

MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

The meeting was called to order by Chairman Ruth Teichman at 9:30 A.M. on February 2, 2005 in Room 234-N of the Capitol.

All members were present except:
James Barnett- excused

Committee staff present:
Melissa Calderwood, Kansas Legislative Research Department
Terri Weber, Kansas Legislative Research Department
Ken Wilke, Office of Revisor of Statutes
Sandy Yingling, Committee Secretary

Conferees appearing before the committee:
Gary Daniels, Acting Secretary of SRS
Kevin Glendening, OSBC

Others attending:
See attached list.

Madam Chair opened the meeting by announcing that Gary Daniels from SRS would not be present because everyone in the committee had heard their presentation.

Madam Chair asked for bill introductions.

Senator Wysong introduced a bill concerning workman's compensation in relationship to exceptions.

Madam Chair asked for questions, there were none and than took motions. Senator Wilson moved to introduction of the bill and it was seconded by Senator Schmidt. All in favor, unanimous.

Jarrold Forbes from the Kansas Insurance Department had three bills to introduce. The first is a technical amendment simply changes the "agent or broker" references in the insurance departments statutes to "producer"; the second is a technical amendment changing a reference from "subsection (a) to "this section"; and the third is a bill updating the current anti-fraud penalties. (Attachment 1) (Attachment 2) (Attachment 3) (Attachment 4)

Madam Chair asked for questions, there were none and than took motions. Senator Steineger moved to introduction of the bills and it was seconded by Senator Wysong. All in favor, unanimous.

Kevin Glendening, Deputy Commissioner, Office of the State Bank Commissioner introduced a bill concerning amendments to the Kansas Mortgage Business Act relating primarily to strengthening certain enforcement provisions of that Act. (Attachment 5)

Madam Chair introduced Kevin Glendening to give some background on the UCCC. Kevin gave an overview of the history of CML, regulatory coverage, important expansion of UCCC coverage in 1999 and the purpose of the UCCC and role of Administrator. Chair Teichman questioned if there were any problems to which Kevin answered that because there were loop holes in the law that some charged extremely high fees on small business loans. The rate cap lifted in 1999 and a few years later they were seeing some loans at 300% interest.

Chair Teichman presented a schedule of the bills that have been introduced in the Senate. (Attachment 6)

Madam Chair asked for questions from the committee, there were none, Madam Chair thanked Mr. Glendening for coming. Madam Chair announced to the committee if anyone had any issues with any of the bills she would like to hear about them.

Meeting was adjourned at 9:53 a.m.

FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE GUEST LIST

DATE: *Wed, Feb. 2, 2005*

NAME	REPRESENTING
<i>Brynd Smoot</i>	<i>Ks Gov'tal Consulting</i>
<i>[Signature]</i>	KID
<i>Amy Salisbury</i>	DOB
<i>Sandra Allen</i>	OSBC
<i>Kevin Glendening</i>	OSBC
<i>Clancy Norris</i>	OSBC
<i>Renee Murray</i>	CBA



Kansas Insurance Department

Sandy Praeger COMMISSIONER OF INSURANCE

KANSAS INSURANCE DEPARTMENT
LEGISLATIVE REQUESTS
SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE
February 2, 2005

Madam Chair 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. Producer

This technical amendment simply changes the "agent or broker" references in our statutes to "producer".

2. Securities held by insurance companies

This technical amendment changes a reference from "subsection (a)" to "this section".

3. Anti-Fraud

This bill updates our current anti-fraud penalties.

Jarrod Forbes
Assistant Director
Government Affairs
Kansas Insurance Department

*Attachment 1
2-2-05
FIT*

PROPOSED BILL NO. _____

By

AN ACT concerning insurance; relating to new terminology for insurance brokers; amending K.S.A. 40-37a01, 40-37a02, 40-37a03, 40-37a04, 40-37a05, 40-37a06 and 40-4502 and K.S.A. 2004 Supp. 40-2,131 and repealing the existing sections.

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

Section 1. K.S.A. 2004 Supp. 40-2,131 is hereby amended to read as follows: 40-2,131. (a) No person, firm, association or corporation shall act in the capacity of an MGA with respect to risks located in this state for an insurer licensed in this state unless such person is a licensed ~~agent-or-broker~~ producer in this state.

