

MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

The meeting was called to order by Chairperson Ruth Teichman at 9:30 a.m. on March 10<sup>th</sup>, 2004 in Room 234-N of the Capitol.

All members were present except:

Senator David Corbin- excused

Committee staff present:

Bill Wolff, Legislative Research  
Ken Wilke, Office of Revisor Statutes  
Nancy Shaughnessy, Committee Secretary

Conferees appearing before the committee:

Brad Smoot, BC-BS  
Jarrod Forbes, KID  
David Hanson, KS Property & Casualty  
Ron Gaches  
Bob Tomlinson, KID  
Jim Hall, Am. Council of Life Insurers

Others attending:

See Attached List.

The Chair opened the hearing on **SB 546—Insurance; transfer and novation of insurance and group life insurance.**

Brad Smoot stated that Advance Insurance Company, a wholly owned subsidiary of Blue Cross-Blue Shield requesting the legislation. (Attachment 1) The purpose is to establish a new Kansas domestic life insurance company and facilitate the transfer of the Kansas business from the Arizona company to the new Kansas company. Kansas has no statutes establishing a formal process by which one carrier can transfer business to another.

The legislation would also amend Kansas law to allow for the issuance of employee paid group term life insurance through a Kansas based trust to eliminate the current statutory limit (50%) on benefits available to dependents under a group life insurance policy.

Jarrod Forbes testified in support of the bill and that the Kansas Insurance Department wished to be on the record in support of the bill.

Dave Hanson spoke in support of the bill (Attachment 2). He stated the bill would encourage companies to consider Kansas for potential transfers of business, as well as facilitating new business and growth in our state.

The hearing was closed on **SB 546**. The Chair then opened the hearing on **HB 2635** and **House Sub 2635—UCCC, additional charges, insufficient check charges, notice.**

Ron Gaches, Kansas Financial Services Corporation testified as a proponent of the bill (Attachment 3). The bill does two things in a very clean manner which balances the interests of the lender community and the consumer community.

The bill allows the lender under the UCCC to charge an amount for an insufficient fund check not to exceed thirty dollars, by giving written notice by first class mail or by clear notice on a regular monthly statement. The bill does not change the amount of the charge levied against the consumer for the insufficient fund check. What the bill does change is the method of notice to the consumer that the charge is being applied.

The second thing the bill does is allows the lender to collect a charge, not to exceed five dollars (\$5), if the borrower makes a single installment payment through an automated clearinghouse procedure on the

CONTINUATION SHEET

MINUTES OF THE SENATE FINANCIAL, INSTITUTIONS AND INSURANCE COMMITTEE at 9:30 a.m. on March 10<sup>th</sup>, 2004 in Room 234-N of the Capitol.

borrower's checking account.

He called the Committee's attention to an attached amendment on the bill which the banking commission had not as yet had time to review. Ron asked for a day or so to communicate with the Commission and smooth out the language. They would like to have the bill moved out favorably whether the amendment is added to the bill or not.

Senator Barnett wanted to know if the institution was required to notify the consumer regarding the charge. Mr. Gaches responded that the current language does not require notification but they would have no objection to that language.

The Chair closed the hearing on **HB sub 2635**.

The Chair opened the hearing on **HCR 5027 Concurrent resolution urging the Insurance Department and Commissioner to pursue creation of interstate compact**.

Bob Tomlinson, who was a former legislator, stated that it was odd for him to be standing there recommending a resolution. ( Attachment 4 ). He was not partial to resolutions due to the fact that if it was good enough to be put in a resolution, why in the world wouldn't it be put into law. In this case, the resolution has some validity, is necessary and the law would be premature at this point.

The two policy decisions contained in the resolution, charge the department with negotiating a compact for the marketing of life and annuity products. A compact with clear high standards for product liability and availability is both desirable and obtainable. The second issue is maintaining state regulation of insurance.

