

Approved: 2-13-01
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Chairperson Sandy Praeger at 9:30 a.m. on February 7, 2001 in Room 234-N of the Capitol.

All members were present except:

Committee staff present: Dr. Bill Wolff, Kansas Legislative Research Department
Ken Wilke, Office of the Revisor of Statutes
JoAnn Bunten, Committee Secretary

Conferees appearing before the committee:

Bob Alderson, National Association of Public Insurance Adjusters
Pat Bickford, Adjusters International, Golden, Colorado
Melissa Wangemann, Secretary of State's Office
Steven Rarrick, Consumer Protection Division, Attorney General's Office
Linda DeCoursey, Kansas Insurance Department
Gary White, Kansas Trial Lawyers Association
Pam Scott, Executive Director, Kansas Funeral Directors and Embalmers Association
Larry Magill, Kansas Association of Insurance Agents
John C. Gann, Kansas Association of Insurance and Financial Advisors

Others attending: See attached list.

Hearing on SB 181 - Enacting the Public Adjusters Licensing Act

Bob Alderson, National Association of Public Insurance Adjusters, testified before the Committee in support of **SB 181** which would enact the Public Adjusters Licensing Act. This bill creates definitions related to public adjusting and sets standards for licensure and examinations of these individuals. Mr. Alderson stated that passage of the bill is needed in order to codify a definition of public adjusting, one which would limit a public adjuster to the performance of services which do not constitute the unauthorized practice of law and give some measure of control over persons engaged in public adjusting. (Attachment 1)

Pat Bickford, Adjusters International, spoke in support of the bill and explained to the Committee the requisites of public insurance adjusting and identified the situations that typically give rise to an insured's use of a public insurance adjuster to resolve a claim. Mr. Bickford also provided the Committee with a packet of information about his company and list of clients. (Attachment 2)

Melissa Wangemann, Secretary of State's Office, offered an amendment to **SB 181** that would make the Secretary of State the "agent and representative" for service of process instead of "true and lawful attorney" as indicated in the bill on page 6, line 24. Ms. Wangemann noted that **SB 181** does not direct the Secretary of State to forward the process to the licensed public adjuster and questioned how the licensed public adjuster would receive notice of pending lawsuits and administrative actions if the process was not provided to the adjuster. She suggested the Committee may want to consider an amendment directing the Secretary of State to forward the process to the adjuster and would provide a fiscal note. (Attachment 3)

Steven Rarrick, Consumer Protection Division, Attorney General's Office, stated they have concerns with language in the bill that relates to the definition of "public adjusting" and committing the unauthorized practice of law. Mr. Rarrick has met with proponents of the bill, and the proponents agreed to the AG's proposed amendments. He pointed out that if the amendments are adopted, as shown in the attached balloon of the bill, the Attorney General would take no position on the bill as they believe public adjusting services are legal under current Kansas law. (Attachment 4) Mr. Rarrick noted that they would leave it to the Committee's discretion as to the amount of commission the adjuster should be allowed which is usually 10% to 15%.

Linda DeCoursey, Kansas Insurance Department, expressed her concern with the bill noting that the state of Kansas has not licensed adjusters of any kind in its many decades of existence as the Kansas Insurance Department currently has a mechanism in place to handle the claim disputes on behalf of Kansas consumers. She believes that the bill needs further study and would prefer the Committee allow the department to

CONTINUATION SHEET

examine the bill more thoroughly as outlined in her written testimony. (Attachment 5)

Gary White, Kansas Trial Lawyers Association, spoke in opposition to **SB 181** because he felt it effectively requires a layperson to practice law without the requisite training and safeguards of a license and fails to protect Kansas consumers in the handling of first-party claims. He suggested that the adjustor may not take appropriate steps to preserve the rights of clients on third party claims that may arise. (Attachment 6)

The Chair noted that because of the number of concerns and amendments associated with the bill, it was suggested **SB 181** be studied during the interim and taken up at a later date.

Hearing on: SB 193 - Insurance; exemption from errors and omissions coverage

Pam Scott, Executive Director, Kansas Funeral Directors and Embalmers Association, testified in support of **SB 193** which would exempt from the errors and omissions requirements insurance agents who hold a life insurance license solely for the purpose of selling life insurance or annuities to fund a prearrange funeral program. She noted that many funeral directors hold this limited insurance agent's license, and a shortfall sometimes results when an insurance policy does not keep pace with inflation and the cost of the merchandise rises faster than the value of the insurance policy. The end result is that if the policy proceeds are not paid, the funeral home is the one that stands to lose because they will not be paid for their services. (Attachment 7)

Larry Magill, Kansas Association of Insurance Agents, testified in opposition to the bill noting that it would set a precedent and inevitable pressure on the legislature to exempt other limited licenses such as crop hail and title insurance. Mr. Magill also pointed out that funeral directors already enjoy a very limited continuing education requirement of two hours every two years and a limited testing requirement. The E&O requirement is only for \$100,000 limit of liability for an individual or \$500,000 for a firm. Reducing these limits further would not save any appreciable amount of money given their likely premium volume, and it was suggested their association step in and obtain a group policy. (Attachment 8)

John C. Gann, Kansas Association of Insurance and Financial Advisors, also testified in opposition to **SB 193** because he felt any licensed insurance agent who holds a license for the sole purpose of selling life insurance or annuity products used to fund a prearranged funeral program is the same as any other licensed agent under the definition of current law, and to allow this exemption would open the door for other agents to ask for a similar request. (Attachment 9)

Committee discussion related to professional liability insurance obtained through an association and what that potential cost would be.

Adjournment

The meeting was adjourned at 10:30 a.m. The next meeting of the Committee is scheduled for February 8, 2001.

SENATE FINANCIAL INSTITUTIONS & INSURANCE
COMMITTEE GUEST LIST

DATE: 2-7-01

NAME	REPRESENTING
<i>Amber Farrell</i>	<i>Colton O'Neil Clinic</i>
<i>Michelle Meier</i>	<i>Kansas Medical Clinic</i>
<i>John Egan</i>	<i>KAIFA</i>
<i>Karen Amburst</i>	<i>Mosier & Mosier Fam Phys.</i>
<i>Gail Urbau</i>	<i>Community Health Council</i>
<i>David Smith</i>	<i>RADIOLOGY + NUCLEAR MEDICINE</i>
<i>Michael Rolfe</i>	<i>Family Med Centers, Derby, KS</i>
<i>Mitchell Hylton</i>	<i>MIO Kansas Physicians Assoc.</i>
<i>Stuart Schroeder</i>	<i>Galichia Med Grp, Wichita, KS</i>
<i>Cathy McVornon</i>	<i>KS Trial Lawyers Assn.</i>
STEVE BARRICK	ATTORNEY GENERAL
<i>Steve Hughes</i>	<i>medical Service Corp.</i>
<i>Bob Magill + Dee Magill</i>	<i>Ashley Clinic, Chanute, Ks.</i>
<i>CINDY REEH</i>	<i>MICHAEL F. REEH, MD</i>
FRED VANCE	LINCOLN CENTER OB-GYN
<i>Jinny Freeman</i>	<i>Imaging For Women - Ks City</i>
DIANA JARVIS	NEUROSURGICAL ASSOCIATES, TOPEKA
<i>Jeffrey</i>	<i>Cutell Clinica P.A.</i>
LARRY MAGILL	KAIA

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CONKLIN, BURGHART & CROW, L.L.C.
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LICENSED TO PRACTICE IN
KANSAS AND MISSOURI

W. ROBERT ALDERSON, JR.
ALAN F. ALDERSON*
JOSEPH M. WEILER
DARIN M. CONKLIN
MARK A. BURGHART*
DANIEL W. CROW**
LESLIE M. MILLER
DEBORAH FRYE STERN

TESTIMONY OF BOB ALDERSON

ON BEHALF OF THE

NATIONAL ASSOCIATION OF PUBLIC

INSURANCE ADJUSTERS

BEFORE THE SENATE COMMITTEE ON

FINANCIAL INSTITUTIONS AND INSURANCE

February 7, 2001

Senator Praeger and Members of the Committee:

I am Bob Alderson, an attorney in private practice in Topeka. I am appearing today on behalf of the National Association of Public Insurance Adjusters (NAPIA) in support of Senate Bill No. 181, which would enact the Public Adjusters Licensing Act. Appearing with me today is Pat Bickford, a member of NAPIA, who will explain the requisites of public insurance adjusting and identify the situations that typically give rise to an insured's use of a public insurance adjuster to resolve a claim. Prior to his testimony, my principal purpose will be to discuss the circumstances giving rise to the introduction of SB 181 and to discuss the bill itself.

