

MINUTES OF THE HOUSE INSURANCE COMMITTEE

The meeting was called to order by Chairman Clark Shultz at 3:30 P.M. on January 25, 2005 in Room 527-S of the Capitol.

Committee members absent:

Representative Bonnie Sharp- excused
Representative Joe McLeland- excused
Representative John Faber- excused
Representative Scott Schwab- excused
Representative Steve Brunk- excused

Committee staff present:

Melissa Calderwood, Kansas Legislative Research Department
Terri Weber, Kansas Legislative Research Department
Ken Wilke, Revisor of Statutes Office
Sue Fowler, Committee Secretary

Conferees appearing before the committee:

Jarrod Forbes, KS Insurance Department

Others attending:

See attached list.

Introduction of Bills:

Jarrod Forbes requested the following bill introductions: (Attachment #1).

1. Risk based capital
An annual bill requiring a simple date change from December 31, 2003 to December 31, 2004.
2. Clean up of agent laws
Removing a reference to a statute that has been repealed.
3. Comprehensive Loss Underwriting Exchange (C.L.U.E.)
This legislation would not allow insurance companies to report simple consumer inquiries as claims to nationwide tracking groups, such as A-PLUS and CLUE.
4. Weather related cancellation
This legislation would prohibit policy cancellations and non-renewals due to a single weather related claim in a single policy period.
5. Lien Holder
This legislation would require insurers to notify lien holders when issuing a claim payment to a policy holder.
6. Health Insurance
This legislation would allow medical and hospital service corporations to group coverage to be terminated for cause under conditions approved by the Commissioner of Insurance.

Representative Grant moved for the introduction of the bills. Seconded by Representative Dillmore. Motion carried.

Representative Grant moved to approve the minutes, with corrections, of the January 20, 2005 meeting. Seconded by Representative Carter. Motion carried.

Meeting was adjourned at 3:42 P.M.

Next meeting will be January 27, 2005.

**House Insurance Committee
Guest Sign Sheet
Tuesday, January 25, 2005**

Name	Representing
Mike Reecht	Aachen Bruder Baker Assoc.
Larrie Ann Lower	KAHP
Jeff Bottenborg	St. Farm
Mike Steiner	KID
Frank	RID
Bred Smart	BCBKC
Latterly Olsen	ICs Bankers Assn.



Kansas Insurance Department

Sandy Praeger COMMISSIONER OF INSURANCE

KANSAS INSURANCE DEPARTMENT
LEGISLATIVE REQUESTS
HOUSE COMMITTEE ON INSURANCE
JANUARY 25, 2005

Mr. Chairman and members of the committee:

Thank you for the opportunity to appear before you on behalf of the Kansas Insurance Department. Today I respectfully request the introduction of four committee bills.

For your convenience, I have provided a brief description of each bill and attached the drafts to my testimony. Clearly, we will provide detailed testimony at the appropriate time, but I would be happy to stand for any questions the committee might have.

1. Risk based capital

An annual bill requiring a simple date change from December 31, 2003 to December 31, 2004.

2. Clean up of agent laws

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3. Comprehensive Loss Underwriting Exchange (C.L.U.E.)

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5. Lien Holder

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Jarrold Forbes
Assistant Director
Government Affairs
Kansas Insurance Department

House Insurance
Date: 1-25-05
Attachment # 1

By

AN ACT concerning insurance; relating to risk-based capital requirements; amending K.S.A. 2004 Supp. 40-2c01 and repealing the existing section.

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

Section 1. K.S.A. 2004 Supp. 40-2c01 is hereby amended to read as follows: 40-2c01. As used in this act:

(a) "Adjusted RBC report" means an RBC report which has been adjusted by the commissioner in accordance with K.S.A. 40-2c04, and amendments thereto.

(b) "Corrective order" means an order issued by the commissioner specifying corrective actions which the commissioner has determined are required to address a RBC level event.

(c) "Domestic insurer" means any insurance company or risk retention group which is licensed and organized in this state.

(d) "Foreign insurer" means any insurance company or risk retention group not domiciled in this state which is licensed or registered to do business in this state pursuant to article 41 of chapter 40 of the Kansas Statutes Annotated or K.S.A. 40-209, and amendments thereto.

(e) "NAIC" means the national association of insurance commissioners.

(f) "Life and health insurer" means any insurance company licensed under article 4 or 5 of chapter 40 of the Kansas Statutes Annotated or a licensed property and casualty insurer writing only accident and health insurance.