(b) No person, firm, association or corporation shall act in the capacity of an MGA representing an insurer domiciled in this state with respect to risks located outside this state unless such person is licensed as ~~an-agent-or-broker~~ a producer in this state pursuant to the provisions of ~~K.S.A.--40-240-or-40-3701~~ the uniform insurance agents licensing act, K.S.A. 2004 Supp. 40-4901 et seq., and amendments thereto.

(c) The commissioner may require a bond in an amount acceptable to the commissioner for the protection of the insurer.

(d) For the purposes of this section, the term "producer" shall have the meaning ascribed to it in K.S.A. 2004 Supp. 40-4902 and amendments thereto.

Sec. 2. K.S.A. 40-37a01 is hereby amended to read as follows: 40-37a01. This act may be cited as the business transacted with ~~broker~~ producer controlled insurer act.

Sec. 3. K.S.A. 40-37a02 is hereby amended to read as follows: 40-37a02. As used in this act:

(a) "Accredited state" means a state in which the insurance department or regulatory agency has qualified as meeting the minimum financial regulatory standards promulgated and established from time to time by the national association of insurance commissioners.

(b) "Captive insurer" means an insurance company owned by another organization whose exclusive purpose is to insure risks

Attachm. 2
2-2-05
FII

of the parent organization and affiliated companies or, in the case of groups and associations, an insurance organization owned by the insureds whose exclusive purpose is to insure risks to member organizations or group members, or both, and their affiliates.

(c) "Control" or "controlled" has the meaning ascribed in subsection (c) of K.S.A. 40-3302 and amendments thereto.

~~(c)~~ (d) "Controlled insurer" means a licensed insurer which is controlled, directly or indirectly by a broker producer.

~~(d)~~ (e) ~~"Controlling-broker"~~ "Controlling producer" means a broker producer who, directly or indirectly, controls an insurer.

~~(e)~~ (f) "Licensed insurer" or "insurer" means any person, firm, association or corporation duly licensed to transact a property or casualty insurance business in this state. The following, inter alia, are not licensed insurers for the purposes of this act:

(1) All risk retention groups as defined in the superfund amendments reauthorization act of 1986, ~~P.L. No.~~ public law 99-499, 100 Stat. 1613 (1986); the risk retention act, 15 U.S.C. §3901 et seq. (1982 & Supp. 1986); and K.S.A. 40-4101 et seq. and amendments thereto; and

(2) all residual market pools and joint underwriting authorities or associations; and

(3) all captive insurers.

~~(f) -- "Broker" means an insurance broker or brokers as defined in subsection (a) of K.S.A. 40-3702 and amendments thereto, or~~

(g) "Producer" has the meaning ascribed to it in K.S.A. 2004 Supp. 40-4902, and amendments thereto. Producer includes any other person, firm, association or corporation, when, for any compensation, commission or other thing of value, such person, firm, association or corporation acts or aids in any manner in soliciting, negotiating or procuring the making of any insurance contract on behalf of an insured other than the person, firm, association or corporation. "Broker" does not mean an insurance agent as defined in K.S.A. 40-239 and amendments thereto.

Sec. 4. K.S.A. 40-37a03 is hereby amended to read as follows: 40-37a03. This act shall apply to licensed insurers as defined in K.S.A. 40-37a02, either domiciled in this state or domiciled in a state that is not an accredited state having in effect a substantially similar law. All provisions of the insurance holding company act, to the extent they such provisions are not superseded by this act, shall continue to apply to all parties within holding company systems subject to this act.

Sec. 5. K.S.A. 40-37a04 is hereby amended to read as follows: 40-37a04. (a) (1) The provisions of K.S.A. 40-37a04 shall apply if, in any calendar year, the aggregate amount of gross written premium on business placed with a controlled insurer by a controlling broker producer is equal to or greater than five percent of the admitted assets of the controlled insurer, as reported in the controlled insurer's quarterly statement filed as of September 30 of the prior year.

