

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 22, 2005 in Room 234-N of the Capitol.

All members were present except:  
David Wysong- 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:  
Kelly Levi, Kansas Insurance Department  
Jarrod Forbes, Kansas Insurance Department  
Kevin Glendening, OSBC  
Bud Burke, CFSA  
Larry McGill, KAIA  
Doug Wareham, KBA

Others attending:  
See attached list.

Madam Chair announced she has five bills to be worked today.

Madam Chair opened discussion on **SB 196**.

**SB 196 - Kansas mortgage business act amendments.**

Ken Wilke, Office of the Revisor of Statutes, addressed the committee and presented the balloon to **SB 196**. (Attachment 1) Mr. Wilke explained there was a drafting error where a section request inadvertently got omitted from the bill. This balloon adds that section in. This inserts an additional section which amends K.S.A. 9-2203 and it would change subsection c so a violation of the act is now a severity level seven not personal felony with a presumed sentence of imprisonment for a second or subsequent offense. It also basically imposes a five-year statute of limitations in subsection (d) on prosecution. In subsection (e) is designed to make sure that this section does not limit the power of the state to punish a person for any conduct that constitutes another crime. Mr. Wilke stated he has been advised by one of the judicial people that Kansas no longer has common law crimes, so the last four words need to come off and should end after the word "statute." The remaining sections have been renumbered. On the last page there is also an insertion of K.S.A. 9-2203 in section 8, line 16.

Madam Chair asked the Committee if these were the amendments during the hearing on **SB 196**? Mr. Wilke stated that is correct. There were no questions.

Madam Chair offered the amendments to **SB 196**; Senator Barnett seconded. The amendment carried.

Madam Chair stated if there is no further discussion, she would entertain a motion to move the bill out.

Senator Schmidt made a motion to pass **SB 196** out favorable as amended; seconded by Senator Barnett. The motion carried.

Madam Chair announced that Senator Wysong will be carrying **SB 196**.

Madam Chair opened discussion on **SB 103**.

**SB 103 - Insurance, effect of military deployment on certain policies.**

## CONTINUATION SHEET

MINUTES OF THE Senate Financial Institutions and Insurance Committee at 9:30 A.M. on February 22, 2005 in Room 234-N of the Capitol.

Madam Chair stated there were some discrepancies between the insurance department and some of the carriers but she was advised this morning that they have reached an agreement as requested.

Kelly Levi, Kansas Insurance Department, was chosen to present the agreed amendments. Ms. Levi stated in the past there was language presented by Bill Sneed regarding property and casualties. There was also some recommended language from Larrie Ann Lower and Brad Smoot regarding health plan and KID has put together a combination of those two which will offer insurance coverage protection to military personnel. Madam Chair presented some of the agreed language. There were numerous changes which would have been easier to follow if the committee as a whole had a copy of the language, thus Madam Chair delayed discussion on **SB 103** while the committee secretary made copies for the members.

Madam Chair opened discussion on **SB207**.

### **SB 207 - Insurance department; fraud prevention program.**

Senator Steineger stated the insurance department's testimony, given that anyone who has knowledge or suspected knowledge of insurance fraud, has to report it or they are in trouble, seems very broad. Senator Steineger stated that he understands the goal is to help crack down on insurance fraud, but have blanket application to just anyone who might have knowledge seems big to him. Jarrod Forbes commented that it is his understanding that this applies only to people in the insurance industry. Chair Teichman added the intent of the bill is if you are an insurance agent or an insurance company you have to report knowledge of fraud. Chair Teichman suggested the word "mandate" should be changed to "require." The other thing is the **SB 207** does redefine the purpose of the fraudulent act and the act amends the relationship to the various felony classes. Mr. Forbes stated that is just an attempt to increasing the penalties, the monetary fines that go along with those penalties.

Madam Chair asked if there is also an amendment dealing with the appointment special prosecutor which reads . . . "the Commissioner may refer evidence to the A.G. or district or county attorney who may institute the appropriate criminal proceedings" . . . is that one of the amendments? Mr. Forbes stated it is one of the amendments that go along with the anti-fraud division. Mr. Forbes stated the KID's anti-fraud division is made of special prosecutors appointed by the attorney general. Madam Chair announced she thinks this is a good bill.

Mr. Forbes stated **SB 207** is set up in such a way that it would allow KID to prosecute crimes that the AG or the district or county attorney does not either want to or have the time.

Ken Wilke added that during the department's original testimony that it should be noted on page 3, line 6 that it should be a Class A misdemeanor instead of a Class C. Madam Chair confirmed that Class C would be changed to Class A.

### **Senator Steineger moved to adopt the Advisor's amendment; Senator Schmidt seconded. The amendment carried.**

Madam Chair went back on the bill and announced she would entertain a motion to move it out.

Senator Steineger made a motion that we report SB 207 favorable for passage as amended; Senator Wilson seconded. Ken Wilke asked if the technical amendments were all there were? Madam Chair answered, just the technical amendment. The motion as amended carried.

Madam Chair returned to **SB 103**.

