

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 March 15, 2005 in Room 234-N of the Capitol.

All members were present.

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:

Lew Ebert, President and CEO of The Kansas Chamber of Commerce
Carlene Marra, Compliance Director for Humana's Kansas City Market
William W. Sneed, America's Health Insurance Plans
Ashley Sherard, Vice President of Lenexa Chamber of Commerce
Cliff Sones, Wichita Independent Business Association
William W. Sneed, National Association of Settlement Purchasers
Sherry Diel, Kansas Real Estate Commission
Kathy Damron, Kansas Association of Realtors

Others attending:

See attached list.

Madam Chair called the meeting to order.

Madam Chair opened the hearing on **HB 2366**.

HB 2366 - Accident and health insurance; removal on limitation on deductibles, coinsurance and similar payments

Melissa Calderwood, Kansas Legislative Research Department, gave an overview of **HB 2366**. **HB 2366** amends K.S.A. 40-2215 to allow insurers to offer one or more group or individual accident and sickness insurance plans that would contain substantial deductible coinsurance, co-payment, out of pocket and other cost sharing levels. As stated in current law the bill would also allow the commissioner of insurance to disapprove the filing of an insurance company for an individual, group or life and health insurance policy within 30 days of filing.

Lew Ebert, Kansas Chamber of Commerce,

Lew Ebert, The Kansas Chamber of Commerce, testified in support of **HB 2366**. **HB 2366** arose from a Health Care Working Group that we convened last fall to study a wide range of ideas directed toward addressing the health care cost problems our members face in Kansas. (Attachment 1)

Senator Wysong asked for an example of what **HB 2366** would do? Mr. Ebert stated that **HB 2366** would provide different options to small business owners, such as different deductibles, co-pay option or expanded network payment rates that are currently not available. Senator Barone asked if there was anything that prevents the insurance companies from marketing these options? Mr. Ebert stated that they are told that the insurance department needs the statutory authority that this body and House will present to them. Senator Barone asked, what specifically prevents people from presenting these options today? Mr. Ebert said that they are told that the insurance department, right now, does not have the authority to offer a broad range of flexible plan designs. Senator Barone asked if the Chamber has done any research to validate this claim? Mr. Ebert states that this summers, parts of their health care development process, services as an opportunity, that hospitals, insurance providers and folks are aware of small and medium sized companies have concerns.

Senator Barone asked if Mr. Ebert had specific examples of the cost of insurance in Kansas vs. other locations? Is Kansas not competitive? Mr. Ebert stated that he has no information on that currently, but he

CONTINUATION SHEET

MINUTES OF THE Senate Financial Institutions and Insurance Committee at 9:30 A.M. on March 15, 2005 in Room 234-N of the Capitol.

has seen studies that suggest that health cost are higher in Kansas than many states, including the surrounding states. Senator Barnett asked how does **HB 2366** tie in with other pieces of legislation? There was to be research done and reported back to the committee in answer.

Carlene Marra, Humana, testified in support of **HB 2366**. **HB 2366** would remove some of the barriers that prevent health plans from offering more affordable health care choices to Kansas. **HB 2366** clarifies that insurers may offer more flexible products in the individual and group markets with a broad range of cost-sharing arrangements, giving employers and consumers the choice of a wide variety of low, medium and high-cost health plan options. (Attachment 2)

Senator Barone said, you talked about the law that is based on "interpretation." Ms. Marra said, the interpretation of existing statute, that is correct. So Senator Barone asked, whenever we have a problem with interpretation, we can refer to the law, has that interpretation ever been challenged? Ms. Marra stated that yes. It has. Carriers have been submitting policies for approval for years that this interpretation has been held. Senator Barone asked if this law based on interpretation ever been challenged in court or appealed. Ms. Marra that it has been challenged, but did not know of appeals.

On the cancellation point, Senator Barone asked if it would be reasonable to add the appropriate reason for cancellation? Ms. Marra stated that there are any number of reasons to cancel a policy. Senator Barone stated that the language said "prior to the end of the term." Based on that, any legislation that would come forth would honor this. Do you have specifics where legislation overrode policy terms and were forced to be cancelled? Ms. Marra said they were not forced to cancel, but could change something within a policy. Senator Barone stated that he is concerned about the indiscriminate cancellation of individual health policies. Ms. Marra stated that there are good reasons to change a modifier terminated policy. Senator Barone would like to have some specific reasons. Ms. Marra would have to research this. Chair Teichman asked if what is being said, is it should not only be based on the following reasons. Do you want to broaden the reasons on why you can terminate? Ms. Marra feels that this particular language, added in, is unnecessary.