Senator Adkins stated that there are several members of the Senate who would appreciate that certain vehicles called HCR never come to the Senate floor. However, the resolution **HCR 5027** seems to be advisory at best. If this isn't passed out, how much heartburn would it cause the Department? Senator Adkins continued and asked what the resolution would give the Department that they don't already have?

Mr. Tomlinson stated that one of the reasons for advancing the resolution is that the Department does not believe it could pass the House at this time, without the standards in place. There is currently activity occurring at the federal level regarding insurance that would completely circumvent state regulations.

Additionally, Kansas does have a seat on the compact negotiating committee, primarily due to the fact that our Insurance Commissioner is an elected official. The resolution gives Kansas leadership in terms of what other Department problems people are having in their home states. It also gives Kansas an edge in negotiation at the compact table.

Jim Hall, American Council of Life Insurers testified as a proponent on the HCR ( Attachment 5 ). The ACLI supports the National Association of Insurance Commissioners (NAIC) Interstate Insurance Product Regulation Compact. The Compact offers the best opportunity to improve state regulation of insurance in the areas of speed to market and uniformity of policy form requirements.

Senator Adkins wanted to know if there was any reason the Legislature wouldn't just pass the Compact? The conferee responded that it wasn't an issue for him, but there might be legislators who had a problem with the Compact, even though there are 195 of them active in the United States today.

The Chair closed the hearing on **HCR 5027**. She then moved the agenda to working bills. The first one was **SB 534-Commercial real estate; co-brokerage agreement**. Copies of a balloon to the bill ( Attachment 6 ) were made by Kansas Real Estate Commission and distributed to the Committee.

Senator Adkins made a motion to adopt the balloon and move the bill out favorably. Senator Barnett seconds. Motion passes.

**HB 2580-Banks and banking; general powers** brought by the banking Commissioner on Capital

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MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE at 9:30 a.m. on March 10<sup>th</sup>, 2004 in Room 234-N of the Capitol.

investment securities.

Senator Adkins made a motion to move the bill out favorably. Senator Helgerson seconds. Motion passes.

The third and final bill to be worked is **HB 2781–Pre-arranged funeral agreements, contracts or plans.**

Senator Adkins made a motion to move the bill out favorably. Senator Brungardt seconds. Motion passes.

The meeting adjourned at 10:39 A.M..

The next meeting is scheduled for March 11<sup>th</sup>, 2004.

SENATE FINANCIAL INSTITUTIONS & INSURANCE

Date: 7-10-04

Name:

WEDNESDAY Representing:

Jim Hacc - American Council of Life Insurers.

Bill Sneed Amerus Annuity

Larue Ann Lower KATP

Bud Smoot Advance

Don CACHES KAFS

David Hanson Ks Insur Assns

Janey Norris Office of State Bank Comm.

Terri Glenclenig " " "

Sonya Allen " "

Shari Weber Community Brokers Assn of KS

Paul Jones KID

Bob Tomlinson KID

Rick Wilborn Farmers Alliance

LARRY MAGILL Ks. ASSN. OF INS. AGENTS

Dan Murray Federico Consulting

# BRAD SMOOT

ATTORNEY AT LAW

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TOPEKA, KANSAS 66612  
(785) 233-0016  
(785) 234-3687 (fax)  
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10200 STATE LINE ROAD  
SUITE 230  
LEAWOOD, KANSAS 66206

Statement of Brad Smoot  
Legislative Counsel  
Advance Insurance Company  
Senate Financial Institutions and Insurance Committee  
Regarding 2004 SB 546

March 10, 2004

Madam Chair and Members,

Advance Insurance Company is an Arizona domiciled life insurance company owned by Blue Cross Blue Shield of Kansas. The company is licensed in 38 states and specializes in group life products. Our product is sold to employers and their employees, usually in conjunction with group accident and health insurance coverage. We currently provide life insurance coverage to approximately 125,000 Kansans.

