

MINUTES OF THE HOUSE COMMITTEE ON INSURANCE.

The meeting was called to order by Chairman Representative Robert Tomlinson at 3:30 pm on March 21, 2002 in Room 527-S of the Capitol.

All members were present except:

Representative John Edmonds  
Representative Gene O'Brien

Committee staff present:

Bill Wolff, Legislative Research  
Ken Wilke, Legislative Revisor  
Mary Best, Administrative Assistant

Conferees appearing before the committee:

Representative Karen DeVita  
Mr. Steve Rarrick, Kansas Attorney General Office  
Mr. Bill Sneed, Consumer Health Alliance  
Ms. Chris Collins, Kansas Medical Association  
Mr. Bob Williams, Kansas Pharmacists Association  
Mr. Roy Worthington, Kansas Land Title Association  
Mr. Brad Smoot, Pfizer & Abbott

Others attending:

See Attached Guest List

Due to recording problems, the first part of the opening statements of the Chairman and Mr. Steve Rarrick's testimony were not able to be recorded.

**SB 459 - Kansas Discount Card Act supplemental to Consumer Protection Act.**

Mr. Steve Rarrick was the first conferee to come before the committee to offer Proponent Testimony. A copy of the testimony is (Attachment #1) attached hereto and incorporated into the Minutes by reference.

Mr. Rarrick presented information to the committee to amend the above mentioned bill. "He explained that the bill should be amended to specify enforcement by the Attorney General and to provide the investigative and enforcement remedies provided under the Kansas Consumer Protection Act." Mr. Rarrick then discussed the recommended changes in the language. Changes took place on page 1, lines 40-43, through page 2, lines 1-3. Further changes were on page 2, lines 20-21, page 2, lines 5-15, lines 16-17 25-28, 30-31, and new language lines 40-43. New language on page 3, lines 1-5. Further changes were discussed on page 1, line 43, and page 2, line 20 & 28.

Mr. Rarrick stood for questions.

Mr. Bill Sneed, Consumer Health Alliance, was next before the committee to present Proponent Testimony. A copy of the testimony is (Attachment # 2) attached hereto and incorporated into the Minutes by reference. Mr. Sneed on the behalf of his clients was asking for additional amendments. He informed the committee, the Senate had made several amendments which they feel "might create some unintended problems" within their business.

Mr. Sneed outlined the changes the Senate had made in regard to the phrase, "network of health care providers," The Senate had deleted this phrase. Mr. Sneed feels this, "eliminates the ability for his clients to contract with large groups unless it is done on individual basis."

MINUTES OF THE HOUSE COMMITTEE ON INSURANCE  
March 21, 2002

Second, original bill language on page 2, lines 25-28, along with the Senate amendments, created an overburdensome situation for his clients.

In conclusion, Mr. Sneed stated that he and his clients would be happy to work with any and all of the interested parties to try and resolve this matter and reach an agreement with everyone. Mr. Sneed stood for questions.

Ms. Chris Collins, Kansas Medical Association, also gave Proponent Testimony before the committee. A copy of her testimony is (Attachment # 3) attached hereto and incorporated into the Minutes by reference. Ms. Collins confirmed Mr. Sneed's testimony and related that her clients also suggested an addition to the proposed amendment.

Ms. Collins and her clients recommended the additional changes be to Page 1, line 39 and delete language on page 2, lines 20-21 and insert recommended specific language which is included in her testimony. Representative Phelps asked one question regarding the changes.

The next conferee before the committee to present Proponent Testimony was Mr. Bob Williams, Kansas Pharmacist Association. A copy of the testimony is (Attachment # 4) attached hereto and incorporated into the Minutes by reference.

Mr. Williams also spoke to the Senate changes and also explained that **SB 459** was introduced, "at the request of the Attorney General to clarify the statute regarding enforcement by the Attorney General." He continued on to let the committee know that if, "the language is removed and not restored we will be back to where we were two years ago with no oversight of these cards." They do not feel there will be repercussions if the language is restored.

Mr. Williams summarized his testimony and stood for questions. Questions were asked by Representatives Kirk and Phelps, with Mr. Rarrick responding.

Mr. Brad Smoot, Pfizer & Abbott, came before the committee, but had no written testimony. He stated his clients were with the bill until amendments were offered. He also addressed advertising and the cards.

There were no questions and the public hearing was closed.

**HB 2934 - Title insurance companies; time period for certain payments.**

Representative Karen DeVita came before the committee to present Proponent Testimony to the committee on the above mentioned bill. A copy of her testimony with reflecting examples is (Attachment # 5) attached hereto and incorporated into the Minutes by reference.

Representative DeVita, gave a brief overview of the bill and explained the necessity of **HB 2934**. Representative explained to the committee the purpose of the bill was to protect the homeowner/consumer when title companies fail to pay off unsecured creditors in a timely manner. She stated the bill provided an "appropriate remedy" when the title companies fail to provide this service and the consumer ends up with bad marks on their credit, more interest fees etc. Representative DeVita also included with her testimony, a copy of a year 2000 case from Wichita, reflecting such problems.

Representative DeVita stood for questions. Chairman Tomlinson commented on the prompt pay bill. Other questions were asked by Representatives Vickery, Grant, Phelps, in regard to the number of complaints and consumer protection.

Mr. Roy Worthington, Kansas Land Title Association, stood to be recognized to address the committee. Mr. Worthington came forward to offer Opponent Testimony. A copy of the testimony is (Attachment # 6) attached hereto and incorporated into the Minutes by reference.

Mr. Worthington offered testimony with eight points against the bill. Included in the points were statements saying the funds could only be dispersed according to written instructions, the new language is too broad in section (h) (1), proposed changes they feel are duplicitous,

## MINUTES OF THE HOUSE COMMITTEE ON INSURANCE

March 21, 2002

and that K.S.A. 40-1135 et seq. Regulates and supervises title insurance agencies involved in escrow and settlement transactions. He stated that refinance transactions clearly fall within the provisions of the law.

Mr. Worthington summarized his testimony and stood for questions. Representative Phelps spoke to the testimony. Mr. Worthington felt the Kansas Insurance Department should be able to handle some of the problems.. There was a request from the Chair for the Insurance Department to conduct some research on the matter and report to the committee. Linda DeCoursey of the Department agreed. Further questions were asked by the Chairman, Representatives Grant and Kirk. There will be more discussion on the matter at next Tuesday's meeting.

The public hearing on the bill were closed.

### **SB 586 - Long-term care insurance - restrictions on elimination period.**

The Chairman then brought forth **SB 586** - Long-term care insurance - restrictions on elimination period. A copy of the balloon is (Attachment # 7) attached hereto and incorporated into the Minutes by reference. Balloon was offered and Representative Mayans made the motion to adopt the balloon. Representative Kirk seconded the motion. There was a discussion on the motion by Representatives McCreary, Grant, Huff, Boston and Mayans. Representative Kirk offered to make a sub-motion, held a discussion with Mr. Wolff and withdrew her offer. Chairman Tomlinson spoke with Mr Larry Magill to make sure KAIA was okay with the balloon, of which Mr. Magill assured him they were. The committee was back on the motion. A vote was taken and the motion was accepted. Representative Vickery made the motion to send the bill out marked favorable for passage as amended. Representative Toelkes seconded the motions. The committee voted in favor of the motion.

The meeting was adjourned. The time was 4:40 p.m.







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: (785) 291-3699

CONSUMER HOTLINE  
1-800-432-2310

Testimony of

Steve Rarrick, Deputy Attorney General  
Consumer Protection/Antitrust Division  
Office of Attorney General Carla J. Stovall  
Before the House Insurance Committee

RE: Senate Bill 459

March 21, 2002

Chairperson Tomlinson and Members of the Committee:

Thank you for the opportunity to appear on behalf of Attorney General Carla J. Stovall today to testify in support of Senate Bill 459. My name is Steve Rarrick and I am the Deputy Attorney General for Consumer Protection.

