operations and advisory board contracts.* Issuing or deliv-
16 ering or permitting agents, officers or employees to issue or deliver,
17 agency company stock or other capital stock, or benefit certificates or
18 shares in any common-law corporation, or securities or any special or
19 advisory board contracts or other contracts of any kind promising returns
20 and profits as an inducement to insurance. Nothing herein shall prohibit
21 the acts permitted by K.S.A. 40-232, and amendments thereto.

22 (7) *Unfair discrimination.* (a) Making or permitting any unfair dis-
23 crimination between individuals of the same class and equal expectation
24 of life in the rates charged for any contract of life insurance or life annuity
25 or in the dividends or other benefits payable thereon, or in any other of
26 the terms and conditions of such contract.

27 (b) Making or permitting any unfair discrimination between individ-
28 uals of the same class and of essentially the same hazard in the amount
29 of premium, policy fees or rates charged for any policy or contract of
30 accident or health insurance or in the benefits payable thereunder, or in
31 any of the terms or conditions of such contract, or in any other manner
32 whatever.

33 (c) Refusing to insure, or refusing to continue to insure, or limiting
34 the amount, extent or kind of coverage available to an individual, or charg-
35 ing an individual a different rate for the same coverage solely because of
36 blindness or partial blindness. With respect to all other conditions, in-
37 cluding the underlying cause of the blindness or partial blindness, persons
38 who are blind or partially blind shall be subject to the same standards of
39 sound actuarial principles or actual or reasonably anticipated experience
40 as are sighted persons. Refusal to insure includes denial by an insurer of
41 disability insurance coverage on the grounds that the policy defines "dis-
42 ability" as being presumed in the event that the insured loses such per-
43 son's eyesight. However, an insurer may exclude from coverage disabili-

1 ties consisting solely of blindness or partial blindness when such condition
2 existed at the time the policy was issued.

3 (d) Refusing to insure, or refusing to continue to insure, or limiting
4 the amount, extent or kind of coverage available for accident and health
5 and life insurance to an applicant who is the proposed insured or charge
6 a different rate for the same coverage or excluding or limiting coverage
7 for losses or denying a claim incurred by an insured as a result of abuse
8 based on the fact that the applicant who is the proposed insured is, has
9 been, or may be the subject of domestic abuse, except as provided in
10 subpart (v). "Abuse" as used in this subsection (7)(d) means one or more
11 acts defined in subsection (a) or (b) of K.S.A. 60-3102 and amendments
12 thereto between family members, current or former household members,
13 or current or former intimate partners.

14 (i) An insurer may not ask an applicant for life or accident and health
15 insurance who is the proposed insured if the individual is, has been or
16 may be the subject of domestic abuse or seeks, has sought or had reason
17 to seek medical or psychological treatment or counseling specifically for
18 abuse, protection from abuse or shelter from abuse.

19 (ii) Nothing in this section shall be construed to prohibit a person
20 from declining to issue an insurance policy insuring the life of an individ-
21 ual who is, has been or has the potential to be the subject of abuse if the
22 perpetrator of the abuse is the applicant or would be the owner of the
23 insurance policy.

24 (iii) No insurer that issues a life or accident and health policy to an
25 individual who is, has been or may be the subject of domestic abuse shall
26 be subject to civil or criminal liability for the death or any injuries suffered
27 by that individual as a result of domestic abuse.

28 (iv) No person shall refuse to insure, refuse to continue to insure,
29 limit the amount, extent or kind of coverage available to an individual or
30 charge a different rate for the same coverage solely because of physical
31 or mental condition, except where the refusal, limitation or rate differ-
32 ential is based on sound actuarial principles.

33 (v) Nothing in this section shall be construed to prohibit a person
34 from underwriting or rating a risk on the basis of a preexisting physical
35 or mental condition, even if such condition has been caused by abuse,
36 provided that:

37 (A) The person routinely underwrites or rates such condition in the
38 same manner with respect to an insured or an applicant who is not a
39 victim of abuse;

40 (B) the fact that an individual is, has been or may be the subject of
41 abuse may not be considered a physical or mental condition; and

42 (C) such underwriting or rating is not used to evade the intent of this
43 section or any other provision of the Kansas insurance code.