We requested this legislation in order to establish a new Kansas domestic life insurance company and facilitate the transfer of the Kansas business from the Arizona company to the new Kansas company. In addition, this legislation would amend Kansas law to allow for the issuance of employee paid group term life insurance through a Kansas based trust and to eliminate the current statutory limit (50%) on benefits available to dependents under a group life insurance policy.

Kansas has no statutes establishing a formal process by which one carrier can transfer business to another. Instead, the Insurance Department issued a bulletin (1993-21) that was written to parallel 1992 court case Security Benefit Life Insurance Company v. Federal Deposit Insurance Corporation, 804 F. Supp. 217 (D. Kan. 1992). That bulletin, in essence, precludes a carrier from ceding business to another carrier without the clear consent of the insured, evidenced by a novation agreement between the ceding carrier and the insured. Obviously, this is intended to protect the insured. Unfortunately, under the process that has evolved in Kansas, there is no way to resolve a transfer of business for those insureds that fail to definitively declare their acceptance or rejection. In any transfer of business such as this, there are always some insureds that fail to respond but continue paying premiums. The current reality in Kansas is that carriers are unable to cede business to another carrier.

The NAIC recognized and addressed these sorts of consumer protection issues in their Assumption Reinsurance Model Act that is the basis for the first part of S-546. See New Sections 1 through 10 of this bill. It describes a methodical process by which the Commissioner pre-approves the transfer of business from one carrier to another. The process includes an initial notification to affected policyholders. Policyholders will be able to accept the transfer – in which case the transfer would be consummated immediately. Policyholders would also have the right to reject the transfer, in which case

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the ceding carrier would retain the coverage indefinitely. As a practical matter, those rejecting the transfer would probably be cancelled unless their policy prohibited such a termination.

Policyholders would also have the right to continue to pay their premium without definitively accepting or rejecting the transfer. The NAIC model (this bill) calls for a 24-month period during which a policyholder has the right to decide whether to accept or reject the transfer. At the end of that 24-month period, those policyholders who have not accepted or rejected the transfer would be sent a final notice to which they would have a month to respond. At the end of that period, those that have continued to pay premiums without definitively accepting or rejecting the transfer would be deemed to have accepted the transfer and moved to the new company. This model legislation will enhance consumer protections, increase the state's regulatory oversight, encourage other carriers to market products in Kansas and, in our case, allow us to create a new Kansas domestic insurance company. About half the states have adopted some version of this model.

Along with the procedural difficulties we face in transferring the business from the Arizona carrier to the new Kansas company, some of the Kansas residents we currently insure are covered under a voluntary employee paid group life insurance product issued through a trust established in Missouri. In order to facilitate the assumption of that trust business by the new Kansas domiciled company (with the Missouri trust business being moved to a Kansas based trust), a couple of minor adjustments are needed in the Kansas laws governing group coverage issued through a trust.

Kansas law does not currently recognize the issuance of group life coverage for which the employer does not contribute at least a portion of the premium. Since some of the group life coverage currently issued through the Missouri trust does not require premium contribution on the part of the employer (only the employee), we are asking that voluntary group life insurance be exempt from the Kansas employer contribution requirement. As well, the Kansas law currently limits the amount of benefit that a dependent under a life insurance policy may buy, in comparison to the amount the actual insured may buy. Group insureds in Kansas have requested higher amounts of coverage for dependents, and it is only through this contract issued in Missouri that we have been able to meet the marketplace demand for dependent coverage benefits that exceed the 50% limitation currently set forth in Kansas law. Once again, the attached legislation exempts that limitation for voluntary group life coverage to accommodate the transfer of this coverage to Kansas. See Section 11.

We know of no public policy reason why Kansas law should not allow the direct sale of these more flexible group insurance products. With these changes, more carriers are likely to offer such products and those who would do so would have a reason to offer such a product through a contract issued in, regulated in, and taxed in Kansas rather than another state, as occurs today. For us, it would mean a seamless transfer of our trust business to a Kansas trust and the payment of our premium taxes to Kansas rather than Missouri. We would appreciate your favorable consideration of S-546.