(g) "Property and casualty insurer" means any insurance company licensed under articles 9, 10, 11, 12, 12a, 15 or 16 of chapter 40 of the Kansas Statutes Annotated, but shall not include monoline mortgage guaranty insurers, financial guaranty insurers and title insurers.

(h) "Negative trend" means, with respect to a life and health insurer, a negative trend over a period of time, as determined in accordance with the "trend test calculation" included in the RBC instructions defined in subsection (j).

(i) "RBC" means risk-based capital.

(j) "RBC instructions" mean the risk-based capital instructions promulgated by the NAIC, which are in effect on December 31, ~~2003~~ 2004.

(k) "RBC level" means an insurer's company action level RBC, regulatory action level RBC, authorized control level RBC, or mandatory control level RBC where:

(1) "Company action level RBC" means, with respect to any insurer, the product of 2.0 and its authorized control level RBC;

(2) "regulatory action level RBC" means the product of 1.5 and its authorized control level RBC;

(3) "authorized control level RBC" means the number determined under the risk-based capital formula in accordance with the RBC instructions; and

(4) "mandatory control level RBC" means the product of .70 and the authorized control level RBC.

(l) "RBC plan" means a comprehensive financial plan containing the elements specified in K.S.A. 40-2c06, and amendments thereto. If the commissioner rejects the RBC plan, and it is revised by the insurer, with or without the commissioner's recommendation, the plan shall be called the "revised RBC plan."

(m) "RBC report" means the report required by K.S.A. 40-2c02, and amendments thereto.

(n) "Total adjusted capital" means the sum of:

(1) An insurer's capital and surplus or surplus only if a mutual insurer; and

(2) such other items, if any, as the RBC instructions may provide.

(o) "Commissioner" means the commissioner of insurance.

Sec. 2. K.S.A. 2004 Supp. 40-2c01 is hereby repealed.

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

By

AN ACT concerning insurance agents; pertaining to the revocation of licenses; amending K.S.A. 40-246d and repealing the existing section.

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

Section 1. K.S.A. 40-246d is hereby amended to read as follows: 40-246d. The commissioner may, in the manner prescribed by law, revoke or suspend the license of any agent issued pursuant to ~~sections 40-241 and 40-246~~ either K.S.A. 40-241, and amendments thereto, or K.S.A. 2004 Supp. 40-4906, and amendments thereto, of the Kansas Statutes Annotated when such agent shall engage in any transaction permitted only to licensees under the provisions of K.S.A. 40-246b, and amendments thereto, without first obtaining the license as required by K.S.A. 40-246b and amendments thereto.

Sec. 2. K.S.A. 40-246d is hereby repealed.

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

PROPOSED BILL NO. _____

By

AN ACT concerning insurance on personal property; relating to certain inquiries concerning coverage.

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

Section 1. For the purposes of this act, "information" shall mean any details concerning an insured's personal property of which an insurer would not have independent knowledge.

Sec. 2. No insurer shall use information to adversely affect an insured's insurance coverage or premium rate until such information is included in a formal claim.

Sec. 3. The commissioner of insurance is hereby authorized to adopt such rules and regulations as may be necessary to carry out the provisions of this act.

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

PROPOSED BILL NO. _____

By

AN ACT concerning property insurance; relating to the cancellation of or refusal to renew coverage.

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

Section 1. (a) This act shall apply to all personal homeowners insurance.

(b) As used in this act, "homeowners insurance" shall mean an insurance policy insuring against the physical loss of or damage to real or personal property used for habitation and personal purposes in connection with insurance coverage offered on a one to four family dwelling or its contents. Homeowners insurance shall also include renters insurance.

(c) As used in this act, "weather related" shall include, but not be limited to, wind, lightning, hail and tornado damage.

Sec. 2. (a) No insurance company shall cancel or refuse to renew a policy of homeowners insurance when such cancellation or refusal to renew is due to a single weather related claim that occurred within the time frame of the policy period to be canceled or renewed.

(b) In the event an insurers' policy plan is no longer offered at the time of renewal, providing policyholders with another policy of most similar comparison within the same group of companies shall be deemed in compliance of this act.

(c) This act shall be applied for a maximum of two renewals on any one policy where this act is the only reason for both renewals.

(d) Nothing in this act shall prevent a refusal to renew based on multiple weather related claims, or a claim of another nature.

Sec. 3. Any insurer found in violation of this act shall be subject to the penalties available to the commissioner of insurance under K.S.A. 40-2404 and amendments thereto.