The Kansas Discount Card Deceptive Practice Act was passed during the 2000 Session and addresses health-related discount cards. It requires certain disclosures, prohibits offering a discount card unless the card is specifically authorized by a separate contract with each health care provider listed in conjunction with the discount card, and prohibits misleading, deceptive or fraudulent claims of discounts.

Some agencies and private associations have assumed the Discount Card Act directs the Attorney General to enforce its provisions because the Act has been placed in Chapter 50 of the Kansas statutes. Unfortunately, the Act does not authorize any agency to enforce its provisions. The Act authorizes any "person" to maintain an action to enjoin violations and for recovery of damages. The Act defines "person" as "an individual, corporation, business trust, estate, trust, partnership, association, joint venture, limited liability company, government, government subdivision or agency or any other legal, governmental or commercial entity." We believe the Discount Card Act should be amended to specify enforcement by the Attorney General and to provide the investigative and enforcement remedies provided under the Kansas Consumer Protection Act (KCPA).

The changes to the Discount Card Act made by Senate Bill 459, as amended, are as follows:

- The original language defining the term "person" in paragraph (c) at page 1, lines 40-43, is deleted as unnecessary under the KCPA.
- The new language defining "network of healthcare providers" proposed by our office at page 1, line 43, through page 2, lines 1-3 is deleted, as is the use of the term at page 2, lines 20-21. This change was made at the request of the Kansas Medical Society. We have been contacted by Bill Sneed on behalf of an industry healthcare provider group called Consumer

HOUSE INSURANCE

DATE: *March 21, 2002*

ATTACHMENT #1

Health Alliance regarding proposed amendments to reinsert this definition as well as two other proposed changes. We have no opposition to the new definition of “network of healthcare providers” proposed by this industry group, and are hopeful the new definition is acceptable to the Kansas Medical Society. We do have some concerns with the two other changes proposed by the group, and believe the balloon amendments attached to my testimony may resolve their concerns.

- The current provisions in K.S.A. 50-1,101 at page 2, lines 5-15 are deleted and replaced with new language at lines 16-28. The new language in paragraphs (a) through (c) contain the same general requirements as the original language, but is drafted in language found in the KCPA.
- New paragraph (d) at page 2, lines 25-28, requires suppliers who sell discount cards to disclose to consumers the health care providers in the State of Kansas who are contractually obligated to honor the card. We believe this information must be provided before a consumer may make an informed decision to purchase a discount card, since we have received complaints from consumers who have been unable to find any health care providers in their area that accept the card. We have spoken with Mr. Sneed about our concerns with the industry proposal, and believe the balloon amendment we have offered will address their concern about internet sales.
- The phrase “markets, promotes, advertises or otherwise distributes” at page 2, lines 16-17 and 30-31 was deleted at the request of a conferee representing Pfizer. The intent was to apply the provisions of the Act only to suppliers who sell discount cards, not drug manufacturer card programs recently offered which do not charge consumers who participate in those discount card programs. However, I understand there may be opposition to this change by other conferees, who have not provided our office with any proposed changes at this time.
- The new language at page 2, lines 38-39 will make the Act part of the KCPA, which will give the Attorney General and county and district attorneys the investigative and enforcement powers provided under the KCPA. The Discount Card Act, as currently written, does not provide any of the investigative tools we use in consumer protection cases, such as subpoenas and the ability to take testimony under oath. Without these tools, our ability to obtain evidence to determine whether violations of the Act have occurred is limited. This will also provide the same remedies for violations as provided for any violation of the KCPA, including consumer damages, injunctive relief, civil penalties, and investigative fees and expenses.
- The new language at page 2, lines 40-43 will make a violation an unconscionable act and practice under the KCPA.
- The new language at page 3, lines 1-5 will give non-consumer entities (corporations, partnerships, associations, churches, etc.) a private cause of action for violations of the Act, similar to that provided in the Kansas slamming law. By making the Act part of the KCPA, businesses and entities not within the definition of “consumer” under the KCPA would no longer have the protections of the Act.

I have attached balloon amendments which contain changes to address the concerns raised by the industry group represented by Mr. Sneed. These changes include:

- A new definition for “network of health care providers” at page 1, line 43.
- Reinsertion of the phrase “or network of health care providers” at page 2, line 20.
- New language at page 2, line 28 which will allow the prior written disclosure of health care providers to be made on the web page for transactions concluded on the Internet and for subsequent annual disclosures to be made by e-mail if authorized by the consumer.

On behalf of Attorney General Stovall, I urge you to pass this bill out favorably with the balloon amendments we have proposed today. I would be happy to answer questions of the Chair or any member of the Committee.

3  
4 **SENATE BILL No. 459**

5  
6 By Committee on Financial Institutions and Insurance

7  
8 1-28  
9

10 AN ACT concerning health related discount cards; amending K.S.A.  
11 2001 Supp. 50-1,100, 50-1,101, 50-1,103 and 50-1,105 and repealing  
12 the existing sections; also repealing K.S.A. 2001 Supp. 50-1,102.  
13

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

15 Section 1. K.S.A. 2001 Supp. 50-1,100 is hereby amended to read as  
16 follows: 50-1,100. As used in this act:

17 (a) "Discount card" means a card or any other purchasing mechanism  
18 or device, which is not insurance, that purports to offer discounts or access  
19 to discounts in health-related purchases from health care providers.

20 (b) "Health care provider" means any person licensed to practice any  
21 branch of the healing arts by the state board of healing arts, any person  
22 who holds a temporary permit to practice any branch of the healing arts  
23 issued by the state board of healing arts, a medical care facility licensed  
24 by the department of health and environment, a podiatrist licensed by  
25 the state board of healing arts, an optometrist licensed by the board of  
26 examiners in optometry, a pharmacist licensed by the state board of phar-  
27 macy, a pharmacy registered with the state board of pharmacy, a dentist  
28 licensed by the Kansas dental board, a respiratory therapist, a professional  
29 corporation organized pursuant to the professional corporation law of  
30 Kansas by persons who are authorized by such law to form such a cor-  
31 poration and who are health care providers as defined by this subsection,  
32 a Kansas limited liability company organized for the purpose of rendering  
33 professional services by its members who are health care providers as  
34 defined by this subsection and who are legally authorized to render the  
35 professional services for which the limited liability company is organized,  
36 a partnership of persons who are health care providers under this sub-  
37 section, a Kansas not-for-profit corporation organized for the purpose of  
38 rendering professional services by persons who are health care providers  
39 as defined by this subsection.

40 (c) ~~"Person" means an individual, corporation, business trust, estate,~~  
41 ~~trust, partnership, association, joint venture, limited liability company,~~  
42 ~~government, government subdivision or agency or any other legal, gov-~~  
43 ~~ernmental or commercial entity~~ "Network of health care providers"

— "Network of health care providers" means two or more separate health care providers who have specifically authorized the network to enter into discount card programs and who are contractually obligated to honor discount card contracts entered into by the network of health care providers.



1 ~~means two or more separate health care providers who are contractually~~  
2 ~~obligated to honor discount card contracts entered into by the network of~~  
3 ~~health care providers.~~

4 Sec. 2. K.S.A. 2001 Supp. 50-1,101 is hereby amended to read as  
5 follows: 50-1,101. It shall be unlawful for any person to sell, market,  
6 promote, advertise or otherwise distribute any discount card where:

7 ~~(a) The discount card does not expressly state in bold and prominent~~  
8 ~~type that such discount is not insurance;~~

9 ~~(b) any discount offered by such discount card is not specifically au-~~  
10 ~~thorized by a separate contract with each health care provider listed in~~  
11 ~~conjunction with the discount card, or~~

12 ~~(c) the discount or range of discounts offered by such discount card~~  
13 ~~or the access to any range of discounts offered by such discount card are~~  
14 ~~misleading, deceptive or fraudulent, regardless of the literal wording used~~  
15 ~~on such discount card~~

16 Any supplier who sells, markets, promotes, advertises or otherwise dis-  
17 tributes any discount card in Kansas shall:

18 (a) State in bold and prominent type that such discount is not insur-  
19 ance on all advertisements and on all discount cards;

20 (b) have a separate contract with each health care provider ~~or net-~~  
21 ~~work of health care providers listed in conjunction with the discount card;~~

— or network of health care providers

22 (c) not make misleading, deceptive or fraudulent representations re-  
23 garding the discount or range of discounts offered by such discount card  
24 or the access to any range of discounts offered by such discount card; and

25 (d) prior to selling the discount card **and on an annual basis there-**  
26 **after**, provide and disclose to all consumers in writing, the name, address  
27 and phone number of all health care providers **in the state of Kansas**  
28 that are contractually obligated to honor the card.