Senator Brownlee asked about Ms. Marra's request to remove paragraph c on page 4 in subsection b that list all the specified reasons. Senator Brownlee stated, in her opinion, it would be very anti-consumer friendly. Ms. Marra feels that this is limiting to insurance carriers to terminate policies. Senator Brownlee stated that it should be limiting, someone has to stand up for the consumer.

Senator Brownlee asked, what existing law is being referred to that hinders health plans from introducing more affordable options. Ms. Marra stated that it is not so much an existing law as an interpretation of the law. Senator Brownlee asked, what law and what interpretation? Ms. Marra stated it is K.S.A. 40-2215(d) which basically prohibits carriers from offering policies or prohibiting policies that are unfair or unjust. Senator asked if this was a regulation that is carried out by the insurance commissioner? Ms. Marra stated it is an interpretation and the insurance people may be better to speak to that than myself.

Senator Brownlee asked Ms. Marra what she means by "cost sharing?" Ms. Marra said it is the difference between participating and nonparticipating such as an 80/20 cost sharing.

Senator Wilson stated that the insurance companies could be regulated to where they have to follow the rules or not do business in this state at all. Senator Wilson asked if an insurance company does business in the state, are they required to sell a particular product? Ms. Marra, state they are not required to sell a particular product. Senator Wilson stated this presents a consumer problem because we have become so cumbersome in directing the insurance companies to offer what we think is consumer friendly when in essence they just do not have to offer it at all.

Ken Wilke asked in reference to subsection d of K.S.A. 40-2213, the mention of the 30% differential. At what point do you consider the differential too tight? Ms. Marra stated she cannot make that call, but as a consumer she would like the option of a higher differential. Mr. Wilke asked, in reference to page 4, line 23 through 26 and the corresponding provision on page 5, lines 22 through 24, what is unjust? How does this affect the consumer? Ms. Marra stated it would be the approval of the insurance department.

CONTINUATION SHEET

MINUTES OF THE Senate Financial Institutions and Insurance Committee at 9:30 A.M. on March 15, 2005 in Room 234-N of the Capitol.

Bill Sneed, America's Health Insurance Plans, offered written testimony in support of **HB 2366**. (Attachment 3)

Cliff Sones, Wichita Independent Business Association, offered written testimony in support of **HB 2366**. (Attachment 4)

Ashley Sherard, Lenexa Chamber of Commerce, offered written testimony in support of **HB 2366**. (Attachment 5)

Jarrold Forbes, Kansas Insurance Department, explained that in a particular situation the consumer had at least four months to find other coverage if they did not like the switch of coverage. It is Mr. Forbes understanding that this is the only complaint that the Consumer Division had in regards to this entire block of business. Senator Wilson asked if there had been any wholesale complaint other than this one particular consumer's problem? Mr. Forbes stated, not to their office. Senator Wilson asked if this was the amendment that was offered up on the Floor or the committee as a whole? It was believed to be a Floor amendment. Senator Wilson said since this amendment had no discussion in Committee, in Mr. Forbes opinion, is this a necessary amendment? Mr. Forbes said that give the KID only had the one consumer's complaint, we believe the company operated within the guidelines of law that we have now. The Department does not believe this amendment is necessary now.

Senator Brownlee stated a concern she has, is the one opportunity a year the consumer has to change a policy vs. the insurance company s' opportunity to change at any time during the term of the policy. Mr. Forbes stated, so long as it meets certain guidelines.

Senator Barone was concerned about this only "one" complaint to the consumers' division of the KID. He states that he personally has made more complaints than that and on behalf of his constituents he can recall five complaints where their insurance has been cancelled. Senator Wilson said that the complaint was specific. Mr. Forbes offered clarification. It is his understanding that this amendment originated out of a particular individual's complaint about what happened in their case. Senator Barone stated he has problems with cancellation resulting from medical conditions or restricted drug usage and similar things. Senator Wilson stated that he does not believe this means the Department of any insurance company can just pick and choose who and when they want to cancel. It would have to be done in the way of a block, i.e., a particular age group, region. Senator Barone asked the KID to provide the committee when an individual policy can be cancelled? Mr. Forbes said he would.

