

MINUTES OF THE HOUSE INSURANCE COMMITTEE

The meeting was called to order by Chairman Clark Shultz at 3:30 P.M. on March 17, 2005 in Room 527-S of the Capitol.

All members were present except:

Representative Cox  
Representative B. Sharp

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:

John Campbell, State of Kansas Insurance Department, Topeka, KS  
Larrie Ann Lower, Kansas Association of Health Plans, Topeka, KS  
Bill Sneed, Americas Health Insurance Plans, WRITTEN TESTIMONY, Topeka, KS  
Callie Denton, Kansas Trial Lawyers Association, Topeka, KS

Others attending:

See attached list.

Hearing on:

**Sub. SB 103: Insurance; effect of military deployment on certain policies**

Melissa Calderwood, Kansas Legislative Research Department, gave a brief overview for **Sub. SB 103**.

Proponents:

John Campbell, State of Kansas Insurance Department, (Attachment #1), appeared before the committee in support of **Sub. SB 103**.

Larrie Ann Lowry, Kansas Association of Health Plans, (Attachment #2), gave testimony in support of **Sub. SB 103**.

Bill Sneed, Americas Health Insurance Plans, (Attachment #3), presented written testimony in support of **Sub. SB 103**.

Hearing was closed on **Sub. SB 103**.

Hearing on:

**SB 207: Insurance department; fraud prevention program**

Melissa Calderwood, Kansas Legislative Research Department, gave a brief overview for **SB 207**.

Proponents:

John Campbell, State of Kansas Insurance Department, (Attachment #4), appeared before the committee in support of **SB 207**.

Callie Denton, Kansas Trial Lawyers Association, (Attachment #5), gave testimony in support of **SB 207**.

Bill Sneed, State Farm, (Attachment #6), presented written testimony in support of **SB 207**.

Hearing was closed on **SB 207**.

CONTINUATION SHEET

MINUTES OF THE House Insurance Committee at 3:30 P.M. on March 17, 2005 in Room 527-S of the Capitol.

Discussion and possible action:

**SB 100: Health insurance; HIPAA technical changes**

Representative Dillmore made a motion to pass SB 100 favorably and place on the Consent Calendar.

Representative Carter made a substitute motion to amend SB 100 by removing all of the language from SB 100 and replacing it with language from HB 2241 as shown on the balloon (Attachment #7). Seconded by Representative Brunk. Motion passed.

Representative Schwab moved to allow for technical corrections to SB 100. Seconded by Representative Carter. Motion passed.

Representative Schwab moved for a motion to pass SB 100 favorably as amended. Seconded by Representative McCreary. Motion passed.

**SB 102: Insurance; closing a block of business; notice to policyholders required**

Representative Schwab moved for a motion to pass SB 102 favorably. Seconded by Representative McLeland.

Representative Carter made a substitute motion to amend SB 102 by removing all of the language from SB 102 and replacing it with language from HB 2150 as shown on the balloon (Attachment #8). Seconded by Representative Schwab. Motion passed.

Representative Schwab moved for a motion to pass SB 102 favorably as amended. Seconded by Representative McLeland.

Representative Kirk moved for a substitute motion to table SB 102 until a date next year so that a hearing could be held on proposed amendments to SB 102. Seconded by Representative Grant. Motion failed.

A division was requested; substitute motion failed 4 to 8. Representatives Dillmore, Grant, Kirk and Phelps requested their no votes be recorded.

Representative Schwab closed on the original motion to pass SB 102 favorably as amended. Motion passed.

A division was requested; original motion was passed.

**SB 140: Insurance; limitation on insurance value on improvements on real property**

Representative Schwab moved for a motion to pass SB 140 favorably. Seconded by Representative McLeland.

Representative Faber moved to allow a conceptual substitute motion to amend SB 140 by adopting an amendment proposed by Larry Magill as part of his testimony. Seconded by Representative Brunk. Motion adopted.

Representative Carter made a substitute motion to amend SB 140 by removing all of the language from SB 140 and replacing it with language from HB 2016 as shown on the balloon and have the amended bill designated as a substitute bill (Attachment #9).

A division was requested; substitute motion passed 6-3.

Representative Carter recommended that Sub. SB 140 be passed favorably as amended. Seconded by Representative Schwab. Motion passed.

CONTINUATION SHEET

MINUTES OF THE House Insurance Committee at 3:30 P.M. on March 17, 2005 in Room 527-S of the Capitol.

Next meeting will be March 22, 2005.

Meeting adjourned at 5:15 P.M.





# Kansas Insurance Department

**Sandy Praeger** COMMISSIONER OF INSURANCE

COMMENTS ON  
SB 103—RELATING TO POLICIES ISSUED KANSANS DEPLOYED FOR  
MILITARY SERVICE  
HOUSE INSURANCE COMMITTEE  
March 17, 2005

Mr. Chairman and Members of the Committee:

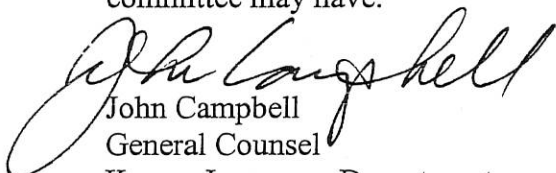
Thank you for the opportunity to visit with you on behalf of the Kansas Insurance Department in support of Senate Bill 103. I know you join us in commending the men and women who serve our country in the armed services by taking the ultimate risk to preserve the freedom and liberty of the United States. In Kansas, these brave men and women who answer the call of duty face the possibility of insurance cancellation, non-renewal and premium increases.

Today, the Kansas Insurance Department asks you to consider changing Kansas law so that the men and women of the military may have the peace of mind knowing that after their service to their country, they – and their families – will continue to have the insurance coverage they deserve.

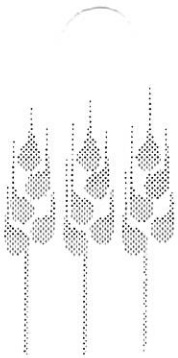
Specifically, Senate Bill 103 would prohibit a personal line of insurance covering a Kansas Resident deployed beyond the borders of the United States to be canceled, non-renewed, or subject to adverse action for the term of their deployment.

Commissioner Praeger believes this is the least we can do for our friends and neighbors risking their lives to defend our freedom, and she urges this committee to recommend Senate Bill 103 favorable for passage as a sign of support for our Kansas Military families.

Thank for the opportunity to speak today I would be happy to stand for any questions the committee may have.

  
John Campbell  
General Counsel  
Kansas Insurance Department

House Insurance  
Date: 3-17-05  
Attachment # 1



# Kansas Association of Health Plans

1206 SW 10th Street  
Topeka, KS 66604

785-233-2747  
Fax 785-233-3518  
kahp@kansasstatehouse.com

**Testimony before the  
House Insurance Committee  
Sub. for SB 103  
March 17, 2005**

Mister Chair and members of the Committee. Thank you for allowing me to appear before you today. I am Larrie Ann Lower, Executive Director of the Kansas Association of Health Plans (KAHP).