The written disclosure required prior to selling the discount card may be made on the supplier's Internet web page when the transaction is concluded via the Internet. The written disclosure required on an annual basis thereafter may be made by electronic mail message if authorized by the consumer.

29 Sec. 3. K.S.A. 2001 Supp. 50-1,103 is hereby amended to read as  
30 follows: 50-1,103. Any ~~person~~ supplier who sells, markets, promotes,  
31 advertises or otherwise distributes any discount card in Kansas shall des-  
32 ignate a resident agent, who is a resident of Kansas, for service of process  
33 and such resident agent shall register with the secretary of state pursuant  
34 to K.S.A. 60-306 and amendments thereto.

35 Sec. 4. K.S.A. 2001 Supp. 50-1,105 is hereby amended to read as  
36 follows: 50-1,105. (a) K.S.A. 2001 Supp. 50-1,100 through 50-1,105  
37 shall be known as the Kansas discount card ~~deceptive practice~~ act.

38 (b) This act shall be part of and supplemental to the Kansas consumer  
39 protection act.

40 (c) Any violation of this act shall constitute an unconscionable act and  
41 practice under the Kansas consumer protection act and amendments  
42 thereto and shall be subject to any and all of the remedies and enforcement  
43 provisions of the Kansas consumer protection act.

1 (d) Any person alleging a violation of this act may bring a private  
2 action to seek relief pursuant to K.S.A. 50-634, 50-636 and this act, and  
3 amendments thereto, and such person shall be considered a consumer  
4 pursuant to K.S.A. 50-624, and amendments thereto, for the purposes of  
5 such private action.

6 Sec. 5. K.S.A. 2001 Supp. 50-1,100, 50-1,101, 50-1,102, 50-1,103 and  
7 50-1,105 are hereby repealed.

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

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43

# Polsinelli | Shalton | Welte

A Professional Corporation

---

## Memorandum

TO: The Honorable Bob Tomlinson, Chairman  
House Insurance Committee

FROM: William W. Sneed, Legislative Counsel  
Consumer Health Alliance

RE: S.B. 459

DATE: March 21, 2002

Mr. Chairman, Members of the Committee: My name is Bill Sneed and I represent the Consumer Health Alliance, a group of independently-owned corporations that provide a variety of health-related services and products throughout the United States. Our members include AME Benefits, AdvancePCS, Careington International and others.

Please accept these comments as our general support of S.B. 459. However, due to some amendments made by the Senate committee, we are requesting some additional amendments to the bill.

Originally, K.S.A. 50-1,100 was enacted in an effort to regulate "discount cards." Unfortunately, along with the passage of this bill a year ago, no enforcement provisions were inserted along with the other provisions. The Attorney General introduced S.B. 459 in an attempt to add any violations to these laws as a violation of the Kansas Consumer Protection Act.

My client unequivocally supports this type of regulation and we do not wish our intended concerns to be viewed as if we are opposed to the bill. However, the Senate committee made several amendments which we believe have created some unintended problems within our business.

First, at the request of the Kansas Medical Society, the Senate committee deleted within the definition section the phrase "network of health care providers" (page 1, ll. 40-43 and page 3, ll. 1-3, l. 21). This was done inasmuch as the Medical Society wishes to eliminate the potential for entities with whom the Medical Society members have contracted with on a network basis, and without the member's prior approval, contract with another entity that provides a discount card. We understand the concerns raised by the Medical Society, but by eliminating the term "network of health care providers," we have also eliminated the ability for my clients to contract with large groups unless it is done on an individual basis.

---

One AmVestors Place  
555 Kansas Avenue, Suite 301  
HOUSE INSURANCE

DATE: *March 21, 2002*

ATTACHMENT # 2

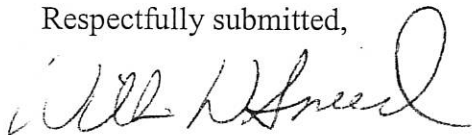
For example, under this current version as passed by the Senate, my client would not be able to enter into a contract with Walgreen's that would encompass all Walgreen's stores in the country. Instead, it would require us to issue individual contracts to each individual store. Obviously, this is not the intent of the amendment requested by the Kansas Medical Society, but as you can see, that is one of the effects. In an effort to resolve this matter, we have included amendatory language which we believe provides the kind of protection desired by the Kansas Medical Society, and at the same time allows us to negotiate contracts on a network-wide basis.

Second, the original bill language found on page two, lines 25-28, along with the Senate amendments, creates an overburdensome situation for my clients. Again, we have no problem with making sure that the consumer has access to those providers who are contractually obligated to honor the card. However, by virtue of the amendments, we fear that we can only accomplish this by sending something in writing and providing it at a date certain. We have also enclosed a proposed amendment that speaks to today's environment relative to the exchange of information. For example, one of my clients does virtually nothing by letter; everything is completed via the Internet. The information that you want the consumer to have is readily available; however, it is readily available through the Internet. Since the sale of the discount card is completed via the Internet, one assumes that individual has access to the Internet to gather the information. However, in the spirit of leaving no stone unturned, we have included language that would allow for written documentation, notwithstanding the other forms of information access available to the consumer if the consumer requests such information.

We appreciate the opportunity to present this material to the Committee. It is our hope that these amendments are amenable to all parties, and as such do not cause any unforeseen problems. I will state for the record that unfortunately we were only able to get this information put together in the last couple of days, and as such the parties involved, including the Attorney General, who are interested in this bill have had very little time to review our work. For that I apologize, and can affirmatively state that it is only because I have only had the information a short time that we were unable to provide it to other parties.

Obviously, we would be happy to work with the interested parties to try and resolve this matter to get a bill that everyone can support. With that, if you have any questions, please feel free to contact me.

Respectfully submitted,



William W. Sneed

WWS:kjb

F:\LOBBY\sb459.tes.doc



(1) **Amend as follows: Page 1, Line 39.**

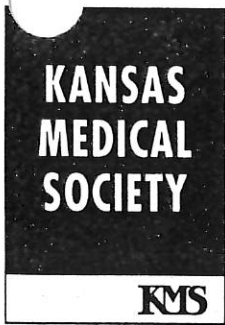
(c) "Network of health care providers" means two or more separate health care providers who have specifically authorized the network to enter into discount card programs and who are contractually obligated to honor discount card contracts entered into by the network of health care providers.

(2) **Delete language on page 2, lines 20-21 and insert the following.**

Ensure that any discount offered by such discount card is specifically authorized by a separate contract with each health care provider or network of health care providers participating in the discount card program.

(3) **Amend as follows: Page 2, lines 25-28.**

(d) ~~prior to selling the discount card and on an annual basis thereafter~~ make available, ~~provided and disclose to all consumers~~ through a toll free number, the Internet, or in writing upon request, the name, address and phone number of all health care providers **in the state of Kansas** that are contractually obligated to honor the card.