1 force contracts of insurance from a transferring insurer to an assuming  
2 insurer; and

3 (2) is intended to effect a novation of the transferred contract of in-  
4 surance with the result that the assuming insurer becomes directly liable  
5 to the policyholders of the transferring insurer and the transferring in-  
6 surer's insurance obligations or risks, or both, under the contracts are  
7 extinguished.

8 (c) "Commissioner" shall mean the commissioner of insurance as de-  
9 fined by K.S.A. 40-102 and amendments thereto, unless the context re-  
10 quires otherwise.

11 (d) "Contract of insurance" means any written agreement between  
12 an insurer and policyholder pursuant to which the insurer, in exchange  
13 for premium or other consideration, agrees to assume an obligation or  
14 risk, or both, of the policyholder or to make payments on behalf of, or  
15 to, the policyholder or its beneficiaries. Contract of insurance includes all  
16 property, casualty, life, health, accident, surety, title and annuity business  
17 authorized to be written pursuant to the insurance laws of this state.

18 (e) "Home service business" means insurance business on which pre-  
19 miums are collected on a weekly or monthly basis by an agent of the  
20 insurer.

21 (f) "Notice of transfer" means the written notice to policyholders re-  
22 quired by section 3 and amendments thereto.

23 (g) "Policyholder" means any individual or entity which has the right  
24 to terminate or otherwise alter the terms of a contract of insurance.

25 (h) "Transferring insurer" means the insurer which transfers an in-  
26 surance obligation or risk, or both, to an assuming insurer pursuant to an  
27 assumption reinsurance agreement.

28 New Sec. 3. (a) The transferring insurer shall provide or cause to be  
29 provided to each policyholder a notice of transfer by first-class mail, ad-  
30 dressed to the policyholder's last known address or to the address to which  
31 premium notices or other policy documents are sent or, with respect to  
32 home service business, by personal delivery with acknowledged receipt.  
33 A notice of transfer shall also be sent to the transferring insurer's agents  
34 or brokers of record on the affected policies.

35 (b) The notice of transfer shall state or provide:

36 (1) The date the transfer and novation of the policyholder's contract  
37 of insurance is proposed to take place;

38 (2) the name, address and telephone number of the assuming and  
39 transferring insurer;

40 (3) that the policyholder has the right to either consent to or reject  
41 the transfer and novation;

42 (4) the procedures and time limit for consenting to or rejecting the  
43 transfer and novation;

It includes any certificateholder whose certificate is in force on the proposed effective date of the assumption, if the certificateholder has the right to keep the certificate in force without change in benefit following termination of the group policy.

The right to keep the certificate in force referred to in this section shall not include the right to elect individual coverage under the Consolidated Omnibus Budget Reconciliation Act ("COBRA") Section 601 et seq., of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. 1161 et seq."

1-4

1 commissioner, a transfer and novation may be effected notwithstanding  
2 the provisions of this act. This may include a form of implied consent and  
3 adequate notification to the policyholder of the circumstances requiring  
4 the transfer as approved by the commissioner.

5 New Sec. 8. Residents of this state whose policies were previously  
6 subject to the protections set forth in K.S.A. 40-2901 et seq., and amend-  
7 ments thereto, or K.S.A. 40-3001 et seq., and amendments thereto, and  
8 whose policies are transferred to an unlicensed insurer pursuant to this  
9 ~~section~~ are entitled to continued protection thereunder.