The KAHP is a nonprofit association dedicated to providing information on managed care health plans. Members of the KAHP are Kansas licensed health maintenance organizations, preferred provider organizations and other entities that are connected to managed care. KAHP members serve most all of the Kansans enrolled in a Kansas licensed HMO. KAHP members also serve the Kansans enrolled in HealthWave and medicaid managed care and also many of the Kansans enrolled in PPO's and self insured plans. We appreciate the opportunity to provide comment on Sub for SB 103.

The Kansas Association of Health Plans is supportive of the Insurance Commissioners' desire to protect the interests of our soldiers who are called to active duty. With regard to health insurance, persons with group coverage have guaranteed coverage when they move from one coverage to another. Because individual policies are underwritten based on health status, there is no guarantee that a person who drops an individual policy will be able to get that individual coverage back from the same carrier or any other.

Two of KAHP's largest member companies (BCBS-KS and BCBS-KC), are willing to offer guaranteed policy renewals to soldiers who are called to service, drop individual policies for themselves and their families while covered by TriCare and then return to the individual market after their service. We suggest the Legislature may want to make this a standard practice for all carriers in the individual market by enacting Sub for SB 103.

In essence, any person returning from active duty with an honorable discharge, will be issued individual coverage with the same carrier they left with no additional underwriting. They would be placed in whatever rating bracket their age would require but no additional health conditions would be considered in setting the rate. They would have the same terms and conditions they would have had if they had not dropped coverage because of their active duty assignment.

We have worked with the KID on Sub for SB 103 and support the bill in its current form. I'll be happy to answer any questions you may have.

House Insurance  
Date: 3-17-05  
Attachment # 2

**Memorandum**

**TO:** THE HONORABLE CLARK SHULTZ, CHAIRMAN  
SENATE FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE

**FROM:** WILLIAM W. SNEED, LEGISLATIVE COUNSEL  
AMERICA'S HEALTH INSURANCE PLANS

**RE:** SENATE BILL 103

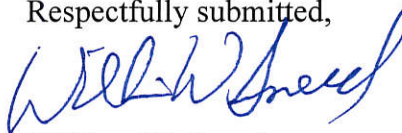
**DATE:** MARCH 17, 2005

Mr. Chairman, Members of the committee: My name is William Sneed and I represent America's Health Insurance Plans (AHIP). AHIP is the national trade association representing nearly 1300 member companies providing health insurance coverage to more than two hundred million Americans. We appreciate the opportunity to testify in favor of Senate Bill 103 as amended by Senate Committee.

My client would request that the House Committee consider adding another exception to this proposed, by adding the attached balloon. Short term, nonrenewable accident policy. These are short term, single premium policies usually purchased to fill a gap of coverage. These policies like the others found in Section 3, are not applicable to this new proposal and we would urge the committee to add this language to Section 3.

Based upon the foregoing, we respectfully request that the committee to add the attached language and act favorably on Senate Bill 103.

Respectfully submitted,



William W. Sneed

WWS:pmk

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WWSNE 1177713

1 program, subject to payment of the current premium charged to other  
 2 persons of the same age and gender that are covered under the same  
 3 individual coverage. Except in the case of birth or adoptions that occur  
 4 during the period of activation, reinstatement must be into the same  
 5 membership type, or a membership type covering fewer persons, as such  
 6 resident held prior to lapsing the individual coverage, and at the same or  
 7 higher deductible level. The reinstatement rights shall not be available to  
 8 an insured or dependents if the activated person is discharged from the  
 9 military under other than honorable conditions.

10 (b) The health plan with which the reinstatement is being requested  
 11 must receive a request for such reinstatement no later than 30 days fol-  
 12 lowing the later of deactivation or loss of coverage under the federal  
 13 government sponsored health insurance program. The health plan may  
 14 request proof of loss and the timing of the loss of such government funded  
 15 coverage in order to determine eligibility for reinstatement into the in-  
 16 dividual coverage. The effective date of the individual coverage will be  
 17 first of the month following receipt of the notice requesting  
 18 reinstatement.

19 (c) All health plans must provide written notice to the policyholder  
 20 of individual coverage of the rights described in subsection (a) of section  
 21 2 and amendments thereto. In lieu of the inclusion of such notice in the  
 22 individual coverage policy, an insurance company will satisfy the notifi-  
 23 cation requirement by providing a single written notice either:

24 (1) To a policyholder enrolling into the individual coverage initially  
 25 after the effective date of this act, in conjunction with the enrollment  
 26 process; or

27 (2) by mailing written notice to policyholders whose coverage was  
 28 effective prior to the effective date of this act no later than 90 days fol-  
 29 lowing the effective date of this act.

30 Sec. 3. The provisions of section 2, and amendments thereto, shall  
 31 not apply to any policy or certificate providing coverage for any specified  
 32 disease, specified accident or accident-only coverage, credit, dental, dis-  
 33 ability income, hospital indemnity, long-term care, as defined by K.S.A.  
 34 40-2227, and any amendments thereto, medicare supplement, as defined  
 35 by the commissioner of insurance by rules and regulations, vision care or  
 36 other limited-benefit supplemental insurance, nor any coverage issued as  
 37 a supplement to any liability insurance, workers' compensation or similar  
 38 insurance, or any insurance under which benefits are payable with or  
 39 without regard to fault, whether written on a group, blanket or individual  
 basis.

40 Sec. 4. Nothing herein shall require a health plan to reinstate such  
 41 resident if the health plan requires residency in an enrollment area and  
 42 those residency requirements are not met after deactivation or loss of  
 43

, short-term nonrenewable health policy





# Kansas Insurance Department

**Sandy Praeger** COMMISSIONER OF INSURANCE

COMMENTS ON  
SB 207—RELATING THE PREVENTION OF FRAUDULENT PRACTICES  
HOUSE COMMITTEE ON INSURANCE  
March 17, 2005

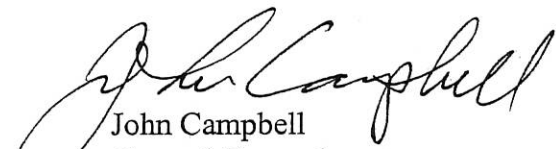
Mr. Chairman and Members of the Committee:

Thank you for the opportunity to visit with you on behalf of the Kansas Insurance Department. Senate Bill 207 would strengthen the current Kansas Anti-Fraud statutes.

With this legislation the Kansas definition of "fraudulent insurance acts" will be consistent with the NAIC model language being adopted by various other states. In addition, Senate Bill 207 would mandate the reporting of insurance fraud to the insurance department by any individual having knowledge of such actions, as well as require each insurer to have an anti-fraud plan.