Sec. 4. The commissioner of insurance is hereby authorized to adopt such rules and regulations as may be necessary to carry out the provisions of this act.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

PROPOSED BILL NO. _____

By

AN ACT concerning insurance; relating to identification and notification of certain secured parties as loss payees; amending K.S.A. 2004 Supp. 40-2404 and repealing the existing section.

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

Section 1. K.S.A. 2004 Supp. 40-2404 is hereby amended to read as follows: 40-2404. 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, sales presentation, omission or comparison which:

(a) Misrepresents the benefits, advantages, 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 statements as to the dividends or share of surplus previously paid on any insurance policy;

(d) is misleading or is a misrepresentation as to the financial condition of any person, or as to 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;

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

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

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

(2) False information and advertising generally. Making, publishing, disseminating, circulating or placing before the

public, or causing, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, misrepresentation or statement with respect to the business of insurance or with respect to any person in the conduct of such person's insurance business, which is untrue, deceptive or misleading.

(3) Defamation. Making, publishing, disseminating or circulating, directly or indirectly, or aiding, abetting or encouraging the making, publishing, disseminating or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of any person, and which is calculated to injure such person.

(4) Boycott, coercion and intimidation. Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of the business of insurance, or by any act of boycott, coercion or intimidation monopolizing or attempting to monopolize any part of the business of insurance.

(5) False statements and entries. (a) Knowingly filing with any supervisory or other public official, or knowingly making, publishing, disseminating, circulating or delivering to any person, or placing before the public, or knowingly causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false material statement of fact as to the financial condition of a person.

(b) Knowingly making any false entry of a material fact in any book, report or statement of any person or knowingly omitting to make a true entry of any material fact pertaining to the

business of such person in any book, report or statement of such person.

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

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

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

(c) Refusing to insure, or refusing to continue to insure, or limiting the amount, extent or kind of coverage available to an individual, or charging an individual a different rate for the same coverage solely because of blindness or partial blindness. With respect to all other conditions, including the underlying cause of the blindness or partial blindness, persons who are blind or partially blind shall be subject to the same standards of sound actuarial principles or actual or reasonably anticipated experience as are sighted persons. Refusal to insure includes denial by an insurer of disability insurance coverage on the grounds that the policy defines "disability" as being presumed in the event that the insured loses such person's eyesight. However, an insurer may exclude from coverage disabilities consisting

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

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

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

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

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

(iv) No person shall refuse to insure, refuse to continue to insure, limit the amount, extent or kind of coverage available to an individual or charge a different rate for the same coverage solely because of physical or mental condition, except where the refusal, limitation or rate differential is based on sound

actuarial principles.

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

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

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

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

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

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

(8) Rebates. (a) Except as otherwise expressly provided by law, knowingly permitting, offering to make or making any contract of life insurance, life annuity or accident and health insurance, or agreement as to such contract other than as plainly expressed in the insurance contract issued thereon; paying, allowing, giving or offering to pay, allow or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or giving, selling, purchasing or offering to give,

sell or purchase as inducement to such insurance contract or annuity or in connection therewith, any stocks, bonds or other securities of any insurance company or other corporation, association or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract.

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

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

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

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

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

(a) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;

(b) failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

(c) failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

(d) refusing to pay claims without conducting a reasonable investigation based upon all available information;

(e) failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;

(f) not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear;

(g) compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds;

(h) attempting to settle a claim for less than the amount to which a reasonable person would have believed that such person was entitled by reference to written or printed advertising material accompanying or made part of an application;

(i) attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of the insured;

(j) making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made;

(k) making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

(l) delaying the investigation or payment of claims by requiring an insured, claimant or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;

(m) failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; or

(n) failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement; or

(o) not attempting in good faith to identify, notify and include as a loss payee any secured party in first and third party claims in which property damage and liability have become reasonably clear.

(10) Failure to maintain complaint handling procedures. Failure of any person, who is an insurer on an insurance policy, to maintain a complete record of all the complaints which it has received since the date of its last examination under K.S.A. 40-222, and amendments thereto; but no such records shall be required for complaints received prior to the effective date of this act. The record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of the complaints, the date each complaint was originally received by the insurer and the date of final disposition of each complaint. For purposes of this subsection, "complaint" means any written communication primarily expressing a grievance related to the acts and practices set out in this section.