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1 (vi) Any person who underwrites or rates a risk on the basis of pre-
2 existing physical or mental condition as set forth in subsection (7)(d)(v),
3 shall treat such underwriting or rating as an adverse underwriting decision
4 pursuant to K.S.A. 40-2,112, and amendments thereto.

5 (vii) The provisions of subsection (d) shall apply to all policies of life
6 and accident and health insurance issued in this state after the effective
7 date of this act and all existing contracts which are renewed on or after
8 the effective date of this act.

9 (8) *Rebates.* (a) Except as otherwise expressly provided by law, know-
10 ingly permitting, offering to make or making any contract of life insur-
11 ance, life annuity or accident and health insurance, or agreement as to
12 such contract other than as plainly expressed in the insurance contract
13 issued thereon; paying, allowing, giving or offering to pay, allow or give,
14 directly or indirectly, as inducement to such insurance, or annuity, any
15 rebate of premiums payable on the contract, any special favor or advan-
16 tage in the dividends or other benefits thereon, or any valuable consid-
17 eration or inducement whatever not specified in the contract; or giving,
18 selling, purchasing or offering to give, sell or purchase as inducement to
19 such insurance contract or annuity or in connection therewith, any stocks,
20 bonds or other securities of any insurance company or other corporation,
21 association or partnership, or any dividends or profits accrued thereon,
22 or anything of value whatsoever not specified in the contract.

23 (b) Nothing in subsection (7) or (8)(a) shall be construed as including
24 within the definition of discrimination or rebates any of the following
25 practices:

26 (i) In the case of any contract of life insurance or life annuity, paying
27 bonuses to policyholders or otherwise abating their premiums in whole
28 or in part out of surplus accumulated from nonparticipating insurance.
29 Any such bonuses or abatement of premiums shall be fair and equitable
30 to policyholders and for the best interests of the company and its poli-
31 cyholders;

32 (ii) in the case of life insurance policies issued on the industrial debit
33 plan, making allowance to policyholders who have continuously for a spec-
34 ified period made premium payments directly to an office of the insurer
35 in an amount which fairly represents the saving in collection expenses; or

36 (iii) readjustment of the rate of premium for a group insurance policy
37 based on the loss or expense experience thereunder, at the end of the
38 first or any subsequent policy year of insurance thereunder, which may
39 be made retroactive only for such policy year.

40 (9) *Unfair claim settlement practices.* It is an unfair claim settlement
41 practice if any of the following or any rules and regulations pertaining
42 thereto are: (A) Committed flagrantly and in conscious disregard of such
43 provisions, or (B) committed with such frequency as to indicate a general

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- 1 business practice.
- 2 (a) Misrepresenting pertinent facts or insurance policy provisions re-
- 3 lating to coverages at issue;
- 4 (b) failing to acknowledge and act reasonably promptly upon com-
- 5 munications with respect to claims arising under insurance policies;
- 6 (c) failing to adopt and implement reasonable standards for the
- 7 prompt investigation of claims arising under insurance policies;
- 8 (d) refusing to pay claims without conducting a reasonable investi-
- 9 gation based upon all available information;
- 10 (e) failing to affirm or deny coverage of claims within a reasonable
- 11 time after proof of loss statements have been completed;
- 12 (f) not attempting in good faith to effectuate prompt, fair and equi-
- 13 table settlements of claims in which liability has become reasonably clear;
- 14 (g) compelling insureds to institute litigation to recover amounts due
- 15 under an insurance policy by offering substantially less than the amounts
- 16 ultimately recovered in actions brought by such insureds;
- 17 (h) attempting to settle a claim for less than the amount to which a
- 18 reasonable person would have believed that such person was entitled by
- 19 reference to written or printed advertising material accompanying or
- 20 made part of an application;
- 21 (i) attempting to settle claims on the basis of an application which
- 22 was altered without notice to, or knowledge or consent of the insured;
- 23 (j) making claims payments to insureds or beneficiaries not accom-
- 24 panied by a statement setting forth the coverage under which payments
- 25 are being made;
- 26 (k) making known to insureds or claimants a policy of appealing from
- 27 arbitration awards in favor of insureds or claimants for the purpose of
- 28 compelling them to accept settlements or compromises less than the
- 29 amount awarded in arbitration;
- 30 (l) delaying the investigation or payment of claims by requiring an
- 31 insured, claimant or the physician of either to submit a preliminary claim
- 32 report and then requiring the subsequent submission of formal proof of
- 33 loss forms, both of which submissions contain substantially the same in-
- 34 formation;
- 35 (m) failing to promptly settle claims, where liability has become rea-
- 36 sonably clear, under one portion of the insurance policy coverage in order
- 37 to influence settlements under other portions of the insurance policy cov-
- 38 erage; or
- 39 (n) failing to promptly provide a reasonable explanation of the basis
- 40 in the insurance policy in relation to the facts or applicable law for denial
- 41 of a claim or for the offer of a compromise settlement.
- 42 (10) *Failure to maintain complaint handling procedures.* Failure of
- 43 any person, who is an insurer on an insurance policy, to maintain a com-