The Kansas Insurance Department is asking for this legislation to help us deal with the ever growing problem of insurance fraud. We believe this bill is good for the state of Kansas and good for the industry we regulate.

With that Mr. Chairman, I would be happy to stand for any questions the committee may have.

  
John Campbell  
General Counsel  
Kansas Insurance Department

House Insurance  
Date: 3-17-05  
Attachment # 4

## ***KID PROPOSED BALLOON***

*As Amended by Senate Committee*

*Session of 2005*

**SENATE BILL No. 207**

By Committee on Financial Institutions and Insurance

2-7

AN ACT concerning insurance; relating to fraudulent practices and the prevention thereof; amending K.S.A. 40-2,118, 40-1612, 40-1613 and 40-19a10 and K.S.A. 2004 Supp. 40-19c09 and repealing the existing sections; also repealing K.S.A. 40-247 and 40-417.

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

New Section 1. (a) Any person engaged in the business of insurance having knowledge or a good faith belief that a fraudulent insurance act is being, ~~will be~~ or has been committed shall *not willfully withhold information from or knowingly give false or misleading information regarding a fraudulent insurance act to the commissioner* ~~provide the information required by the commissioner in a manner prescribed by the commissioner.~~

(b) Any other person having knowledge or a good faith belief that a fraudulent insurance act is being, ~~will be~~ or has been committed may provide the information required by the commissioner in a manner prescribed by the commissioner.

*(c) Any insurance company, or person acting in its behalf, which in good faith and without malice releases information, whether oral or written, pursuant to this act shall be immune from any liability arising out of a civil action by reason of providing such information. Nothing in this section shall immunize any insurance company or person from any liability arising out of a civil action by reason of committing a fraudulent insurance act.*

New Sec. 2. (a) Each insurer shall have antifraud initiatives reasonably calculated to detect, ~~prosecute~~ and prevent fraudulent insurance acts. Antifraud initiatives may include:

(1) Fraud investigators, who may be insurer employees or independent contractors; or

(2) an antifraud plan submitted to the commissioner.

(b) Antifraud plans submitted to the commissioner shall be privileged and confidential and shall not be a public record and shall not be subject

to discovery or subpoena in a civil action.

(c) The provisions of subsection (b) of this section shall expire on July 1, 2010, unless the legislature reviews and reenacts this provision pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2010.

Sec. 3. ~~K.S.A. 40-2,118 is hereby amended to read as follows: 40-2,118. (a) For purposes of this act a "fraudulent insurance act" means an act committed by any person who, knowingly and with intent to defraud, presents, causes to be presented or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer, broker or any agent thereof, any written statement as part of, or in support of, an application for the issuance of, or the rating of an insurance policy for personal or commercial insurance, or a claim for payment or other benefit~~

~~pursuant to an insurance policy for commercial or personal insurance which such person knows to contain materially false information concerning any fact material thereto; or conceals, for the purpose of misleading, information concerning any fact material thereto.~~ For purposes of this act a "fraudulent insurance act" means an act or omission committed by a person who, knowingly and with intent to defraud commits one or more of the following:

- (1) Presenting, causing to be presented or preparing false information with knowledge or belief that such false information will be presented to or by an insurer, a reinsurer, ~~broker or such broker's agent~~, as part of, in support of or concerning a fact material to one or more of the following:
    - (A) An application for the issuance or renewal of an insurance policy or reinsurance contract;
    - (B) the rating of an insurance policy or reinsurance contract;
    - (C) any claim for payment or benefit pursuant to an insurance policy or reinsurance contract;
    - (D) any premium paid on an insurance policy or reinsurance contract;
    - (E) any payments made in accordance with the terms of an insurance policy or reinsurance contract;
    - (F) any document filed with the commissioner;
    - (G) the financial condition of an insurer or reinsurer;
    - (H) the formation, acquisition, merger, reconsolidation, dissolution or withdrawal from one or more lines of insurance or reinsurance in all or part of this state by an insurer or reinsurer;
    - (I) the issuance of written evidence of insurance; or
    - (J) the reinstatement of an insurance policy.
  - (2) Solicitation or acceptance of new or renewal insurance risks on behalf of an insurer, reinsurer or other person engaged in the business of insurance by a person who knows, ~~or by reckless disregard of the facts should have known~~, that the insurer or other person responsible for the risk is insolvent at the time of the transaction.
  - (3) Removal, concealment, alteration or destruction of the assets or records of an insurer, reinsurer or other person engaged in the business of insurance.
  - (4) Willful embezzlement, ~~abstracting, purloining~~ or conversion of moneys, funds, premiums, credits or other property of an insurer, reinsurer or person engaged in the business of insurance.
  - (5) Transaction of the business of insurance in violation of laws requiring a license, certificate of authority or other legal authority for the transaction of the business of insurance.
- (b) Except as otherwise specifically provided in K.S.A. 21-3718 and amendments thereto and K.S.A. 44-5,125 and amendments thereto, a

fraudulent insurance act shall constitute a severity level 6 5, nonperson felony if the amount involved is \$25,000K \$100,000 or more; a severity level 7, nonperson felony if the amount is at least \$5,000 \$25,000 but less than \$25,000 \$100,000; and a severity level 8 9, nonperson felony if the amount is at least \$1,000 but less than \$5,000 \$25,000; a severity level 9, nonperson felony if the amount is at least \$500 but less than \$1,000; and a class C A nonperson misdemeanor if the amount is less than \$500 \$1,000.

(c) In addition to any other penalty, a person who violates this statute shall be ordered to make restitution to the insurer or any other person or entity for any financial loss sustained as a result of such violation. An insurer shall not be required to provide coverage or pay any claim involving a fraudulent insurance act.

(d) This act shall apply to all insurance applications, ratings, claims and other benefits made pursuant to any insurance policy.

Sec. 4. K.S.A. 40-1612 is hereby amended to read as follows: 40-1612. In addition to the provisions of this article, the provisions set forth in the following sections of the Kansas Statutes Annotated, and amendments thereto, which govern other types of insurance companies shall apply to reciprocals to the extent that such provisions do not conflict with the provisions of this article: Sections 40-208, 40-209, 40-214, 40-215, 40-216, 40-218, 40-220, 40-221a, 40-222, 40-223, 40-224, 40-225, 40-229, 40-229a, 40-231, 40-233, 40-234, 40-234a, 40-235, 40-236, 40-237, 40-238, 40-239, 40-240, 40-241, 40-242, 40-244, 40-245, 40-246 except as to contracts written through traveling salaried representatives to whom no commissions are paid, 40-246a, 40-247, 40-248, 40-249, 40-250, 40-251, 40-253, 40-254, 40-256, 40-281, 40-2,118, 40-2,125, 40-2,126, 40-2,127, 40-2,128, 40-2,156, 40-2,156a, 40-2,157, 40-2,159, 40-952, 40-2001, 40-2002, 40-2003, 40-2004, 40-2005, 40-2006 and 40-2404 and article 2a of the Kansas Statutes Annotated, and amendments thereto, and any other provision of law pertaining to insurance which specifically refers to reciprocals.