Chair Teichman pointed out that she had **HB 2366** scheduled to work March 16, but could move it to a later date.

Madam Chair closed the hearing on **HB 2366**.

Madam Chair opened the hearing on **HB 2160**.

HB 2160 - Structured settlement protection act

Bill Sneed, National Association of Settlement Purchasers, testified in support of **HB 2160**. **HB 2160** was passed by the House 123 to 0. (Attachment 6) Mr. Sneed introduced the Committee to graphic triangles, theoretical 3-ring circuses and threw in some nut shells to explain **HB 2160**.

Senator Wysong set up the scenario that he is the consumer, things have changed and I am going to go back to my insurance company that wrote the deal and restructure the deal. How do I go to the courthouse and get that approved? Mr. Sneed answered that Kansas law does not allow this type arrangement under workers compensation. There is a specific provision that prohibits this. Mr. Sneed stated that they forgot to include that in the original bill and it was corrected in the House committee so that it is consistent with Kansas law.

Madam Chair closed the hearing on **HB 2160**.

CONTINUATION SHEET

MINUTES OF THE Senate Financial Institutions and Insurance Committee at 9:30 A.M. on March 15, 2005 in Room 234-N of the Capitol.

Madam Chair opened the hearing on **SB 269**.

SB 269 - Real estate brokers and salespersons; escrow account requirements; prohibited acts; rebates

Sherry Diel, Kansas Real Estate Commission, testified in support of **SB 269**. **SB 269** contains four proposed amendments to the Kansas Real Estate Brokers' and Salespersons' License Act, K.S.A. 58-30334, and the Kansas Brokerage Relationships in Real Estate Transactions Act, K.S.A. 58-30,101. Three of the amendments are cleanups in nature. (Attachment 7) Chair Teichman stated these cleanups were agreements that were worked out between the Realtors and title people over the long summer.

Senator Wysong asked if a branch broker with a commercial license for the state of Kansas finds a broker outside of the state who wants to bring a client into the Kansas to purchase a piece of listed real estate, what is the fee? Ms. Diel stated that usually there is an out-of-state brokerage that handles a lot of WalMart transactions and when they are looking at property in Kansas. They want their broker to handle it, if that broker is not licensed in Kansas, that particular transaction a foreign licensee can enter into an agreement with a Kansas broker. Senator Wysong asked if when the deal is put together are the fees split? Ms. Diel said the agreement requires that they specify how the fees are split. There is also a list of other things that need specified such as where the escrow money is held.

Kathy Damron, Kansas Association of Realtors, testified in support of **SB 269**. (Attachment 8)

John Peterson, Kansas Land Title Association, testified in support of **SB 269**.

There were no other questions.

Madam Chair closed the hearing on **SB 269**.

Madam Chair asked for approval of Committee Minutes for February 1, 8, 9, 10, 15, 16, 17, 22 and March 2 which were given to the Committee March 8.

Senator Wilson moved to approve the minutes, Senator Schmidt seconded the motion. The motion carried with the exception of Senator Wysong who passed because of illness.

The meeting was adjourned at 10:31 a.m.

Legislative Testimony

HB 2366

March 15, 2005

Testimony before the Kansas Senate Insurance Committee
By Lew Ebert, President and CEO

Madam Chair and members of the Committee;

I am Lew Ebert with the Kansas Chamber of Commerce and we are appearing in support of HB 2366. Our over 10,000 small, medium and large business members have made it clear that health care and health insurance costs are their number one priority.

HB 2366 arose from a Health Care Working Group that we convened last fall to study a wide range of ideas directed toward addressing the health care cost problems our members face in Kansas. The Work Group discovered that member firms were finding it difficult to purchase health insurance products with benefit designs that many believe would work to lower health insurance costs. As an example, the bill addresses regulatory restrictions on the maximum differential between coinsurance levels insurance companies are allowed to impose on insured persons for services they receive at in-network providers as compared to out-of-network providers. This amendment would suggest that insurers ought to be free to design benefit plans with a wide range of flexibility governing deductibles, coinsurance and co-payment levels. We support that type of flexibility and believe that regulatory restrictions that may date from decades past ought to be revisited if they no longer make sense in the type of cost environment we now find ourselves in.