623 SW 10th Avenue  
Topeka KS 66612-1627  
785.235.2383  
800.332.0156  
fax 785.235.5114  
kmsonline.org

**TO:** House Committee on Insurance  
**FROM:** Chris Collins *Chris Collins*  
Director of Government Affairs  
**DATE:** March 21, 2002  
**RE:** SB 459: Health Related Discount Cards

Ladies and Gentlemen of the Committee:

Thank you for the opportunity to testify today on SB 459. The Kansas Medical Society supports the concept of increased consumer protections for patients who are purchasers of medical discount cards. However, the original language of the bill was problematic for physicians. Members of our organization sign contracts with insurance networks to become a member of their physician network. There have been several instances in the Kansas City area where insurance networks have entered into agreements with discount card companies and obligated physicians to provide services to patients at a discounted rate, without the physicians' express consent. The bill's definition of "network of health care providers", in the physician contracting context, tacitly approved such activities. In an effort to remedy this situation, the Senate removed the definition of "network of health care providers" and deleted reference to it in Section 2(b) on lines 20 and 21 on page two. However, as we have just recently learned, the term "network of health care providers" has a different significance for those companies that contract with pharmacy chains. The Kansas Medical Society does not wish to adversely impact others' contractual relationships and generally supports Mr. Sneed's effort to remedy the situation. However, we would respectfully suggest the following addition to the proposed amendment.

The Kansas Medical Society respectfully urges the adoption of the attached amendment. Thank you for the opportunity to comment today on SB 459. I am pleased to stand for any questions the committee may have.

HOUSE INSURANCE  
DATE: *March 21, 2002*  
ATTACHMENT # 3

**SB 459**

KMS proposed amendments

**(1) Amend as follows: Page 1, line 39.**

(c) "Network of health care providers" means two or more separate health care providers whom have specifically authorized the network to enter into discount card programs and who are contractually obligated to honor discount card contracts entered into by the network of health care providers.

**(2) Delete language on page 2, lines 20-21 and insert the following:**

Ensure that any discount offered by such discount card is specifically authorized by a separate contract with each health care provider or network of **non-physician** health care providers participating in the discount card program.



**Kansas Pharmacists Association**  
 Kansas Society of Health-System Pharmacists  
 Kansas Employee Pharmacists Council  
 1020 SW Fairlawn Rd.  
 Topeka KS 66604  
 Phone 785-228-2327 ♦ Fax 785-228-9147 ♦ [www.kansaspharmacy.org](http://www.kansaspharmacy.org)  
 Robert (Bob) R. Williams, MS, CAE, Executive Director

---

**TESTIMONY**

SB 459

House Committee on Insurance

March 21, 2002

My name is Bob Williams, I am the Executive Director of the Kansas Pharmacists Association. Thank you for this opportunity to address the Committee regarding SB 459.

Two years ago legislation was passed to provide oversight of so called "discount cards". There were three principle components of the legislation: 1) All discount cards and their marketing material are required to clearly specify that the program is not insurance. 2) Any claim of discounts offered are to be verifiable. 3) Distributors of the discount cards are to have a separate contract with providers.

SB 459 was introduced at the request of the Attorney General to clarify the statute regarding enforcement by the Attorney General. KPhA supports the Attorney General's efforts in this regard.

During hearings in the Senate Financial Institutions and Insurance Committee regarding SB 459, concern was expressed regarding the impact of SB 459 on discount cards currently being promoted by drug companies (Pfizer, Glaxco etc.). As a result, language was stricken from the current statute which KPhA believes dramatically diminishes the effectiveness of the current statute.

★ Specifically, the language on page 2, lines 16 and 30 was changed to exclude discount cards that are sold, marketed, promoted, advertised or otherwise distributed from oversight by the Attorney General which only makes the statute applicable to discount cards which are sold. Many discount cards are not sold but distributed as promotional gimmicks. If the language is removed and not restored, we will be back to where we were two years ago with no oversight of these cards.

We do not believe there will be any detrimental repercussions regarding the availability of discount card programs from drug companies by restoring the language. No state in which similar legislation has passed has found it necessary to modify their statutes to accommodate drug company discount cards. Regardless of who offers a discount card to consumers, KPhA believes it is important that accurate information be provided to consumers and providers participating in the program. Thank you.

HOUSE INSURANCE

DATE: *March 21, 2002*



1 ~~means two or more separate health care providers who are contractually~~  
2 ~~obligated to honor discount card contracts entered into by the network of~~  
3 ~~health care providers.~~

4 Sec. 2. K.S.A. 2001 Supp. 50-1,101 is hereby amended to read as  
5 follows: 50-1,101. It shall be unlawful for any person to sell, market,  
6 promote, advertise or otherwise distribute any discount card where:

7 ~~(a) The discount card does not expressly state in bold and prominent~~  
8 ~~type that such discount is not insurance;~~

9 ~~(b) any discount offered by such discount card is not specifically au-~~  
10 ~~thorized by a separate contract with each health care provider listed in~~  
11 ~~conjunction with the discount card, or~~

12 ~~(c) the discount or range of discounts offered by such discount card~~  
13 ~~or the access to any range of discounts offered by such discount card are~~  
14 ~~misleading, deceptive or fraudulent, regardless of the literal wording used~~  
15 ~~on such discount card~~

16 ~~Any supplier who sells, markets, promotes, advertises or otherwise dis-~~  
17 ~~tributes any discount card in Kansas shall:~~

18 ~~(a) State in bold and prominent type that such discount is not insur-~~  
19 ~~ance on all advertisements and on all discount cards;~~

20 ~~(b) have a separate contract with each health care provider or net-~~  
21 ~~work of health care providers listed in conjunction with the discount card;~~

22 ~~(c) not make misleading, deceptive or fraudulent representations re-~~  
23 ~~garding the discount or range of discounts offered by such discount card~~  
24 ~~or the access to any range of discounts offered by such discount card; and~~

25 ~~(d) prior to selling the discount card and on an annual basis there-~~  
26 ~~after, provide and disclose to all consumers in writing, the name, address~~  
27 ~~and phone number of all health care providers in the state of Kansas~~  
28 ~~that are contractually obligated to honor the card.~~

29 Sec. 3. K.S.A. 2001 Supp. 50-1,103 is hereby amended to read as  
30 follows: 50-1,103. Any ~~person~~ supplier who sells, markets, promotes,  
31 ~~advertises or otherwise distributes~~ any discount card in Kansas shall des-  
32 ignate a resident agent, who is a resident of Kansas, for service of process  
33 and such resident agent shall register with the secretary of state pursuant  
34 to K.S.A. 60-306 and amendments thereto.

35 Sec. 4. K.S.A. 2001 Supp. 50-1,105 is hereby amended to read as  
36 follows: 50-1,105. (a) K.S.A. 2001 Supp. 50-1,100 through 50-1,105  
37 shall be known as the Kansas discount card ~~deceptive practice~~ act.

38 (b) This act shall be part of and supplemental to the Kansas consumer  
39 protection act.

40 (c) Any violation of this act shall constitute an unconscionable act and  
41 practice under the Kansas consumer protection act and amendments  
42 thereto and shall be subject to any and all of the remedies and enforcement  
43 provisions of the Kansas consumer protection act.

, markets, promotes, advertises or otherwise distributes

, marketing, promoting, advertising or otherwise distributing

, markets, promotes, advertises or otherwise distributes

KAREN DIVITA-JOHNSON  
 REPRESENTATIVE, SIXTEENTH DISTRICT  
 10208 FLINT ST  
 OVERLAND PARK, KANSAS 66214

182-W  
 STATE CAPITOL  
 TOPEKA, KANSAS 66612-1504  
 (785) 296-7637  
 divita@house.state.ks.us



TOPEKA  
 HOUSE OF REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
 MEMBER: EDUCATION  
 KANSAS FUTURES  
 JUDICIARY

March 21, 2002

**Testimony on HB 2934**

Dear Mr. Chairman and Members of the House Insurance Committee,

Thank you for this opportunity to bring HB2934 to your attention. I have asked to have this bill heard so that we may protect Kansas homeowners who refinance their homes. Home refinancing and debt consolidation/payoff have become very popular among homeowners, especially since mortgage rates have dropped so low. Many consumers today are using the equity in their homes to pay off credit card debts, auto loans, school loans, and some may even choose to take the equity for other home or personal needs.