Kelly Levi explained the proposed changes. (Attachment 2) Senator Brungardt asked in simple terms, what exactly does **SB 103** do? Ms. Levi answered it allows military personnel who get deployed and goes on the federal military insurance to come back on their health insurance with the original coverage. They would not be required to do medical testing. They are able to get back into the original policy. Senator Brungardt asked what happens to the premiums in the meantime? Ms. Levi stated the premiums are not affected based solely

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on the military employment. Senator Brungardt asked, who is to pay the premiums? Larrie Ann Lower answered they are not required to make the payments, because they are allowed to go off the policy while they are deployed.

Senator Brownlee stated in all due respect that the balloon is unreadable and she would not feel comfortable taking any action. Madam Chair stated she would address that concern.

Ken Wilke stated in subsection c on page 3, the referral to notification by providing a single written notice to either: 1) to a policy holder . . . ”and” . . . 2) by mailing, do you mean “either or” or “one and two?” Ms. Levi did not have an answer.

Madam Chair announced her suggestion to the committee since this was a last minute compromise, was to ask the Senate President to bless SB 103.

Madam Chair agreed with Senator Brownlee there is no way to comprehend this without seeing it written out and apologized to Ken Wilke.

Madam Chair opened discussion of SB 140.

### **SB 140 - Limitation on insurance value on improvements on real property.**

Madam Chair reminded the committee she had requested agreed language from all the parties involved. Madam Chair held the discussion on SB 140 while the committee secretary made copies of Larry McGill’s language. Madam Chair apologized to the committee for the interruption.

Madam Chair opened discussion on SB 223.

### **SB223 - Payday loans; changes affecting fees and military personnel.**

Madam Chair addressed the changes to the amendment to SB 223. (Attachment 3)

Starting with line 32 “an amount equal to 15% of the amount of the cash advance plus a \$5 administrative fee” should read “an amount equal to 15% of the amount of the cash advance.”

The next balloon is on line 34, where it reads a minimum of 7 days which is changed to 14. Madam Chair asked why have a minimum? Senator Wilson said, in his opinion it should stay 7 days. Senator Barone asked, with no minimum term, could they make a loan for one day? The minimum term could offer some consumer protection. Madam Chair stated she believed the committee would like to leave it at 7 days and not change to 14 days. It was agreed to leave it at 7 days.

The balloon on page 3, line 6 after the word “charges or interest . . . ” the balloon would read “or which results in more fees; charges or interest being paid by the consumer.” There is an AG opinion pending on whether this language is appropriate. After discussion from Senator Wilson, Senator Barone, Senator Brungardt and Mr. Glendening, Chair Teichman explained that this would not allow a Payday loan company to go to somebody outside of our borders who charge a higher rate than we do, 25% to 35%. Mr. Glendening stated that is correct, but an out-of-state bank can charge what their own state allows. Sonya Allen explained that an out-of-state bank cannot bring a branch into Kansas without merger or requisition.

The new section to address is, Payday loans to military personnel, which says they cannot garnish wages, defer collections, cannot be contacted by the military chain of command to try to collect. Senator Barone asked if other creditors such as MasterCard have the privilege of pursuing the military personnel? Madam Chair answered that this section only applies to Payday loans. Senator Barone asked, what about other creditors? Madam Chair said another bill would need to address that issue. Senator Brownlee asked if the interest would continue to accrue? Steve Shaller, attorney, answered it would fall under creditor freezing of interest covered under federal law.

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Senator Brownlee moved to adopt the amendments on page 3, lines 6 and 11; Senator Brungardt seconded. The as amendments carried.

Senator Brungardt made a motion that we report **SB 223** favorable for passage as amended; Senator Brownlee seconded. The motion as amended carried.

Madam Chair readdressed **SB 140**.

The balloon being offered by Larry McGill strikes line 25 through 28 on page 1 and inserted the new language (Attachment 4). Senator Brungardt asked, why does the balloon bring in lender? Mr. McGill answered, the lenders of last year said that if the insurance companies are prohibited from insuring for greater than replacement costs, they would not oppose the bill. The bill was drafted accordingly. When the insurance companies came back saying they are the ones to decide on recommend replacement cost, not the lender, they were afraid the language created new liability for them. The courts have generally said that the assured needs to establish the value of their property. Mr. McGill stated they are trying not to increase their potential liability for establishing the replacement costs.

Senator Wilson stated his original concern was with the insurance companies which required him to over insure his home. Senator Wilson asked if would be appropriate, in this particular balloon, that says no lien holder or mortgagees or an insurance provider may require the insurance to be fair about this? Larry McGill stated a situation like Senator Wilson's would occur on an older home where the replacement cost is greater than the market value. Senator Wilson stated his home was only a year and a half old. The language Senator Wilson is offering states "no lien holder or mortgagee or insurance provider may require insurance on improvements to real property that includes land value." Mr. McGill stated he has no problem with that language.

Senator Brownlee stated she was not aware that in the course of a mortgage loan that the lien holder or mortgagee has to improve the amount of the insurance on the home. Mr. McGill stated they require a certain amount of insurance in order to close the loan and that is where the issue comes up. Often the agent is caught in the middle between an insurance company who says they will only insure for 100% replacement cost and lender who has a loan for more than that amount and wants the policy of insurance equal to the loan. Senator Brownlee stated she believes the original language is good.