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

(12) Statutory violations. Any violation of any of the provisions of K.S.A. 40-216, 40-276a, 40-2,155 or 40-1515 and amendments thereto.

(13) Disclosure of information relating to adverse

underwriting decisions and refund of premiums. Failing to comply with the provisions of K.S.A. 40-2,112, and amendments thereto, within the time prescribed in such section.

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

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

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

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

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

(iii) the payment of reasonable entertainment and advertising expenses.

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

(e) As used in paragraphs (e) through (i)(7) of this subpart, unless the context otherwise requires:

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

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

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

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

- (A) Buying or selling interests in real property;
- (B) making loans secured by interests in real property; or
- (C) acting as broker, agent, representative or attorney for a person who buys or sells any interest in real property or who lends or borrows money with such interest as security.

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

(f) No title insurer or title agent may accept any order for, issue a title insurance policy to, or provide services to, an applicant if it knows or has reason to believe that the applicant was referred to it by any producer of title business or by any associate of such producer, where the producer, the associate, or both, have a financial interest in the title insurer or title agent to which business is referred unless the producer has disclosed to the buyer, seller and lender the financial interest of the producer of title business or associate referring the title insurance business.

(g) No title insurer or title agent may accept an order for title insurance business, issue a title insurance policy, or receive or retain any premium, or charge in connection with any transaction if: (i) The title insurer or title agent knows or has reason to believe that the transaction will constitute controlled business for that title insurer or title agent, and (ii) 70% or more of the closed title orders of that title insurer or title agent during the 12 full calendar months immediately preceding the month in which the transaction takes place is derived from controlled business. The prohibitions contained in this subparagraph shall not apply to transactions involving real estate located in a county that has a population, as shown by the

last preceding decennial census, of 10,000 or less.

(h) Within 90 days following the end of each business year, as established by the title insurer or title agent, each title insurer or title agent shall file with the department of insurance and any title insurer with which the title agent maintains an underwriting agreement, a report executed by the title insurer's or title agent's chief executive officer or designee, under penalty of perjury, stating the percent of closed title orders originating from controlled business. The failure of a title insurer or title agent to comply with the requirements of this section, at the discretion of the commissioner, shall be grounds for the suspension or revocation of a license or other disciplinary action, with the commissioner able to mitigate any such disciplinary action if the title insurer or title agent is found to be in substantial compliance with competitive behavior as defined by federal housing and urban development statement of policy 1996-2.

(i) (1) No title insurer or title agent may accept any title insurance order or issue a title insurance policy to any person if it knows or has reason to believe that such person was referred to it by any producer of title business or by any associate of such producer, where the producer, the associate, or both, have a financial interest in the title insurer or title agent to which business is referred unless the producer has disclosed in writing to the person so referred the fact that such producer or associate has a financial interest in the title insurer or title agent, the nature of the financial interest and a written estimate of the charge or range of charges generally made by the title insurer or agent for the title services. Such disclosure shall include language stating that the consumer is not obligated to use the title insurer or agent in which the referring producer or associate has a financial interest and shall include the names and telephone numbers of not less than three other title insurers or agents which operate in the county in which the property is located. If fewer than three insurers

or agents operate in that county, the disclosure shall include all title insurers or agents operating in that county. Such written disclosure shall be signed by the person so referred and must have occurred prior to any commitment having been made to such title insurer or agent.

(2) No producer of title business or associate of such producer shall require, directly or indirectly, as a condition to selling or furnishing any other person any loan or extension thereof, credit, sale, property, contract, lease or service, that such other person shall purchase title insurance of any kind through any title agent or title insurer if such producer has a financial interest in such title agent or title insurer.

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

(4) Nothing in this subpart (i) shall prohibit any producer of title business or associate of such producer from referring title business to any title insurer or title agent of such producer's or associate's choice, and, if such producer or associate of such producer has any financial interest in the title insurer, from receiving income, profits or dividends produced or realized from such financial interest, so long as:

(a) Such financial interest is disclosed to the purchaser of the title insurance in accordance with part (i)(1) through (4) of this subpart;

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

(c) the receipt of income, profits or dividends constitutes only a return on the investment of the producer or associate.

(5) Any producer of title business or associate of such producer who violates the provisions of paragraphs (i)(2) through (i)(4), or any title insurer or title agent who accepts an order for title insurance knowing that it is in violation of paragraphs

(i)(2) through (i)(4), in addition to any other action which may be taken by the commissioner of insurance, shall be subject to a fine by the commissioner in an amount equal to five times the premium for the title insurance and, if licensed pursuant to K.S.A. 58-3034 et seq., and amendments thereto, shall be deemed to have committed a prohibited act pursuant to K.S.A. 58-3602, and amendments thereto, and shall be liable to the purchaser of such title insurance in an amount equal to the premium for the title insurance.