10 New Sec. 9. A notice of transfer and form for response by an insured  
11 to such a notice shall be deemed to be sufficient for the purposes of this  
12 act if it substantially conforms with the following form:

13 NOTICE OF TRANSFER  
14 IMPORTANT: THIS NOTICE AFFECTS YOUR CONTRACT  
15 RIGHTS. PLEASE READ IT CAREFULLY.

16 Transfer of Policy

17 The [ABC Insurance Company] has agreed to replace us as your insurer  
18 under[insert policy/certificate name and number] effective [insert date].  
19 The[ABC Insurance Company's] principal place of business is [insert ad-  
20 dress] and certain financial information concerning both companies is  
21 attached, including (1) ratings for the last five years, if available, or for  
22 such lesser period as is available from two nationally recognized insurance  
23 rating services; (2) balance sheets for the previous three years, if available,  
24 or for such lesser period as is available and as of the date of the most  
25 recent quarterly statement; (3) a copy of the Management's Discussion  
26 and Analysis that was filed as a supplement to the previous year's annual  
27 statement; and (4) an explanation of the reason for the transfer. You may  
28 obtain additional information concerning[ABC Insurance Company] from  
29 reference materials in your local library or by contacting your Insurance  
30 Commissioner at [insert address and phone number].

31 The [ABC Insurance Company] is licensed to write this coverage in  
32 your state. The Commissioner of Insurance in your state has reviewed  
33 the potential effect of the proposed transaction, and has approved the  
34 transaction.

35 Your Rights

36 You may choose to consent to or reject the transfer of your policy to  
37 [ABC Insurance Company]. If you want your policy transferred, you may  
38 notify us in writing by signing and returning the enclosed pre-addressed,  
39 postage-paid card or by writing to us at:

40 [Insert name, address and facsimile number of contact person.]

41 Payment of your premium to the assuming company will also constitute  
42 acceptance of the transaction. However, a method will be provided to  
43 allow you to pay the premium while reserving the right to reject the

act



# KANSAS LIFE INSURANCE ASSOCIATIONS

DAVID A. HANSON, LEGISLATIVE COUNSEL  
800 S.W. JACKSON, SUITE 900  
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TELEPHONE NO. (785) 232-0545  
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## Kansas Life Insurance Association

Member Companies:

The American Home Life  
Insurance Company  
Topeka

American Investors Life  
Insurance Company  
Topeka

Employers Reassurance  
Corporation  
Overland Park

First Life America Corporation  
Topeka

Kansas Blue Cross/Blue Shield  
Topeka

Preferred Health Systems  
Wichita

The Pyramid Life  
Insurance Company  
Shawnee Mission

Security Benefit Life  
Insurance Company  
Topeka

## TESTIMONY ON SB 546

March 10, 2004

TO: **Senate Financial Institutions and Insurance Committee**

RE: **Senate Bill No. 546**

Madame Chair and Members of the Committee:

Thank you for this opportunity to appear before the Committee. I am David Hanson and am appearing on behalf of the Kansas Life Insurance Association, whose members are domestic life and health insurance companies in Kansas.

We support this bill as encouraging companies to consider Kansas for potential transfers of business, as well as facilitating new business and growth in our state. We also appreciate the Kansas Insurance Department's review and support of the provisions of the bill. These provisions are based upon NAIC model language, which should help provide uniformity and consistency with any other states adopting similar provisions.

We therefore urge your favorable consideration of the bill.

Respectfully,



DAVID A. HANSON

Senate F I & I Committee

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# Gaches, Braden, Barbee & Associates

## Governmental Affairs & Association Management

300 SW EIGHTH • THIRD FLOOR • TOPEKA, KANSAS 66603-3912 • 785-233-4512 • FAX 785-233-2206

**Senate Financial Institutions & Insurance Committee**  
**Substitute HB 2635: Uniform Consumer Credit Code Changes**  
**Testimony of Kansas Financial Services Association**  
**Submitted by Ron Gaches,**  
**Gaches, Braden, Barbee & Associates**  
**Wednesday, March 10, 2004**

Thank you Senator Teichman and members of the Committee for this opportunity to comment on behalf of the Kansas Financial Services Association in support of Substitute for House Bill 2635. As amended by the House Committee, the bill makes two changes to the Kansas Uniform Consumer Credit Code:

First, the bill allows the lender under the UCCC to charge an amount for an insufficient fund check not to exceed \$30 by giving written notice by first class mail or by clear notice on a regular monthly statement. The current requirement in the law requires notification by "restricted mail." The bill does not change the amount of the insufficient fund check fee, only the method of notifying the consumer of the charge.