Initially, however, I think it would be helpful to note there are essentially two types of insurance claims adjusters: Company adjusters and public adjusters. As the name implies, company adjusters provide their services to insurers, and they may either be employees of insurance companies or independent contractors. Regardless, they adjust claims on behalf of insurance companies.

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Date: 2-7-01
Attachment No. 1

Public adjusters, on the other hand, represent insureds in formulating and presenting their insurance claims. Licensing laws in other states universally limit public adjusters to processing first party claims, i.e., claims presented by an insured to the insured's insurance carrier. Third-party claims (claims made against a third party or the third party's insurance carrier) are universally prohibited as constituting the unauthorized practice of law. That was the issue in *State of Kansas v. Martinez*, 27 Kan. App. 2d 9, 996 P. 2d 371 (2000), which was an action commenced by Attorney General Stovall against an individual who represented himself to be an "insurance claims consultant" and who advertised his services as an alternative to representation by an attorney.

In *Martinez*, the Kansas Court of Appeals determined that Mr. Martinez, who was not a lawyer, was engaged in the unauthorized practice of law, which the court defined as including "counseling and advising clients on their legal rights and rendering services requiring knowledge of legal principles." Based on this definition, the Court found that the consulting service in which Martinez was engaged involved the practice of law. In discussing the *Martinez* case with the attorneys in the Attorney General's Office who prosecuted the case, I was advised that the substantial number of instances where Mr. Martinez was found to have engaged in the unauthorized practice of law involved third-party claims, and where his involvement in first-party claims was at issue, Mr. Martinez exceeded the limitations that would be imposed by SB 181.

Quite frankly, we do not believe that the *Martinez* case inhibits legitimate public adjusters from continuing to operate in Kansas without the benefit of SB 181. Legitimate public adjusters limit their activities to the formulation and presentation of first-party claims, and these activities are accomplished in a manner which does not constitute the unauthorized practice of law. The services performed by legitimate public adjusters do not involve advising clients as to their legal rights, and these services do not require the adjuster's knowledge of legal principles.

X So, why is SB 181 needed? We believe passage of SB 181 is important for two reasons. First, it will codify a definition of public adjusting, one which will limit a public adjuster to the performance of services which do not constitute the unauthorized practice of law. The enactment of this definition should act as a deterrent to a public adjuster engaging in the unauthorized practice of law out of ignorance.

The second reason for passage of SB 181 is to effect some measure of control over persons engaged in public adjusting. The activities giving rise to the *Martinez* case give public adjusting a black eye, and NAPIA welcomes the regulation afforded by SB 181 as a means to prevent further cases of this type. No law is ever passed with a guarantee that it won't be violated, but SB 181 will provide a means for dealing with violators administratively, thereby potentially avoiding the type of litigation that was spawned by the activities of Mr. Martinez.

I believe the provisions of SB 181 are rather straightforward, so I will not belabor this testimony by a detailed explanation. Suffice it to state that:

- “Public adjusting” is defined so as to limit a public adjuster to representing an insured on first-party claims only and in a manner which prevents the unauthorized practice of law;
- The Commissioner of Insurance is given the authority to license public adjusters upon application and examination, with the discretion to waive examination where warranted;
- The bill contains a list of prohibited activities by public adjusters, with penalties prescribed for violations; and
- To that end, the Commissioner of Insurance also is empowered to refuse to issue, refuse to renew, suspend or revoke a public adjuster’s license.

I believe that passage of SB 181 will have a very positive effect with minimal bureaucracy, and I would urge your favorable consideration. Thank you for your attention to these remarks. I will be happy to respond to any questions you might have.



*The clear path
to recovery.*

ADJUSTERS INTERNATIONAL

COMMENTS FROM PAST ENGAGEMENTS

"Having been through the entire process, there is absolutely no doubt that hiring AI..was the best move Southern Pacific made. I think the key to the entire process is contained in your letterhead. Under the (AI) Adjusters International logo is the line indicating "Professional Loss Consultants". The key word of course is "Professional". Throughout the entire adjusting process I was continually impressed by the professionalism evidenced by you..."

SOUTHERN PACIFIC LINES, Denver, CO - Dale A. Wydman, Director of Risk Management

"Time and again you had the creative solution, the tough negotiating point, or the quick response necessary to keep our insurance claim on track with the insurance adjusters."

THE PILLSBURY COMPANY, Minneapolis, MN - Richard Q. Russeth, Vice President & Associate General Counsel

"The claim was quite intricate for it involved a hub station that had been damaged by a typhoon. Adjusters International exhibited experience in the claims process and provided Continental with the tools needed to finalize the claim."

CONTINENTAL AIRLINES, INC., Houston, TX - Monica Ho, Manager, Property & Casualty Insurance Risk Mgt.

"With your help, we were able to prepare and "satisfactorily conclude" a partial adjustment in excess of \$24 million dollars, within ten weeks of the date of our loss. The time factor was one of our most important considerations and we feel no one could have done this more quickly."

SERVICE MERCHANDISE, Nashville, TN - Thomas R. Ainsworth, Director Risk Management

"I would recommend Adjusters International to anyone in need of competent professionals for any insurance claim - no matter how large or complex. At its conclusion, the claim was settled for \$1.592 million - more than \$1 million higher than the insurance company's original offer."

REVERE COPPER PRODUCTS, Rome, NY - Gregory Savage, Vice President

"When it was initially suggested that we hire an independent loss consultant, I must admit I was skeptical of the need. However, I am convinced beyond all doubt that it was the best decision for the district to retain your services. If I could give anyone who was unfortunate enough to suffer a loss, one piece of advice, it would be to retain Adjusters International as soon as possible after the occurrence."

OREGON CITY PUBLIC SCHOOLS, Oregon City, OR - Kenneth W. Reza, Business Manager

"Thank you for your invaluable assistance in resolving Illinois Bell's property and extra expense claims. Your knowledge and experience are remarkable, and your diligence in pursuing the many complex issues was instrumental in helping us achieve an early, fair settlement."

ILLINOIS BELL, Chicago, IL - Ed Butz, Vice President/General Counsel

"As a result of your work, our claim went from (the insurance carrier's) initial assessment of \$2,749,525 to an agreed upon amount of \$8,232,321. Your professionalism with our carrier was appreciated and your ability to work with the limited information the school district was able to provide you was amazing."

DALLAS PUBLIC SCHOOLS, Dallas, TX - Cheryl Johnson, Director of Risk Man

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Date: 2-7-01

Attachment No. 2



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ADJUSTERS INTERNATIONAL

"I wish to express my sincere gratitude to you for assisting the Department of Human Services with the insurance claims relative the Boys' and Girls' Homes and the Herbert Grigg Home."