As you might suspect, Kansas based businesses believe they are at their best when free of unnecessary regulatory red tape and when competition is allowed to manifest itself in lower costs. Those concepts are what are in play in HB 2366. Providing flexibility to insurers by eliminating unnecessary regulation will allow for innovate benefit designs that can only work to our advantage in our push to impact health care costs.

Finally, the Kansas Chamber would urge the committee to remove the provision that was amended on to HB 2366 on the House Floor. We believe that this amendment is unnecessary.

Thank you for your time and I would be happy to answer any questions you may have.

The Kansas Chamber, with headquarters in Topeka, is the statewide business advocacy group moving Kansas towards becoming the best state in America to do business. The Kansas Chamber and its affiliate organization, The Kansas Chamber Federation, have more than 10,000 member businesses, including local and regional chambers of commerce and trade organizations. The Chamber represents small, medium and large employers all across Kansas.

*Attachment 1
3/15/05
FI+I*



The Force for Business

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Kansas
House Bill 2366
Senate Financial Institutions and Insurance Committee
March 15, 2005

Thank you Chairperson Teichman and members of the Senate Financial Institutions and Insurance Committee for the opportunity to testify today. My name is Carlene Marra the Compliance Director for Humana's Kansas City Market.

I am here today on behalf of Humana to testify in support of House Bill 2366 which would increase affordable health insurance options for Kansas consumers and businesses. This bill change on page two places more control over coverage decisions in the hands of consumers and purchasers. We also would ask the committee to support removing the change to termination or modification of individual policies on page four because it is impractical.

Flexible Cost Sharing Offer Lower Cost Options

Rising health care costs, largely due to increased hospital, physician and prescription drug costs,¹ threaten to place affordable health insurance coverage out of reach for thousands of individuals and their families and may led to an increasing number of uninsured around the country. Studies show that many of the uninsured are from working families, and those employed by small businesses are particularly vulnerable. In fact, result surveys indicate that only about 40% of Kansas firms with less than fifty employees offer health insurance coverage to their employees, compared to 97.6% of firms with more than 50 employees.²

¹ The Center for Studying Health System Change.

² *State Health Facts Online*, The Henry J. Kaiser Family Foundation.

Attachment 2
3/15/05
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The legislation before this committee today provides for lower cost options to help make affordable health coverage more widely available. **House Bill 2366 would do this by removing some of the barriers that prevent health plans from offering more affordable health care choices to Kansas residents.** Restrictions under current statutes and regulations prohibit certain consumer choice health plans with higher coinsurance and cost sharing levels from being offered to consumers and employers.

For example, some customers want to choose a health plan with a less expensive monthly premium in exchange for broader cost-sharing when they seek out-of-network care. Premiums can be reduced simply by broadening the cost-sharing provisions for out-of-network coverage. **House Bill 2366 clarifies that insurers may offer more flexible products in the individual and group markets with a broad range of cost-sharing arrangements, giving employers and consumers the choice of a wide variety of low, medium and high-cost health plan options.** This change can be accomplished while maintaining the strong consumer protection provided to employers and consumers by requiring disclosures that outline key benefit provisions including cost sharing at the time of sale and when plans are issued.

While the private sector is already developing and offering new, innovative consumer choice products in the marketplace, the existing law hinders health plans from introducing more affordable options. At Humana, we have developed new products such as SmartSuite and SmartSelect consumer choice options to give employees as many as 50 benefit plan choices, information, and guidance to balance their coverage and costs in ways that are right for them. But even more choices can be made available if additional flexibility is provided to health plans. We believe House Bill 2366 will continue to encourage innovative plan designs and expand the private sector's activities to increase access to affordable health coverage.

With rising health care costs threatening access to health insurance coverage, employers and consumers need – and *deserve* – more affordable and attractive health insurance options. While House Bill 2366 is not a panacea to the lower premium costs,

it is a start. **It will encourage less expensive consumer choice plan designs in the individual and group markets, while giving consumers the freedom to choose the type of coverage most tailored to fit their individual health care needs.**

Individual Policy Restriction Impractical

We ask that the provisions on page four that limit the justified non-renewal, modification or cancellation of individual coverage to the end of the policy term be removed. This language would restrict terminations for such things as non-payment of premium or fraud and misrepresentation. If insurers are required to continue coverage and pay claims even when a person does not pay premiums for months until the end of the policy term, other individual policyholder will see an increase in their premiums to cover those losses. It is inappropriate to ask individuals who already face high premium costs to subsidize people who fail to pay their premiums or commit fraud.