As this upswing in refinancing has occurred, so has concern for the consumer who has little if any protection from a negligent or unscrupulous title company employee who fails to pay off the unsecured creditors as directed by the refinancing consumer. Our present statute, 40-1137, does not adequately address a refinancing situation where there are unsecured creditors in addition to the mortgage lender.

HB2934 that I have brought to you today provides consumers with an appropriate remedy when a title company fails to timely pay the unsecured creditors as directed by the refinancing agreement. HB2934 fills that gap by amending current statute to include refinancing and a civil penalty for non-compliance that is modeled after KS58-2309a. (Last year our Legislature addressed the issue of a title company's failure to timely record the satisfaction of a mortgage by enacting statute 58-2309a. This statute gives a consumer a remedy when a title company fails to perform its duty to record the satisfaction of a mortgage.)

Why, you may ask, is this change needed in our current statute? This revision of statute is needed because consumers have no recourse when title companies fail to pay off unsecured creditors in a timely fashion. The consumer bears the brunt of this neglect or fraud. Unsecured creditors continue to charge interest on account balances when the title company fails to timely pay. These accounts may go more than 30 days past due, which then results in bad credit reports

HOUSE INSURANCE

DATE: *March 21, 2002*

ATTACHMENT # 5

for the consumer, a diminishing of creditworthiness, additional late charges and fees, not to mention the stress and anxiety of trying to correct the situation. Lack of protection in this area is completely unfair to consumers. Kansas can do better for its citizens, and we've already shown this by enacting K.S.A. 58-2309(a) last session. Now it's time to complete this process and provide protection to consumers who are refinancing more than just their current mortgage.

I urge you to support HB2934.

A handwritten signature in cursive script that reads "Karen M. Divita-Johnson". The signature is written in dark ink and is positioned centrally on the page.

Karen M. Divita-Johnson

addition, or subdivision; and (3) in all unplatted areas, every tract or parcel not otherwise specifically identified, which is or will be affected by such public improvement or special benefit district.

(b) No title insurance company shall exempt itself from the provisions of subsection (a) by means of a general exclusion in the title insurance policy.

**History:** L. 1983, ch. 151, § 1; July 1.

**40-1135. Title insurance agencies; purpose.** The purpose of K.S.A. 40-1135 through 40-1141 is to provide the state of Kansas with a comprehensive body of law for the effective regulation and supervision of title insurance agencies engaged in settlement and closing of the sale of an interest in real estate.

**History:** L. 1999, ch. 95, § 8; July 1.

**40-1136. Same; definitions.** As used in this act, unless the context otherwise requires:

(a) "Commissioner" means the commissioner of insurance of the state of Kansas.

(b) "Escrow" means written instruments, money or other items deposited by one party with a depository, escrow agent or escrow for delivery to another party upon the performance of a specified condition or the happening of a certain event.

(c) "Person" means a natural person, partnership, association, cooperative, corporation, trust or other legal entity.

(d) "Qualified financial institution" means an institution that is:

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

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

(3) insured by the appropriate federal entity; and

(4) qualified under any additional rules established by the commissioner.

(e) "Title insurance agent" or "agent" means an authorized person, other than a bona fide employee of the title insurer who, on behalf of the title insurer, performs the following acts, in conjunction with the issuance of a title insurance report or policy:

(1) Determines insurability and issues title insurance reports or policies, or both, based upon the performance or review of a search, or an abstract of title;

(2) collects or disburses premiums, escrow or security deposits or other funds;

(3) handles escrow, settlements or closings;

(4) solicits or negotiates title insurance business; or

(5) records closing documents.

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

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

(1) Defects in or liens or encumbrances on the insured title;

(2) unmarketability of the insured title;

(3) invalidity, lack of priority, or unenforceability of liens or encumbrances on the stated property;

(4) lack of legal right of access to the land; or

(5) unenforceability of rights in title to the land.

**History:** L. 1999, ch. 95, § 9; July 1.

**40-1137. Same; agents, authorized activities; use of client funds; escrow accounts, audit.** A title insurance agent may operate as an escrow, settlement or closing agent, provided that:

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

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



(2) the funds shall be applied only in accordance with the terms of the individual instructions or agreements under which the funds were accepted; and

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

(b) Funds held in an escrow account shall be disbursed only:



(1) Pursuant to written authorization of buyer and seller:

(2) pursuant to a court order; or

(3) when a transaction is closed according to the agreement of the parties.

(c) A title insurance agent shall not commingle the agent's personal funds or other moneys with escrow funds. In addition, the agent shall not use escrow funds to pay or to indemnify against the debts of the agent or of any other party. The escrow funds shall be used only to fulfill the terms of the individual escrow and none of the funds shall be utilized until the necessary conditions of the escrow have been met. All funds deposited for real estate closings, including closings involving refinances of existing mortgage loans, which exceed \$2,500 shall be in one of the following forms:

(1) Lawful money of the United States;

(2) wire transfers such that the funds are unconditionally received by the title insurance agent or the agent's depository;

(3) cashier's checks, certified checks, teller's checks or bank money orders issued by a federally insured financial institution and unconditionally held by the title insurance agent;

(4) funds received from governmental entities, federally chartered instrumentalities of the United States or drawn on an escrow account of a real estate broker licensed in the state or drawn on an escrow account of a title insurer or title insurance agent licensed to do business in the state; or

(5) other negotiable instruments which have been on deposit in the escrow account at least 10 days.

(d) Each title insurance agent shall have an audit made of its escrow, settlement and closing deposit accounts, conducted by a certified public accountant or by a title insurer for which the title insurance agent has a licensing agreement, according to the following schedule. Audits shall be considered current if dated within the 12 months prior to submission of the audit as required

herein. The title insurance agent shall provide a copy of the audit report to the commissioner and to each title insurance company which it represents within 160 days after the close of the calendar year for which an audit is required. Title insurance agents who are attorneys and who issue title insurance policies as part of their legal representation of clients are exempt from the requirements of this subsection. However, the title insurer, at its expense, may conduct or cause to be conducted an annual audit of the escrow, settlement and closing accounts of the attorney. Attorneys who are exclusively in the business of title insurance are not exempt from the requirements of this subsection. Audits shall be required as follows:

(1) Annual audit required in counties having a population of 40,001 and over;

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

(3) triennial audit required in counties having a population of 20,000 or under.

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

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

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

**History:** L. 1999, ch. 95, § 10; L. 2000, ch. 26, § 1; July 1.

**40-1133. Same; agent record requirements; inspection.** (a) The title insurance agent shall maintain sufficient records of its escrow operations and escrow trust accounts so that the commissioner may adequately ensure that the title insurance agent is in compliance with all provisions of K.S.A. 40-1135 through 40-1141 and amendments thereto. The commissioner may prescribe the specific record entries and documents to be kept and the length of time for which the records must be maintained.

**58-2309a. Entry of satisfaction of mortgage; duties and liability of mortgagee or assignee of mortgage; entry of satisfaction of mortgage by lender or closing agent, when.**

(a) When the indebtedness secured by a recorded mortgage is paid and there is no agreement for the making of future advances to be secured by the mortgage, the mortgagee or the mortgagee's assignee shall enter satisfaction or cause satisfaction of such mortgage to be entered of record forthwith, paying the required fee. In the event the mortgagee or the mortgagee's assignee fails to enter satisfaction or cause satisfaction of such mortgage to be entered within 20 days after written demand by certified or registered mail, the lender or a designated closing agent acting as a closing agent in the sale, financing or refinancing of the real estate subject to such mortgage, who upon reliance of written payoff information provided by the mortgagee, and which payoff information shall be deemed as the correct and full amount due and owing under such mortgage, has caused the indebtedness to be paid in full may cause satisfaction of the mortgage to be entered. If in fact the mortgagee or mortgagee's assignee was not paid in accordance with the aforesaid payoff information when the mortgage was released the lender or the closing agent in the sale, financing or refinancing of the real estate subject to such mortgage who signed the false release shall be liable in damages to the mortgagee or mortgagee's assignee for the entire indebtedness together with interest thereon, attorney fees, and any additional damages that the mortgagee or mortgagee's assignee has incurred. Upon recording of such satisfaction by the lender or closing agent in the sale, financing or refinancing of the real estate subject to such mortgage, who has caused the indebtedness to be paid in full, such mortgage shall be deemed fully released as if discharged by the mortgagee or mortgagee's assignee.