Sec. 5. K.S.A. 40-1613 is hereby amended to read as follows: 40-1613. Under authority given by the commissioner, a reciprocal may engage in the business of writing fidelity and surety bonds but only upon the condition that such reciprocal shall have and maintain an amount of surplus equal to the total of capital and surplus required of domestic stock insurance companies transacting the same kind of business and any such reciprocal shall be deemed a stock insurance company for the purposes of K.S.A. 40-214, 40-239 to 40-247 40-246f, inclusive, 40-252, 40-1107 and 40-1108 of the Kansas Statutes Annotated and amendments thereto. No fidelity or surety bond shall be issued by any such reciprocal until the form of such bond shall have been submitted to and accepted by the

commissioner. Any fidelity or surety bonds executed pursuant to this act shall be received and accepted as company, corporation or corporate bonds.

Sec. 6. K.S.A. 40-19a10 is hereby amended to read as follows: 40-19a10. (a) Such corporations shall be subject to the provisions of K.S.A. 40-214, 40-215, 40-216, 40-218, 40-219, 40-222, 40-223, 40-224, 40-225, 40-226, 40-229, 40-230, 40-231, 40-235, 40-236, 40-237, 40-247, 40-248, 40-249, 40-250, 40-251, 40-252, 40-254, 40-2,102, 40-2,118, 40-2a01 et seq., 40-2215 to 40-2220, inclusive, 40-2253, 40-2401 to 40-2421, inclusive, 40-3301 to 40-3313, inclusive, K.S.A. 40-2,154 and 40-2,161, and amendments thereto, except as the context otherwise requires, and shall not be subject to any other provisions of the insurance code except as expressly provided in this act.

(b) No policy, agreement, contract or certificate issued by a corporation to which this section applies shall contain a provision which excludes, limits or otherwise restricts coverage because medicaid benefits as permitted by title XIX of the social security act of 1965 are or may be available for the same accident or illness.

(c) Violation of subsection (b) shall be subject to the penalties prescribed by K.S.A. 40-2407 and 40-2411, and amendments thereto.

Sec. 7. K.S.A. 2004 Supp. 40-19c09 is hereby amended to read as follows: 40-19c09. (a) Corporations organized under the nonprofit medical and hospital service corporation act shall be subject to the provisions of the Kansas general corporation code, articles 60 to 74, inclusive, of chapter 17 of the Kansas Statutes Annotated, applicable to nonprofit corporations, to the provisions of K.S.A. 40-214, 40-215, 40-216, 40-218, 40-219, 40-222, 40-223, 40-224, 40-225, 40-226, 40-229, 40-230, 40-231, 40-235, 40-236, 40-237, 40-247, 40-248, 40-249, 40-250, 40-251, 40-252, 40-254, 40-2,100, 40-2,101, 40-2,102, 40-2,103, 40-2,104, 40-2,105, 40-2,116, 40-2,117, 40-2,118, 40-2,153, 40-2,154, 40-2,160, 40-2,161, 40-2,163 through 40-2,170, inclusive, 40-2a01 et seq., 40-2111 to 40-2116, inclusive, 40-2215 to 40-2220, inclusive, 40-2221a, 40-2221b, 40-2229, 40-2230, 40-2250, 40-2251, 40-2253, 40-2254, 40-2401 to 40-2421, inclusive, and 40-3301 to 40-3313, inclusive, K.S.A. 2004 Supp. 40-2,105a and 40-2,105b, and amendments thereto, except as the context otherwise requires, and shall not be subject to any other provisions of the insurance code except as expressly provided in this act.

(b) No policy, agreement, contract or certificate issued by a corporation to which this section applies shall contain a provision which excludes, limits or otherwise restricts coverage because medicaid benefits as permitted by title XIX of the social security act of 1965 are or may be available for the same accident or illness.

(c) Violation of subsection (b) shall be subject to the penalties pre

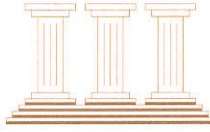
SB 207—Am.

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scribed by K.S.A. 40-2407 and 40-2411, and amendments thereto.

Sec. 8. K.S.A. 40-247, 40-2,118, 40-417, 40-1612, 40-1613 and 40-19a10 and K.S.A. 2004 Supp. 40-19c09 are hereby repealed.

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



KANSAS TRIAL LAWYERS ASSOCIATION

*Lawyers Representing Consumers*

To: Chairman Clark Shultz and the House Committee on Insurance  
From: Callie Denton of the Kansas Trial Lawyers Association  
Date: March 17, 2005  
Re: SB 207

Mr. Chairman and members of the Committee, I am here today on behalf of the Kansas Trial Lawyers Association. KTLA is a statewide, nonprofit organization of lawyers who represent consumers and advocate for the safety of families and the preservation of the civil justice system. I appreciate the opportunity to present testimony on SB 207. We support the policy behind SB 207 but respectfully request an amendment.

SB 207 provides for a new definition of "fraudulent insurance act" and increased criminal penalties for commission of such acts. The bill also requires insurers to have in place antifraud initiatives that may include an antifraud plan that would be required to be submitted to the Insurance Commissioner.

KTLA is supportive of the policy to enhance fraud detection and prevention, and to increase the Insurance Commissioner's ability to detect and prosecute any and all who commit insurance fraud. Our concern with the bill is the privilege that is created for antifraud plans. Under SB 207, such plans are shielded from the Open Records Act disclosure requirements and are not subject to either discovery or subpoena from a court of law in a civil action.

KTLA members suggest that the more information is needed regarding the public policy purpose for shielding antifraud plans from either the public or the courts. Under K.S. A. 45-229, exceptions to disclosure of public records under the Open Records Act are permitted only where such public record is of a sensitive or personal nature concerning individuals; the public record is necessary to the effective and efficient administration of a governmental program; or the public record affects confidential information. Further, 45-229 specifies that citizens have a right to access public records and that consideration of the criteria outlined above must be significant enough to override the strong public policy of open government. KTLA urges the committee to review the requirements for exceptions to the Open Records Act to determine if SB 207 meets the required statutory criteria.

