

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 16, 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:

Doug Wareham, Kansas Bankers Association
Matthew Goddard, Heartland Community Bankers Association
Kathleen Taylor Olsen, Kansas Bankers Association
David Hanson, Kansas Insurance Guaranty Association
Daniel Magill, Kansas Association of Insurance Agents
Jarrod Forbes, Kansas Insurance Department
Craig VanAalst, Kansas Insurance Department
Thomas Holland, Kansas Representative

Others attending:

See attached list.

Madam Chair announced, the Kansas Bankers Association dinner for the Committee would be tonight.

Madam Chair opened the hearing on **HB 2125**.

HB 2125 - Mortgages on real property; entry of satisfaction; fees

Doug Wareham, Kansas Bankers Association, presented testimony in support of **HB 2125**. There are two separate statutes that currently address mortgage release fees that are paid to Register of Deeds when a mortgage is paid off and a release of the mortgage is requested. K.S.A. 16-207(d) and 1994 legislation amended K.S.A. 58-2309(a). **HB 2125** is simply a clarification of existing law. (Attachment 1)

Matthew Goddard, Heartland Community Bankers Association, presented testimony in support of **HB 2125**. This bill explicitly authorizes mortgage lenders to collect the fee for filing a mortgage release from a mortgagor. (Attachment 2)

There were no questions.

Madam Chair closed the hearing on **HB 2125**.

Madam Chair opened the hearing on **HB 2205**.

HB 2205 - prohibiting unauthorized use of lender's name, trade name or trademark

Matthew Goddard, Heartland Community Bankers Association, presented testimony in support of **HB 2205**. This bill provides a solution to the problem of misleading and deceptive use of certain information in solicitations for mortgage loans and related insurance products. Along with Mr. Goddard's testimony, were attached examples of misleading mailings. (Attachment 3)

Senator Schmidt asked, if other states presently have laws in place been covering this type of deception? Mr. Goddard stated that other states do have similar legislation. Senator Wilson asked if this bill would stop companies from marketing their services if they did use the appropriate disclosures? Mr. Goddard this bill was an attempt to stop misleading mailings without using disclosures. If a company used the proper disclosure, this bill would not affect them. Senator Barone asked, how do these companies obtain the

CONTINUATION SHEET

MINUTES OF THE Senate Financial Institutions and Insurance Committee at 9:30 A.M. on March 16, 2005 in Room 234-N of the Capitol.

information about an individual, they use in their deceptive policies. Mr. Goddard stated, through public records.

Kathy Olsen, Kansas Bankers Association, testified in support of **HB 2205**. Ms. Olsen pointed out that if this information did actually come from the banks which the misleading mailer intends a person to believe, the bank would be in violation of privacy regulations. (Attachment 4)

There were no further questions.

Madam Chair closed the hearing on **HB 2205**.

Madam Chair opened the hearing on **HB 2326**.

HB 2326 - Kansas Insurance Guaranty Association, handling of claims

Jarrold Forbes, Kansas Insurance Department, offered his support of **HB 2326** and turned to David Hanson for testimony.

David Hanson, Kansas Insurance Guaranty Association, testified in support of **HB 2326**. **HB 2326** passed out of the House, favorably, with 121 to 0 vote. (Attachment 5) Mr. Hanson offered a balloon. (Attachment 6)

Madam Chair asked if there were any questions on the bill "as it is?" There were none.

Daniel Magill, Kansas Association of Insurance Agents, testified in support of **HB 2326**. (Attachment 7)

Senator Barnett moved to adopt the first balloon amendment; Senator Wilson seconded the motion. The motion carried.

Senator Brownlee moved to adopt the second balloon amendment; Senator Schmidt seconded the motion. The motion carried.

Ken Wilke, Revisor of Statutes Office, stated he made a minor grammatical change as requested.

Madam Chair closed the hearing on **HB 2326**.

Madam Chair announced the committee would work **HB 2125**, **HB 2205**, **HB 2326**, **SB 269** and **HB 2160**.

Senator Steineger moved to pass **HB 2125** out favorably; Senator Wilson seconded the motion. The motion carried.