GOVERNMENT OF THE VIRGIN ISLANDS, Charlotte Amalie, VI - Catherine L. Mills, Commissioner

"You and your associates did a fine job and we are very happy with the outcome. Rest assured that we will be in touch with you if we need your kind of professional help again."

TENNANT COMPANY, Minneapolis, MN - Thomas L. Larson, Corporate Facilities & Risk Manager

"We would have had much difficulty in handling the various complex issues without your good office, and we would be more than happy to recommend you to other companies who have similar incidents in the future."

ELIZABETH ARDEN RED DOOR HAIR & BEAUTY SPA, London, UK - David Bell, Financial Director

"Our selection of your firm certainly was a wise decision as your results have brought successful and favorable conclusions to both the earthquake claim and the fire claim. Along with your excellent settlement on the business interruption claim, we could not have been happier. You gave us immediate and necessary advice that allowed our claim to be processed promptly and, ultimately, have our store re-open faster than initially expected."

THE NATIONAL DOLLAR STORES, LTD., San Francisco, CA - Lincoln Yee, Corporate Secretary

"Although I was a little skeptical in the beginning, there is absolutely no doubt in my mind now that we did the right thing in contracting with your company."

COUNTY OF MONROE, Key West, FL - Donna J. Perez, Risk Manager

"As you also know, our more than 300 locations in the United States and twelve foreign countries have made us a very complex organization. The professionalism and quick response time you and Nicholas both put forth is unparalleled in my business experience."

CCA INDUSTRIES, INC., Richmond, VA - Beverley W. Armstrong, Vice Chairman

"Your adjustment of Atchison Casting's \$50,000,000 claim with (our insurance carrier) was accomplished with perseverance, capability and professionalism."

ATCHISON CASTING, Atchison, KS - Hugh H. Aiken, CEO

"After we got a few weeks into the loss adjustment we realized that we were not on equal footing with the insurance company staff. There were too many variables, and subjective areas of the insurance policy for us to understand... You and your staff of experts were able to compile details of the loss, understand the intricacies of the insurance policy, and alleviate the unbelievable amount of time and effort placed on our staff so that we were able to focus on saving our customer base and running our business."

COPPINGER and AFFILIATES, Cleveland, TN - Frank A. Morda, Executive Vice President

"We realized early on that we were ill equipped to devote knowledgeable staff to attend the numerous meetings, scope negotiations, unit cost negotiations, addressing building code issues and many other details that needed to be addressed in order to achieve a satisfactory settlement. We are glad we allowed professionals to handle these matters. Thank you for your hard work and decisiveness."

SHAWNEE COUNTY, Topeka, KS - Susanna L. Valdovinos, Assistant County Counselor

J-J



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ADJUSTERS INTERNATIONAL

"In reviewing our real property, stock and business interruption policies, we concluded that any reimbursement would be minimal. We then employed the services of Adjusters International. The team came in, and with their combined expertise and diligence in resolving the many complicated issues, the insurance companies offered a much greater settlement than originally expected."

LSG LUFTHANSA SERVICE GUAM, INC., Tamuning, Guam – Michelle D. Ramps, Mgr., Finance & Administration

"Our thanks and appreciation for the courteous and professional services provided to us in preparing and negotiating a very successful settlement with our insurers."

BAHAMAS TELECOMMUNICATIONS CORP., Nassau, Bahamas - Barrett A. Russell, General Manager

"You have done a phenomenal job, we have been very impressed everywhere you have gone and you were recommended without question."

PINNACLE REALTY MANAGEMENT CO., Salt Lake City, UT- James L. Terry, President Southwest Region

"I realize now that there are numerous technical issues that we, as homeowners, are not qualified to address directly with (the insurance carrier). You more than earned your fee. Not only did you triple the amount of our settlement, you eliminated a lot of stress and time that we would have had to go through in dealing directly with (the insurance carrier)."

TOLUCA VILLAS HOMEOWNERS ASSOC., INC., Toluca Lake, CA - Heidi Graham, President

"Had you been handling and guiding the preparation and presentation of all our damage estimates from the beginning, our recovery could have been far greater. I speak from experience when I say that estimates given "off the cuff" and without consideration of all the insurance policy's provisions can come back to haunt you."

BOARD OF PUBLIC UTILITIES, Kansas City, KS – Lanny L. Uden, Director of Civil Engineering

"We were always aware of the complex issues the claim generated and the difficulty that some of them posed. Your professionalism, knowledge and steadfastness were outstanding and the ultimate result certainly met our most optimistic expectations."

ALPHA HOSPITALITY CORPORATION, New York, NY – Thomas W. Aro, Executive Vice President

"The professionalism I experienced with your firm prompted me to overcome my initial reservations. That turned out to be a great decision as all the people at Adjusters International conducted themselves professionally and delivered very high quality products. You saved me untold hours and aggravation and saved the association a lot of money."

NATIONAL LUMBER AND BUILDING MATERIAL DEALERS ASSOCIATION, Washington, DC – Gary W. Donnelly, President

"You maximized our recovery and minimized our "recovery time" What could have been a tedious, time consuming process for the Board and staff of The Washington Ballet was handled effectively and efficiently by your staff."

THE WASHINGTON BALLET, Washington, DC – Elvi Moore, General Director

"Your honest interest in our problem didn't just save us from the fire, you saved us from ourselves and truly took care of us when we needed it most. I can't say enough good about how you handled our insurance claim... Thanks for everything."

JACKSON YACHT CLUB, Jackson, MS – Robert L. Wells



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ADJUSTERS INTERNATIONAL

Who we've helped

The following represents a partial listing of Adjusters International's clients.

STATE OF OKLAHOMA

Governor's Task Force
Oklahoma City, Oklahoma

Served on Governor's Task Force, assessing \$652 million in damages emanating from the Oklahoma City Bombing

PORT AUTHORITY OF NEW YORK & NEW JERSEY

New York, New York

Assisted the Port Authority with their property and business interruption losses resulting from the World Trade Center Bombing

THE GILLETTE COMPANY

Boston, Massachusetts

Damage to a facility due to the Los Angeles earthquake

GOVERNMENT OF KUWAIT

(Public Authority for Assessment of Compensation for Damages Resulting from Iraqi Aggression)

Assisted the Government of Kuwait with their war reparation submissions to the United Nations

MALDEN MILLS

Lawrence, Massachusetts

Fire completely destroyed all but one building of this major textile manufacturing complex

SERVICE MERCHANDISE

Garland, Texas

Fire destroyed the main warehouse for a major national retailer

ILLINOIS BELL

Chicago, Illinois

Telephone service to 40,000 customers was lost when a major fire destroyed a central switching station

THE PILLSBURY COMPANY

Minneapolis, Minnesota

Earthquake damage caused an ammonia leak at a frozen food processing plant

JC PENNEY CO., INC.

Plano, Texas

Earthquake damage at multiple retail locations in California

SOUTHERN PACIFIC RAILROAD

San Francisco, California

Damage at various locations resulting from flooding in the midwest

JAMAICA PUBLIC SERVICE

Kingston, Jamaica

A public utility sustained extensive losses as a result of Hurricane Gilbert

PURITY BAKERY, LTD.