1 plete record of all the complaints which it has received since the date of
2 its last examination under K.S.A. 40-222, and amendments thereto; but
3 no such records shall be required for complaints received prior to the
4 effective date of this act. The record shall indicate the total number of
5 complaints, their classification by line of insurance, the nature of each
6 complaint, the disposition of the complaints, the date each complaint was
7 originally received by the insurer and the date of final disposition of each
8 complaint. For purposes of this subsection, "complaint" means any writ-
9 ten communication primarily expressing a grievance related to the acts
10 and practices set out in this section.

11 (11) *Misrepresentation in insurance applications.* Making false or
12 fraudulent statements or representations on or relative to an application
13 for an insurance policy, for the purpose of obtaining a fee, commission,
14 money or other benefit from any insurer, agent, broker or individual.

15 (12) *Statutory violations.* Any violation of any of the provisions of
16 K.S.A. 40-276a, 40-1515, and amendments thereto, or K.S.A. 1997 Supp.
17 40-2,155 and amendments thereto.

18 (13) *Disclosure of information relating to adverse underwriting de-*
19 *isions and refund of premiums.* Failing to comply with the provisions of
20 K.S.A. 40-2,112, and amendments thereto, within the time prescribed in
21 such section.

22 (14) *Rebates and other inducements in title insurance.* (a) No title
23 insurance company or title insurance agent, or any officer, employee,
24 attorney, agent or solicitor thereof, may pay, allow or give, or offer to pay,
25 allow or give, directly or indirectly, as an inducement to obtaining any
26 title insurance business, any rebate, reduction or abatement of any rate
27 or charge made incident to the issuance of such insurance, any special
28 favor or advantage not generally available to others of the same classifi-
29 cation, or any money, thing of value or other consideration or material
30 inducement. The words "charge made incident to the issuance of such
31 insurance" includes, without limitations, escrow, settlement and closing
32 charges.

33 (b) No insured named in a title insurance policy or contract nor any
34 other person directly or indirectly connected with the transaction involv-
35 ing the issuance of the policy or contract, including, but not limited to,
36 mortgage lender, real estate broker, builder, attorney or any officer, em-
37 ployee, agent representative or solicitor thereof, or any other person may
38 knowingly receive or accept, directly or indirectly, any rebate, reduction
39 or abatement of any charge, or any special favor or advantage or any
40 monetary consideration or inducement referred to in (14)(a).

41 (c) Nothing in this section shall be construed as prohibiting:

42 (i) The payment of reasonable fees for services actually rendered to
43 a title insurance agent in connection with a title insurance transaction;

1 (ii) the payment of an earned commission to a duly appointed title
2 insurance agent for services actually performed in the issuance of the
3 policy of title insurance; or

4 (iii) the payment of reasonable entertainment and advertising ex-
5 penses.

6 (d) Nothing in this section prohibits the division of rates and charges
7 between or among a title insurance company and its agent, or one or
8 more title insurance companies and one or more title insurance agents,
9 if such division of rates and charges does not constitute an unlawful rebate
10 under the provisions of this section and is not in payment of a forwarding
11 fee or a finder's fee.