Senator Steineger moved to pass **HB 2205** out favorably; Senator Brownlee seconded the motion. The motion carried.

Senator Steineger moved to pass **HB 2326**, as amended, out favorably; Senator Barone seconded the motion. The motion carried.

Senator Wilson moved to pass **SB 269** out favorably; Senator Schmidt seconded the motion. The motion carried.

Senator Steineger moved to pass **HB 2160** out favorably; Senator Schmidt seconded the motion. The motion carried.

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

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

CONTINUATION SHEET

MINUTES OF THE Senate Financial Institutions and Insurance Committee at 9:30 A.M. on March 16, 2005 in Room 234-N of the Capitol.

Craig VanAalst, Kansas Insurance Department, presented testimony that was requested by the Committee the previous day. Specifically, in regard to individual health insurance policies in relationship to an amendment made on the floor of the Kansas House of Representatives. Mr. VanAalst addressed three areas: HB 2366 floor amendment background, Individual Health Insurance Policy cancellation complaints and current law regarding non-renewal of Individual health Insurance Policies. Mr. VanAalst stated it would take at least a 90-day notification to close a block of business and 180 days notice to discontinue all business. The amendment in section 2 defines individual opt-out. (Attachment 8)

Senator Barnett asked what the Insurance Department's position is on **HB 2366**? Mr. VanAalst stated, they have no position, they are leaving it up to the policymakers. Madam Chair pointed out that they have regulatory authority. Senator Barnett expressed his concerns about **HB 2366** not being a consumer friendly bill. It looks to him as though **HB 2366** is directed more toward the insurance companies.

Lew Ebert, President of The Kansas Chamber, stated that the bill is a way to bring more opportunities to the consumer. Senator Barnett said it appears as though it gives the insurance companies more opportunities to manage the patient, i.e., where to go and/or who to go to.

Senator Brownlee asked if there is anything in the laws that allows HSAs or FSAs? Chair Teichman said that legislation was passed out last year.

Senator Barone asked what amount of time does the word "term" refer to? Mr. VanAalst stated, generally 30-days. Senator Barone pointed out, if that was the case, that it would appear as though every 30 days the deductible could be raised. Kelly Levi, KID, stated "term" would refer to annually. Senator Wilson stated his interpretation of "term" would be for whatever period of time the policy was written.

Tom Holland, Kansas Representative, testified in support of **HB 2366**. Mr. Holland stated that he is the representative who introduced this piece of legislation based upon a small business owner in his district. They had a family policy, filed a claim and the deductible was promptly raised, several times! He stated that in **HB 2366** the specifics in the coverage could not be change as long as the premiums were paid and there were stability and reliability.

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

Madam Chair asked the Committee to approve the Minutes for March 8 and March 10.

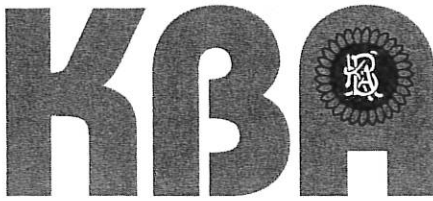
Senator Barnett moved to approve the Minutes; Senator Wilson seconded the motion. The motion carried.

The meeting was adjourned at 10:33.

FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE GUEST LIST

DATE: Wed, March 16

NAME	REPRESENTING
Alex Kotovantz	P.I.A.
Doug Wareham	Kansas Bankers Assn.
Dan M. Moore	KITA
John	KID
Craig Van Aalst	KID
David Hanson	Ks Insur Assn.
Chel Austin	KITA
Stuart Little	CBA
Ashley Sheard	Levee Chamber



The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

Date: March 16, 2005
To: Senate Financial Institutions & Insurance Committee
From: Doug Wareham, Vice President-Government Affairs
Re: H.B. 2125

Madam Chair and members of the Committee, I am Doug Wareham appearing on behalf of the Kansas Bankers Association (KBA). KBA's membership includes 360 Kansas banks, which operate more than 1,300 banking facilities in 440 towns and cities across the state. KBA appreciates the opportunity to appear in support of H.B. 2125.