Second, the bill allows a lender to collect a charge not to exceed \$5 if the borrower makes a single installment payment through an automated clearinghouse procedure on the borrower's checking account. No charge would be allowed for the ACH procedure if the creditor collects a delinquency fee on the same installment, or if the consumer and lender have agreed in writing to make all scheduled payments through the ACH procedure.

The House Committee incorporated amendments to the original bill recommended by Kevin Glending of the Kansas Bank Commissioner's Office as well as the KFSA.

This bill is beneficial to the lender and consumer in two ways. First it reduces the cost of the notice requirement for the lender by eliminating the requirement for restricted mail, but still ensures the consumer receives notice through first class mail or on their monthly notice; and, second authorizes the lender to charge up to \$5 for a service that has become more frequently requested by consumers, but ensures the consumer is not charged a fee for both the electronic transfer and an insufficient fund check charge.

In reviewing the reasonableness of the bill please consider that lenders under the UCCC are only asking for authority already granted to many other lenders. Other institutions are allowed under current law to charge fees for insufficient fund checks without restricted letter notice to the check writer. And nationally chartered banks and their credit card companies, are already able to charge fees for authorized electronic transfer payments.

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1 desire to do so after written disclosure to the consumer of the cost thereof.

2 (3) With respect to a consumer loan or a consumer credit sale in  
3 either case pursuant to open end credit, a creditor may charge the fol-  
4 lowing fees in an amount not to exceed that agreed to by the consumer:

5 (a) Fees on a monthly or annual basis;

6 (b) over-limit fees; and

7 (c) cash advance fees. The fees permitted under this subsection are  
8 in addition to any finance charges, additional charges or other charges  
9 permitted by the uniform consumer credit code.

10 (4) *A charge not exceeding \$5 per payment, if the borrower makes a*  
11 *single installment payment by authorizing a creditor, verbally or in writ-*  
12 *ing, to write a check or process a payment through use of the automated*  
13 *clearing house procedures on the borrower's checking account, subject to*  
14 *the following limitations:*

or other means

15 (A) *No charge shall be assessed if the creditor also collects a delin-*  
16 *quency fee on the same installment; and*

17 (B) *no charge shall be assessed where the consumer has agreed in*  
18 *writing with the creditor to make all scheduled payments through the use*  
19 *of the automated clearing house procedures.*

20 Sec. 2. K.S.A. 2003 Supp. 16a-2-501 is hereby repealed.

21 Sec. 3. This act shall take effect and be in force from and after its  
22 publication in the statute book.



# Kansas Insurance Department

**Sandy Praeger** COMMISSIONER OF INSURANCE

March 10, 2004

Testimony on HCR 5027  
Kansas Department of Insurance  
Bob Tomlinson, Assistant Insurance Commissioner

Senator Ruth Teichman  
Chairwoman, Senate Financial Institutions and Insurance  
Kansas State Senate

Madam Char, members of the Committee, thank you for the opportunity to address you today. HCR 5027 is a resolution requested by the Department of Insurance that asks the legislature to make two important policy declarations. First, it asks for your direction to the Department to negotiate an interstate compact to improve speed to market of life and annuity insurance products nationwide. Secondly, the resolution asks for the legislature to declare their commitment to state regulation of insurance.