(Sunshine Group of Companies)
Nassau, Bahamas

Commercial bakery and snack food distributor destroyed by fire

GOVERNMENT OF THE VIRGIN ISLANDS

Charlotte Amalie, Virgin Islands

Hurricane Marilyn damage to more than 300 municipal buildings



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Who we've helped

BON MARCHE
Seattle, Washington

A business interruption loss resulted when this well-known retailer lost electrical services due to an off-site accident

FIRST UNION
Charlotte, North Carolina

Fire damaged this bank's Charlotte location

STEWART SANDWICHES
Norfolk, Virginia

Fire at a company which produces pre-packaged foods

**SUPERGLASS SECTIONS, LTD.
(ENCON PLC.)**
Clydebank, United Kingdom

A major fire loss at a building materials manufacturing facility

PYRAMID MINING
(Subsidiary Division of First Mississippi Corp.)
Owensboro, Kentucky

Flooding at a strip mining operation

DALLAS PUBLIC SCHOOLS
Dallas, Texas

Hail damage at many of the district's schools

KERR GLASS MANUFACTURING CORP.
Dunkirk, Indiana

Machinery breakdown at a glass products manufacturing plant

PUERTO RICO TELEPHONE COMPANY
San Juan, Puerto Rico

Damage to a telephone switching center

HOMESTEAD HOSPITAL
Homestead, Florida

Property and business interruption claims as a result of Hurricane Andrew

FIRST INTERSTATE BANK
Everett, Washington

Building collapse due to an underground railroad tunnel

HEUGA HOLDING
(Subsidiary of Interface Inc.)
Scherpenzeel, Netherlands

Fire at a carpet manufacturing facility

REVERE COPPER PRODUCTS
Rome, New York

Business interruption and extra expense losses at copper and copper alloy processing company

BAHAMIAN TELECOMMUNICATIONS CO.
Nassau, Bahamas

Extensive damage to telecommunication company's buildings, towers, radio and other equipment due to Hurricane Andrew



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ADJUSTERS INTERNATIONAL

[Who we've helped]

TENNANT, INC.
Uden, Netherlands

Fire destroyed the European manufacturing facilities of this U.S. company

CHAMPION PARTS COMPANY
Fresno, California

Business interruption, building and contents claims resulting from a fire

CITY OF LOUISVILLE
Louisville, Kentucky

City-wide flood damage to municipal buildings

TRAMMEL CROW RESIDENTIAL SERVICES
Boca Raton, Florida

Apartment complexes damaged by Hurricane Andrew

RESOLUTION TRUST CORPORATION
(Heritage Hotel)
Englewood, Colorado

Hail and water damaged this Resolution Trust Corporation managed property

SOUTH MIAMI HEALTH SYSTEMS, INC.
Miami, Florida

Major metropolitan hospital damaged by Hurricane Andrew

NATIONAL DOLLAR STORES
San Francisco, California

Losses at three locations which resulted from earthquake, fire and rioting

JAMAICA PORT AUTHORITY
Kingston, Jamaica

International port damaged by Hurricane Gilbert

PAYLESS CASHWAYS
Kansas City and Elwood, Kansas

Flood damage at two retail locations of the third largest lumber supply company in the United States

JACK ECKERD CORPORATION
Clearwater, Florida

Business interruption losses at various retail locations of a major drug store chain

BOARD OF UTILITIES OF KANSAS CITY
Kansas City, Missouri

Municipal water plant significantly damaged by flooding

BRANDSMART USA
Miami, Florida

National electronic equipment retailer sustained hurricane damage at four locations

RENO/TAHOE INTERNATIONAL AIRPORT
Reno, Nevada

Flooding extensively damaged buildings, concourses and runways

PINNACLE REALTY MANAGEMENT CO.
Salt Lake City, UT

Fire losses at various locations

RON THORNBURGH
Secretary of State



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120 SW 10th Ave.
Topeka, KS 66612-1594
(785) 296-4564

TESTIMONY OF THE SECRETARY OF STATE
TO THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE
ON SB 181

FEBRUARY 7, 2001

Madam Chair and Members of the Committee:

I appreciate the opportunity to offer an amendment to SB 181 on page 6, line 24.

The Secretary of State is often appointed under Kansas law as an agent to accept service of process. Statutes assigning this duty to the Secretary of State generally refer to our office as the "agent" for service of process. For the purposes of uniformity and clarity, we would prefer that the reference to "true and lawful attorney" given in SB 181 be amended to say "agent and representative." This language is adopted from K.S.A. 60-304, which appoints the Secretary of State as the service agent for business entities.

As a point of observation, the Secretary of State notes that SB 181 does not direct our office to forward the process to the licensed public adjuster. I question how the licensed public adjuster will receive notice of pending lawsuits and administrative actions if the process is not provided to the adjuster and whether failure to receive notice will impact the adjuster's due process rights. If the committee were to consider an amendment directing the Secretary of State to forward the process to the adjuster, our office would appreciate the opportunity to provide a fiscal note.

Melissa Wangemann, Legal Counsel
Deputy Assistant Secretary of State

Senate Financial Inst. & Insurance
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Attachment No. 3

1 \$2,500 for the first offense and not more than \$5,000 for the second and
 2 each subsequent offense, but not to exceed \$25,000 for the same violation
 3 occurring within any six, consecutive calendar months. For the purposes
 4 of this section, each transaction or statutory violation shall constitute a
 5 separate offense. The commissioner may issue an order to any person
 6 violating any provision of this act assessing a penalty in accordance with
 7 this section. Such order shall be reviewable in a hearing held pursuant to
 8 the Kansas administrative procedure act.

9 Sec. 16. (a) Every license issued pursuant to this act shall at all times
 10 be the property of the state of Kansas and, upon any suspension, revo-
 11 cation, refusal to renew, expiration or other termination of such license,
 12 shall no longer be in force and effect. Upon any suspension, revocation
 13 or other termination of a license, the licensee or other person having
 14 possession or custody of the license shall immediately surrender it to the
 15 commissioner by personal delivery or by registered or certified mail, re-
 16 turn receipt requested.

17 (b) If a license is lost, stolen or destroyed, in lieu of the return of the
 18 license, the commissioner may accept the affidavit of the licensee or other
 19 person responsible for the license, stating the facts of the loss, theft or
 20 destruction of such license.

21 Sec. 17. Any person becoming licensed as a public adjuster under
 22 this act thereby makes an irrevocable appointment, binding upon such
 23 person and the person's executor or administrator, of the secretary of
 24 state of the state of Kansas to be the true and lawful attorney of such
 25 person, upon whom may be served all lawful process in any action, suit
 26 or proceeding in any court by the commissioner or by the state, and upon
 27 whom may be served any notice, order, pleading or process in any ad-
 28 ministrative proceeding before the commissioner which arises out of such
 29 person acting as a public adjuster in this state. Any action taken by such
 30 person to act as a public adjuster in this state shall be a signification of
 31 such person's agreement that any such lawful process in such court action,
 32 suit or proceeding, and any such notice, order, pleading or process in
 33 such administrative proceeding before the commissioner so served, shall
 34 be of the same legal force and validity as personal service of process in
 35 this state upon such person.

36 Sec. 18. The commissioner may promulgate such rules and regula-
 37 tions as may be necessary to effectuate the purposes of this act.

38 Sec. 19. This act shall take effect and be in force from and after its
 39 publication in the statute book.

40
 41
 42
 43

agent and representative

Source: K.S.A. 60-304

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CARLA J. STOVALL
ATTORNEY GENERAL

State of Kansas

Office of the Attorney General

CONSUMER PROTECTION/ANTITRUST DIVISION

120 S.W. 10TH AVENUE, 2ND FLOOR, TOPEKA, KANSAS 66612-1597
PHONE: (785) 296-3751 FAX: 291-3699

Testimony of
C. Steven Rarrick, Deputy Attorney General
Consumer Protection Division
Office of Attorney General Carla J. Stovall
Before the Senate Financial Institutions & Insurance Committee
RE: SB 181
February 7, 2001

CONSUMER HOTLINE
1-800-432-2310

Chairperson Praeger and Members of the Committee:

Thank you for the opportunity to appear on behalf of Attorney General Carla J. Stovall today in regard to SB 181. My name is Steve Rarrick and I am the Deputy Attorney General for Consumer Protection.