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

(7) The commissioner shall also require each title agent to provide core title services as required by the real estate settlement procedures act.

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

(15) Disclosure of nonpublic personal information. (a) No person shall disclose any nonpublic personal information contrary to the provisions of title V of the Gramm-Leach-Bliley act of 1999 (public law 106-102). The commissioner may adopt rules and regulations necessary to carry out this section. Such rules and regulations shall be consistent with and not more restrictive than the model regulation adopted on September 26, 2000, by the national association of insurance commissioners entitled "Privacy of consumer financial and health information regulation".

(b) Any rules and regulations adopted by the commissioner

which implement article V of the model regulation adopted on September 26, 2000, by the national association of insurance commissioners entitled "Privacy of consumer financial and health information regulation" shall become effective on and after February 1, 2002.

(c) Nothing in this paragraph (15) shall be deemed or construed to authorize the promulgation or adoption of any regulation which preempts, supersedes or is inconsistent with any provision of Kansas law concerning requirements for notification of, or obtaining consent from, a parent, guardian or other legal custodian of a minor relating to any matter pertaining to the health and medical treatment for such minor.

Sec. 2. K.S.A. 2004 Supp. 40-2404 is hereby repealed.

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

40-19c06

Chapter 40.--INSURANCE

Article 19c.--NONPROFIT MEDICAL AND HOSPITAL SERVICE CORPORATIONS

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40-19c06. Subscription agreements; contents; continuation of subscription agreements; converted subscription agreements. (a) No subscription agreement, except as provided in subsection (d), between a corporation organized under the nonprofit medical and hospital service corporation act and a subscriber, shall entitle more than one person to benefits, except that a "family subscription agreement" may be issued, at an established subscription charge, to a husband and wife, or husband, wife, and their dependent child or children and any other person dependent upon the subscriber. Only the subscriber must be named in the subscription agreement.

(b) Every subscription agreement entered into by any such corporation with any subscriber shall be in writing and a certificate stating the terms and conditions shall be furnished to the subscriber to be kept by the subscriber. No such certificate form shall be made, issued or delivered in this state unless it contains the following provisions: (1) A statement of the nature of the benefits to be furnished and the period during which they will be furnished, and if there are any benefits to be excepted, a detailed statement of such exceptions printed as hereinafter specified; (2) a statement of the terms and conditions, if any, upon which the subscription agreement may be canceled or otherwise terminated at the option of either party; (3) a statement that the subscription agreement includes the endorsements and attached papers, if any, and contains the entire contract; (4) a statement that no statement by the subscriber in the application for a subscription agreement shall avoid the subscription agreement or be used in any legal proceeding, unless such application or an exact copy is included in or attached to such subscription agreement, and that no agent or representative of such corporation, other than an officer or officers designated therein, is authorized to change the subscription agreement or waive any of its provisions; (5) a statement that if the subscriber defaults in making any payments under the subscription agreement, the subsequent acceptance of a payment by the corporation or by one of its duly authorized agents shall reinstate the subscription agreement but with respect to sickness and injury, only to cover such sickness as may be first manifested more than 10 days after the date of such acceptance; (6) a statement of the period of grace which will be allowed the subscriber for making any payment due under the subscription agreement. Such period shall not be less than 10 days; and (7) if applicable, a statement of the kind of hospital in which the subscriber may receive benefits and the types of benefits to which the subscriber may be entitled to in such kinds of hospitals. The subscriber shall be entitled to benefits in any nonparticipating hospital in Kansas which is licensed by the secretary of health and environment and in which the average length of stay of patient is similar to the average length of stay in participating hospitals. The agreements issued by any corporation currently or previously organized under this act may include provisions allowing for direct payment of benefits only to contracting health care providers.

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(c) In every such subscription agreement made, issued or delivered in this state: (1) All printed portions shall be plainly printed; (2) the exceptions of the subscription agreement shall appear with the same prominence as the benefits to which they apply; (3) if the subscription agreement contains any provisions purporting to make any portion of the articles of incorporation or bylaws of the corporation a part of the subscription agreement, such portion shall be set forth in full; and (4) there shall be a brief description of the subscription agreement on the first page and on its filing back.