12 (e) No title insurer or title agent may accept any order for, issue a
13 title insurance policy to, or provide services to, an applicant if it knows
14 or has reason to believe that the applicant was referred to it by any pro-
15 ducer of title business or by any associate of such producer, where the
16 producer, the associate, or both, have a financial interest in the title in-
17 surer or title agent to which business is referred unless the producer has
18 disclosed to the buyer, seller and lender the financial interest of the pro-
19 ducer of title business or associate referring the title insurance business.

20 (f) No title insurer or title agent may accept an order for title insur-
21 ance business, issue a title insurance policy, or receive or retain any pre-
22 mium, or charge in connection with any transaction if: (i) The title insurer
23 or title agent knows or has reason to believe that the transaction will
24 constitute controlled business for that title insurer or title agent, and (ii)
25 20% or more of the gross operating revenue of that title insurer or title
26 agent during the six full calendar months immediately preceding the
27 month in which the transaction takes place is derived from controlled
28 business. The prohibitions contained in this subparagraph shall not apply
29 to transactions involving real estate located in a county that has a popu-
30 lation, as shown by the last preceding decennial census, of 10,000 or less.

31 (g) (e) The commissioner shall adopt any regulations necessary to
32 carry out the provisions of this act.

33 Sec. ~~6.1~~ K.S.A. 1997 Supp. 40-2404 is hereby repealed.

34 Sec. ~~7.13~~ This act shall take effect and be in force from and after its
35 publication in the statute book.

Description of amendments:

1. Disclosure:

WHAT: The disclosure must be in writing, and must include the following information:

- a. The referring company/individual has a financial interest in the title company, and may earn financial benefits from the consumer's use of the company.
- b. The consumer is not obligated to use this title company and may select a different company if they wish to do so.
- c. The names and phone numbers of 3 other title companies which operate in the county. If less than 3 are available, the list should be of all the title companies in the county.
- d. An estimate of the charge or range of charges made for the title services provided by the insurer or agent.

WHEN: The disclosure must be signed by the person selecting the title company prior to any commitment having been made to the title insurer or agent.

2. Penalty

The penalty applies to the entire section equal to three times the premium for the title insurance, payable to the consumer, in addition to any other economic damages proven by the consumer.

3. Enforcement

In addition to actions by the Insurance Commissioner, the Kansas Real Estate Commission and any civil remedies available, a competitor title company can go to court and ask for damages and injunctive relief for the failure to comply with the act. The successful party may recover court costs and attorneys fees.

4. Other amendment to Unfair Trade Practices Act, applicable to all title companies.

- a. prohibition against pre-printing the names of title companies in sales contracts, prior to seller or buyer selecting the title company.
- b. title insurance companies must provide core title services required by the Real Estate Settlement Procedures Act (RESPA) in order to receive compensation for the services it renders. Today, the core services include:
 - 1) the evaluation of a title search or abstract to determine the insurability of title
 - 2) the clearance of underwriting objections
 - 3) issuing and assuming responsibility for the issuance of the title insurance policy and where applicable, the issuance of a title commitment.

HOUSE BILL No. 2966

By Representatives Wagle and Sawyer, Boston, Farmer, Flaharty, Gilbert, Gregory, Horst, Johnston, Landwehr, Mayans, McCreary, Myers, Palmer, E. Peterson, Pottorff, Powell, Powers, Shriver, Swenson, Thimesch, Vining and Welshimer

2-13

House Insurance
Attachment #4-1
2-19-98

12 AN ACT concerning title insurance and escrow accounts.

13

14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. The purpose of this act is to provide the state of Kansas
16 with a comprehensive body of law for the effective regulation and super-
17 vision of title insurance agencies engaged in settlement and closing of the
18 sale of an interest in real estate.

19 Sec. 2. As used in this act, unless the context otherwise requires:

20 (a) "Escrow" means written instruments, money or other items de-
21 posited by one party with a depository, escrow agent or escrow for deliv-
22 ery to another party upon the performance of a specified condition or the
23 happening of a certain event.