Currently there are two separate statutes that address mortgage release fees that are paid to Register of Deeds when a mortgage is paid off and a release of the mortgage is requested.

K.S.A. 16-207(d), which addresses interest rates and charges included in contracts & promises, clearly allows lenders to collect mortgage release fees from borrowers. The statute states the following:

"The lender may collect from the borrower: (1) The actual fees paid a public official or agency of the state, federal government, for filing, recording or releasing any instrument relating to a loan subject to provisions of this section.

In 1994, the legislature amended K.S.A. 58-2309(a) by striking statutory language that prohibited mortgagees (lenders) from requiring mortgagors (borrower) to pay mortgage release fees. While the 1994 amendments to K.S.A. 58-2309(a) were intended to allow lenders to assess borrowers for mortgage release fees, the absence of specific language in K.S.A. 58-2309(a) continues to cause confusion within the banking industry, title insurance industry and with borrowers. We believe the language proposed in H.B. 2125 will simply clarify the situation and alleviate confusion.

To provide you with added assurance that H.B. 2125 is simply a clarification of existing law, I have attached a copy of an Attorney General Opinion, which substantiates the fact that banks are presently allowed to assess borrowers for mortgage release fees. Comments near the bottom of page 4 of the opinion state:

"we (Attorney General) opine that the 1994 amendments to K.S.A. 1993 Supp. 58-2309(a) allow lenders to require mortgagors to pay the \$5.00 filing fee, to be forwarded to the county register of deeds, to release that individual's mortgage."

Once again, thank you for the opportunity to appear in support of H.B. 2125 and I would be happy to stand for questions.

Attachment 1
FI+I 3/16/05

28-115

Chapter 28.--FEES AND SALARIES

Article 1.--FEES IN ALL COUNTIES AND SALARIES IN CERTAIN COUNTIES

28-115. Fees of register of deeds; monthly billing to internal revenue service; standards for documents to be filed; disposition of fees. (a) The register of deeds of each county shall charge and collect the following fees:

For recording deeds, mortgages or other instruments of writing, for first page, not to exceed legal size page--8 1/2" x 14".....\$6.00

For second page and each additional page or fraction thereof.....2.00

Recording town plats, for each page.....20.00

Recording release or assignment of real estate mortgage.....5.00

Certificate, certifying any instrument on record.....1.00

Acknowledgment of a signature.....50

For filing notices of tax liens under the internal revenue laws of the United States.....5.00

For filing releases of tax liens, certificates of discharge, under the internal revenue laws of the United States or the revenue laws of the state of Kansas5.00

For filing liens for materials and services under K.S.A. 58-201, and amendments thereto.....5.00

(b) In addition to the fees required to be charged and collected pursuant to subsection (a), the register of deeds shall charge and collect an additional fee of \$2 per page for recording:

(1) The first page of any deeds, mortgages or other instruments of writing, not to exceed legal size--8 1/2" x 14";

(2) the second page and each additional page or fraction of any deeds, mortgages or instruments of writing; and

(3) a release or assignment of real estate mortgage.

Any fees collected pursuant to this subsection shall be paid by the register of deeds to the county treasurer. The county treasurer shall deposit such funds in the register of deeds technology fund as provided by K.S.A. 2003 Supp. 28-115a, and amendments thereto.

(c) For any filing or service provided for in the uniform commercial code, the amount therein provided, shall be charged and collected. No fee shall be charged or collected for any filing made by the department of revenue as required under the provisions of the Kansas inheritance tax act, and amendments thereto.

(d) If the name or names of the signer or signers or any notary public to any instrument to be recorded are not plainly typed or printed under the signatures affixed to the instrument, the register of deeds shall charge and collect a fee of \$1 in addition to all other fees provided in this section.

(e) If sufficient space is not provided for the necessary recording information and certification on a document, such recording information shall be placed on an added sheet and such sheet shall be counted as a page. The document shall be of sufficient legibility so as to produce a clear and legible reproduction thereof. If a document is judged not to be of sufficient legibility so as to produce a clear and legible reproduction, such document shall be accompanied by an exact copy thereof which shall be of sufficient legibility so as to produce a clear and legible reproduction thereof and which shall be recorded contemporaneously with the document and shall be counted as additional pages. The register of deeds may reject any document which is not of sufficient legibility so as to produce a clear and legible reproduction thereof.