(d) Any such corporations may issue a group or blanket subscription agreement, provided the group of persons insured conforms to the requirements of law applicable to other companies writing group or blanket sickness and accident insurance policies and provided such subscription agreement and the individual certificates issued to members of the group shall comply in substance with this section. Any such subscription agreement may provide for the adjustment of the premiums based upon the experience at the end of the first year or of any subsequent year of insurance, and such readjustment may be made retroactive in the form of a rate credit or a cash refund.

(e) (1) Any group subscription agreement issued pursuant to subsection (d) shall provide that an employee or member or such employee's or member's covered dependents whose insurance under the group subscription agreement has been terminated for any reason, including discontinuance of the group in its entirety or with respect to an insured class, and who has been continuously insured under the group subscription agreement or under any group policy or subscription agreement providing similar benefits which it replaces for at least three months immediately prior to termination, shall be entitled to have such coverage nonetheless continued under the group policy for a period of six months and at the end of such six-month period of continuation, such employee or member or such employee's or member's covered dependents shall be entitled to obtain, at the employee's, member's or dependent's option either:

(A) A converted subscription agreement providing coverage equal to 80% of that afforded under the group subscription agreement for basic hospital, surgical and medical benefits. Persons selecting this option shall also be entitled to obtain major medical expense coverage which will provide hospital, medical and surgical expense benefits to an aggregate maximum of not less than \$50,000. The major medical expense coverage may be subject to a copayment by the covered person of not more than 20% of covered charges and a deductible stated on a per person, per family, per illness, per benefit period, or per year basis or a combination of such bases of not more than \$500 per person subject to a maximum annual deductible of \$750 per family; or

(B) a subscription agreement which imposes a deductible of not less than \$1,000 per subscriber and not less than \$2,000 per family and subjects the covered person to a copayment of not more than 20% of covered charges with a \$1,000 maximum copayment per subscriber and \$2,000 maximum copayment per family per contract year and providing a lifetime maximum benefit of not less than \$1,000,000.

(2) The requirements imposed by this subsection (e) shall not apply to a group subscription agreement which provides benefits for specific diseases or for accidental injuries only or any group subscription agreement issued to an employer subject to the continuation and conversion obligations set forth at title I, subtitle B, part 6 of the employee retirement income security act of 1974 or at title XXII of the public health service act, as each act was in effect on January 1, 1987, to the extent federal law provides the employee or member or such employee's or member's covered dependents with equal or greater continuation or conversion rights, or any employee or member or such employee's or member's covered dependents whose termination of insurance under the group subscription agreement occurred because:

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(A) Such person failed to pay any required contribution after receiving reasonable notice of such required contribution from the insurer in accordance with rules and regulations adopted by the commissioner of insurance;

~~(B) any discontinued group coverage was replaced by similar group coverage within 31 days; or the employee or member is or could be covered by medicare (title XVIII of the United States social security act as added by the social security amendments of 1965 or as later amended or superseded);~~

~~(C) coverage for the employee or member, or any covered dependent thereof, was terminated for cause as permitted by the group policy or certificate of coverage approved by the commissioner; or~~

~~(D) the employee or member is or could be covered to the same extent by any other insured or lawful self-insured arrangement which provides expense incurred hospital, surgical or medical coverage and benefits for individuals in a group under which the person was not covered prior to such termination. In the event the group policy is terminated and not replaced the insurer may issue an individual policy or certificate in lieu of a conversion policy or the continuation of group coverage required herein if the individual policy or certificate provides substantially similar coverage for the same or less premium as the group subscription agreement. In any event, the employee or member shall have the option to be issued a conversion policy which meets the requirements set forth in this subsection (e) in lieu of the right to continue group coverage.~~

(3) Written application for the converted subscription agreement shall be made and the first premium paid to the insurer not later than 31 days after termination of the group coverage and shall become effective the day following the termination of insurance under the group subscription agreement. In addition, the converted subscription agreement shall be subject to the provisions contained in paragraphs (2), (3), (4), (5), (6), (7), (8), (9), (10), (13), (14), (15), (16), (17), (18), (19), and (20) of subsection (j) of K.S.A. 40-2209, and amendments thereto.

History: L. 1980, ch. 137, § 24; L. 1984, ch. 172, § 3; L. 1987, ch. 169, § 1; L. 1988, ch. 157, § 1; L. 1992, ch. 196, § 1; L. 1998, ch. 174, § 2; July 1.

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