(2) Notwithstanding paragraph (1) of this subsection, the provisions of this section shall not apply if:

(A) The controlling broker producer:

(i) Places insurance only with the controlled insurer, or only with the controlled insurer and a member or members of the controlled insurer's holding company system, or the controlled insurer's parent, affiliate or subsidiary and receives no compensation based upon the amount of premiums written in connection with such insurance; and

(ii) accepts insurance placements only from nonaffiliated subproducers, and not directly from insureds; and

(B) the controlled insurer, except for insurance business written through a residual market facility established pursuant to Kansas statutes or administrative regulations, accepts insurance business only from a controlling broker producer, a broker producer controlled by the controlled insurer, or a broker producer that is a subsidiary of the controlled insurer.

(b) A controlled insurer shall not accept business from a controlling broker producer and a controlling broker producer

shall not place business with a controlled insurer unless there is a written contract between the controlling broker producer and the insurer specifying the responsibilities of each party, which contract has been approved by the board of directors of the insurer and contains the following minimum provisions:

(1) The controlled insurer may terminate the contract for cause, upon written notice to the controlling broker producer. The controlled insurer shall suspend the authority of the controlling broker producer to write business during the pendency of any dispute regarding the cause for the termination;

(2) the controlling broker producer shall render accounts to the controlled insurer detailing all material transactions, including information necessary to support all commissions, charges and other fees received by, or owing to, the controlling broker producer;

(3) the controlling broker producer shall remit all funds due under the terms of the contract to the controlled insurer on at least a monthly basis. The due date shall be fixed so that premiums or installments thereof collected shall be remitted no later than 90 days after the effective date of any policy placed with the controlled insurer under this contract;

(4) all funds collected for the controlled insurer's account shall be held by the controlling broker producer in a fiduciary capacity, in one or more appropriately identified bank accounts in banks that are members of the federal reserve system, in accordance with the provisions of the insurance law as applicable. Notwithstanding the foregoing, funds of a controlling broker producer not required to be licensed in this state shall be maintained in compliance with the requirements of the controlling broker's producer's state of domicile;

(5) the controlling broker producer shall maintain separately identifiable records of business written for the controlled insurer;

(6) the contract shall not be assigned in whole or in part by the controlling broker producer;

(7) the controlled insurer shall provide the controlling broker producer with its underwriting standards, rules and procedures, manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks. The controlling broker producer shall adhere to the standards, rules, procedures, rates and conditions. The standards, rules, procedures, rates and conditions shall be the same as those applicable to comparable business placed with the controlled insurer by a broker producer other than the controlling broker producer;

(8) the rates and terms of the controlling broker's producer's commissions, charges or other fees and the purposes for those charges or fees. The rates of the commissions, charges and other fees shall be no greater than those applicable to comparable business placed with the controlled insurer by brokers producers other than controlling brokers producers. For purposes of this paragraph and paragraph (7) of this subsection, examples of "comparable business" includes the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business;

(9) if the contract provides that the controlling broker producer, on insurance business placed with the insurer, is to be compensated contingent upon the insurer's profits on that business, then such compensation shall not be determined and paid until at least five years after the premiums on liability insurance are earned and at least one year after the premiums are earned on any other insurance. In no event shall the commission be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified pursuant to paragraph (1) of subsection (c)-of-this-section (d);

(10) a limit on the controlling broker's producer's writings in relation to the controlled insurer's surplus and total writings. The insurer may establish a different limit for each line or subline of business. The controlled insurer shall notify the controlling broker producer when the applicable limit is

approached and shall not accept business from the controlling broker producer if the limit is reached. The controlling broker producer shall not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached; and

(11) the controlling broker producer may negotiate but shall not bind reinsurance on behalf of the controlled insurer on business the controlling broker producer places with the controlled insurer, except that the controlling broker producer may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured and commission schedules.

(c) Every controlled insurer shall have an audit committee of the board of directors composed of independent directors. The audit committee shall annually meet the management, the insurer's independent certified public accountants, and an independent casualty actuary or other independent loss reserve specialist acceptable to the commissioner to review the adequacy of the insurer's loss reserves.

(d) (1) In addition to any other required loss reserve certification, the controlled insurer shall annually, on April 1 of each year, file with the commissioner an opinion of an independent casualty actuary or other independent loss reserve specialist acceptable to the commissioner, reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of year-end, including incurred but not reported losses, on business placed by the broker producer; and

(2) the controlled insurer shall annually report to the commissioner the amount of commissions paid to the broker producer, the percentage such amount represents of the net premiums written and comparable amounts and percentage paid to

noncontrolling ~~brokers~~ producers for placements of the same kinds of insurance.