House Insurance  
Date: 3-17-05  
Attachment # 5

*Terry Humphrey, Executive Director*



In addition, we note that the privilege goes beyond simply creating an exception to the Open Records Act in that it also protects antifraud plans from the reach of the courts. To the extent that antifraud plans are sensitive, we believe that a judge should have the opportunity to review the plans in camera to determine if they are relevant and therefore should be admitted in a particular case. SB 207 as currently drafted would not permit such a review. Absent a clear understanding of the policy behind these provisions, and demonstrated compliance with the requirements of K.S.A. 45-229, we urge deletion of the language in lines 30 through 35 of the bill.

Thank you for the opportunity to comment on SB 207. If it advances, we respectfully request that our amendment be adopted.

**Memorandum**

**TO:** THE HONORABLE CLARK SCHULTZ, CHAIRMAN  
HOUSE INSURANCE COMMITTEE

**FROM:** WILLIAM W. SNEED, LEGISLATIVE COUNSEL  
THE STATE FARM INSURANCE COMPANIES, INC

**RE:** SENATE BILL 207

**DATE:** MARCH 17, 2005

Mr. Chairman, Members of the committee: My name is William Sneed and I am legislative counsel for the State Farm Insurance Companies. State Farm is the largest insurer of homes and automobiles in Kansas. State Farm insured one out of every three cars and one out of every four homes in the United States. We appreciate the opportunity to present our thoughts regarding Senate Bill 207. Please be advised that State Farm supports Senate Bill 207.

After reviewing the bill, we believe that there are several points that should be mentioned as to why this bill strengthens the Department's work against fraud.

First, it requires insurers, agents and their employees to report fraud. This is a major change if passed, as my client would have an affirmative duty to report.

Secondly, the bill requires insurers to have fraud investigators or submit an anti-fraud plan to the Commissioner. My client has a dedicated fraud unit and fraud investigators.

Third, the prior law gives a general definition of fraud. This bill is more specific. We believe this strengthens the overall law.

Finally, the bill changes the monetary threshold in relation to various felony classes, which although up to the Legislature from a public policy standpoint, appear to be appropriate.

However, after additional review of the bill, we have raised several concerns to KID and they incorporated some changes. We would like to present the attached balloons and suggest these additional changes as warranted. The balloon in red is what we would suggest the committee to do at a minimum. The balloon with red and blue changes would eliminate all overlap between this bill and existing statutes.

The purpose of the measure is to encourage insurers to report insurance fraud to the KID so they can investigate and if appropriate refer to the authorities for prosecution. There are sufficient measures to address the questionable activities of insurers through market conduct exams, financial exams, licensing and continuing education requirements for agents, licensing

requirement and financial reporting requirements for insurers, and the affirmative duty under Kansas law to report the fraudulent activities of insurers.

Thus, after careful review of the bill, we respectfully commend the Department for its efforts and request the committee to review our requested amendments and act favorably on Senate Bill 207.

I am available for questions at your convenience.

Respectfully submitted,



William W. Sneed

WWS:pmk

019646 / 032884  
WWSNE 1177701

pursuant to an insurance policy for commercial or personal insurance which such person knows to contain materially false information concerning any fact material thereto; or conceals, for the purpose of misleading, information concerning any fact material thereto. For purposes of this act a "fraudulent insurance act" means an act or omission committed by a person who, knowingly and with intent to defraud commits one or more of the following:

(1) Presenting, causing to be presented or preparing false information with knowledge or belief that such false information will be presented to ~~or by~~ an insurer, ~~a reinsurer, broker or such broker's agent~~, as part of, in support of or concerning a fact material to one or more of the following:

(A) An application for the issuance or renewal of an insurance policy ~~or reinsurance contract;~~

(B) the rating of an insurance policy ~~or reinsurance contract;~~

(C) any claim for payment or benefit pursuant to an insurance policy ~~or reinsurance contract;~~

(D) any premium paid on an insurance ~~policy or reinsurance contract;~~

(E) any payments made in accordance with the terms of an insurance policy ~~or reinsurance contract;~~ or

~~(F) any document filed with the commissioner;~~

~~(G) the financial condition of an insurer or reinsurer;~~

~~(H) the formation, acquisition, merger, reconsolidation, dissolution or withdrawal from one or more lines of insurance or reinsurance in all or part of this state by an insurer or reinsurer;~~

~~(I) the issuance of written evidence of insurance; or~~

~~(J) the reinstatement of an insurance policy.~~

(2) Solicitation or acceptance of new or renewal insurance risks on behalf of an insurer, reinsurer or other person engaged in the business of insurance by a person who knows, ~~or by reckless disregard of the facts should have known,~~ that the insurer or other person responsible for the risk is insolvent at the time of the transaction.

(3) Removal, concealment, alteration or destruction of the assets or records of an insurer, reinsurer or other person engaged in the business of insurance.

(4) Willful embezzlement, ~~abstracting, purloining~~ or conversion of moneys, funds, premiums, credits or other property of an insurer, reinsurer or person engaged in the business of insurance.

(5) Transaction of the business of insurance in violation of laws requiring a license, certificate of authority or other legal authority for the transaction of the business of insurance.

(b) Except as otherwise specifically provided in K.S.A. 21-3718 and amendments thereto and K.S.A. 44-5,125 and amendments thereto, a

pursuant to an insurance policy for commercial or personal insurance which such person knows to contain materially false information concerning any fact material thereto; or conceals, for the purpose of misleading, information concerning any fact material thereto. ~~For purposes of this act a "fraudulent insurance act" means an act or omission committed by a person who, knowingly and with intent to defraud commits one or more of the following:~~

- ~~(1) Presenting, causing to be presented or preparing false information with knowledge or belief that such false information will be presented to or by an insurer, a reinsurer, broker or such broker's agent, as part of, in support of or concerning a fact material to one or more of the following:
    - ~~(A) An application for the issuance or renewal of an insurance policy or reinsurance contract;~~
    - ~~(B) the rating of an insurance policy or reinsurance contract;~~
    - ~~(C) any claim for payment or benefit pursuant to an insurance policy or reinsurance contract;~~
    - ~~(D) any premium paid on an insurance policy or reinsurance contract;~~
    - ~~(E) any payments made in accordance with the terms of an insurance policy or reinsurance contract; or~~
    - ~~(F) any document filed with the commissioner;~~
    - ~~(G) the financial condition of an insurer or reinsurer;~~
    - ~~(H) the formation, acquisition, merger, reconsolidation, dissolution or withdrawal from one or more lines of insurance or reinsurance in all or part of this state by an insurer or reinsurer;~~
    - ~~(I) the issuance of written evidence of insurance; or~~
    - ~~(J) the reinstatement of an insurance policy.~~~~
  - ~~(2) Solicitation or acceptance of new or renewal insurance risks on behalf of an insurer, reinsurer or other person engaged in the business of insurance by a person who knows, or by reckless disregard of the facts should have known, that the insurer or other person responsible for the risk is insolvent at the time of the transaction.~~
  - ~~(3) Removal, concealment, alteration or destruction of the assets or records of an insurer, reinsurer or other person engaged in the business of insurance.~~
  - ~~(4) Willful embezzlement, abstracting, purloining or conversion of moneys, funds, premiums, credits or other property of an insurer, reinsurer or person engaged in the business of insurance.~~
  - ~~(5) Transaction of the business of insurance in violation of laws requiring a license, certificate of authority or other legal authority for the transaction of the business of insurance.~~
- (b) Except as otherwise specifically provided in K.S.A. 21-3718 and amendments thereto and K.S.A. 44-5,125 and amendments thereto, a

SENATE BILL No. 100

By Committee on Financial Institutions and Insurance

1-25

9 [AN ACT concerning insurance; pertaining to HIPAA compliance;
10 amending K.S.A. 2004 Supp. 40-2258 and repealing the existing
11 section.]