Thank you again, Chairperson Teichman for the opportunity to speak before your committee on this important legislation.

Memorandum

TO: THE HONORABLE RUTH TEICHMAN, CHAIR
SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

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

RE: HOUSE BILL 2366

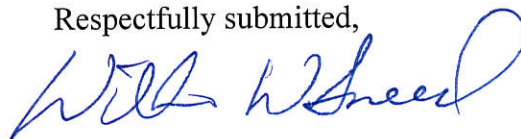
DATE: MARCH 14, 2005

Madame Chair, Members of the Committee: My name is Bill 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 House Bill 2366 as it was originally introduced and amended by the House Committee.

We do oppose the amendment that was added on the House floor. In essence it is House Bill 2255. Including this language will make individual health insurance more difficult to procure.

Based upon the foregoing, we respectfully request that the committee to delete new section 2 and act favorably on House Bill 2366.

Respectfully submitted,



William W. Sneed

WWS:pmk

030825 / 066955

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Attachment 3
3/15/05
FII



Wichita Independent Business Association

THE VOICE OF INDEPENDENT BUSINESS

**Testimony by Cliff Sones
in Support of HB 2366
Senate Financial Institutions and Insurance Committee
March 15, 2005**

Chair Teichman and Honorable Committee Members,

Health care and health insurance costs are an extremely important issue for the members of WIBA/KOPE and we support HB 2366.

The business community statewide has found it difficult to purchase health insurance products with benefit designs that many believe would work to lower health insurance costs. As an example, the new wording at the top of page two of the bill would address regulatory restrictions on the maximum differential between coinsurance levels insurance companies are allowed to impose on insured persons for services they receive at in-network providers as compared to out-of-network providers. This amendment would suggest that insurers ought to be free to design benefit plans with a wide range of flexibility governing deductibles, coinsurance and co-payment levels. We support that sort of flexibility and think that regulatory restrictions that are totally outdated ought to be revisited and abandoned if they no longer make sense in today's health care system.

Kansas based businesses believe they are at their best when freed of unnecessary regulatory red tape and when competition is allowed to manifest itself in lower costs. These concepts are available in HB 2366. Providing flexibility to insurers by eliminating unnecessary regulation will allow for innovative benefit designs that will work to everyone's advantage as health care costs continue to escalate.

The members of WIBA/KOPE urge you to support HB 2366.

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*Attachment 4
3/15/05
FII*



The Historic Lackman-Thompson Estate

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TO: Senator Ruth Teichman, Chairperson
Members, Senate Financial Institutions
and Insurance Committee

FROM: Ashley Sherard, Vice-President
Lenexa Chamber of Commerce

DATE: March 15, 2005

RE: **HB 2366—Removal of Certain Limitations on
Accident and Health Insurance Plans**

The Lenexa Chamber of Commerce would like to express its support for the concepts embodied in HB 2366, which would remove certain limitations on accident and health insurance plan deductibles, coinsurance, and similar payments.

Most health care coverage in the U.S. is provided through an employer. Unfortunately, employers have absorbed several years of double-digit cost increases for employee health benefits. Higher costs mean fewer employers can afford to provide quality health care coverage for their employees, particularly among small businesses. In some cases benefits may be eliminated altogether. Of those employers that continue to provide coverage, substantial cost increases are often managed by reducing benefits or by requiring employees to contribute more toward their plans.

This prevention or loss of health care coverage endangers employees and their families, promotes costly emergency health care, and makes it more difficult for businesses to attract and retain quality employees.

We believe HB 2366 is a key step in the right direction. Allowing insurers additional flexibility in the design of accident and health insurance plans would help ensure that businesses and employees have a range of affordable coverage options from which to choose.

For these reasons, the Lenexa Chamber of Commerce urges the committee to consider the concepts in HB 2366 favorably. Thank you for your time and consideration of this important issue.