HCR 5027 begins with some statements of fact that frame the position of insurance regulation in Kansas. The longevity of the department is mentioned in the clause. In addition it is clearly noted that throughout our history we have been so committed to the course of accountability that we are one of only thirteen states that elects their commissioner. The whereas clauses also make note of the contribution insurance premium taxes make to the state general fund. While it is not stated within the resolution, one of the implied problems with the federal regulation of insurance could be the loss of these funds.

The two policy decisions contained within this resolution are serious in nature and are inseparably joined. The first, charging our department with negotiating a compact for the marketing of life and annuity products reflects our commitment both to the company providing insurance products and the consumers who purchase them. A compact with clear high standards for product reliability and availability is both desirable and obtainable. Bringing more products to market in an efficient well-regulated manner is positive in both costs and selection for Kansas consumers.

The second issue is of critical importance. That is the issue of maintaining state regulation of insurance. The Kansas Insurance Department stands firmly committed to state regulation. We believe that government works best at a level nearest to the people and the accountability that nearness engenders.

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We refuse to ask for the authority to enter into any compact until such time as it is complete and the standards are well defined. To do otherwise would be to abdicate your authority to review such matters.

We urge the legislature to adopt this resolution. We believe it would show our commitment to compact negotiations while reinforcing the people of Kansas' commitment to state insurance regulation.

*Attachments:*

JAMES D. HALL  
SENIOR COUNSEL & DIRECTOR  
CENTRAL STATES REGION  
[jameshall@ACLI.com](mailto:jameshall@ACLI.com)



March 10, 2004

The Honorable Ruth Teichman  
Chair, Senate Financial Institutions  
and Insurance Committee  
State Capitol  
300 SW 10<sup>th</sup> Street  
Topeka, KS 66612

Re: **HCR 5027**

Dear Senator Teichman:

This letter is written on behalf of the American Council of Life Insurers ("ACLI"), a national trade association of 368 life insurance companies whose assets approximate 70% of the life insurance business written in the United States. Three hundred two ACLI members are licensed to do business in Kansas, accounting for 73 percent of the ordinary life insurance in force in the state. Thank you for the opportunity to offer comments in support of HCR 5027.

The ACLI supports the National Association of Insurance Commissioners' (NAIC) Interstate Insurance Product Regulation Compact. We believe that that the Compact offers the best opportunity to improve state regulation of insurance in the areas of speed to market and uniformity of policy form requirements.

The NAIC Compact has been endorsed by the National Conference of State Legislators (NCSL) and by the National Conference of Insurance Legislators (NCOIL). We commend the NAIC for its hard work on this important project.

In light of our support for the NAIC Compact, we accordingly join the Kansas Insurance Department in their support for House Concurrent Resolution 5027.

Sincerely,

A handwritten signature in cursive script that reads 'James D. Hall'. The signature is written in dark ink and is positioned above the printed name.

James D. Hall

2220 Monrovia, Overland Park  
TELEPHONE ((913) 897-65

Senate F I & I Committee

Meeting Date: 03-10-04

Attachment No.: 5

1 earnest money deposit.

2 (3) If a purchase agreement provides that the earnest money be held  
3 by an escrow agent other than a real estate broker and neither the seller  
4 nor buyer is represented by a broker, no transaction broker shall:

5 (A) Fail to deliver the purchase agreement and earnest money de-  
6 posit to the escrow agent named in the purchase agreement within five  
7 business days after the purchase agreement is signed by all parties unless  
8 otherwise specifically provided by written agreement of all parties to the  
9 purchase agreement, in which case the broker shall deliver the purchase  
10 agreement and earnest money deposit to the escrow agent named in the  
11 purchase agreement on the date provided by such written agreement; or

12 (B) fail to obtain and keep in the transaction file a receipt from the  
13 escrow agent showing date of delivery of the purchase agreement and  
14 earnest money deposit.

15 The commission may adopt rules and regulations to require that such  
16 purchase agreement which provides that the earnest money be held by  
17 an escrow agent other than a real estate broker include: (1) notification  
18 of whether or not the escrow agent named in the purchase agreement  
19 maintains a surety bond, and (2) notification that statutes governing the  
20 disbursement of earnest money held in trust accounts of real estate bro-  
21 kers do not apply to earnest money deposited with the escrow agent  
22 named in the purchase agreement.