(b) When a mortgage is recorded covering real estate in which the mortgagor has no interest, the mortgagee or the mortgagee's assignee shall enter satisfaction or cause satisfaction of such mortgage to be entered of record, paying the required fee without charge to the mortgagor or the mortgagor's assigns.

(c) The following persons may make demand upon a mortgagee or assignee of a mortgagee for the entering of satisfaction of the mortgage, as provided for in subsections (a) and (b):

(1) A mortgagor, a mortgagor's heirs or assigns or anyone acting for such mortgagor, heirs or assigns;

(2) an owner of real estate upon which a mortgage has been recorded by someone having no interest in the real estate; or

(3) a lender or designated closing agent acting as a closing agent in the sale, financing or refinancing of the real estate subject to such mortgage.



(d) Any mortgagee or assignee of a mortgagee who refuses or neglects to enter satisfaction of such mortgage within 20 days after demand has been made as provided in subsection (c) shall be liable in damages to the person for whom the demand was made in the sum of \$500, together with a reasonable attorney's fee for preparing and prosecuting the action. The plaintiff in such action may recover any additional damages that the evidence in the case warrants. Civil actions may be brought under this act before any court of competent jurisdiction, and attachments may be had as in other cases.

(e) The mortgagee or assignee of a mortgagee entering satisfaction or causing to be entered satisfaction of a mortgage under the provisions of subsection (a) shall furnish to the office of the register of deeds the full name and last known post office address of the mortgagor or the mortgagor's assignee. The register of deeds shall forward such information to the county clerk who shall make any necessary changes in address records for mailing tax statements.

**History:** L. 1971, ch. 189, § 1; L. 1980, ch. 163, § 1; L. 1989, ch. 165, § 1; L. 1994, ch. 250, § 1; L. 1995, ch. 173, § 2; L. 2001, ch. 28, § 1; March 29.

**Attorney General's Opinions:**

Entry of satisfaction of real estate mortgage: fee. 94-143.

**CASE ANNOTATIONS**

2. Whether absent specific contractual provision authorizing prepayment debtor has a right to prepay note and mortgage examined. *Metropolitan Life Ins. Co. v. Strmad*, 255 K. 657, 660, 667, 376 P.2d 1362 (1994).

**40-2401. Purpose of act.** The purpose of this act is to regulate trade practices in the business of insurance in accordance with the intent of congress as expressed in the act of congress of March 9, 1945 (Public Law 15 [\*], 79th Congress) by defining, or providing for the determination of, all such practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.

**History:** L. 1955, ch. 247, § 1; June 30.

\*15 U.S.C.A. §§ 1011 to 1015.

**Research and Practice Aids:**

Insurance = 11.

C.J.S. Insurance § 60 et seq.

**Law Review and Bar Journal References:**

"Insurer's Bad Faith: A New Tort for Kansas?" Janet Amerine and Jan E. Montgomery, 19 W.L.J. 467, 476, 486 (1980).

"Unfair Claims Settlements—A Suggested Approach to a Potential Cause of Action." Gene E. Schroer and Paul H. Hulsey, 5 J.K.T.L.A. No. 4, S. 11, 13 (1982).

**CASE ANNOTATIONS**

1. Tort of bad faith not recognized in Kansas. *Spencer v. Aetna Life & Casualty Ins. Co.*, 227 K. 914, 923, 924, 926, 611 P.2d 149.

**40-2402. Definitions.** When used in this act:

(a) "Person" means any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyd's insurer, fraternal benefit society and any other legal entity engaged in the business of insurance, including agents, brokers and adjusters. Person also means any non-profit medical and hospital service corporations, as defined in article 19c of chapter 40 of the Kansas Statutes Annotated, and amendments thereto; administrators, as defined in article 38 of chapter 40 of the Kansas Statutes Annotated, and amendments thereto; and health maintenance organizations, as defined in article 32 of chapter 40 of the Kansas Statutes Annotated, and amendments thereto.

(b) "Commissioner" means the commissioner of insurance of this state.

(c) "Insurance policy" or "insurance contract" means any contract of insurance, indemnity, medical or hospital service, suretyship or annuity issued, proposed for issuance or intended for issuance by any person.

**History:** L. 1955, ch. 247, § 2; L. 1972, ch. 189, § 1; L. 1985, ch. 163, § 1; L. 1987, ch. 170, § 1; L. 1997, ch. 8, § 10; July 1.

**CASE ANNOTATIONS**

1. All power under act vested in insurance commissioner; no language purporting to create private cause of action. *Earth Scientists v. United States Fidelity Ex. Guar.*, 619 F.Supp. 1465, 1468, 1469 (1985).

**40-2403. Unfair methods of competition or unfair and deceptive acts or practices; prohibited.** No person shall engage in this state in any trade practice which is defined in this act as, or determined pursuant to K.S.A. 40-2406 to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

**History:** L. 1955, ch. 247, § 3; L. 1972, ch. 189, § 2; July 1.

**Research and Practice Aids:**

Insurance = 11.

C.J.S. Insurance § 60 et seq.

**Attorney General's Opinions:**

Definitions: prepaid legal and dental prepaid service plans act. 59-112.

Insurance coverage for services rendered in treatment of alcoholism, drug abuse or nervous or mental conditions. 90-130.

**CASE ANNOTATIONS**

1. Tort of bad faith not recognized in Kansas. *Spencer v. Aetna Life & Casualty Ins. Co.*, 227 K. 914, 923, 924, 611 P.2d 149.

**40-2404. Unfair methods of competition or unfair and deceptive acts or practices; disclosure of nonpublic personal information; rules and regulations.** The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

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

(a) Misrepresents the benefits, advantageous conditions or terms of any insurance policy;

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

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

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

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

shall be assessed against such person or the company or companies represented by such person as an agent, broker or adjuster who is a participating party to the matters giving rise to the hearing. As used in this subsection, "costs" shall include witness fees, mileage allowances, any costs associated with reproduction of documents which become a part of the hearing record and the expense of making a record of the hearing.

**History:** L. 1955, ch. 247, § 6; L. 1972, ch. 189, § 5; L. 1982, ch. 205, § 1; L. 1986, ch. 318, § 37; L. 1988, ch. 356, § 110; July 1, 1989.

**Law Review and Bar Journal References:**

Cited in note on review of administrative decisions, 17 W.L.J. 312, 313 (1978).

"Torts—Insurance—First Party Bad Faith—Is There an Adequate Remedy in Kansas After *Spencer v. Aetna Life & Casualty Insurance Co.*?" Karen S. Kressin, 29 K.L.R. 277, 281 (1981).

"Potential Liability of Real Estate Brokers and Salesmen for Misrepresentation and Nondisclosure in Kansas." Craig Altenhofen, 52 J.K.B.A. 9, 16 (1983).

**CASE ANNOTATIONS**

1. Tort of bad faith not recognized in Kansas. *Spencer v. Aetna Life & Casualty Ins. Co.*, 227 K. 914, 923, 925, 611 P.2d 149.

2. All power under act vested in insurance commissioner; no language purporting to create private cause of action. *Earth Scientists v. United States Fidelity Ex Guar.*, 619 F.Supp. 1465, 1468, 1469 (1985).