*Attachment 5
3/15/05
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Memorandum

TO: THE HONORABLE RUTH TEICHMAN, CHAIRMAN
SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

FROM: WILLIAM W. SNEED, LEGISLATIVE COUNSEL
NATIONAL ASSOCIATION OF SETTLEMENT PURCHASERS

RE: HOUSE BILL 2160

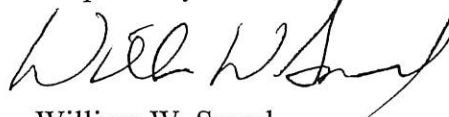
DATE: MARCH 15, 2005

Madame Chair, Members of the committee: My name is William Sneed and I represent National Association of Settlement Purchasers ("NASP"). NASP is a trade group made up of companies and entities that are involved in the "secondary market" for structured settlements. NASP members provide liquidity options for individuals who are receiving structured settlements over a long period of time. These liquidity options are typically provided to individuals who are entitled to receive structured settlement payments in the future through a transfer or assignment of all or a portion of the individual's future structured settlement payments in return for the payment of a lump sum. All such proceedings are completed through a court-ordered decision. At our request, the House Insurance Committee introduced House Bill 2160.

Attached to this is my client's testimony. Also, please be advised that House Bill 2160 passed the House 123-0.

Based on the forgoing, we respectfully request that the committee favorably pass the bill.

Respectfully submitted,



William W. Sneed

WWS:pmk

020528 / 100433
WWSNE 1176589

*Attachment 6
3/15/05
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**WRITTEN STATEMENT OF NATIONAL ASSOCIATION OF SETTLEMENT
PURCHASERS IN SUPPORT OF KANSAS HB NO. 2160**

The National Association of Settlement Purchasers (NASP) supports the enactment of HB No. 2160 in Kansas. HB 2160 requires certain disclosures and admonishments to individuals who are considering a transfer of future structured settlement payment rights in return for a lump sum cash payment and provides for court review of such transactions to insure compliance with applicable state and Federal laws and to insure that the transaction is in the best interest of the transferee.

In 2002 the United States Congress enacted legislation (26 USC § 5891) that confirms that transfers of structured settlement payment rights do not violate Federal law or public policy and encouraged the states to enact state statutes that provide for a court review procedure for such transactions. Congress encouraged the enactment of applicable state transfer statutes by imposing a 40% excise tax on transactions that are not completed pursuant to an applicable state statute. Specifically, 26 USC § 5891 provides that transfers of structured settlement payment rights that are completed pursuant to an “applicable state statute” will not be subject to a 40% excise tax. Kansas does not currently have a structured settlement transfer statute.

Approximately 38 states currently have structured settlement transfer statutes similar to HB 2160, including states in close proximity to Kansas such as Missouri, Nebraska, Oklahoma, South Dakota, Iowa, Illinois, Colorado, and Utah. Additionally, structured settlement transfer legislation is currently pending in Oregon, New Mexico, Wisconsin, Montana, and Alabama, in addition to Kansas, and it is anticipated that such legislation will shortly be introduced in Arkansas and perhaps a couple of other states. By the end of 2005, it is anticipated that at least 45 states will have structured settlement transfer statutes.

The National Coalition of Insurance Legislators (NCOIL) has addressed the issue of structured settlement transfers and adopted a model structured settlement transfer statute. HB 2160 tracks the NCOIL model act.

Structured settlements typically arise from the settlement of a tort claim or lawsuit where the plaintiff or claimant receives, in lieu of or in addition to a lump sum cash payment, periodic structured settlement payments over many years. The periodic structured settlement payments may be monthly payments or periodic lump sum payments (i.e. payments every 3 or 5 years) or a combination of monthly and periodic lump sum payments. The obligation to make the future structured settlement payments is usually assigned by the defendant/casualty insurance company who settled the case to a third party (structured settlement obligor). The structured settlement obligor will then typically purchase an annuity from a life insurance company (the annuity issuer) to fund the obligation to receive the future structured settlement payments. This market is typically referred to as the “primary” market for structured settlements. Structured

settlements began in the early 1980's. In the beginning, structured settlements were used primarily to settle large cases or cases involving minors. However, today structured settlements are used in all kinds of cases, both large and small, and with all kinds of claimants. According to the National Structured Settlement Trade Association (the NSSTA) the nationwide "primary" market for structured settlements is over Six Billion Dollars per year.