23 (e) A branch broker shall not be employed by or associated with more  
24 than one supervising broker at any one time unless each supervising bro-  
25 ker who employs or associates with the branch broker consents to such  
26 multiple employment or association. Such consent shall be on a form  
27 provided by the commission and shall not be effective until a signed copy  
28 of the completed form has been filed with the commission.

29 (f) Nothing in this section shall be construed to grant any person a  
30 private right of action for damages or to eliminate any right of action  
31 pursuant to other statutes or common law.

32 New Sec. 2. (a) As used in this section:

33 (1) "Commercial real estate" means any real estate for which the  
34 present use is other than (A) one to four residential units or (B) for  
35 agricultural purposes.

36 (2) "Foreign licensee" means a real estate licensee, in good standing  
37 of another state or country.

38 (3) Words and phrases used in this section have the meanings as-  
39 cribed thereto in K.S.A. 58-3035, and amendments thereto.

40 (b) A licensee may cooperate with and share commissions or other  
41 compensation for services related to commercial real estate with a foreign  
42 licensee and such foreign licensee shall be permitted to perform services  
43 requiring a license under K.S.A. 58-3034 et seq., and amendments

branch broker or supervising broker

Senate FI & I Committee  
March 10, 2004  
Attachment 6

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Attachment No.: 6

1 thereto, with respect to commercial real estate in this state even though  
2 such foreign licensee is not licensed thereunder if:

3 (1) The real estate is not improved with a single family residence; and

4 (2) the foreign licensee agrees to cooperate with a licensee of this  
5 state in any commercial real estate transaction, as evidenced by execution  
6 of and compliance with a broker cooperation agreement which shall in-  
7 clude, but not be limited to, provisions requiring:

branch broker or supervising broker

8 (A) The foreign licensee to comply with all applicable laws and reg-  
9 ulations of this state;

, the jurisdiction of the Kansas real estate commission

10 (B) the foreign licensee to submit to the jurisdiction of the courts of  
11 this state and the applicability of the laws and regulations of this state for  
12 the conduct of the foreign licensee with respect to commercial real estate  
13 and any and all claims related thereto;

14 (C) the foreign licensee to give its written irrevocable written consent  
15 to service of process upon it by valid service upon the secretary of state  
16 of this state and upon the secretary of state of the state or province of  
17 the foreign licensee's real estate licensure;

such foreign licensee

18 (D) all escrow funds, including but not limited to, earnest deposits  
19 and security deposits, concerning the commercial real estate to be held  
20 in this state in the trust account of a licensee of this state;

branch broker or supervising broker

21 (E) a description of how any and all compensation earned on any  
22 commercial real estate transaction shall be shared between the foreign  
23 licensee and the licensee of this state;

branch broker or supervising broker

24 (F) the foreign licensee and the licensee of this state to agree to each  
25 keep the other informed of all showings and negotiations for commercial  
26 real estate;

branch broker or supervising broker

27 (G) the foreign licensee and the licensee of this state to agree to  
28 furnish to the other copies of all documents related to any commercial  
29 real estate transaction required by Kansas law to be retained by its li-  
30 censees, including but not limited to, agency disclosure, offers, counter-  
31 offers, purchase and sale contracts, leases and closing statements.

branch broker or supervising broker

32 (c) A copy of any broker cooperation agreement shall be provided to  
33 the commission within five business days of the execution thereof.

34 Sec. 3. K.S.A. 2003 Supp. 58-3062 is hereby repealed.

35 Sec. 4. This act shall take effect and be in force from and after its  
36 publication in the statute book.

(d) The provisions of this section shall be a part of and supplemental to the Kansas real estate brokers' and salespersons' license act.