(f) Any document which was filed on or after January 1, 1989, which was of a size print or type smaller than 8-point type but which otherwise was properly filed shall be deemed to be validly filed.

(g) All fees required to be collected pursuant to this section, except those charged for the filing of liens and releases of tax liens under the internal revenue laws of the United States, shall be due and payable before the register of deeds shall be required to do the work. If the register of deeds fails to collect any of the fees provided in this section, the amount of the fees at the end of each quarter shall be deducted from the register's salary.

(h) Except as otherwise provided by subsection (b), all fees required to be collected pursuant to this section shall be paid by the register of deeds to the county treasurer and deposited into the general fund of the county.

History: L. 1913, ch. 197, § 15; R.S. 1923, 28-115; L. 1949, ch. 260, § 4; L. 1955, ch. 214, § 1; L. 1959, ch. 184, § 1; L. 1965, ch. 564, § 401; L. 1967, ch. 215, § 1; L. 1970, ch. 148, § 1; L. 1973, ch. 174, § 1; L. 1976, ch. 194, § 1; L. 1979, ch. 316, § 13; L. 1983, ch. 129, § 1; L. 1988, ch. 125, § 1; L. 1989, ch. 114, § 1; L. 2002, ch. 98, § 1; July 1.



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

October 27, 1994

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 94- 143

The Honorable Vernon W. Correll
State Representative, 7th District
P.O. Box 214
Oswego, KS 67356

FILE COPY

Re: Personal and Real Property -- Mortgages of Real
Property -- Entry of Satisfaction of Mortgage

Synopsis: Pursuant to K.S.A. 1993 Supp. 58-2309a, as
amended by L. 1994, ch. 250, § 1, a mortgagee may
charge a mortgagor a \$5.00 fee for filing of a
release of that individual's mortgage. Cited
herein: K.S.A. 16-207(d)(1); K.S.A. 28-115; K.S.A.
1993 Supp. 58-2309a, as amended by L. 1994,
ch. 250 § 1; Gen. Stat. 1909, § 5202, repealed
by L. 1971, ch. 189, §2.

* * *

Dear Representative Correll:

You request our opinion regarding the effect of the 1994
changes to K.S.A. 1993 Supp. 58-2309a. Specifically, you
ask if the amendments enacted in house bill no. 2654 permit
financial institutions to charge a fee for preparing a
mortgage release. You indicate that some financial
institutions are charging up to \$150.00 for preparing the
release of a mortgage.

Prior to the 1994 amendments, K.S.A. 1993 Supp. 58-2309a
provided as follows:

1-4

"(a) When the indebtedness secured by a recorded mortgage is paid . . . the mortgagee . . . shall enter satisfaction or cause satisfaction of such mortgage to be entered of record forthwith, paying the required fee without charge to the mortgagor or the mortgagor's assigns." Id. (Emphasis added).

In 1994, the legislature amended the statute by deleting the portion underlined above. L. 1994, ch. 250, § 1. It is not clear from the statute what effect this change has upon a mortgagee's ability to charge a fee for preparation of releasing a mortgage. To determine what the legislature intended, it is proper to look at the circumstances attending the passage of the statute, the purpose to be accomplished and effect the statute may have under various constructions. West v. Collins. 251 Kan. 657 (1992).

When the amendment was first proposed, the intent was to strike the "language prohibiting a mortgagee from charging the mortgagor a fee for releasing the mortgage." Minutes, House Committee on Financial Institutions and Insurance, January 26, 1994. The purpose of this change was stated by the director of research for the Kansas Bankers Association (KBA), Chuck Stones. Mr. Stones stated that the language of K.S.A. 58-2309a conflicts with K.S.A. 16-207(d). Id. He went on to say that:

"Striking the language from 58-209a [sic.] will allow the mortgage release to be governed by 16-207 similar to other promissory notes, and will eliminate the confusion created by the conflict between these two statutes." Minutes, Attachment 2, House Committee on Financial Institutions and Insurance, January 26, 1994.