24 (b) "Person" means a natural person, partnership, association, coop-
25 erative, corporation, trust or other legal entity.

26 (c) "Qualified financial institution" means an institution that is:

27 (1) Organized or (in the case of a U.S. branch or agency office of a
28 foreign banking organization) licensed under the laws of the United States
29 or any state and has been granted authority to operate with fiduciary
30 powers;

31 (2) regulated, supervised and examined by federal or state authorities
32 having regulatory authority over banks and trust companies;

33 (3) insured by the appropriate federal entity; and

34 (4) qualified under any additional rules established by the commis-

35 sioned.

36 (d) "Title insurance [produce] or [produce]" means an authorized
37 person, other than a bona fide employee of the title insurer who, on behalf
38 of the title insurer, performs the following acts, in conjunction with the
39 issuance of a title insurance report or policy:

40 (1) Determines insurability and issues title insurance reports or pol-
41 icies, or both, based upon the performance or review of a search, or an
42 abstract of title;

43 (2) collects or disburses premiums, escrow or security deposits or

of insurance

agent

agent

- 1 other funds;
- 2 (3) handles escrow, settlements or closings;
- 3 (4) solicits or negotiates title insurance business; or
- 4 (5) records closing documents.
- 5 (e) "Title insurer" or "insurer" means a company organized under
- 6 laws of this state for the purpose of transacting the business of title in-
- 7 surance and any foreign or non-U.S. title insurer licensed in this state to
- 8 transact the business of title insurance.
- 9 (f) "Title insurance policy" or "policy" means a contract insuring or
- 10 indemnifying owners of, or other persons lawfully interested in, real or
- 11 personal property or any interest in real property, against loss or damage
- 12 arising from any or all of the following conditions existing on or before
- 13 the policy date and not excepted or excluded:
- 14 (1) Defects in or liens or encumbrances on the insured title;
- 15 (2) unmarketability of the insured title;
- 16 (3) invalidity, lack of priority, or unenforceability of liens or encum-
- 17 brances on the stated property;
- 18 (4) lack of legal right of access to the land; or
- 19 (5) unenforceability of rights in title to the land.

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~~an insured bank, savings and loan association or credit union which is insured with an insurer or guarantee corporation as required pursuant to K.S.A. 17-2246, and amendments thereto~~

or invested

(3) an agent shall not retain any interest on any money held in an interest-bearing account without the written consent of all parties to the transaction.

- only:
- (1) Pursuant to written authorization of buyer and seller;
 - (2) pursuant to a court order; or
 - (3) when a transaction is closed according to the agreement of the parties.

A title insurance agent

- 20 Sec. 3. A title insurance agency may operate as an escrow, settlement
- 21 or closing agent, provided that:
- 22 (a) All funds deposited with the title insurance agency in connection
- 23 with an escrow, settlement or closing shall be submitted for collection to
- 24 or deposited in a separate fiduciary trust account or accounts in a qualified
- 25 financial institution no later than the close of the next business day, in
- 26 accordance with the following requirements:
- 27 (1) The funds shall be the property of the person or persons entitled
- 28 to them under the provisions of the escrow, settlement or closing agree-
- 29 ment and shall be segregated for each depository by escrow, settlement
- 30 or closing in the records of the title insurance agent in a manner that
- 31 permits the funds to be identified on an individual basis; and
- 32 (2) the funds shall be applied only in accordance with the terms of
- 33 the individual instructions or agreements under which the funds were
- 34 accepted.
- 35 (b) Funds held in an escrow account shall be disbursed only pursuant
- 36 to a written instruction or agreement specifying how and to whom such
- 37 funds may be disbursed.
- 38 (c) An escrow agent shall not commingle the escrow agent's personal
- 39 funds or other moneys with escrow funds. In addition, the escrow agent
- 40 shall not use escrow funds to pay or to indemnify against the debts of the
- 41 escrow agent or of any other party. The escrow funds shall be used only
- 42 to fulfill the terms of the individual escrow and none of the funds shall
- 43 be utilized until the necessary conditions of the escrow have been met.