**40-2407. Same; cease and desist orders; penalties; suspension or revocation of license; restitution; modification of order.** (a) If, after such hearing, the commissioner shall determine that the person charged has engaged in an unfair method of competition or an unfair or deceptive act or practice, the commissioner shall render an order requiring such person to cease and desist from engaging in such method of competition, act or practice and if the act or practice is a violation of K.S.A. 40-2404 and amendments thereto, the commissioner may in the exercise of discretion order any one or more of the following:

(1) Payment of a monetary penalty of not more than \$1,000 for each and every act or violation, but not to exceed an aggregate penalty of \$10,000, unless the person knew or reasonably should have known such person was in violation of this act, in which case the penalty shall be not more than \$5,000 for each and every act or violation, but not to exceed an aggregate of \$50,000 in any six-month period;

(2) suspension or revocation of the person's license if such person knew or reasonably should

have known such person was in violation of this act; or

(3) redress of the injury by requiring the refund of any premiums paid by, the payment of any moneys withheld from, any consumer and appropriate public notification of the violation. In applying this penalty any requirement for the payment of moneys may include reasonable interest at a rate not to exceed the rate specified in K.S.A. 40-2.126 and amendments thereto, with such interest commencing no earlier than the date the consumer's complaint was received by the commissioner and actual costs incurred by the consumer in effecting the payment associated directly with the injury.

(b) After the expiration of the time allowed for filing a petition for review if no such petition has been duly filed within such time, the commissioner may at any time, after notice and opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act, reopen and alter, modify or set aside, in whole or in part, any order issued under this section, whenever in the commissioner's opinion conditions of fact or of law have so changed as to require such action or if the public interest shall so require.

**History:** L. 1955, ch. 247, § 7; L. 1972, ch. 189, § 6; L. 1976, ch. 219, § 1; L. 1988, ch. 356, § 111; L. 1993, ch. 91, § 1; L. 1997, ch. 24, § 5; July 1.

**Research and Practice Aids:**

Insurance ☞ 11.

C.J.S. Insurance § 60 et seq.

**Law Review and Bar Journal References:**

"Insurer's Bad Faith: A New Tort for Kansas?" Janet Amerine and Jan E. Montgomery, 19 W.L.J. 467, 476, 486 (1980).

**Attorney General's Opinions:**

Definitions; prepaid legal and dental prepaid service plans act. 89-112.

**CASE ANNOTATIONS**

1. Tort of bad faith not recognized in Kansas. *Spencer v. Aetna Life & Casualty Ins. Co.*, 227 K. 914, 923, 925, 611 P.2d 149.

2. All power under act vested in insurance commissioner; no language purporting to create private cause of action. *Earth Scientists v. United States Fidelity Ex Guar.*, 619 F.Supp. 1465, 1468, 1469 (1985).

3. Liability of insurer in excess of policy limits as based upon wrongdoing causing loss to insured examined. *Heinson v. Potter*, 244 K. 667, 676, 772 P.2d 778 (1989).

4. Constitutionality of 40-2404b prohibiting unfair competition and deceptive practices upheld; distinction between criminal statutes and those regulating business noted. *Guardian Title Co. v. Bell*, 248 K. 146, 150, 805 P.2d 33 (1991).

Subj: **story**  
 Date: 03/21/2002 11:09:34 AM Central Standard Time  
 From: spainter@wichitaeagle.com (Steve Painter)  
 To: StevenCPainter@aol.com

THE WICHITA EAGLE

\$1.4 MILLION GONE FROM TITLE FIRM  
 --OFFICIALS SAY CUSTOMER ACCOUNTS  
 AT SOUTH KANSAS TITLE IN WICHITA  
 ARE COVERED BY INSURANCE AND  
 SECURITY BONDS.

Saturday, January 22, 2000  
 Section: LOCAL & STATE  
 Edition: main  
 Page: 9A  
 BY STEVE PAINTER AND ALICIA HENRIKSON , The Wichita Eagle  
 Illustration: PHOTO

Caption: Sebelius

More than a million dollars in customer money is missing from escrow accounts of a Wichita title company, state and federal officials said Friday.

The FBI and the Justice Department are investigating the disappearance of \$1.4 million from South Kansas Title Corp., said U.S. Attorney Jackie Williams.

State Insurance Commissioner Kathleen Sebelius said investigators from her office discovered the shortfall after receiving complaints about bounced checks and slow payments on mortgage-closing and contract-for- deed accounts.

In one case, a man sold property and paid about \$30,000 to South Kansas Title, the closing agent, but the money was never forwarded to the mortgage company, said an investigator for the insurance department, Jim Nelson. He said the property seller was unaware of the problem until his mortgage company called to say he was late on his payments.

Sebelius said officials seized South Kansas Title's financial records at the company's lawyer's office Thursday. She said the situation "sounded eerily similar" to the 1997 collapse of Realty Title Co., in which hundreds of Wichitans lost more than \$1 million.

Unlike that case, however, customers apparently will not lose any money in the South Kansas case. First American Title Insurance Co., which underwrites title insurance for South Kansas, will stand by its obligations, said Jo Bandy, a First American spokeswoman in Santa Ana, Calif.

Sebelius said bonds posted with the insurance department by South Kansas Title,

Thursday, March 21, 2002 America Online: Steven C Painter



required under a state law passed in 1999, will cover the \$57,000 difference between First American's obligation and the total \$1.4 million in missing funds.

Sebelius said South Kansas had paid all property taxes due from escrow accounts in December.

No one answered the phone at South Kansas Title on Friday.

Sebelius said Michael S. Dixon, who founded the company in 1991, had surrendered his Kansas insurance license and ceased doing business.

South Kansas Title has offices in Wichita, Derby and Great Bend.

When Realty Title went bankrupt in 1997, South Kansas Title bought the company's escrow accounts through the bankruptcy trustee. Some of the people who lost money in the Realty Title collapse still had accounts with South Kansas Title.

"I already got one phone call from someone who said, 'Oh my God, it's happened again,'" said an examiner with the state insurance department, Marty Hazen. "Unfortunately, it's a sad coincidence."

In December 1998, Realty Title's owner, Linda Ayala, was sentenced to 21/2 years in prison and ordered to pay more than \$1 million in restitution. The losses to individuals ranged from a few hundred dollars to tens of thousands.

Hazen said the department had received complaints about South Kansas Title and that Dixon would have various explanations, such as a book-keeping error.

"After a while, it started becoming a pattern," he said.

Hazen said First American officials told Insurance Department investigators that Dixon was diverting customers' escrow account money to his business, which was losing money. Bandy, the First American spokeswoman, said she didn't know where the missing money went.

Sebelius said South Kansas Title customers who seek information about the status of their accounts can call Hazen toll-free at (800) 432-2484 or David Wood with First American in Wichita at 293-1679.

The First American number is a recording that directs callers to leave their name, phone number, South Kansas Title file number, transaction date and other information.

Steve Painter can be reached by e-mail at [spainter@wichitaeagle.com](mailto:spainter@wichitaeagle.com), at 268-6357 or at (785) 296-3006.

All content © 2000 THE WICHITA EAGLE and may not be republished without permission.

All archives are stored on a SAVE (tm) newspaper library system from MediaStream Inc., a



Knight-Ridder Inc. company.

THE WICHITA EAGLE

CUSTOMERS OF TITLE COMPANY  
GETTING REFUNDS  
-- CHECKS WILL COVER ALL THE LOSSES  
OF THOSE WITH ESCROW ACCOUNTS AT  
THE COLLAPSED SOUTH KANSAS TITLE.

Saturday, September 2, 2000  
Section: LOCAL & STATE  
Edition: main  
Page: 11A  
BY LILLIAN ZIER MARTELL, The Wichita Eagle

More than 300 people who suffered losses in the collapse of South Kansas Title Corp. will get their money back soon, Kansas Insurance Commission Kathleen Sebelius said Friday.

And lawmakers are likely to take another look at the laws that regulate title companies and escrow accounts, she said.

The Kansas Insurance Department will pay \$160,597 to cover the losses of people who held escrow accounts with South Kansas Title, which offered title insurance and escrow services in the Wichita area. The company had about 450 customers.