The language of K.S.A. 16-207, to which Mr. Stones refers, provides:

"The lender may collect from the borrower: (1) The actual fees paid a public official or agency of the state, or federal government, for filing recording or releasing any instrument

relating to a loan subject to the provisions of this section;" K.S.A. 16-207(d).

We agree that these statutes appeared to be in conflict prior to the amendment. K.S.A. 1993 Supp. 58-2309a prohibited mortgagees from requiring the mortgagors to pay the fee required to release a mortgage, whereas K.S.A. 16-207(d)(1) permits a lender to charge a fee to the borrower, if they choose to do so.

The next issue that must be addressed is determining exactly what "fee" is being discussed. It is not clear from the language of K.S.A. 1993 Supp. 58-2309a what "fee" is being referred to, nor is it clear from the amendment. L. 1994, ch. 250, § 1. To discern what fee the legislature was referring to, the intent of the legislature controls. State v. Royse, 252 Kan. 755 (1993). It is proper to review historical background and changes made in a statute when determining legislative intent. Moore v. City of Lawrence, 232 Kan. 353 (1982).

The forerunner of K.S.A. 58-2309a was first interpreted in Blout v. Atena Building & Loan Assoc., 97 Kan. 77 (1916). In that case, the court was interpreting the provisions of Gen. Stat. 1909, § 5202, repealed by L. 1971, ch. 189, § 2, which required that:

"When any mortgage of real estate shall be paid . . . it shall be the duty of the mortgagee . . . to enter satisfaction or cause satisfaction of such mortgage to be entered of record without charge."

The Blout court pointed out that the fee for recording the release was a "trifling expense of thirty cents." Id. at 80. The court went on to hold that parties could contract outside of the statute, so that the mortgagor could pay for the release if the agreement specified. Id. at 81

In Bird v. Aetna Building & Loan Assoc., 110 Kan. 706 (1922) the court followed the decision of Blout. There again, the court noted how minimal the expense for releasing a mortgage would be. Bird 110 Kan. at 709. The court stated that "the statute (Gen. Stat. 1915, § 4720) provides that the fee for releasing a mortgage . . . shall be twenty-five cents. . . ." Id.

In addition to this historical background of the statute, we must also look at the legislative history of the statute. When there is uncertainty about the meaning of a statute it is prudent to examine its legislative history. Koch v. Shell Oil Co., 820 F.Supp. 1336 (D.Kan. 1993). In your letter of request, you refer to comments made during the drafting of the amendment which refer to a \$5.00 fee. This \$5.00 fee you refer to was mentioned on several occasions during the drafting of the statute.

The actual \$5.00 amount was first referred to when Mr. Stones, director of research for the KBA, stated that "the KBA would prefer that the customer be charged the \$5.00 fee." Minutes, House Committee on Financial Institutions and Insurance, Feb. 14, 1994. The \$5.00 amount was next mentioned by Representative Allen when he recommended that "the lending institutions would have to pay the \$5.00 fee." Minutes, House Committee on Financial Institutions and Insurance, Feb. 23, 1994. The last time the fee is mentioned is when Representative King moved to pass out house bill no. 2654 "in the original form which required the borrower to pay the \$5.00 fee." Id.

Based on the above statements and the actual change made to the statute an inference can be drawn that this \$5.00 amount refers to the fee required by a government office to have a mortgage released from the record.