Sec. 6. K.S.A. 40-37a05 is hereby amended to read as follows: 40-37a05. The ~~broker~~ producer, prior to the effective date of the policy, shall deliver written notice to the prospective insured disclosing the relationship between the ~~broker~~ producer and the controlled insurer; except that, if the business is placed through a person subproducer who is not a controlling ~~broker~~ producer, the controlling ~~broker~~ producer shall retain in such controlling producer's records a signed commitment from the person subproducer that such person subproducer is aware of the relationship between the insurer and the ~~broker~~ producer and that the person subproducer has or will notify the insured.

Sec. 7. K.S.A. 40-37a06 is hereby amended to read as follows: 40-37a06. (a) (1) If the commissioner believes the controlling ~~broker~~ producer or any other person has not complied with this act, or any regulation or order promulgated hereunder, the commissioner may, after a hearing conducted under the provisions of the Kansas administrative procedures act, order the controlling ~~broker~~ producer to cease placing business with the controlled insurer; and

(2) if it was found that because of such noncompliance, the controlled insurer or any policyholder thereof has suffered any loss or damage, the commissioner may maintain a civil action or intervene in an action brought by or on behalf of the insurer or policyholder for recovery of compensatory damages for the benefit of the insurer or policyholder or other appropriate relief.

(b) If an order for liquidation or rehabilitation of the controlled insurer has been entered pursuant to K.S.A. 40-3605 et seq. and amendments thereto, and the receiver appointed under that order believes that the controlling ~~broker~~ producer or any other person has not materially complied with this act, or any regulation or order promulgated hereunder, and the insurer suffered any loss or damage therefrom, the receiver may maintain

a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

(c) Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided for in chapter 40 of the Kansas Statutes Annotated.

(d) Nothing contained in this section is intended to or shall in any manner alter or affect the rights of policyholders, claimants, creditors or other third parties.

Sec. 8. K.S.A. 40-4502 is hereby amended to read as follows: 40-4502. As used in this act:

(a) "Actuary" means a person who is a member in good standing of the American academy of actuaries.

(b) "Controlling person" means any person, firm, association or corporation who directly or indirectly has the power to direct or cause to be directed, the management, control or activities of the reinsurance intermediary.

(c) "Insurer" means any person, firm, association or corporation duly licensed in this state, pursuant to chapter 40 of the Kansas Statutes Annotated, as an insurer.

(d) "Licensed producer" means an agent, ~~broker~~ or reinsurance intermediary licensed pursuant to the applicable provision of the Kansas Statutes Annotated.

(e) "Reinsurance intermediary" means a reinsurance intermediary-broker or a reinsurance intermediary-manager as these terms are defined in subsections (f) and (g).

(f) "Reinsurance intermediary-broker" or "reinsurance broker" means any person, other than an officer or employee of the ceding insurer, firm, association or corporation who solicits, negotiates or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of such insurer.

(g) "Reinsurance intermediary-manager" or "reinsurance manager" means any person, firm, association or corporation who has authority to bind or manages all or part of the assumed reinsurance business of a reinsurer, including the management of

a separate division, department or underwriting office, and acts as an agent for such reinsurer whether known as a reinsurance manager, manager or other similar term. Notwithstanding the above, the following persons shall not be considered a reinsurance manager, with respect to such reinsurer, for the purposes of this act:

(1) An employee of the reinsurer;

(2) a U.S. manager of the United States branch of an alien reinsurer;

(3) an underwriting manager who, pursuant to contract, manages all the reinsurance operations of the reinsurer, is under common control with the reinsurer, subject to the holding company act, and whose compensation is not based on the volume of premiums written;

(4) the manager of a group, association, pool or organization of insurers which engage in joint underwriting or joint reinsurance and who are subject to examination by the chief insurance regulatory official of the state in which the manager's principal business office is located.

(h) "Reinsurer" means any person, firm, association or corporation duly licensed in this state pursuant to chapter 40 of the Kansas Statutes Annotated as an insurer with the authority to assume reinsurance.

(i) "To be in violation" means that the reinsurance intermediary, insurer or reinsurer for whom the reinsurance intermediary was acting failed to substantially comply with the provisions of this act.