Senator Barone supports Senator Wilson's language that the insurance department has concurred. Senator Brungardt asked for Mr. Sneed's opinion. Mr. Sneed stated they oppose the bill as it was originally drafted.

Madam Chair called on Doug Wareham. Mr. Wareham stated they oppose Mr. Gills third amendment and he believes Senator Wilson's language seems fair but unnecessary.

Ken Wilke suggested a change in the language from "may" to "shall." Senator Wilson asked Mr. Wilke if his language was back to the original bill? Mr. Wilke stated that we would be basically back to what we started with.

Madam Chair asked what the wishes of the committee were for **SB 140**?

Senator Brungardt moved to accept the bill with the language that offered not including Mr. Wilson's suggestion; Senator Schmidt seconded. Madam Chair asked for a show of hands. The show of hands was a 3 to 3 count. Madam Chair stated the language would be put in.

Senator Brungardt moved to pass **SB 140** favorably for passage; Senator Wilson seconded. The motion carried.

Meeting adjourned 10:31 a.m.

**FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE GUEST LIST**

DATE: Monday, Feb. 27  
Guest

NAME	REPRESENTING
Alex Kotovantz	PIA
Rebecca Bailey	KMS
Joe Dick	KCBPU
Dan Murray	Federico Consulting
Bill Sneed	State Farm
<del>Paul Jank</del>	KID
Kelly Lewis	KID
<del>Paul Jank</del>	Quik Cash
Tom Cochran	GBA
Terri Gokulasing	OJBC
Sonja Allen	"
Raddy Anderson	KAMB
Whith, James	FS Payday Loan Co

SENATE BILL No. 196

By Committee on Financial Institutions and Insurance

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Attachment 1  
2-22-05  
FII

9 AN ACT relating to the Kansas mortgage business act; pertaining to ad-  
10 ministration of the act by the state bank commissioner; amending  
11 K.S.A. 9-2205, 9-2208, 9-2209, 9-2211, 9-2216 and 9-2218 and re-  
12 pealing the existing sections.  
13

9-2203,

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

15 Section 1. K.S.A. 9-2205 is hereby amended to read as follows: 9-  
16 2205. (a) A license or registration shall become effective as of the date  
17 specified on the face of the certificate.

18 (b) A license shall be renewed in each odd-numbered year by filing  
19 with the commissioner, at least 30 days prior to the expiration of the  
20 license, a renewal application, containing information the commissioner  
21 requires to determine the existence of material changes from the infor-  
22 mation contained in the applicant's original license application or prior  
23 renewal applications.

24 (c) A registration shall be renewed annually by filing with the com-  
25 missioner, at least 30 days prior to the expiration of the registration, a  
26 renewal application, containing information the ~~commissioner~~ commis-  
27 sioner requires to determine the existence of material changes from the  
28 information contained in the applicant's original registration application  
29 or prior renewal applications, including the completion of any continuing  
30 education requirements.

31 (d) Each renewal application shall be accompanied by a nonrefund-  
32 able fee which shall be established by rules and regulations pursuant to  
33 K.S.A. 9-2209, and amendments thereto.

34 (e) Any renewal application received by the commissioner after the  
35 expiration date of the current license or registration shall be treated as  
36 an original application and be subject to all reporting and fee require-  
37 ments contained in K.S.A. 9-2204, and amendments thereto.

38 Sec. 2. K.S.A. 9-2208 is hereby amended to read as follows: 9-2208.

39 (a) Each licensee shall prominently display the license of any principal  
40 place of business and any branch office in a way that reasonably assures  
41 recognition by customers and members of the general public who enter  
42 the licensee's place of business.

43 (b) Prior to entering into any contract for the provision of services or

K.S.A. 9-2203 is hereby amended to read as follows:

~~9-2203. License required to conduct mortgage business; registration required for a loan originator; penalty.~~ (a) Mortgage business shall only be conducted in this state at or from a mortgage company licensed by the commissioner as required by this act. A licensee shall be responsible for all mortgage business conducted on their behalf by loan originators or other employees.

(b) Mortgage business involving loan origination shall only be conducted in this state by an individual who has first been registered with the commissioner as a loan originator as required by this act. Loan origination shall only be conducted at or from a mortgage company and a registrant shall only engage in mortgage business on behalf of one mortgage company.

(c) Any person violating this act shall be guilty of a misdemeanor, and upon conviction shall be punished by a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed one year, or a fine not exceeding \$5,000 or both.

**History:** L. 1996, ch. 175, § 3; L. 1999, ch. 45, § 3; L. 2001, ch. 88, § 4; Nov. 1.

who willfully or knowingly violates any of the provisions of this act, any rule and regulation adopted or order issued under this act commits a severity level 7 nonperson felony. A second or subsequent conviction of this act, regardless of its location on the sentencing grid block, shall have a presumptive sentence of imprisonment.

(d) No prosecution for any crime under this act may be commenced more than five years after the alleged violation. A prosecution is commenced when a complaint or information is filed, or an indictment returned, and a warrant thereon is delivered to the sheriff or other officer for execution, except that no prosecution shall be deemed to have been commenced if the warrant so issued is not executed without unreasonable delay.