This position is further supported by K.S.A. 28-115 which provides that:

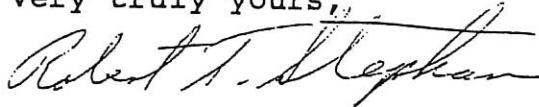
"The register of deeds of each county shall charge and collect the following fees:

"Recording release or assignment of real estate mortgage 5.00"

Based on the court cases which refer to K.S.A. 58-2309a's predecessor, the legislative history accompanying the amendments made in L. 1994, ch. 250, § 1 and the provisions of K.S.A. 28-115, we opine that the 1994 amendments to K.S.A. 1993 Supp. 58-2309a allow lenders to require mortgagors to pay the \$5.00 filing fee, to be forwarded to the county register of deeds, to release that individual's mortgage. The amendment cannot, however, be used as authority to charge any other fees to the mortgagor for preparation of a mortgage

release. This opinion does not address whether statutes other than K.S.A. 58-2309a may authorize the mortgagee to charge additional fees for preparation of the release.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Lawrence J. Logback
Assistant Attorney General

RTS:JLM:LJL:bas

To: Senate Financial Institutions and Insurance Committee

From: Matthew Goddard
Heartland Community Bankers Association

Date: March 16, 2005

Re: House Bill No. 2125

The Heartland Community Bankers Association appreciates the opportunity to express our support for House Bill 2125 to the Senate Committee on Financial Institutions and Insurance.

House Bill 2125 explicitly authorizes mortgage lenders to collect the fee for filing a mortgage release from a mortgagor. The legislature last visited this issue in 1994, but the solution at the time has proven to be somewhat ambiguous. House Bill 2125 would clarify the law for all parties involved.

Prior to the passage of House Bill 2654 in 1994, Kansas law prohibited a mortgagee from passing along to the mortgagor the fee payable to the register of deeds for releasing a mortgage. K.S.A. 16-207, however, authorized lenders to collect from borrowers the actual fees paid to a government agency. The two statutes were clearly in conflict with one another. House Bill 2654 removed this statutory disagreement by striking the prohibitory language from K.S.A. 58-2309a. Kansas law then spoke with one voice in allowing lenders to collect the actual fees paid to a government agency.

The thinking in 1994 was that eliminating the prohibition on passing the cost on to the customer would allow mortgage lenders to do just that. Attorney General Opinion No. 94-143 from then-Attorney General Bob Stephan reached the same conclusion when it stated:

"...we opine that the 1994 amendments to K.S.A. 1993 Supp. 58-2309a allow lenders to require mortgagors to pay the \$5 filing fee... to release that individual's mortgage."

Unfortunately, the lack of clear statutory authority for lenders to collect from the borrower the actual fee they pay for releasing a mortgage has led some nonlenders to question their authority to do so.

Following the legislature's 1994 action, some of our members began collecting the mortgage release fee from their customers. Others chose not to collect the fee and still today pay it themselves instead of passing it on to the borrower. For a high volume lender, the cost of paying the fee can be significant. The fee is currently \$5 for filing a release, plus an additional \$2 per page for the applicable Register of Deeds technology fund. Some HCBA members now pay \$9 for each release.

House Bill 2125 makes clear that a mortgagee has the authority to collect the *actual* mortgage release fee from a borrower by expressly stating that the fee may be collected from the mortgagor pursuant to K.S.A. 16-207. The Heartland Community Bankers Association respectfully requests that the Senate Financial Institutions and Insurance Committee recommend HB 2125 favorable for passage.

Thank you.

Attachment 2



Matthew S. Goddard, Vice President

700 S. Kansas Ave., Suite 512
Topeka, Kansas 66603
Office (785) 232-8215 • Fax (785) 232-9320
mgoddard@hcbankers.com

To: Senate Financial Institutions and Insurance Committee

From: Matthew Goddard
Heartland Community Bankers Association

Date: March 16, 2005

Re: House Bill 2205

The Heartland Community Bankers Association appreciates the opportunity to appear before the Senate Financial Institutions and Insurance Committee to express our support for House Bill 2205.

House Bill 2205 provides a solution in Kansas law for a growing nationwide problem. The problem is the misleading, if not outright deceptive, use of certain information in solicitations for mortgage loans and related insurance products. These solicitations prominently display the name or logo of the recipient's lender or otherwise imply an affiliation with the lender even though they typically have no relationship or connection to the lender whose name or logo is being used. The solicitations also often include loan information that gives the recipient the impression that their lender is involved with the solicitation. Examples of these solicitations are attached.