The Attorney General opposes SB 181 as currently drafted. However, we have met with the proponents of the bill, and they have agreed to the proposed amendments (attached to my written testimony) which resolve our concerns. If these proposed amendments are adopted, the Attorney General takes no position on the bill, as we believe public adjusting services, as defined by our proposed amendments, are legal under current Kansas law.

The purpose of SB 181 is to enact a "public adjusters licensing act." Our primary concern with this bill is the definition of "public adjusting" as "investigating, appraising or evaluating and reporting to an insured in relation to a first party claim, or otherwise acting in any manner on behalf of or aiding an insured in negotiating for or effecting the settlement of a first party claim." (emphasis added)

The Office of the Attorney General is authorized by Kansas Supreme Court decisions to investigate and prosecute allegations of the unauthorized practice of law (*State ex rel. Stephan v. Williams*, 246 Kan. 681, 793 P.2d 234 (1990)). This bill appears to have been brought, at least in part, as a result of an action the Attorney General filed against an "insurance claims consultant" in Wichita for the unauthorized practice of law, as well as violations of the Kansas Consumer Protection Act (KCPA). The trial court determined the defendant had been practicing law without a license and the jury found the defendant had committed deceptive acts and practices in violation of the KCPA. The Court issued a permanent injunction against the defendant and assessed \$115,000 in civil penalties for the KCPA violations. The judgment against the defendant was upheld by the Kansas Court of Appeals (*State ex rel. Stovall v. Martinez*, 27 K.A.2d 9, 996 P.2d 371 (2000)).

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f The Court of Appeals, in affirming that the defendant had been practicing law without a license, specifically referenced the activities of (1) compiling a settlement packet of relevant information, (2) making written demand upon an insurance company, (3) advising of the reasonableness of a settlement offer and (4) negotiating with insurance companies. Our concern is that SB 181, as drafted, appears to authorize the same activities the *Martinez* case and cases across the county have held to constitute the unauthorized practice of law. Specifically, our concern that public adjusters would be negotiating settlements and providing legal advice on coverage and liability issues, activities that cannot occur without committing the unauthorized practice of law. We believe allowing public adjusters to perform these activities would put Kansas consumers and businesses at risk of receiving unqualified legal advice, which could result in severe financial loss.

X The opposition of Attorney General Stovall to this bill, as drafted, is not to protect Kansas attorneys, but rather to provide consumer protection. Consumers seeking assistance in times of loss covered by insurance are typically not well-versed in the area of insurance law and are looking for guidance - - particularly if the claim is of substantial value. It would be extremely unfortunate if a consumer settled away legal rights for less money because his/her public adjuster was not familiar with the applicable statutes and case law.

X However, as I stated initially, we have drafted proposed amendments, to which the proponents of this bill have agreed, which we believe resolve our concern that public adjusters would be committing the unauthorized practice of law. These proposed amendments are summarized below:

- The definition of "public adjusting" at page 1, lines 37-38, would be amended by deleting the phrase "negotiating for or effecting the settlement of a first party claim" and substituting the phrase, "adjusting and evaluating the amount and extent of loss or damage sustained by an insured and presenting the loss to the insurer in a first party claim." This would allow public adjusters to do what we believe public adjusters are trained and qualified to do - adjust the loss sustained by the insured, without providing legal advice and representation constituting the unauthorized practice of law.
- The word "producer" at page 2, line 27, would be replaced with the word "agent," which staff at the insurance department have advised is consistent with language in other Kansas statutes.
- Eliminate exceptions to the examination requirement at page 3, lines 30 and 35-41. This would require all adjusters, except those who have been licensed in other states with similar laws who provide reciprocity with Kansas, to take an examination before being licensed in Kansas.
- Require public adjusters to carry errors and omissions coverage similar to that required of insurance agents in Kansas at page 4, line 20.

- A technical change at page 5, lines 40-42, and page 6, line 3, would clarify that the \$25,000 penalty limit does not apply if the public adjuster knew or should have known that the act committed was a violation of this act.

Thank you again for the opportunity to testify in regard to SB 181. As drafted, the Attorney General would urge you to report the bill unfavorably to the Senate. With our proposed amendments, the Attorney General takes no position on the bill. I would be happy to answer questions of the Chair or any member of the Committee.

SENATE BILL No. 181

By Committee on Financial Institutions and Insurance

1-31

AN ACT enacting the public adjusters licensing act.

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

Section 1. This act shall be known and may be cited as the public adjusters licensing act.

Sec. 2. As used in this act:

(a) "Commissioner" means the Kansas commissioner of insurance;

(b) "first party claim" means any claim for loss or damage caused by, or resulting from, any accident, incident or occurrence covered under insurance contracts that insure the real or personal property, or both, of the insured;

(c) "insured" means and includes only the policyholder and any beneficiaries named or otherwise identified in a policy of insurance;

(d) "licensee" means a public adjuster licensed pursuant to this act;

(e) "nonresident adjuster" means an individual who:

(1) Is not a resident of this state;

(2) is a currently licensed or authorized public insurance adjuster in such public adjuster's home state for the type or kinds of insurance for which such public adjuster intends to adjust claims in this state; and

(3) does not maintain an office in this state for the purpose of adjusting claims in this state;

(f) "person" means any individual, partnership or corporation;

(g) "public adjuster" means any individual who, for money, fee, commission or other compensation engages in public adjusting, but such term does not include an adjuster acting on behalf of or representing an insurer; and

(h) "public adjusting" means investigating, appraising or evaluating and reporting to an insured in relation to a first party claim, or otherwise acting in any manner on behalf of or aiding an insured in ~~negotiating for or effecting the settlement of a first party claim.~~ "Public adjusting" shall not include acting in any manner in relation to claims for damages to or arising out of the operation of a motor vehicle, or any activity which may constitute the unauthorized practice of law.

adjusting and evaluating the amount and extent of loss or damage sustained by an insured and presenting the loss to the insurer in a first party claim.

Sec. 3. (a) No public adjuster shall adjust or solicit a contract for the adjustment of any claim for loss or damage on behalf of an insured, except

1 a first party claim.

2 (b) No individual shall act as a public adjuster in this state unless
3 licensed as a public adjuster as required by this act.

4 (c) No person shall engage in the business of public adjusting unless
5 licensed as a public adjuster as required by this act.

6 (d) A licensee under this act may act as a public adjuster without any
7 other license.

8 Sec. 4. (a) Nothing in this act applicable to public adjusters shall
9 apply to:

10 (1) Any employee, agent or other representative of any authorized
11 insurer who acts as a claims adjuster; or

12 (2) any licensed insurance agent who is designated by the insurer to
13 act as an adjuster for a client of such insurance agent without any com-
14 pensation for those services as adjuster. No insurer's representative and
15 no licensed insurance agent shall advertise or publicly solicit the adjust-
16 ment of claims in a manner likely to mislead the public into believing that
17 such representative or insurance agent is offering to serve as a public
18 adjuster.

19 (b) Nothing in this act shall apply to:

20 (1) Any attorney admitted to the bar of this state who acts or aids in
21 adjusting insurance claims as an incident to the practice of the attorney's
22 profession and who does not advertise such attorney as a public adjuster;

23 (2) any licensed insurance agent who acts as an adjuster with respect
24 to any loss involving insurance contracts under which such insurance
25 agent was the broker of record in placing the insurance, whether or not
26 designated in writing to act for the insured; or

27 (3) any other duly licensed ~~producer~~ *agent* who has been designated to act
28 for the insured in writing before a loss occurs.