(e) Nothing in this act limits the power of the state to punish any person for any conduct which constitutes a crime by statute or at common law

Sec. 2.

1 prior to the licensee receiving any compensation or promise of compen-  
2 sation for a mortgage loan the licensee shall acquire from the customer  
3 a signed acknowledgment containing such information as the commis-  
4 sioner may prescribe by rule and regulation. The signed acknowledgment  
5 shall be retained by the licensee and a copy shall be provided to the  
6 customer.

7 (c) All solicitations and published advertisements concerning mort-  
8 gage business directed at Kansas residents, including those on the internet  
9 or by other electronic means, shall contain the words "Kansas licensed  
10 mortgage company," and must also contain the name, ~~address~~ and license  
11 number of the licensee, which shall be the same as the name, ~~address~~  
12 and number on record with the commissioner. Each licensee shall main-  
13 tain a record of all solicitations or advertisements for a period of 25  
14 months. For the purpose of this subsection, "advertising" does not include  
15 business cards or promotional items.

16 (d) No solicitation or advertisement shall contain false, misleading or  
17 deceptive information, or indicate or imply that the interest rates or  
18 charges stated are "recommended," "approved," "set" or "established"  
19 by the state of Kansas.

20 (e) No licensee or registrant shall conduct mortgage business in this  
21 state using any name other than the name or names stated on their license  
22 or registration.

4) 23 Sec. ~~3~~ K.S.A. 9-2209 is hereby amended to read as follows: 9-2209.

24 (a) The commissioner may exercise the following powers:

25 ~~(a)~~ (1) Adopt rules and regulations as necessary to carry out the intent  
26 and purpose of this act;

27 ~~(b)~~ (2) make investigations and examinations of the licensee's oper-  
28 ations, books and records as the commissioner deems necessary for the  
29 protection of the public;

30 ~~(c)~~ (3) charge reasonable costs of investigation, administration or ex-  
31 amination to be paid by the applicant, licensee or registrant under inves-  
32 tigation, examination or requiring administrative action;

33 ~~(d)~~ (4) order any licensee or registrant to cease any activity or practice  
34 which the commissioner deems to be deceptive, dishonest, violative of  
35 state or federal law or unduly harmful to the interests of the public;

36 ~~(e)~~ (5) exchange any information regarding the administration of this  
37 act with any agency of the United States or any state which regulates the  
38 licensee or registrant or administers statutes, rules and regulations or  
39 programs related to mortgage loans;

40 ~~(f)~~ (6) disclose to any person or entity that an applicant's, licensee's  
41 or registrant's application, license or registration has been denied, sus-  
42 pended, revoked or refused renewal;

43 ~~(g)~~ (7) require or permit any person to file a written statement, under

1 of a comparable official of another state if the activities constituting an  
2 alleged violation for which the information is sought would be a violation  
3 of the Kansas mortgage business act if the activities had occurred in this  
4 state.

5 (b) For the purpose of any examination, investigation or proceeding  
6 under this act, the commissioner or any officer designated by the com-  
7 missioner may administer oaths and affirmations, subpoena witnesses,  
8 compel such witnesses' attendance, adduce evidence and require the pro-  
9 duction of any matter which is relevant to the examination or investiga-  
10 tion, including the existence, description, nature, custody, condition and  
11 location of any books, documents or other tangible things and the identity  
12 and location of persons having knowledge of relevant facts, or any other  
13 matter reasonably calculated to lead to the discovery of relevant infor-  
14 mation or items.

15 (c) In case of contumacy by, or refusal to obey a subpoena issued to  
16 any person, any court of competent jurisdiction, upon application by the  
17 commissioner, may issue to that person an order requiring the person to  
18 appear before the commissioner, or the officer designated by the com-  
19 missioner, there, to produce documentary evidence if so ordered or to give  
20 evidence touching the matter under investigation or in question. Any fail-  
21 ure to obey the order of the court may be punished by the court as a  
22 contempt of court; and

23 (d) No person is excused from attending and testifying or from pro-  
24 ducing any document or record before the commissioner or in obedience  
25 to the subpoena of the commissioner or any officer designated by the  
26 commissioner or in any proceeding instituted by the commissioner, on the  
27 ground that the testimony or evidence (documentary or otherwise) re-  
28 quired of the person may tend to incriminate the person or subject the  
29 person to a penalty or forfeiture. No individual may be prosecuted or  
30 subjected to any penalty or forfeiture for or on account of any transaction,  
31 matter or thing concerning which such person is compelled, after claiming  
32 privilege against self-incrimination, to testify or produce evidence (doc-  
33 umentary or otherwise), except that the individual so testifying shall not  
34 be exempt from prosecution and punishment for perjury committed in so  
35 testifying.

5 36 ~~Sec. 4~~ K.S.A. 9-2211 is hereby amended to read as follows: 9-2211.