Most mortgage lenders have earned a high level of credibility with their customers. By implying that a solicitation is in some way associated with the lender, the companies making these solicitations are preying on these lender-borrower relationships. The mailings often reference the original lender's name and use words such as "authorized" and "endorsed" to promote products and services. The solicitation also includes the recipient's loan amount and sometimes even their loan number. Without these deceptive techniques, most consumers wouldn't give the solicitations a second thought.

The most common complaint our members receive from their customers regarding these solicitations is that the customer thinks their financial institution provided this other company with their loan information. The companies making the solicitations generally get their information from public records, although the information can also be gathered from credit reports. Some solicitations already disclose that loan information came from the public record. Unfortunately, K.S.A. 45-230 already makes it unlawful to receive information from public records "for the purpose of selling or offering for sale any property or service to the persons listed therein..." This would appear to make it illegal under Kansas law to use information acquired from a public record to sell a product or service. It is the understanding of HCBA that this statute is not actively enforced.

As shown by the attached examples, these solicitations take a number of different formats. Some disclose that the solicitor is not affiliated with the consumer's lender while others acknowledge that the loan details were obtained from public records and not their lender. However, these disclosures are inconsistent and there is no uniform standard for the disclosures. Based on the responses of customers who call with questions or complaints, the disclosures are not always effective.

What the Bill Does

House Bill 2205 takes several different approaches to address the problem of these misleading solicitations. First, it requires that the person making the solicitation get the consent of a lender before using the lender's name, trade name or trademark. This requirement also applies to names, trade names and trademarks that are similar to that of the lender mentioned in the solicitation. A person can still use the lender's name without its consent if they clearly and conspicuously state in bold type that the solicitation is not authorized by the referenced lender, but the referenced lender must be identified by name in the statement. The statement must also include the name, address and telephone number of the person making the solicitation and state that any loan information referenced in the solicitation was not provided by the lender. Please note that HB 2205 does not apply to advertisements and solicitations that make comparisons between lenders so long as the person making the comparison clearly identifies itself.

House Bill 2205 takes three steps to limit the use of a consumer's loan information in a solicitation. First, it prohibits the use of any loan information that is not publicly available. This would preclude the use of information culled from credit reports. Second, the bill prohibits the use of loan information acquired from public records if its use would violate K.S.A. 45-230. Finally, if there is still any other public loan information that can be used, the solicitor must make a clear and conspicuous disclosure that the solicitation is not authorized by the lender and that the lender did not provide the loan information.

The envelopes or mailing labels used with these solicitations often use the name of the recipient's lender or use other information to give the mailing a sense of urgency. House Bill 2205 prohibits the use of an existing lender's name without that lender's permission and prohibits specific loan information from being visible on the outside of a mailing.

As is the case with K.S.A. 45-230, enforcement is an issue with any laws targeting these solicitations. They do not pose a threat to public safety and therefore do not warrant the involvement of law enforcement and regulatory bodies such as the Office of the State Bank Commissioner claim they lack the appropriate staff for enforcement. House Bill 2205 allows the lender whose name, trade name or trademark is used to seek a court injunction against the person who violates the law. The bill provides that the lender seeking the injunction does not have to prove actual damages and irreparable and interim harm to the lender are presumed. The lender seeking the injunction may also seek to recover actual damages and any profits the defendant made resulting from the violation.

In addition to making an exception for comparisons, House Bill 2205 also exempts from its provisions communications by a lender or its affiliates with a current customer or someone who was a customer during the immediately preceding 18 months.

House Bill 2205 will help curtail the use of these deceptive and misleading business solicitations. Unfortunately, their use is a national trend that, absent legislative action, we do not expect to subside. States across the country have passed legislation similar to HB 2205, including Colorado and Missouri in our own region. Kansas can protect its consumers and lenders by being the next and passing HB 2205.

We respectfully request that the Senate Committee on Financial Institutions and Insurance recommend HB 2205 favorable for passage.

Important Notice: Michael [REDACTED]

You can eliminate an average of **8 years** off your **\$93,000** loan with **Lasalle Bank NA**.

Fixed Rate, Adjustable Rate, APM, Balloon, Interest Only, and all other types of loans. 30 year, 20 year, 15 year or any other term loan.