(j) For purposes of this act, a "qualified United States financial institution" means an institution that:

(1) Is organized or, in the case of a United States office of a foreign banking organization licensed, under the laws of the United States or any state thereof;

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

(3) has been determined by either the commissioner, or the securities valuation office of the national association of insurance commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

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

Sec. 9. K.S.A. 40-37a01, 40-37a02, 40-37a03, 40-37a04, 40-37a05, 40-37a06 and 40-4502 and K.S.A. 2004 Supp. 40-2,131 are hereby repealed.

Sec. 10. 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 companies; relating to securities held by insurance companies; amending K.S.A. 40-2a27 and 40-2b28 and repealing the existing sections.

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

Section 1. K.S.A. 40-2a27 is hereby amended to read as follows: 40-2a27. (a) No insurance company shall acquire, directly or indirectly, any medium grade or lower grade obligation of any institution if, after giving effect to any such acquisition, the aggregate amount of all medium grade and lower grade obligations then held by such insurer would exceed 20% of its admitted assets. Within this limitation no more than 10% of its admitted assets shall consist of lower grade obligations; no more than three percent of its admitted assets shall consist of obligations designated "5" or "6" in the valuations of securities manual; and, no more than one percent of its admitted assets shall consist of obligations designated "6" in the valuations of securities manual. Attaining or exceeding the limit of any one category shall not preclude an insurer from acquiring obligations in other categories subject to the specific and multi-category limits.

(b) No insurer organized under the laws of this state may invest more than one percent of its admitted assets in medium grade obligations issued, guaranteed or insured by any one institution nor may it invest more than one-half of one percent of its admitted assets in lower grade obligations issued, guaranteed or insured by any one institution. In no event, shall such insurer invest more than one percent of its admitted assets in any medium or lower grade obligations issued, guaranteed or insured by any one institution.

(c) Nothing contained in this act shall prohibit an insurer from acquiring any obligations which it has committed to acquire if the insurer would have been permitted to acquire that obligation pursuant to this act on the date on which such insurer committed to purchase that obligation.

Attachment 3
2-2-05
FII

(d) Notwithstanding the limitations of subsection (b) an insurer may acquire an obligation of an institution in which the insurer already has one or more obligations, if the obligation is acquired in order to protect an investment previously made in the obligations of the institution, except all such acquired obligations shall not exceed one-half of one percent of the insurer's admitted assets.

(e) Nothing contained in this act shall prohibit an insurer to which this act applies from acquiring an obligation as a result of a restructuring of a medium or lower grade obligation already held or require such insurer to sell or otherwise dispose of any obligation legally acquired prior to the effective date of this act.

(f) Nothing contained in this act shall permit or be construed as permitting an insurer to exceed, alter or otherwise circumvent any of the limitations or restrictions applicable to the investments authorized by K.S.A. 40-2a01 et seq. and amendments thereto.

(g) Notwithstanding the provisions of K.S.A. 40-2a16 and amendments thereto, the total investment in medium and lower grade securities shall not exceed the limitations set forth in ~~subsection-(a)~~ this section.

(h) The board of directors of any insurance company organized under the laws of this state which acquires or invests, directly or indirectly, more than two percent of its admitted assets in medium grade and lower grade obligations, shall adopt a written plan for the making of such investments. The plan, in addition to guidelines with respect to the quality of the issues invested in, shall contain diversification standards acceptable to the commissioner which may include, but not be limited to, standards for issuer, industry, duration, liquidity and geographic location.

Sec. 2. K.S.A. 40-2b28 is hereby amended to read as follows:
40-2b28. (a) No insurance company shall acquire, directly or indirectly, any medium grade or lower grade obligation of any

institution if, after giving effect to any such acquisition, the aggregate amount of all medium grade and lower grade obligations then held by such insurer would exceed 20% of its admitted assets. Within this limitation no more than 10% of its admitted assets shall consist of lower grade obligations; no more than three percent of its admitted assets shall consist of obligations designated "5" or "6" in the valuations of securities manual; and, no more than one percent of its admitted assets shall consist of obligations designated "6" in the valuations of securities manual. Attaining or exceeding the limit of any one category shall not preclude an insurer from acquiring obligations in other categories subject to the specific and multi-category limits.