37 (a) Each applicant or licensee who maintains a bona fide office shall file  
38 with the commissioner a surety bond in the amount of \$50,000, in a form  
39 acceptable to the commissioner, issued by an insurance company author-  
40 ized to conduct business in this state, securing the applicant's or licensee's  
41 faithful performance of all duties and obligations of a licensee meeting  
42 the following requirements:

43 (1) The bond shall be payable to the office of the state bank

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1 commissioner;

2 (2) the terms of the bond shall provide that it may not be terminated  
3 without 30 days prior written notice to the commissioner; and

4 (3) the bond shall be available for the recovery of expenses, fines and  
5 fees levied by the commissioner under this act, and for losses or damages  
6 which are *determined by the commissioner to have been* incurred by any  
7 borrower or consumer as a result of the applicant's or licensee's failure  
8 to comply with the requirements of this act.

9 (b) Each applicant or licensee who does not maintain a bona fide  
10 office shall comply with both of the following:

11 (1) File with the commissioner a surety bond in the amount of  
12 \$100,000, in a form acceptable to the commissioner, issued by an insur-  
13 ance company authorized to conduct business in this state, securing the  
14 applicant's or licensee's faithful performance of all duties and obligations  
15 of a licensee meeting the following requirements:

16 (A) The bond shall be payable to the office of the state bank  
17 commissioner;

18 (B) the terms of the bond shall provide that it may not be terminated  
19 without 30 days prior written notice to the commissioner; and

20 (C) the bond shall be available for the recovery of expenses, fines and  
21 fees levied by the commissioner under this act, and for losses or damages  
22 which are *determined by the commissioner to have been* incurred by any  
23 borrower or consumer as a result of the applicant's or licensee's failure  
24 to comply with the requirements of this act;

25 (2) Submit evidence that establishes, to the commissioner's satisfac-  
26 tion, that the applicant or licensee shall at all times maintain a minimum  
27 net worth of \$50,000. Evidence of net worth shall include the submission  
28 of a balance sheet accompanied by a written statement by an independent  
29 certified public accountant attesting that the balance sheet has been re-  
30 viewed in accordance with generally accepted accounting principles.

6 31 Sec. 3 K.S.A. 9-2216 is hereby amended to read as follows: 9-2216.

32 (a) A licensee shall keep for at least 25 months copies of all documents  
33 or correspondence received or prepared by the licensee or registrant in  
34 connection with a loan or loan application and those records and docu-  
35 ments required by the commissioner by rules and regulations adopted  
36 pursuant to K.S.A. 9-2209, and amendments thereto. If the loan is not  
37 serviced by a licensee, the retention period commences on the date the  
38 loan is closed or, if the loan is not closed, the date of the loan application.  
39 If the loan is serviced by a licensee, the retention period commences on  
40 the date the loan is paid in full or the date the licensee ceases to service  
41 the loan.

42 (b) All books, records and any other documents held by the licensee  
43 shall be made available for examination and inspection by the commis-

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1 sioner or the commissioner's designee. Certified copies of all records not  
2 kept within this state shall be delivered to the commissioner within three  
3 business days of the date such documents are requested.

4 (c) *No person required to be licensed or registered under this act shall:*

5 (1) *Alter, destroy, shred, mutilate, conceal, cover up or falsify any*  
6 *record with the intent to impede, obstruct or influence any investigation*  
7 *by the commissioner or the commissioner's designee; or*

8 (2) *alter, destroy, shred, mutilate or conceal a record with the intent*  
9 *to impair the object's integrity or availability for use in a proceeding*  
10 *before the commissioner or a proceeding brought by the commissioner.*

7 11 Sec. 6. K.S.A. 9-2218 is hereby amended to read as follows: 9-2218.

12 (a) If the commissioner determines after notice and opportunity for a  
13 hearing pursuant to the Kansas administrative procedure act that any  
14 person has engaged, is engaging or is about to engage in any act or practice  
15 constituting a violation of any provision of this act or any rule and regu-  
16 lation or order hereunder, the commissioner by order may require any  
17 or all of the following:

18 (1) That the person cease and desist from the unlawful act or practice;

19 (2) that the person pay a fine not to exceed ~~\$5,000~~ \$10,000 per in-  
20 cident for the unlawful act or practice; ~~or~~

21 (3) *If any person is found to have violated any provision of this act,*  
22 *and such violation is committed against elder or disabled persons, as de-*  
23 *fined in K.S.A. 50-676, and amendments thereto, in addition to any civil*  
24 *penalty otherwise provided by law, the commissioner may impose an ad-*  
25 *ditional penalty not to exceed \$10,000 for each such violation;*

26 (4) *censure the person if the person is registered or licensed under*  
27 *this act;*

28 (5) *bar or suspend the person from applying for a license or registra-*  
29 *tion under this act, or associating with a mortgage business or supervised*  
30 *lender licensed in this state;*

31 (6) *issue an order requiring the person to pay restitution for any loss*  
32 *arising from the violation or requiring the person to disgorge any profits*  
33 *arising from the violation. Such order may include the assessment of in-*  
34 *terest not to exceed 8% per annum from the date of the violation; or*

35 (7) that the person take such affirmative action as in the judgment of  
36 the commissioner will carry out the purposes of this act.

37 (b) If the commissioner makes written findings of fact that the public  
38 interest will be irreparably harmed by delay in issuing an order under  
39 subsection (a), the commissioner may issue an emergency cease and desist  
40 order.