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

14 [Section 1. K.S.A. 2004 Supp. 40-2258 is hereby amended to read as
15 follows: 40-2258. (a) An accident and sickness insurer which offers cov-
16 erage through a group policy providing hospital, medical or surgical ex-
17 pense benefits pursuant to K.S.A. 40-2209 and amendments thereto
18 which includes mental health benefits shall be subject to the following
19 requirements:

20 (1) If the policy does not include an aggregate lifetime limit on sub-
21 stantially all hospital, medical and surgical expense benefits, the policy
22 may not impose any aggregate lifetime limit on mental health benefits;

23 (2) if the policy includes an aggregate lifetime limit on substantially
24 all hospital, medical and surgical expense benefits the plan shall either:
25 (A) Apply the applicable lifetime limit both to the hospital, medical and
26 surgical expense benefits to which it otherwise would apply and to mental
27 health benefits and not distinguished in the application of such limit be-
28 tween such hospital, medical and surgical expense benefits and mental
29 health benefits; or (B) not include any aggregate lifetime limit on mental
30 health benefits that is less than the applicable lifetime limit on hospital,
31 medical and surgical expense benefits;

32 (3) if the policy does not include an annual limit on substantially all
33 hospital, medical and surgical expense benefits, the plan or coverage may
34 not impose any annual limit on mental health benefits; and

35 (4) if the policy includes an annual limit on substantially all hospital,
36 medical and surgical expense benefits the policy shall either: (A) Apply
37 the applicable annual limit both to hospital, medical and surgical expense
38 benefits to which it otherwise would apply and to mental health benefits
39 and not distinguish in the application of such limit between such hospital,
40 medical and surgical expense benefits and mental health benefits; or (B)
41 not include any annual limit on mental health benefits that is less than
42 the applicable annual limit.

43 (b) If the group policy providing hospital, medical or surgical expense ]

AN ACT concerning adult care homes; relating to risk assessment plans
and inspection reports; amending K.S.A. 39-935 and repealing the ex-
isting section.

1 health services, as defined under the terms of the policy, but does not  
 2 include benefits with respect to treatment of substance abuse or chemical  
 3 dependency.  
 4 (h) This section shall be effective for group policies providing hos-  
 5 pital, medical or surgical expense benefits which are entered into or re-  
 6 newed after January 1, 1998. This section shall not apply to benefits for  
 7 services furnished on or after December 31, 2004 2005.  
 8 (i) The commissioner is hereby authorized to adopt such rules and  
 9 regulations as may be necessary to carry out the provisions of this section.  
 10 Sec. 2. K.S.A. 2004 Supp. 40-2258 is hereby repealed.  
 11 ~~Sec. 3. This act shall take effect and be in force from and after its~~  
 12 ~~publication in the statute book.~~

~~As Amended by House Committee~~  
 Session of 2005  
**HOUSE BILL No. 2241**  
 By Committee on Insurance  
 2-1

7-2

10 AN ACT concerning adult care homes; relating to risk assessment plans  
 11 and inspection reports; amending K.S.A. 39-935 and repealing the ex-  
 12 isting section.  
 13  
 14 ~~Be it enacted by the Legislature of the State of Kansas:~~  
 15 Section 1. K.S.A. 39-935 is hereby amended to read as follows: 39-  
 16 935. (a) Inspections shall be made and reported in writing by the au-  
 17 thorized agents and representatives of the licensing agency and state fire  
 18 marshal, and of the county, city-county and multicounty health depart-  
 19 ments as often and in the manner and form prescribed by the rules and  
 20 regulations promulgated under the provisions of this act. Access shall be  
 21 given to the premises of any adult care home at any time upon presenting  
 22 adequate identification to carry out the requirements of this section and  
 23 the provisions and purposes of this act, and failure to provide such access  
 24 shall constitute grounds for denial or revocation of license. A copy of any  
 25 inspection reports required by this section shall be furnished to the ap-  
 26 plicant, except that a copy of the preliminary inspection report signed  
 27 jointly by a representative of the adult care home and the inspector shall  
 28 be left with the applicant when an inspection under this section is com-  
 29 pleted. This preliminary inspection report shall constitute the final record  
 30 of deficiencies assessed against the adult care home during the inspection,  
 31 all deficiencies shall be specifically listed and no additional deficiencies  
 32 based upon the data developed at that time shall be assessed at a later  
 33 time. An exit interview shall be conducted in conjunction with the joint  
 34 signing of the preliminary inspection report.  
 35 (b) The authorized agents and representatives of the licensing agency  
 36 shall conduct at least one unannounced inspection of each adult care  
 37 home within 15 months of any previous inspection for the purpose of  
 38 determining whether the adult care home is complying with applicable  
 39 statutes and rules and regulations relating to the health and safety of the  
 40 residents of the adult care home. The statewide average interval between  
 41 inspections shall not exceed 12 months.  
 42 (c) Every adult care home shall post in a conspicuous place a notice  
 43 indicating that the most recent inspection report and related documents

(d) Each adult care home shall establish and maintain a risk management program in accordance with the provisions of K.S.A. 65-4922(a) and amendments thereto. Any reports and records reviewed, obtained or prepared by the department on aging in connection with any reportable incidents referred for investigation and analysis under such risk management program, including any reports and records reflecting the results of an inspection or survey under this chapter or in accordance with the regulations, guidelines, and procedures issued by the United States secretary of health and human services under Titles XVIII and XIX of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301, as amended, shall not be admissible in any civil action under the laws of the state of Kansas. However, nothing in this section shall prohibit the use and admissibility in evidence of one or more excerpts from any survey or inspection report that is relevant and substantially relates to the allegations asserted by the named plaintiff, if the court determines on the record, following a hearing outside the presence of the jury, that every such excerpt is relevant, substantially related to the plaintiff's allegations and otherwise admissible under the rules of evidence set forth in article 4, chapter 60 of the Kansas Statutes Annotated and amendments thereto.