29 Sec. 5. The commissioner may issue a public adjuster's license to any
30 individual who is trustworthy and competent to act as a public adjuster
31 in a manner as to safeguard the interests of the people of this state and
32 who has complied with the requirements of this act.

33 Sec. 6. (a) Before any license or any renewal thereof shall be issued
34 by the commissioner, there shall be filed in the commissioner's office a
35 written application therefor. The application shall be in the form pre-
36 scribed by the commissioner and shall contain such information as the
37 commissioner reasonably may require. Each application for a public ad-
38 juster's license or for any renewed thereof shall be accompanied by an
39 application fee of \$300. The commissioner shall refund to the applicant
40 the application fee if the application is denied.

41 (b) Each applicant shall submit to the commissioner, together with
42 the application: (1) The applicant's photograph, in duplicate, in pass-
43 port size; and

(2) fingerprints of the applicant's two hands taken on standard fingerprint cards by a state or municipal law enforcement agency. No license shall be issued to any individual who has ever been convicted of any crime or offense involving fraud or dishonesty; nor shall a licensee employ any person who has ever been convicted of any crime or offense involving fraud or dishonesty. The commissioner is authorized to exchange fingerprint data with and receive criminal history record information from the federal bureau of investigation and the Kansas bureau of investigation for use in making the determinations required by this subsection.

(c) The commissioner may require an applicant for a license to present evidence, in the form the commissioner may prescribe, that the applicant has been employed, for a period which the commissioner deems reasonable, by an insurer, an independent adjuster or a public adjuster, in the performance of duties which, in the commissioner's opinion, would provide the applicant with satisfactory preliminary training for the duties and responsibilities which would devolve upon the applicant as a licensee.

Sec. 7. (a) Except as otherwise provided in this act, the commissioner shall require each applicant to take and pass a written examination, in order to determine the competency of the applicant to act as a public adjuster. The commissioner is authorized to enter into contracts with private vendors that are reasonable and necessary in regard to preparing or administering such examinations.

(b) The commissioner, in the commissioner's discretion and on terms the commissioner may prescribe, may dispense with the examination in the case of any applicant who

~~(1) is a nonresident adjuster holding a public adjuster's license issued by another state in which the licensing provisions of public adjusters are substantially similar to the provisions of this act and which similarly recognizes and accepts public adjusters licensed in Kansas, or~~

~~(2) previously has operated a public adjusting business in this state.~~

(c) Any applicant for a license who is required to take and pass an examination shall pay to the commissioner a nonrefundable examination fee not to exceed \$50 in an amount established by the commissioner pursuant to duly adopted rules and regulations.

Sec. 8. ~~(a) Upon payment of the application fee prescribed by section 6, and amendments thereto, a person who has been employed as or acted as a public adjuster as such person's principal business for a period of five years immediately prior to the effective date of this act, and who has demonstrated such person's trustworthiness and competence to act as a public adjuster to the satisfaction of the commissioner, shall be granted a license without examination.~~

~~(b)~~ Application for a license without examination pursuant to this section shall be made to the commissioner within 12 months of the effective

is

(a)

1 date of this act and shall be accompanied by a sworn statement:
 2 (1) Describing the experience of the applicant as a public adjuster;
 3 and
 4 (2) containing such other information as may be required by the
 5 commissioner.
 6 Sec. 9. Every public adjuster's license issued pursuant to this act shall
 7 be valid for four years from the date of its issuance, unless suspended or
 8 revoked, pursuant to section 12, and amendments thereto. A public ad-
 9 juster's license may be renewed upon the filing of an application and
 10 payment of the application fee required by section 6, and amendments
 11 thereto.

12 Sec. 10. No public adjuster's license shall be issued or renewed, un-
 13 less there shall be on file with the commissioner a bond, executed by the
 14 applicant and by approved sureties, in the penal sum of \$10,000 appli-
 15 cable to the licensee. The bond shall be approved as to form by the
 16 attorney general and as to sufficiency of security by the commissioner.
 17 The bond shall be made to the state of Kansas for the use and benefit of
 18 any person injured by a willful, malicious or wrongful act by a public
 19 adjuster in connection with the transaction of such public adjuster's
 20 business.

21 Sec. 11. No licensee shall:
 22 (a) Enter into any agreement, oral or written, with an insured to ne-
 23 gotiate or settle any claim for loss or damage occurring in this state be-
 24 tween the hours of 6 p.m. and 8 a.m. during the 24 hours after the loss
 25 or damage has occurred;
 26 (b) have any right to compensation from any insured for or on account
 27 of services rendered to an insured as a public adjuster, unless the right
 28 to compensation is based upon a written memorandum in such form and
 29 with such language as the commissioner may prescribe; signed by the
 30 party to be charged and by the public adjuster, and specifying or clearly
 31 defining the services to be rendered and the amount or extent of the
 32 compensation;
 33 (c) induce cancellation of a duly executed written memorandum be-
 34 tween an insured and any other public adjuster;
 35 (d) make any misrepresentation of facts or advise any person on ques-
 36 tions of law in connection with the transaction of business as a public
 37 adjuster; or
 38 (e) receive, accept or hold any moneys towards the settlement of a
 39 claim on behalf of an insured, unless the public adjuster deposits the
 40 moneys in an interest-bearing escrow account in a financial institution in
 41 this state insured by an agency of the federal government. Any funds held
 42 in escrow, together with interest accumulated thereon, shall be the prop-
 43 erty of the insured until disbursement thereof pursuant to a written mem-

(a)

(b) No public adjuster's license shall be issued or renewed, unless there shall be on file with the commissioner proof that the public adjuster is covered by an errors and omissions policy in an amount of not less than \$100,000 total liability limit per occurrence, subject to not less than \$100,000 annual aggregate for all claims made during the policy period; or, covering the public adjuster under blanket liability policy or policies, which policy or policies can include other coverage on an excess basis over \$100,000 primary, insuring other public adjusters in an amount of not less than \$500,000 total liability limit per occurrence subject to not less than \$500,000 annual aggregate for all claims made during the policy period. Such policy shall be issued by an authorized insurance company or as authorized by K.S.A. 40-246b or 40-246c, and amendments thereto, for errors and omissions of the public adjuster.

1 orandum, as prescribed by subsection (b). In the event of the insolvency
2 or bankruptcy of a public adjuster, the claim of an insured for any settle-
3 ment moneys received, accepted or held by the public adjuster shall con-
4 stitute a statutory trust.

5 Sec. 12. (a) The commissioner may refuse to issue or renew a public
6 adjuster's license, or may suspend or revoke any public adjuster's license
7 if, after notice and opportunity for a hearing pursuant to the Kansas ad-
8 ministrative procedure act, the commissioner determines that the appli-
9 cant or licensee:

10 (1) Has violated any provisions of the insurance laws of this state,
11 including any rules and regulations promulgated thereunder, or has vio-
12 lated any law in the course of such applicant's or licensee's dealings as a
13 public adjuster;

14 (2) has withheld material information or made a material misstate-
15 ment in the application for the public adjuster's license;

16 (3) has committed a fraudulent or dishonest act;

17 (4) has demonstrated such applicant's or adjuster's incompetency,
18 lack of integrity, bad faith, dishonesty, financial irresponsibility or un-
19 trustworthiness to act as a public adjuster; or

20 (5) has aided, abetted or assisted another person in violating any in-
21 surance law of this state or any rule and regulation promulgated
22 thereunder.

23 (b) Any person claiming to be aggrieved by any act or omission of a
24 public adjuster may file a verified complaint with the commissioner set-
25 ting forth facts showing sufficient grounds for the suspension or revoca-
26 tion of the public adjuster's license. Upon the filing of the complaint, the
27 commissioner shall determine, in accordance with the Kansas adminis-
28 trative procedure act, whether the public adjuster's license shall be sus-
29 pended or revoked.