41 (1) Such emergency order, even when not an order within the mean-  
42 ing of K.S.A. 77-502, and amendments thereto, shall be subject to the  
43 same procedures as an emergency order issued under K.S.A. 77-536, and

9-1

1 amendments thereto.

2 (2) Upon the entry of such an emergency order, the commissioner  
3 shall promptly notify the person subject to the order that it has been  
4 entered, of the reasons, and that a hearing will be held upon written  
5 request by the person.

6 (3) If the person requests a hearing, or in the absence of any request,  
7 if the commissioner determines that a hearing should be held, the matter  
8 will be set for a hearing which shall be conducted in accordance with the  
9 provisions of the Kansas administrative procedure act. Upon completion  
10 of the hearing the commissioner shall by written findings of fact and  
11 conclusions of law vacate, modify or make permanent the emergency  
12 order.

13 (4) If no hearing is requested and none is ordered by the commis-  
14 sioner, the emergency order will remain in effect until it is modified or  
15 vacated by the commissioner.

8 16 Sec. ~~1~~ K.S.A. ~~9-2205, 9-2208, 9-2209, 9-2211, 9-2216 and 9-2218~~  
17 are hereby repealed.

9-2203,

9 18 Sec. ~~2~~ This act shall take effect and be in force from and after its  
19 publication in the statute book.

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SENATE BILL No. 103

By Committee on Financial Institutions and Insurance

1-25

9 AN ACT concerning insurance; relating to certain insurance policies is-  
10 sued to Kansas residents deployed in military service.

11

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

13 Section 1. As used in this act:

14 (a) "Personal insurance" means private passenger automobile, mo-  
15 torcycle, mobile homeowners, homeowners, renters and non-commercial  
16 dwelling fire insurance policies and boat, personal watercraft, snowmobile  
17 and recreational vehicle policies. ~~Personal insurance shall also include~~  
18 ~~individual life and individual health insurance including an individual~~  
19 ~~health insurance policy containing spouse or spouse and dependent~~  
20 ~~coverage.~~

21 (b) "Adverse tier placement" means being subject to the rates of any  
22 tier with less coverage or higher premiums than the tier within which the  
23 insured is currently insured.

Sec. (5)

24 ~~Sec. 2.~~ No personal line of insurance issued to a Kansas resident on  
25 active military deployment beyond the borders of the United States of  
26 America, or the spouse or any dependent of such Kansas resident, shall  
27 be subject to cancellation, non-renewal, premium increase or adverse tier  
28 placement for the term of their deployment ~~unless such cancellation, non-~~  
29 ~~renewal, premium increase or adverse tier placement is the result of:~~

→ JUMP TO pg. 2  
for sections

- 30 (a) ~~Unpaid premiums; or~~
- 31 (b) ~~policy changes initiated by a covered individual; or~~
- 32 (c) ~~negligence on the part of any individual covered under such per-~~
- 33 ~~sonal line of insurance.~~

based  
solely upon  
said Kansas  
resident's  
military  
deployment.

Section (6)

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

Section (7)

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

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FII

funded coverage in order to determine eligibility for reinstatement into the individual coverage. The effective date of the individual coverage will be first of the month following receipt of the notice requesting reinstatement.

(c) All health plans must provide written notice to the policyholder of individual coverage of the rights described in section 2(a). In lieu of the inclusion of such notice in the individual coverage policy, an insurance company will satisfy the notification requirement by providing a single written notice either, 1) to a policyholder enrolling into the individual coverage initially after the effective date of this act, in conjunction with the enrollment process and 2) by mailing written notice to policyholders whose coverage was effective prior to the effective date of this act no later than 90 days following the effective date of this act.

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

~~3~~ Sec. 4. Nothing herein shall require a health plan to reinstate such resident if the health plan requires residency in an enrollment area and those residency requirements are not met after deactivation or loss of coverage under the government-sponsored health insurance program.

~~4~~ Sec. 5. All terms, conditions and limitations of the individual coverage into which reinstatement is made, will apply equally to all insureds enrolled in such coverage.

~~Sec. 6. This act shall take effect and be in force on and after publication in the Kansas register.~~

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to Section 5

2

Senate Bill No. 103  
By Committee on Financial Institutions and Insurance

An ACT concerning insurance; relating to certain insurance policies issued to Kansas residents activated into military service.

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

Section 1. As used in this act:

- (E) (a) "Health Plan" means any insurance company or health maintenance organization which issues individual coverage to a resident of this state.
- (D) (b) "Individual coverage" means health insurance or health maintenance organization coverage issued on other than a group or blanket basis, including an individual coverage containing coverage for a spouse, dependent, or both
- (E) (c) "Insureds" means those persons enrolled under individual coverage issued by a health plan.
- (F) (d) "Federal government sponsored health insurance program" means the TriCare program providing coverage for civilian dependents of military personnel.