1 may be examined in the office of the administrator of the adult care home.  
2 Upon request, every adult care home shall provide to any person a copy  
3 of the most recent inspection report and related documents, provided the  
4 person requesting such report agrees to pay a reasonable charge to cover  
5 copying costs.

6 (d) ~~Each adult care home shall establish and maintain a risk man-~~  
7 ~~agement program in accordance with the provisions of subsection (a) of~~  
8 ~~K.S.A. 65-4922 and amendments thereto. No later than 60 days prior to~~  
9 ~~the time for renewal of its license in 2006, each adult care home shall~~  
10 ~~submit its plan for establishing and implementing such risk management~~  
11 ~~program to the department on aging for action in accordance with the~~  
12 ~~provisions of subsection (d) of K.S.A. 65-4922 and amendments thereto.~~  
13 ~~Any reports and records reviewed, obtained or prepared by the depart-~~  
14 ~~ment on aging in connection with any reportable incidents referred for~~  
15 ~~investigation and analysis under such risk management program, includ-~~  
16 ~~ing any reports and records reflecting the results of an inspection or sur-~~  
17 ~~vey under this chapter or in accordance with regulations, guidelines and~~  
18 ~~procedures issued by the United States secretary of health and human~~  
19 ~~services under titles XVIII and XIX of the "social security act," 49 Stat.~~  
20 ~~620 (1935), 42 U.S.C. 301, as amended, shall not be subject to discovery~~  
21 ~~nor shall they be admissible in any civil action under the laws of the state~~  
22 ~~of Kansas.]~~

23 Sec. 2. K.S.A. 39-935 is hereby repealed.

24 Sec. 3. This act shall take effect and be in force from and after its  
25 publication in the Kansas register.



# SENATE BILL No. 102

By Committee on Financial Institutions and Insurance

1-25

civil procedure; relating to collateral source benefits; amending K.S.A. 60-3802

9 AN ACT concerning health insurance; relating to notice when a block of  
10 business is closed; amending K.S.A. 40-2255 and repealing the existing  
11 section.  
12

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

14 Section 1. [ K.S.A. 40-2255 is hereby amended to read as follows: 40-  
15 2255. (a) This act shall apply to individual contracts covering hospital,  
16 medical or surgical expenses, providing long-term care coverage, and  
17 medicare supplement policies, which are issued, amended, delivered or  
18 renewed on or after the effective date of this act but shall not apply to  
19 any block of long-term care coverage or medicare supplement business  
20 already in force in Kansas on such effective date.

21 (b) As used in this act:

22 (1) "Block of business" means a particular individual policy form or  
23 contract providing hospital, medical or surgical expense, long-term care  
24 or medicare supplement coverage issued by a carrier to one or more  
25 individuals which includes distinct benefits, services and terms.

26 (2) "Closed block of business" means a block of business which a  
27 carrier ceases to actively offer or sell to new applicants.

28 (3) "Carrier" means any insurance company, nonprofit medical and  
29 hospital service corporation, municipal group-funded pool, fraternal ben-  
30 efit society or health maintenance organization, as these terms are defined  
31 by the Kansas Statutes Annotated, that offers any individual hospital, sur-  
32 gical or medical expense, long-term care or medicare supplement policy  
33 and which is authorized to do business in this state. "Carrier" does not  
34 include those entities identified above with respect to the sale or issuance  
35 of policies or certificates covering only accident, credit, dental, disability  
36 income, hospital indemnity, specified disease, vision care, coverage issued  
37 as a supplement to liability insurance, insurance arising out of a workers  
38 compensation or similar law, automobile medical payment insurance, or  
39 insurance under which benefits are payable with or without regard to  
40 fault and which is statutorily required to be contained in any liability  
41 insurance policy or equivalent self-insurance.

42 (4) "Commissioner" means the commissioner of insurance.

43 (c) No block of business shall be closed by a carrier unless: ]

1 [of its decision to close a block of business or, in the absence of an actual  
 2 decision to close a block of business, within 30 days of its determination  
 3 that a block of business is within one of the presumptions set forth in  
 4 subsection (d). When the carrier decides to close a block of business, the  
 5 written notice shall fully disclose all information required for compliance  
 6 with subsection (c). When the carrier determines that a block of business  
 7 is within a presumption of subsection (c), the written notice shall fully  
 8 disclose all information required for compliance with a presumption of  
 9 subsection (c). In the case of either notice, the carrier shall provide ad-  
 10 ditional information within 15 business days after a request by the com-  
 11 missioner. This subsection shall not apply to a carrier which does not have  
 12 available a block of business which provides comparable benefits, services  
 13 and terms comparable to the closed block of business and which has  
 14 complied with the notice requirements pursuant to subsection (c)(3).  
 15 (f) A carrier shall preserve for a period of not less than five years in  
 16 an identified location which is readily accessible for review by the com-  
 17 missioner, all books and records relating to any action taken by a carrier  
 18 pursuant to subsection (c).  
 19 (g) No carrier shall offer or sell any contract, or provide misleading  
 20 information about the active or closed status of a block of business, for  
 21 the purpose of evading this act.  
 22 Sec. 2. K.S.A. 40-2255 is hereby repealed.  
 23 Sec. 3. This act shall take effect and be in force from and after its  
 24 publication in the statute book.]

*Session of 2005*

**HOUSE BILL No. 2150**

By Committee on Judiciary

1-25

9 AN ACT concerning civil procedure; relating to collateral source bene-  
 10 fits; amending K.S.A. 60-3802 and repealing the existing section.  
 11  
 12 ~~Be it enacted by the Legislature of the State of Kansas:~~  
 13 Section 1. K.S.A. 60-3802 is hereby amended to read as follows: 60-  
 14 3802. In any action for personal injury or death, in which the claimant  
 15 demands judgment for damages ~~in excess of \$150,000~~, evidence of col-  
 16 lateral source benefits received or evidence of collateral source benefits  
 17 which are reasonably expected to be received in the future shall be  
 18 admissible.  
 19 Sec. 2. K.S.A. 60-3802 is hereby repealed.  
 20 Sec. 3. This act shall take effect and be in force from and after its  
 21 publication in the statute book.

[As Amended by Senate Committee of the Whole]

As Amended by Senate Committee

Session of 2005

SENATE BILL No. 140

By Committee on Financial Institutions and Insurance

1-31

12 [AN ACT concerning insurance; relating to limiting the insurance value  
13 of improvements on real property to its replacement cost; amending  
14 K.S.A. 40-905 and repealing the existing section.]

AN ACT concerning arbitration; relating to the validity of an agreement;  
amending K.S.A. 5-401 and repealing the existing section.