30 Sec. 13. For one year after the revocation is final, including the final
31 determination of any judicial proceeding affirming the action of the com-
32 missioner in revoking the public adjuster's license, no individual whose
33 public adjuster's license has been revoked shall be entitled to the issuance
34 or renewal of a public adjuster's license.

35 Sec. 14. If an application for a public adjuster's license is denied, or
36 if any public adjuster's license is suspended or revoked by the commis-
37 sioner, the commissioner shall forthwith give notice and an opportunity
38 for a hearing as required by the Kansas administrative procedure act to
39 the applicant or licensee.

40 Sec. 15. In addition to any other sanctions provided by law, ~~unless~~
41 ~~such person knew or reasonably should have known that the act consti-~~
42 ~~tuting the offense was a violation of this act,~~ any person violating any
43 provision of this act shall be liable to a civil penalty of not more than

1 \$2,500 for the first offense and not more than \$5,000 for the second and
 2 each subsequent offense, but not to exceed \$25,000 for the same violation
 3 occurring within any six, consecutive calendar months. For the purposes
 4 of this section, each transaction or statutory violation shall constitute a
 5 separate offense. The commissioner may issue an order to any person
 6 violating any provision of this act assessing a penalty in accordance with
 7 this section. Such order shall be reviewable in a hearing held pursuant to
 8 the Kansas administrative procedure act.

*unless such person knew or reasonably
 should have known that the act
 constituting the offense was a violation
 of this act, in which event the \$25,000
 limit does not apply*

9 Sec. 16. (a) Every license issued pursuant to this act shall at all times
 10 be the property of the state of Kansas and, upon any suspension, revo-
 11 cation, refusal to renew, expiration or other termination of such license,
 12 shall no longer be in force and effect. Upon any suspension, revocation
 13 or other termination of a license, the licensee or other person having
 14 possession or custody of the license shall immediately surrender it to the
 15 commissioner by personal delivery or by registered or certified mail, re-
 16 turn receipt requested.

17 (b) If a license is lost, stolen or destroyed, in lieu of the return of the
 18 license, the commissioner may accept the affidavit of the licensee or other
 19 person responsible for the license, stating the facts of the loss, theft or
 20 destruction of such license.

21 Sec. 17. Any person becoming licensed as a public adjuster under
 22 this act thereby makes an irrevocable appointment, binding upon such
 23 person and the person's executor or administrator, of the secretary of
 24 state of the state of Kansas to be the true and lawful attorney of such
 25 person, upon whom may be served all lawful process in any action, suit
 26 or proceeding in any court by the commissioner or by the state, and upon
 27 whom may be served any notice, order, pleading or process in any ad-
 28 ministrative proceeding before the commissioner which arises out of such
 29 person acting as a public adjuster in this state. Any action taken by such
 30 person to act as a public adjuster in this state shall be a signification of
 31 such person's agreement that any such lawful process in such court action,
 32 suit or proceeding, and any such notice, order, pleading or process in
 33 such administrative proceeding before the commissioner so served, shall
 34 be of the same legal force and validity as personal service of process in
 35 this state upon such person.

36 Sec. 18. The commissioner may promulgate such rules and regula-
 37 tions as may be necessary to effectuate the purposes of this act.

38 Sec. 19. This act shall take effect and be in force from and after its
 39 publication in the statute book.

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Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

TO: Senate Committee on Financial Institutions and Insurance
FROM: Linda De Coursey, Director of Government Affairs
RE: SB 181 Public Adjusters Licensure
DATE: February 7, 2001

Madam Chairwoman and members of the committee:

Thank you for allowing us to comment on SB 181, establishing public adjusters licensure. We would like to serve as an educational component to you at this time on licensure issues.

The state of Kansas has not licensed adjusters of any kind in its many decades of existence. Currently, we have a mechanism in place to handle the claims disputes on behalf of Kansas consumers. Public adjusters have been, and currently are, operating in the state of Kansas, seemingly without any troubles or difficulties. This does not dismiss the fact that public adjusters now wish to be licensed and regulated by the Kansas Insurance Department.

If it the policy decision of this Legislative body to decide public adjusters need to be license, we will comply with that, but we do have concerns with the bill in its current form.

The department does not question the credibility of this bill. This group is coming forward voluntarily desiring to be regulated by the Kansas Insurance Department. While the Kansas Insurance Department is in the business of regulating insurance companies, agents, etc., we do not seek out other groups to license. We believe that the marketplace is the best area for determining those doing business in this state. It is our understanding that public adjusters do

currently operate in this state, and have operated in this state without licensure. As far as we know, there have not been any adverse effects of their activities to consumers of Kansas.

Yesterday before this committee, we testified about the uniform issue of licensure among agents, and this bill now does not conform to many of those points made yesterday. Since public adjusters currently operate in our state without licensure and licensure is not a necessary must, we would respectfully request more time to examine this bill thoroughly in the following areas.

They are in sequence as they appear in this legislation:

- Having a proper application.
- The appropriate fee for the license.
- Refundability of the application fee.
- Applicant's photo.
- Applicant's fingerprints.
- Applicant's work history.

All of these above items should be assessed as to how they relate to our current licensing process.

- The exam issue—we should be able to contact our vendor on the availability of the exam and its cost to the adjuster.
- Should there be other exemptions to the exam, and if so, what are they?
- Should there be continuing education, and if so, how much?
- The length of the license term probably should be consistent with our agent's license.
- A proper sum for a bond, if needed, or errors and omissions as the agents' have.

- Should the reasons for non-renewal, suspension, or revocation be tied into the reasons noted in our producer model act?
- If a license has been revoked, is one year enough to allow the adjuster back into the practice?
- We should make sure the penalties noted in this legislation be somewhat consistent to other penalties within the insurance code.

We had made an original estimate on our costs on this bill to be around \$2600, which is for computer programming. The costs may run slightly more than that. We have no idea how many applicants there would be. Additional time will allow for a better fiscal estimate.

Thank you for listening to our concerns with this bill, and would respectfully request more time to work out any issues with the public adjusters in the licensing requirements.



KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

Feb. 7, 2001

TO: Members of the Senate Committee on Financial Institutions & Insurance
FROM: Terry Humphrey, Executive Director
RE: SB 181

Chairman Praeger and Members of the Senate Committee on Financial Institutions & Insurance: Thank you for the opportunity to submit comments on Senate Bill 181. KTLA has serious concerns with this bill because it effectively requires a layperson to practice law without the requisite training and safeguards of a license and fails to protect Kansas consumers in the handling of first-party claims. It creates problems where none currently exist.

Although the bill only concerns first party claims, a factual situation giving rise to a first party claim frequently gives rise to a third-party claim as well. Since public adjusters are only concerned with first party claims and cannot give legal advice under Sec. 11(d), they do not have the expertise or obligation to advise claimants of all of their options and may not take appropriate steps to preserve the rights of their clients on third party claims. This is significant because the handling of a first party claim can detrimentally impact a third party claim.

In addition, a public adjuster is unlikely to have the training or expertise to provide the advice that is necessary when a dispute arises in a first party claim. For instance, a common dispute on a first party claim concerns whether insurance coverage exists or the extent of such coverage. The resolution of such dispute requires an interpretation of the insurance contract. Such an interpretation could be based upon Kansas decisions or upon decisions in other jurisdictions. Further, even if the public adjuster does have the requisite training, he cannot give legal advice under Sec. 11(d).

