

Approved: 3-10-98
Date

MINUTES OF THE HOUSE COMMITTEE ON INSURANCE.

The meeting was called to order by Chairperson Dennis Wilson at 1:45 p.m. on February 25, 1998 in Room 527-S of the State Capitol.

All members were present except: Representative Vaughn Flora, excused
Representative Robert Krehbiel, excused

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

Conferees appearing before the committee:

Others attending: See attached list

The meeting was called to order at 1:45 p.m. by Chairperson Wilson. The Chairperson announced that the meeting was called to discuss and have action on **HB2692**.

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

Representative Myers made a motion to move out HB2692 favorably. The motion was seconded by Representative Gregory. The Chairperson called for discussion. Representative Tomlinson said he had a balloon for the bill. He passed the balloon out. (Attachment #1). Representative Tomlinson went through the balloon with the committee. A short discussion followed. A clarification was made in regard to the percentage of business a realtor can have from his own business.

Representative Tomlinson made a substitute motion to pass out HB2692 as amended by his balloon favorably. The motion was seconded by Representative Myers. The Chairperson called for further discussion. There was none. The Committee voted to pass out HB2692 favorably.

The Chairperson asked the Committee to please read over the minutes that had been passed out from the February 17, 1998 meeting. The Chairperson said he would entertain a motion on the minutes. Representative Burroughs made a motion to accept the minutes as written. Representative Gregory seconded the motion. The Committee voted in favor.

The meeting was adjourned at 2:02 p.m.

HOUSE INSURANCE COMMITTEE GUEST LIST

DATE: 2-25-98

NAME	REPRESENTING
Tom Wilder	Kansas Insurance Dept.
Diana Wharta	KS Assn Realtors
Ken Baker	Ks. Land Title Assn.
Cullen Jill Denton	KATP
David Hanson	Ks Insur Assns.

HOUSE BILL No. 2692

By Committee on Insurance

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9 AN ACT relating to title insurance; requiring certain disclosures and pro-
10 hibiting certain practices; amending K.S.A. 1997 Supp. 40-2404 and
11 repealing the existing section.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 New Section 1. As used in this act, unless the context otherwise re-
15 quires:

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

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

36 (c) "Person" means any natural person, partnership, association, co-
37 operative, corporation, trust or other legal entity.

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

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

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

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

(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.

(b) 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.

(c) 22 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.

(d) 29 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. 4.5 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

in writing

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 shall 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 or agent.

(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.

the commissioner of insurance

, shall be subject to a fine by the commissioner in an amount equal to five times the premium for the title insurance and, if licensed pursuant to K.S.A. 58-3034 et seq., and amendments thereto, shall be deemed to have committed a prohibited act pursuant to K.S.A. 58-3062, and amendments thereto, and

New Sec. 3 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 sch 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. 4. The commissioner shall also require each title agent to provide core title services as required by the real estate settlement procedures act.

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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

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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 deliver-
16 ing 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-

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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-

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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;

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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) ~~The~~ The commissioner shall adopt any regulations necessary to
32 carry out the provisions of this act.

33 Sec. 6.7 K.S.A. 1997 Supp. 40-2404 is hereby repealed.

34 Sec. 7.8 This act shall take effect and be in force from and after its
35 publication in the statute book.

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

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or 50,000 or greater

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