(b) No insurer organized under the laws of this state may invest more than one percent of its admitted assets in medium grade obligations issued, guaranteed or insured by any one institution nor may it invest more than one-half of one percent of its admitted assets in lower grade obligations issued, guaranteed or insured by any one institution. In no event, shall such insurer invest more than one percent of its admitted assets in any medium or lower grade obligations issued, guaranteed or insured by any one institution.

(c) Nothing contained in this act shall prohibit an insurer from acquiring any obligations which it has committed to acquire if the insurer would have been permitted to acquire that obligation pursuant to this act on the date on which such insurer committed to purchase that obligation.

(d) Notwithstanding the limitations of subsection (b), an insurer may acquire an obligation of an institution in which the insurer already has one or more obligations, if the obligation is acquired in order to protect an investment previously made in the obligations of the institution, except that all such acquired obligations shall not exceed one-half of one percent of the insurer's admitted assets.

(e) Nothing contained in this act shall prohibit an insurer

to which this act applies from acquiring an obligation as a result of a restructuring of a medium or lower grade obligation already held or require such insurer to sell or otherwise dispose of any obligation legally acquired prior to the effective date of this act.

(f) Nothing contained in this act shall permit or be construed as permitting an insurer to exceed, alter or otherwise circumvent any of the limitations or restrictions applicable to the investments authorized by K.S.A. 40-2b01 et seq. and amendments thereto.

(g) Notwithstanding the provisions of K.S.A. 40-2b13 and amendments thereto, the total investment in medium and lower grade securities shall not exceed the limitations set forth in ~~subsection-(a)~~ this section.

(h) The board of directors of any insurance company organized under the laws of this state which acquires or invests, directly or indirectly, more than two percent of its admitted assets in medium grade and lower grade obligations, shall adopt a written plan for the making of such investments. The plan, in addition to guidelines with respect to the quality of the issues invested in, shall contain diversification standards acceptable to the commissioner which may include, but not be limited to, standards for issuer, industry, duration, liquidity and geographic location.

Sec. 3. K.S.A. 40-2a27 and 40-2b28 are hereby repealed.

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

PROPOSED ANTI-FRAUD LEGISLATION

Amend K.S.A. 40-2,118

Repeal K.S.A. 40-247 and K.S.A. 40-417

40-2,118. Fraudulent insurance act defined; penalty. (a) 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 with knowledge or belief that it will be presented to or by an insurer, a reinsurer, broker or its agent, false information 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. A claim for payment or benefit pursuant to an insurance policy or reinsurance contract;
 - d. Premiums paid on an insurance policy or reinsurance contract;
 - e. Payments made in accordance with the terms of an insurance policy or reinsurance Contract;
 - f. A 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;

*Attachment 4
2-2-05
FII*

- (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 monies, 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 ~~\$25,000~~ \$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; 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.

New Section

40- . Investigations; powers of commissioner to refer prosecutions. (a) The commissioner may refer evidence as may be available concerning fraudulent insurance acts or other violations of criminal statutes in cases involving the business of insurance to the attorney general or the proper county or district attorney, who may in the prosecutor's discretion, with or without such a reference, institute the appropriate criminal proceedings. Upon receipt of such reference, the attorney general or the county attorney or district attorney may request that a duly employed attorney of the commissioner prosecute or assist in the prosecution of such violation or violations on behalf of the state. Upon approval of the commissioner, such employee shall be appointed a special prosecutor for the attorney general or the county attorney or district attorney to serve without compensation from the attorney general or the county attorney or district attorney. Such special prosecutor shall have all the powers and duties prescribed by law for assistant attorneys general or assistant county or district attorneys and such other powers and duties as are lawfully delegated to such special prosecutor by the attorney general or the county attorney or district attorney.

(b) The foregoing provisions shall not:

- (1) Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine and prosecute suspected violations of law;
- (2) Limit the powers granted elsewhere by the laws of this state to the commissioner to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

New Section

40- . Mandatory Reporting of Fraudulent Insurance Acts. (a) A 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 provide to the commissioner the information required by, and 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 to the commissioner the information required by, and in a manner prescribed by, the commissioner.

New Section

40 - . Insurer Antifraud Initiatives. Insurers shall have antifraud initiatives reasonably calculated to detect, prosecute and prevent fraudulent insurance acts. Antifraud initiatives may include: (a) Fraud investigators, who may be insurer employees or independent contractors; or

(b) An antifraud plan submitted to the commissioner. 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.