One of the problems with structured settlements is their lack of flexibility and liquidity. Because the structured settlement obligors and annuity issuers receive significant tax benefits for accepting the obligation to make future structured settlement payments, such companies are prohibited by Federal law from accelerating, altering, or cashing out the future payments. Thus, if a structured settlement recipient's life or financial circumstances change after they receive a structured settlement (through a death, illness, divorce, financial problems, bankruptcy, etc.) or if they simply need or desire some flexibility or liquidity with respect to their future structured settlement payments, the individual must look to the "secondary" market as a release valve for such liquidity and flexibility. NASP is an organization of companies that provide this liquidity and flexibility. The secondary market is approximately 3-5% the size of the primary market, on an annual basis.

HB 2160 governs the secondary market and insures that those Kansas residents who are receiving structured settlement payments and who need or desire some flexibility or liquidity with respect to their future structured settlement payments have available a procedure and process whereby they can transfer, assign, mortgage, or encumber portions of their future property rights (i.e. their future structured settlement payment rights) to a third party in a transaction that insures that the transferor is well-informed about the terms of the transaction, is admonished to seek professional advice regarding the transaction, and that the transaction is reviewed and approved by an impartial Judge in an open court proceeding.

Briefly, HB 2160 provides for the following in connection with all transfers of structured settlement payments in Kansas:

- Section 2 of HB 2160 requires the transferee to provide to the "payee" (the individual who is considering transferring, assigning, encumbering their future structured settlement payment rights) a disclosure statement that sets forth the main financial terms of the transaction, including the specific payments to be transferred, the total amount to be transferred, the gross amount to be paid to the payee in return for the transfer, and the expenses of the transaction for which the payee will be responsible.
- Section 2 provides that the disclosure statement must be provided to the payee at least three (3) days PRIOR to the date that the payee signs a contract and must include a provision notifying the payee that they will have a three (3) day rescission period after they sign a contract during which they can cancel the transaction without penalty

- Section 3 provides that the transfer must be approved by a court based on findings by the Court that the transfer
 - is in the best interest of the payee, taking into account the welfare support of the payee's dependents;
 - the payee has been advised in writing to seek independent professional advice regarding the transfer and has either received such advice or waived their right to receive such advice; and
 - the transfer does not contravene any applicable statute or the order of any court or other governmental authority.
- Section 4 provides that once the transfer is approved by the court the structured settlement obligor and annuity issuer are relieved from liability to make the payments which were the subject of the transfer application to anyone other than the transferee and imposes some indemnity obligations on the transferee flowing to such parties.
- Section 5 sets forth the places where the application for approval may be filed or brought – which is in the county in which the payee resides, the county in which the structured settlement obligor or annuity issuer maintains its principal place of business, or the county where the original structured settlement was approved, if it was approved by a previous court
- Section 5 also sets forth the procedure for filing the court proceeding and providing notice of same to various interested parties.
- Section 6 addresses choice of law provisions and prohibits confessions of judgment in transfer agreements and addresses life-contingent payments and the division of payments and other miscellaneous and procedural issues.

HB 2160 insures that the transactions which are subject to this statute will comply with applicable Federal law. With the enactment of HB 2160 Kansas residents who desire to complete transactions of this nature will be able to do so in accordance with applicable Federal law and such transactions will not be subject to a 40% excise tax. Kansas residents will be able to evaluate the main financial terms of such transactions, via the disclosure statement, prior to signing any binding contract and all future transactions of this nature involving Kansas residents will be subject to court review and approval.

NASP supports HB 2160. Those Kansas residents who in the future desire some liquidity and flexibility with respect to their future structured settlement payment rights are our customers. Obviously, NASP wants to be able to do business in Kansas in a manner that complies with all applicable laws and in a manner that will benefit both NASP members and our customers. NASP accepts the obligations of HB 2160 and believe it to be in the best interest of NASP members and our customers.

NASP asks for the Kansas Legislature to support and enact HB 2160 to allow Kansas residents to have flexibility and control over their property rights and future, while insuring that all secondary market transactions are completed in a manner that insures that such transactions are reasonable and appropriate and that the individuals who go forward with such transactions are well-informed and treated fairly.

NASP welcomes the opportunity to address this legislation with members of the Kansas Legislature and/or staff members who might be interested in same.

Thank you for your support and if you have any questions I will be happy to answer them for you.