Sec. 2. (a) No Kansas resident activated for military service, and no spouse or any dependents of such a resident who become eligible for a federal government sponsored health insurance program as a result of such activation, shall be denied reinstatement into the same individual coverage with the same health plan that such resident lapsed as a result of activation or becoming covered by the federal government sponsored health insurance program. Such resident will have the right to reinstatement in the same individual coverage without medical underwriting and in the same rating tier that the resident held prior to activation or becoming covered under the federal government sponsored health insurance program, subject to payment of the current premium charged to other persons of the same age and gender that are covered under the same individual coverage. Except in the case of birth or adoptions that occur during the period of activation, reinstatement must be into the same membership type, or a membership type covering fewer persons, as such resident held prior to lapsing the individual coverage, and at the same or higher deductible level. The reinstatement rights shall not be available to an insured or dependents if the activated person is discharged from the military under other than honorable conditions.

(b) The health plan with which the reinstatement is being requested must receive a request for such reinstatement no later than 30 days following the later of deactivation or loss of coverage under the federal government sponsored health insurance program. The health plan may request proof of loss and the timing of the loss of such government

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SENATE BILL No. 223

By Committee on Financial Institutions and Insurance

2-8

9 AN ACT concerning payday loans; relating to fees; relating to collection  
10 from deployed military personnel; amending K.S.A. 2004 Supp. 16a-  
11 2-404 and repealing the existing section.

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

14 Section 1. K.S.A. 2004 Supp. 16a-2-404 is hereby amended to read  
15 as follows: 16a-2-404. (1) On consumer loan transactions in which cash is  
16 advanced:

17 (a) With a short term,

18 (b) a single payment repayment is anticipated, and

19 (c) such cash advance is equal to or less than \$500, a licensed or  
20 supervised lender may charge in lieu of the loan finance charges specified  
21 in K.S.A. 16a-2-401, and amendments thereto, the following amounts:

22 ~~(i) On any amount up to and including \$50, a charge of \$5.50 may  
23 be added;~~

24 ~~(ii) on amounts in excess of \$50, but not more than \$100, a charge  
25 may be added equal to 10% of the loan proceeds plus a \$5 administrative  
26 fee;~~

27 ~~(iii) on amounts in excess of \$100, but not more than \$250 a charge  
28 may be added equal to 7% of the loan proceeds with a minimum of \$10  
29 plus a \$5 administrative fee;~~

30 ~~(iv) for amounts in excess of \$250 and not greater than the maximum  
31 defined in this section, a charge may be added equal to 6% of the loan  
32 proceeds with a minimum of \$17.50 an amount equal to 15% of the  
33 amount of the cash advance, plus a \$5 administrative fee.~~

34 (2) The minimum term of any loan under this section shall be 7 days  
35 and the maximum term of any loan made under this section shall be 30  
36 days.

37 (3) A lender and related interest shall not have more than two loans  
38 made under this section outstanding to the same borrower at any one  
39 time and shall not make more than three loans to any one borrower within  
40 a 30 calendar day period. Each lender shall maintain a journal of loan  
41 transactions for each borrower which shall include at least the following  
42 information:

43 (a) Name, address and telephone number of each borrower; and

- 1 (b) date made and due date of each loan.
- 2 (4) Each loan agreement made under this section shall contain the  
3 following notice in at least 10 point bold face type: NOTICE TO BOR-  
4 ROWER: KANSAS LAW PROHIBITS THIS LENDER AND THEIR  
5 RELATED INTEREST FROM HAVING MORE THAN TWO LOANS  
6 OUTSTANDING TO YOU AT ANY ONE TIME. A LENDER CAN-  
7 NOT DIVIDE THE AMOUNT YOU WANT TO BORROW INTO  
8 MULTIPLE LOANS IN ORDER TO INCREASE THE FEES YOU  
9 PAY.
- 10 (5) The contract rate of any loan made under this section shall not  
11 be more than 3% per month of the loan proceeds after the maturity date.  
12 No insurance charges or any other charges of any nature whatsoever shall  
13 be permitted, except as stated in subsection (7), including any charges  
14 for cashing the loan proceeds if they are given in check form.
- 15 (6) Any loan made under this section shall not be repaid by proceeds  
16 of another loan made under this section by the same lender or related  
17 interest. The proceeds from any loan made under this section shall not  
18 be applied to any other loan from the same lender or related interest.
- 19 (7) On a consumer loan transaction in which cash is advanced in  
20 exchange for a personal check, one return check charge may be charged  
21 if the check is deemed insufficient as defined in paragraph (e) of subsec-  
22 tion (1) of K.S.A. 16a-2-501, and amendments thereto. Upon receipt of  
23 the check from the consumer, the lender shall immediately stamp the  
24 back of the check with an endorsement that states: "Negotiated as part  
25 of a loan made under K.S.A. 16a-2-404. Holder takes subject to claims  
26 and defenses of maker. No criminal prosecution."
- 27 (8) In determining whether a consumer loan transaction made under  
28 the provisions of this section is unconscionable conduct under K.S.A. 16a-  
29 5-108, and amendments thereto, consideration shall be given, among  
30 other factors, to:
- 31 (a) The ability of the borrower to repay within the terms of the loan  
32 made under this section; or
- 33 (b) the original request of the borrower for amount and term of the  
34 loan are within the limitations under this section.
- 35 (9) A consumer may rescind any consumer loan transaction made  
36 under the provisions of this section without cost not later than the end  
37 of the business day immediately following the day on which the loan  
38 transaction was made. To rescind the loan transaction:
- 39 (a) A consumer shall inform the lender that the consumer wants to  
40 rescind the loan transaction;
- 41 (b) the consumer shall return the cash amount of the principal of the  
42 loan transaction to the lender; and
- 43 (c) the lender shall return any fees that have been collected in asso-



1 ciation with the loan.