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

17 [Section 1. K.S.A. 40-905 is hereby amended to read as follows: 40-  
18 905. (a) (1) Whenever any policy of insurance or an increase in the amount  
19 of coverage in an existing policy of insurance shall be written to insure  
20 any improvements upon real property in this state against loss by fire,  
21 tornado, windstorm or lightning, and the property insured shall be wholly  
22 destroyed, without criminal fault on the part of the insured or the in-  
23 sured's assigns, the amount of insurance written in such policy shall be  
24 taken conclusively to be the true value of the property insured, and the  
25 true amount of loss and measure of damages, and the payment of money  
26 as a premium for insurance shall be prima facie evidence that the party  
27 paying for such insurance is the owner of the property insured.

28 (2) ~~Improvements on real property shall not be insured for more than~~  
29 ~~replacement cost of such improvements as determined by a recognized~~  
30 ~~appraisal method or service. Nothing herein shall prohibit an insurer from~~  
31 ~~offering an inflation guard endorsement on a replacement cost policy. No~~  
32 ~~lienholder or mortgagee shall require insurance on improvements~~  
33 ~~to real property that includes land value. [Improvements on real~~  
34 ~~property shall not be insured for more than the reasonably esti-~~  
35 ~~mated replacement cost of such improvements. Nothing herein shall~~  
36 ~~prohibit a policy or endorsement to a policy as described in this~~  
37 ~~subsection from containing an inflation guard provision or similar~~  
38 ~~provision. Nothing in this section shall be deemed to create a private~~  
39 ~~cause of action.]~~

40 (b) The provisions of subsection (a) shall not apply to:

41 (1) New policies of fire insurance or existing policies of fire insurance  
42 where there has been an increase in the amount of coverage of 25% or  
43 more, until such policies have been in effect for at least 60 days. If there]

House Insurance

Date: 3-17-05

Attachment # 9

~~HOUSE BILL No. 2016~~

~~By Representative Carter~~

~~12-27~~

1 [is a total loss by fire within the sixty-day period and the insurer pays less  
 2 than the face value of the policy, the insurer shall refund the difference  
 3 in premium between the amount of insurance purchased and the pre-  
 4 mium applicable for the amount of the loss actually paid. This paragraph  
 5 shall not apply to a loss by fire caused by lightning.  
 6 (2) Builder's risk policies of insurance covering property in the pro-  
 7 cess of being constructed. The value of the property insured shall be the  
 8 actual value of the property at the time of the loss.  
 9 Sec. 2. K.S.A. 40-905 is hereby repealed.  
 10 Sec. 3. This act shall take effect and be in force from and after its  
 11 publication in the statute book.]

9 AN ACT concerning arbitration; relating to the validity of an agreement;  
 10 amending K.S.A. 5-401 and repealing the existing section.  
 11

~~12 Be it enacted by the Legislature of the State of Kansas:~~

13 Section 1. K.S.A. 5-401 is hereby amended to read as follows: 5-401.

14 (a) A written agreement to submit any existing controversy to arbitration  
 15 is valid, enforceable and irrevocable except upon such grounds as exist at  
 16 law or in equity for the revocation of any contract.

17 (b) Except as provided in subsection (c), a provision in a written con-  
 18 tract to submit to arbitration any controversy thereafter arising between  
 19 the parties is valid, enforceable and irrevocable except upon such grounds  
 20 as exist at law or in equity for the revocation of any contract.

21 (c) [The provisions of subsection (b) shall not apply to: (1) contracts  
 22 of insurance, except for those contracts between insurance companies,  
 23 including reinsurance contracts; (2) contracts between an employer and  
 24 employees, or their respective representatives; or (3) any provision of a  
 25 contract providing for arbitration of a claim in tort.]

26 Sec. 2. K.S.A. 5-401 is hereby repealed.

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

(c) The provisions of subsection (b) shall not apply to:  
 (1) Contracts of insurance, except for those contracts between insurance companies, including reinsurance contracts; or  
 (2) contracts between an employer and employees, or the respective representatives thereof.

(d) A provision of a contract providing for arbitration of a claim in tort between a medical care facility and a patient or a health care provider and a patient or an adult care home and a resident, or the respective representatives thereof, shall be valid and enforceable only where the following three conditions are satisfied:  
 (1) Such provision is not made a condition precedent to the rendition or receipt of care, treatment or services;  
 (2) the patient or resident, or the respective representative thereof, is authorized to strike or otherwise avoid the force or effect of such provision by submitting written notice to the other party within 30 days after signing the contract; and  
 (3) such provision, including the substance of paragraphs (2) and (3) of this subsection, is set forth in a separate writing signed by the patient or resident or the respective representative thereof.

9-2

HOUSE BILL No. 2016

By Representative Carter

12-27

AN ACT concerning arbitration; relating to the validity of an agreement; amending K.S.A. 5-401 and repealing the existing section.

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

Section 1. K.S.A. 5-401 is hereby amended to read as follows: 5-401.

(a) A written agreement to submit any existing controversy to arbitration is valid, enforceable and irrevocable except upon such grounds as exist at law or in equity for the revocation of any contract.

(b) Except as provided in subsection (c), a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable except upon such grounds as exist at law or in equity for the revocation of any contract.

(c) The provisions of subsection (b) shall not apply to: (1) contracts of insurance, except for those contracts between insurance companies, including reinsurance contracts; (2) contracts between an employer and employees, or their respective representatives, or (3) any provision of a contract providing for arbitration of a claim in tort.

Sec. 2. K.S.A. 5-401 is hereby repealed.

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

1 [is a total loss by fire within the sixty-day period and the insurer pays less  
2 than the face value of the policy, the insurer shall refund the difference  
3 in premium between the amount of insurance purchased and the pre-  
4 mium applicable for the amount of the loss actually paid. This paragraph  
5 shall not apply to a loss by fire caused by lightning.

6 (2) Builder's risk policies of insurance covering property in the pro-  
7 cess of being constructed. The value of the property insured shall be the  
8 actual value of the property at the time of the loss.

9 Sec. 2. K.S.A. 40-905 is hereby repealed.

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

(c) The provisions of subsection (b) shall not apply to:

(1) Contracts of insurance, except for those contracts between insurance companies, including reinsurance contracts; or

(2) contracts between an employer and employees, or the respective representatives thereof.

(d) A provision of a contract providing for arbitration of a claim in tort between a medical care facility and a patient or a health care provider and a patient or an adult care home and a resident, or the respective representatives thereof, shall be valid and enforceable only where the following three conditions are satisfied:

(1) Such provision is not made a condition precedent to the rendition or receipt of care, treatment or services;

(2) the patient or resident, or the respective representative thereof, is authorized to strike or otherwise avoid the force or effect of such provision by submitting written notice to the other party within 30 days after signing the contract; and

(3) such provision, including the substance of paragraphs (2) and (3) of this subsection, is set forth in a separate writing signed by the patient or resident, or the respective representative thereof.

9-3