Respectfully submitted

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KANSAS

KANSAS REAL ESTATE COMMISSION
SHERRY C. DIEL, EXECUTIVE DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

Memo To: Members of Senate Financial Institutions and Insurance Committee
From: Sherry C. Diel, Executive Director, Kansas Real Estate Commission
RE: SB 269
Date: March 15, 2005

SB 269 contains four proposed amendments to the Kansas Real Estate Brokers' and Salespersons' License Act, K.S.A. 58-3034 *et seq.*, and the Kansas Brokerage Relationships in Real Estate Transactions Act, K.S.A. 58-30,101 *et seq.* Three of the amendments are cleanup in nature.

The proposed amendments are as follows:

- A \$50 late fee would be added to K.S.A. 58-3039(f)(2) when an application to convert a temporary salesperson's license to a standard salesperson's license is filed subsequent to the expiration date of the temporary license. A temporary license is issued for six months during which time the new salesperson must complete a 30-hour post-license course. Existing law provides a three-month grace period after the expiration date of the temporary salesperson's license to file an application for late conversion of the license to a standard salesperson's license, but no penalty is imposed when the application is filed late. The Commission estimates that 10% of the applications to convert a temporary salesperson license to a standard salesperson license are filed late.
- K.S.A. 58-3062(a)(24) would be amended to clarify that the prohibition on a licensee receiving direct or indirect compensation for the production of title insurance business does not include compensation derived from an affiliated business arrangement with a title insurance agency that is permitted pursuant to K.S.A. 40-2404(14)(e)-(j). The Kansas Attorney General recommended that current law be clarified to address what appears to be a conflict of interest between the real estate law and the title insurance statutes.
- K.S.A. 58-3077 was passed last Session. The statute permits a Kansas-licensed supervising or branch broker to enter into a broker cooperation agreement with a foreign licensee who is not licensed in Kansas to perform real estate activities in a commercial real estate transaction. Existing law requires escrow monies derived from a commercial co-brokerage relationship to be held in the Kansas broker's trust account. The Commission understands that very few commercial brokers maintain trust accounts. The proposed amendment to K.S.A. 58-3077(b)(2) would permit escrow funds derived from a broker cooperation

agreement to either be held in the Kansas broker's trust account or by a third-party escrow agent located in Kansas.

- The proposed amendment to K.S.A. 58-30,113(a) would address an alleged ambiguity in the wording of the statute to clarify that a licensee engaged as a transaction broker shall not act as an agent for either party in the real estate transaction. A transaction broker is supposed to remain neutral in the transaction without advocating for the interest of one party over the other. A licensee functioning as a transaction broker is a merely a facilitator in the transaction. The current version of the law states that a transaction broker *is not* an agent of either party. The Commission recently received an adverse decision in a Shawnee County District Court case in which the judge ruled that it is an inherent conflict of interest for a licensee who is the buyer or seller in the transaction to act as a transaction broker. However, the judge also determined that the current version of K.S.A. 58-30,113(a) is just a statement of fact as opposed to being prohibitory in nature.

I would be happy to address any questions from the Committee.

Testimony supporting SB 269
Senate Financial Institutions and Insurance Committee

Tuesday, March 15, 2005

On behalf of

Kansas Association of Realtors

Chairman Teichman and Members of the Committee:

I am Kathy Damron testifying in support of Senate Bill 269 on behalf of the Kansas Association of Realtors, the statewide association of realtors.

Senate Bill 269, as requested for introduction and enactment by the Kansas Real Estate Commission, contains important amendments to the Kansas Real Estate License Law. One of the most significant amendments to KAR is found on line 1 through 7 on page 5 of SB 269 where the language clarifies that real estate licensees are allowed to receive compensation from the issuance of title insurance. This language is a clarification necessitated by the passage last year of Senate Bill 66 amending the Kansas Controlled Business Law. It seeks to add regulatory clarity to the controlled business law and the Kansas license law to enable KREC to perform the regulatory oversight they're asked to provide. You'll be pleased to know that this clarification is supported by both KAR and the Kansas Land Title Association.

SB 269 also clarifies a provision affecting commercial real estate portability. In 2004, the law was changed allowing real estate practitioners to co-broker real estate transactions with non-Kansas real estate licensees. Co-brokering such deals require a broker cooperation agreement, which provides the framework for such transactions. Importantly, as part of the cooperation agreement, all escrow funds must be held in Kansas. SB 269 clarifies that a commercial real estate practitioner may hold escrow funds in the practitioner's trust account or in a third party escrow account located in Kansas.

Attachment 8
3/15/05
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