2 (10) A person shall not commit or cause to be committed any of the  
3 following acts or practices in connection with a consumer loan transaction  
4 subject to the provisions of this section:

5 (a) Use any device or agreement that would have the effect of charg-  
6 ing or collecting more fees, charges or interest than allowed by the pro-  
7 visions of this section, including but not limited to:

- 8 (i) Entering into a different type of transaction with the consumer;
- 9 (ii) entering into a sales/leaseback or rebate arrangement;
- 10 (iii) catalog sales; or
- 11 (iv) entering into any other transaction with the consumer that is de-  
12 signed to evade the applicability of this section;

13 (b) use, or threaten to use the criminal process in any state to collect  
14 on the loan;

15 (c) sell any other product of any kind in connection with the making  
16 or collecting of the loan;

17 (d) include any of the following provisions in a loan document:

- 18 (i) A hold harmless clause;
- 19 (ii) a confession of judgment clause;
- 20 (iii) a provision in which the consumer agrees not to assert a claim or  
21 defense arising out of the contract.

22 (11) As used in this section, "related interest" shall have the same  
23 meaning as "person related to" in K.S.A. 16a-1-301, and amendments  
24 thereto.

25 (12) Any person who facilitates, enables or acts as a conduit or agent  
26 for any third party who enters into a consumer loan transaction with the  
27 characteristics set out in paragraphs (a) and (b) of subsection (1) shall be  
28 required to obtain a supervised loan license pursuant to K.S.A. 16a-2-301,  
29 and amendments thereto, regardless of whether the third party may be  
30 exempt from licensure provisions of the Kansas uniform consumer credit  
31 code.

32 (13) Notwithstanding that a person may be exempted by virtue of  
33 federal law from the interest rate, finance charge and licensure provisions  
34 of the Kansas uniform consumer credit code, all other provisions of the  
35 code shall apply to both the person and the loan transaction.

36 (14) This section shall be supplemental to and a part of the uniform  
37 consumer credit code.

38 New Sec. 2. (a) Any person who makes a loan under the provisions  
39 of K.S.A. 16a-2-404, and amendments thereto, shall:

40 (1) Not garnish any wages or salary paid to a military borrower for  
41 service in the armed forces.

42 (2) Defer all collection activity against a military borrower who has  
43 been deployed to a combat or combat support posting for the duration

or which results in more fees, charges  
or interest being paid by the consumer.

or any other person

- 1 of such posting.  
2 (3) Not contact any person in the military chain of command of a  
3 military borrower in an attempt to collect such loan.  
4 (4) Honor all terms of any repayment agreement between the person  
5 making such loan and:  
6 (A) The military borrower; or  
7 (B) any military counselor or third party credit counselor negotiating  
8 on behalf of the military borrower.  
9 (5) Not make any loan to any military borrower whenever the military  
10 base commander has declared such person's place of business off limits  
11 to military personnel.  
12 (b) For the purposes of this section, "military borrower" means any  
13 of the following that have been called to active duty:  
14 (1) Any member of the armed forces of the United states;  
15 (2) any member of the national guard; or  
16 (3) any member of the armed forces reserves.  
17 (c) This section shall be supplemental to and a part of the uniform  
18 consumer credit code.  
19 Sec. 3. K.S.A. 2004 Supp. 16a-2-404 is hereby repealed.  
20 Sec. 4. This act shall take effect and be in force from and after its  
21 publication in the statute book.

SENATE BILL No. 140

By Committee on Financial Institutions and Insurance

1-31

9 AN ACT concerning insurance; relating to limiting the insurance value of  
10 improvements on real property to its replacement cost; amending K.S.A.  
11 40-905 and repealing the existing section.

12  
13 *Be it enacted by the legislature of the state of Kansas:*

14 Section 1. K.S.A. 40-905 is hereby amended to read as follow: 40-905.

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

25 ~~(2) Improvements on real property shall not be insured for more than~~  
26 ~~replacement cost of such improvements as determined by a recognized~~  
27 ~~appraisal method or service. Nothing herein shall prohibit an insurer from~~  
28 ~~offering an inflation guard endorsement on a replacement cost policy.~~

(2) No lienholder or  
mortgagee may require  
insurance on improvements to  
real property that includes  
land values.

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

30 (1) New policies of fire insurance or existing policies of fire insurance  
31 where there has been an increase in the amount of coverage of 25% or more,  
32 until such policies have been in effect for at least 60 days. If there is a total  
33 loss by fire within the sixty-day period and the insurer pays less than the  
34 face value of the policy, the insurer shall refund the difference in premium  
35 between the amount of insurance purchased and the premium applicable for  
36 the amount of the loss actually paid. This paragraph shall not apply to a loss  
37 by fire caused by lightning.

38 (2) Builder's risk policies of insurance covering property in the process  
39 of being constructed. The value of the property insured shall be the actual  
40 value of the property at the time of the loss.

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

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

Attachment 4  
2/22/05  
F-I-I