KANSAS

OFFICE OF THE STATE BANK COMMISSIONER
CLARENCE W. NORRIS, Bank Commissioner

KATHLEEN SEBELIUS, GOVERNOR

Senate Committee on Financial Institutions and Insurance

February 2, 2005

Madam Chairman and members of the committee:

I respectfully request introduction of a bill concerning amendments to the Kansas Mortgage Business Act relating primarily to strengthening certain enforcement provisions of that Act.

Sincerely,



Kevin Glendening
Deputy Commissioner
Office of the State Bank Commissioner
Consumer & Mortgage Lending Division

Attachment 5
2-2-05

KANSAS

OFFICE OF THE STATE BANK COMMISSIONER
CLARENCE W. NORRIS, Bank Commissioner

KATHLEEN SEBELIUS, GOVERNOR

Senate Committee on Financial Institutions and Insurance

February 2, 2005

Madam Chairman and members of the committee:

My name is Kevin Glendening. I am the Deputy Commissioner in charge of the Consumer and Mortgage Lending Division (CML) of the Office of the State Bank Commissioner; and, I am also the Administrator of the Kansas Uniform Consumer Credit Code (UCCC). I appreciate the opportunity to provide you with an overview of the CML Division and specifically the role of the UCCC in protecting Kansas consumers.

History of CML

- Mortgage Business Act 1996 / merger with Consumer Credit 1999

Regulatory Coverage (regulation / enforcement primarily by the states)

- Residential mortgages (rise in predatory lending activities)
- Consumer Credit Transactions (Broad Category) - loans and credit sales for personal, family, or household purposes

Important Expansion of UCCC coverage in 1999

- Territorial Application of UCCC Law and inclusion of high interest rate 1st REMs

These two factors, in combination with the broad range of activities already covered by the UCCC, caused significant growth in number of regulated entities - 10,500 plus as of 7/1/04

Purpose of the UCCC and Role of the Administrator

- Nine states have adopted a version of the UCCC, Kansas in 1973

The overriding purpose of the UCCC is to:

- 1) Recognize the disparity which exists between the consumer and the lender, or other credit provider, in both knowledge and understanding of credit practices; and,
- 2) Attempt to compensate for that unequal footing by ensuring some measure of protection for the consumer through the establishment of rights and responsibilities for both the consumer and lender. The UCCC accomplishes this by setting out specific rules which define how credit transactions may be structured, what information must be provided to the consumer, and limitations on fees, interest, and other charges. These are very important safeguards which not only protect the individual consumer, but also have positive implications for the Kansas economy as a whole.

As Administrator, my job is to enforce the requirements of the UCCC and recommend changes to the law which I believe further the goals of fostering access to legitimate sources of credit, while ensuring consumers are afforded reasonable protections under the law.

These goals are always a balancing act, and the proposed amendments we will be offering this session, I believe, encourage legitimate credit activities and provide necessary consumer protections.

SENATE FINANCIAL INSTITUTIONS AND INSURANCE
COMMITTEE ACTION INDEX

Bill Number	Subject	Date of Hearing/ Discussion	Date of Final Action by Full Committee	Senate Vote	House Vote
57	Consumer Protection Act – relating to occasional sales of certain repossessed collateral KBA	2/1/05			
100	Pertaining to HIPPA Compliance KID	2/3/05			
101	Relating to employment of an officer or director who has been removed for cause OSBC	2/8/05			
102	Health Insurance; relating to notice when a block of business is closed KID	2/9/05			
103	Relating to certain insurance policies issued to Kansas residents deployed in military service KID	2/15/05			
104	Relating to examination of certain affiliated business entities OSBC	2/8/05			
114	Relating to issuance of civil penalties OSBC	2/10/05			
140	Relating to limiting the insurance value of improvements on real property to its replacement cost				
152	Relating to the sale of hospital property Teichman				
165	Health Insurance; relating to abuse-dealing with co-pays & deductibles Hein				
166	Health Insurance; relating to assignment of insurance payments Dental Assoc.				
167	Relating to insurance payments for covered dental services Dental Assoc.				
1602	SCR – Urging appointment of task force to study the licensing & appointment process for insurance agents KID	2/3/05			

Attachment 6
2-2-05
FII