Escrow account owners affected by the company's collapse will receive checks covering 100 percent of their losses, Sebelius said. Checks will be mailed in the next couple of weeks.

Wichitan Jim Harris, who lost roughly \$1,000 in the company's collapse, said he doesn't want to celebrate until he sees the money. But he thinks more regulation would be "a very good idea."

Investigators began examining the company's finances in January after complaints about bounced checks and slow payments. The investigation turned up more than \$2 million in losses.

Michael Dixon, the owner of South Kansas Title, has been indicted on 11 counts of wire fraud, three counts of mail fraud and five counts of money laundering.

Most of the losses were covered by First American Title Insurance Co., South Kansas Title's underwriter.

But those who held contract-for-deed escrow accounts were not covered by the insurance company. They were small homeowners and business owners who were using South Kansas Title to hold money for mortgage payments or property tax payments, Sebelius said.

With contracts for deed, the seller finances the property for the buyer. Payments typically go from the buyer to the seller through a third party, such as South Kansas Title, which takes a small handling fee and often handles the payments for taxes and insurance, too.

Using legislation passed in 1999, the state was able to cover most of the escrow account losses.

The legislation gave the Kansas Insurance Department authority to review the books of title insurance that handle escrow accounts. It also required title company to post bonds of up to \$100,000 to cover losses.

About \$57,000 of the reimbursements to escrow account owners will come from South Kansas Title accounts. Another \$100,000 came from the bonds. First American Title Insurance contributed about \$3,000, Sebelius said.

State lawmakers passed the 1999 legislation after a different title company, Realty Title, went bankrupt in 1997.

Lawmakers now might look at increasing the bonding requirement or putting in new regulations, such as requiring licenses to handle escrow accounts, Sebelius said.

Sen. Paul Feleciano, D-Wichita, who joined Sebelius in making Friday's announcement, said legislators likely will consider broadening the law.

"We want to make sure at the very least that it never happens again," Feleciano said.

Reach Lillian Zier Martell at 268-6404 or [lmartell@wichitaeagle.com](mailto:lmartell@wichitaeagle.com).

All content © 2000 THE WICHITA EAGLE and may not be republished without permission.

All archives are stored on a SAVE (tm) newspaper library system from MediaStream Inc., a Knight-Ridder Inc. company.

KANSAS LAND TITLE ASSOCIATION  
434 N.MAIN  
WICHITA, KS 67202

Date: March 21, 2002

To: House Insurance Committee

From: Kansas Land Title Association

RE: House Bill 2934

The Kansas Land Title Association is opposed to House Bill 2934 for the following reasons:

1. In 1999 Kansas passed K.S.A. 40-1135 et seq. which regulates and supervises title insurance agencies involved in escrow and settlement transactions;
2. Proposed changes are duplicitous, in that KSA 40-1136, et seq. already covers a refinance transaction and 40-1141 provides for violations and penalties if the law is violated. Existing law gives the consumer a remedy if there is an alleged violation of a title insurance agent's duty to disburse funds in a refinance or any other escrow/settlement transaction.
3. KSA 40-1136 defines "escrow" as "written instruments, money or other items deposited by one party with a depository, escrow agent or escrow for delivery to another party upon the performance of a specified condition or the happening of a certain event." Money and documents deposited with a title insurance agent for a refinance transaction would clearly fall within the definition.
4. KSA 40-1137 deals with funds deposited in connection with an escrow, settlement or closing and provides that such funds shall be disbursed only (1) pursuant to written authorization of buyer and seller, (2) pursuant to court order, (3) when a transaction is closed according the agreement of the parties. Once again, a refinance transaction clearly falls within the provisions of the law, in that funds held pursuant to a refinance are disbursed according the written instructions of the lender;
5. KSA 40-1141 provides that the commissioner of insurance may order that the title insurance agent be subject to penalties provided in KSA 40-2406, et seq. for failure to comply with existing law.
6. KSA 40-2407 provides for cease and desist orders, monetary penalties of \$1,000.00 for each act or violation, up to a total of \$10,000.00, or \$5,000.00 for each act or violation up to a total of \$50,000.00 if the person knew he was in violation of the act, suspension or revocation of the license, and restitution.
7. The language in new section (h) (1) is too broad and vague. It fails to indicate who can make a demand upon the title insurance agent for failure to disburse funds. Can the "creditors, lien holders or any other person" mentioned in the section make the demand? The section makes the title insurance agent liable in damages to "the person for whom the demand is made" - who is this "party." This wording could result in unsecured creditors or other lien claimants threatening the title insurance agent directly if they did not get paid from a settlement, regardless of whether they were entitled to payment.
8. Under KSA 40-1137, funds can only be disbursed according to written instructions. Due to the language in the bill, a title insurance agent could be put in a position where he violates 40-1137 if a demand is paid to a third party without written authority, or violates new section (h)(1) by failing to pay that same demand.

HOUSE INSURANCE

DATE: *March 21, 2002*


ATTACHMENT # 6

9. A title insurance agent can only be responsible to the parties involved in the transaction and to written instructions given to the agent. No other party should be able to make a demand upon the agent. Even with written instructions, the title insurance agent may be unable to disburse funds if those funds are not "good funds" as defined in 40-1137;

The wrong alleged to have been committed by the title insurance agency which resulted in this bill being introduced is not a pattern of behavior by title insurance agencies throughout the state, and the consumer already has an adequate remedy if a title insurance agent is negligent in disbursing funds in a real estate transaction.

The Kansas Land Title Association requests that the committee oppose this bill.

Sincerely,



Roy Worthington  
Chairperson, Legislative Committee

[As Amended by Senate Committee of the Whole]

As Amended by Senate Committee

Session of 2002

## SENATE BILL No. 586

By Committee on Financial Institutions and Insurance

2-13

12 AN ACT concerning long-term care insurance; relating to restrictions on  
13 elimination periods; amending K.S.A. 40-2228 and repealing the ex-  
14 isting section.

15  
16 *Be it enacted by the Legislature of the State of Kansas:*

17 Section 1. K.S.A. 40-2228 is hereby amended to read as follows: 40-  
18 2228. (a) The commissioner may adopt reasonable rules and regulations:

19 (1) To establish specific standards for policy provisions of long-term  
20 care insurance policies. Such standards shall be in addition to and in  
21 accordance with applicable laws of this state, and shall address terms of  
22 renewability, initial and subsequent conditions of eligibility, nonduplica-  
23 tion of coverage provisions, coverage of dependents, preexisting condi-  
24 tions, termination of insurance, probationary periods, limitations, excep-  
25 tions, reductions, elimination periods, requirements for replacement,  
26 recurrent conditions and definitions of terms, *except that no regulation*  
27 *shall preclude an elimination period of 365 days or less for each elimi-*  
28 *nation period greater than 100 365 days for each period of confinement*  
29 *in a nursing home or for all confinements in a nursing home which are*  
30 *due to the same or related causes and separated from each other by less*  
31 *than six months; and*

32 (2) to specify prohibited policy provisions not otherwise specifically  
33 authorized by statute which, in the opinion of the commissioner, are un-  
34 just, unfair or unfairly discriminatory to any person insured under a long-  
35 term care insurance policy.

36 (b) Rules and regulations adopted by the commissioner shall:

37 (1) Recognize the unique, developing and experimental nature of  
38 long-term care insurance; and

39 (2) recognize the appropriate distinctions necessary between group  
40 and individual long-term care insurance policies.

41 (c) The commissioner may adopt rules and regulations establishing  
42 loss-ratio standards for long-term care insurance policies if a specific ref-  
43 erence to long-term care insurance policies is contained in the rules and

except that no regulation shall limit the number of days contained in an elimination period of confinement in a nursing facility or for all confinements in a nursing facility which are due to the same or related causes and separated from each other by less than 180 days; and

HOUSE INSURANCE

DATE: March 21, 2002

ATTACHMENT # 7