SB 181, in Sections 3 and 11(a), also allows direct solicitation of persons having a first party claim by public adjusters. This could result in harassing telephone calls or other communications with Kansas consumers. Under current law this is not a problem because attorneys are not allowed to directly solicit clients under these circumstances.

SB 181 in Sections 2(g) and 11(b) requires a public adjuster to have a written contract with the insured. However, there is no provision of review of the fee to determine if it is reasonable. If an attorney were involved, a court has an obligation to review the fee to determine its reasonableness, a safeguard that does not exist under the bill.

Thank you for the opportunity to express our concerns about this bill

Terry Humphrey, Executive Director

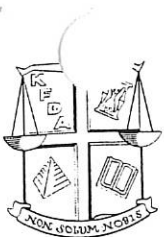
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Senate Financial Inst. & Insurance

Date: 2-7-01

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AFFILIATED WITH NFDA

KANSAS FUNERAL DIRECTORS AND EMBALMERS ASSOCIATION, INC.

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EXECUTIVE DIRECTOR

PAM SCOTT
Topeka

To: Senate Financial Institutions and Insurance Committee
From: Pam Scott, Executive Director
Date: February 7, 2001
Re: Senate Bill No. 193

Madam Chair and members of the Committee, thank you for the opportunity to appear before you today in support of Senate Bill No. 193.

Senate Bill No. 193 was introduced by this committee at the request of the Kansas Funeral Directors and Embalmers Association (KFDA). The bill would exempt from the errors and omissions requirements found in K.S.A. 40-241, insurance agents who hold a life insurance license solely for the purpose of selling life insurance or annuities to fund a prearranged funeral program.

A prearranged funeral program is a program in which a funeral home enters into a contractual relationship with a person to provide certain funeral goods and services upon their death. These contracts are often prefunded by an insurance policy or an annuity. These contracts are most often entered into when a person is spending down assets to become eligible for medical assistance in the form of nursing home coverage. Funds set aside, in an irrevocable bank account or an insurance policy irrevocably assigned to a funeral home, are considered by the Kansas Department of Social and Rehabilitation Services to be exempt assets for the purpose of determining eligibility for public assistance. In the case of an insurance policy, the value of the policy can not exceed the cost of the funeral goods and services selected.

Many funeral directors hold this limited insurance agent's license to sell only this one type of insurance. These funeral directors sell the insurance as an ancillary part of their business and are not full time insurance agents. The Kansas Insurance Department has 223 agents holding this limited license. Because of the limited nature of the insurance business they write, such agents are only required by Kansas law to obtain two hours of insurance continuing education every two years.

The policies sold by these agents are generally single premium policies with little or no underwriting. According to a General Price List Survey conducted by the National

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"Honoring our Heritage ~ Embracing the

Funeral Directors Association, the average cost of a funeral service is approximately \$4700. That figure excludes cemetery costs. Therefore, the value of policies sold under a prearranged funeral program average are not large since the value of the policy is equal to the price of funeral goods and services to be provided.

This type of business is also unique in that if an error or omission in the issuance of a policy occurs and the maximum proceeds payable under the policy are not paid, the funeral home would still, in many cases, be contractually required to provide funeral services. It is my estimate that approximately fifty percent of all funeral homes guarantee that they will provide the funeral services agreed to under the prearranged funeral agreement for the funds initially paid. This is so even if there is a shortfall in the proceeds received from the insurance policy or prearranged funeral account. A shortfall sometimes results when an insurance policy does not keep pace with inflation and the cost of the merchandise rises faster than the value of the insurance policy. The end result is that if the policy proceeds are not paid the funeral home is the one that stands to lose because they will not be paid for their services.

Funeral directors holding this limited license have found that the cost of errors and omissions coverage in Kansas is costly in light of the amount of risk involved. Insurance companies offering errors and omissions coverage have not differentiated between full line agents and those selling this limited type of business. Especially burdened have been those agents in the smaller communities of Kansas who sell only a few policies a year. My search for reasonable rates indicates that premium for errors and omissions coverage starts at approximately \$450.

The KFDDA asks that you recognize the uniqueness of this limited license to sell insurance in conjunction with prearranged funeral agreements and exempt such agents from the errors and omissions insurance coverage requirements of K.S.A. 40-241.

Thank you for the opportunity to appear before you today. I would be happy to address any questions you may have.

Testimony on Senate Bill 193
Before the Senate Financial Institutions and Insurance Committee
By Larry Magill
Kansas Association of Insurance Agents
February 7, 2001

Thank you Madam Chair and members of the Committee for the opportunity to appear today in opposition to this legislation which seeks to carve out one type of insurance license as an exception to the general licensing requirement that insurance agents carry Errors and Omissions insurance.

Senate Bill 152 proposed by the Kansas Insurance Department and passed in the 1999 Legislative session created the requirement that to renew an agent's license, even limited lines licenses, the agent must show proof of errors and omissions insurance. Although I was not here at the time, I assume the thinking was that the professional liability insurance protected the members of the public from a failure by agents to meet the standard of care and competence established by the courts.

X And while we certainly agree that the body of knowledge needed to provide pre-need life insurance is not as great as a life and health agent's, the insurance market should take that into account when establishing rates for the exposure. We have confirmed with the Kansas Insurance Department that they now allow group property casualty policies. This would make it even more economical for individual funeral homes to group together for the purchase of the coverage and avoid the high minimum premiums that they might run into with an individual policy.

We are concerned about the precedent that S. B. 193 would create and the inevitable pressure on the Legislature to exempt other limited lines licenses such as crop hail and title insurance. Once the Legislature starts making exceptions, there are a number of additional groups likely to come before you.

The Funeral Directors already enjoy a very limited continuing education requirement of 2 hours every two years and a limited testing requirement. The E&O requirement is only for \$100,000 limit of liability for an individual or \$500,000 for the firm. Reducing these limits further would not save any appreciable amount of money given their likely premium volume. Their best hope for very inexpensive professional liability insurance is for their association to step in and obtain a group policy.

We are not unsympathetic to the plight of a small funeral home that sells only a few policies a year and is facing a minimum premium of \$500. But this same lack of activity may indicate that they are not as well versed on the technical aspects of the product they are selling. Are these the individuals it makes sense to exempt from the public protection of E&O coverage?

Senate Financial Inst. & Insurance

Date: 2-7-01

Attachment No. 8

We encourage the Funeral Homes to find a market solution to their dilemma. We urge this committee not to act favorably on this bill. Thank you and if we can answer questions or provide additional information, we would be happy to do so.



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John C. Gann, LUTCF
Law and Legislation Chairman
Kansas Association of Insurance and Financial Advisors (KAIFA)

Testimony Before the Senate Financial Institutions and Insurance Committee
Senate Bill No. 193
February 7, 2001

Madam Chairperson and Committee Members:

I appreciate the opportunity to address you today on behalf of the many members of the Kansas Association of Insurance and Financial Advisors. Our membership consists of 1,500 Kansans located in all Kansas counties who are actively engaged as insurance agents and brokers.

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KAIFA is opposed to Senate Bill No.193 for the following reasons:

- Any licensed insurance agent who holds a license for the sole purpose of selling life insurance or annuity products used to fund a prearranged funeral program is the same as any other licensed agent under the definition of current law. We believe that there is no justification for any select group of agents to be exempt from the requirement of having errors and omissions coverage.
- We believe that licensed agents that sell life insurance and annuity products used to fund prearranged funeral programs do so on a limited basis. Therefore there may be more margin for error and justification for the need of errors and omissions coverage.
- We believe that if this exception is allowed for this select group of agents it will open the door for other agents to ask for the same. There could be no end to such requests.

Thank you for your time and consideration.

Senate Financial Inst. & Insurance
Date: 2-7-01
Attachment No. 9