Lender: (listed for loan reference only)
Lasalle Bank NA

To Borrower:

Michael [REDACTED]

[REDACTED]
Shawnee Mission, KS 66205-2757

RE: Bi-Weekly ID#: 05-0316TM2
Customer ID#: AYCS4347



Dear Michael [REDACTED]:

Many homeowners are requesting that Weekly and Bi-Weekly payments be made available as an option for paying mortgage payments. Most people do not get paid monthly, but get paid either Weekly or every two weeks/Bi-Weekly. Weekly and Bi-Weekly payments have become easier forms of budgeting because the payments are much smaller. And, if you get paid Weekly or every two weeks/Bi-Weekly, your payments can be debited on or around the same days you get paid. (A small transfer fee is added to each bi-weekly/weekly payment to cover processing.) Since your \$93,000 loan with Lasalle Bank NA is one of the largest bills you have to pay, it makes sense to use an easier and faster way to pay it off. We give you the ability to do just that. (Eliminate an average of 8 years and \$32,736 in interest charges off your loan just by adjusting the way you make your payments from monthly to bi-weekly. It's so simple.)

Michael [REDACTED], compare the advantages of Weekly and Bi-Weekly payments to a typical Monthly payment:

Weekly & Bi-Weekly Payments (sample comparison)
1. Smaller Payments. (\$198 weekly or \$395 bi-weekly)
2. Can be set up to match your pay schedule.
3. Budgeting is easier because a smaller amount can be taken from each pay period.
Monthly Payment
1. Larger payments. (\$790 monthly).
2. Does not match most pay schedules.
3. Budgeting requires you to put money aside throughout the month for a larger payment.

Sample Comparison			
	Payment Amount	Years To Pay	Interest Savings
Monthly:	\$790	30	\$0
Bi-Weekly:	\$395	22.8	\$32,736
Weekly:	\$198	22.7	\$33,108
Compare adding a little extra to your payments			
	Payment Amount(+)	Years To Pay	Interest Savings
Monthly:	\$790 + \$40	24.8	\$24,552
Bi-Weekly:	\$395 + \$20	19.8	\$46,686
Weekly:	\$198 + \$10	19.7	\$47,058

*Sample comparison information: \$93,000, 30 year term, 6.5% fixed rate, \$790 monthly payment (estimated escrow included)

- As shown above, you could eliminate 10-12 years and \$47,058 in interest off your loan with Lasalle Bank NA just by adding a little extra to your Weekly or Bi-Weekly payments.

The Weekly and Bi-Weekly programs are offered and administered by Nationwide Biweekly Administration, Inc. Your funds are mailed from the administrator directly to Lasalle Bank NA on or before the due date. No changes are made to your existing Lasalle Bank NA loan. All extra funds collected are directed toward the principal of your loan.

To switch to a Weekly or Bi-Weekly payment for your \$93,000 loan with Lasalle Bank NA or to get information on how much money and how many years you can save, call us at 1-888-234-1813. Please respond no later than **March 16, 2005**. There is a one-time non-refundable setup fee for the Weekly and Bi-Weekly program. Be sure to have your Customer ID# and your Lasalle Bank NA monthly mortgage statement or coupon book available, when you call.

Lasalle Bank NA - \$93,000 - Michael [REDACTED] [REDACTED], Shawnee Mission, KS 66205-2757

Nationwide Biweekly Administration, Inc. is located at 855 Lower BellBrook Rd., Xenia, Oh 45385 and is not affiliated, connected, associated with, sponsored, or approved by the lender. Information concerning your loan was obtained from public record. The Lenders name listed above is included for loan identification purposes only. © Nationwide Biweekly Administration, Inc. Sept 2004.

3-2

3-4

Nationwide Biweekly Admin.
855 Lower Bellbrook Road
Xenia, OH 45385

PRESORTED
FIRST CLASS



Mortgage Information Enclosed

Regarding Loan With:

(where the total reference only)

Lasalle Bank NA

To Borrower:

Michael [REDACTED]

Shawnee Mission, KS 66205-2757



3-3



PLEASE READ ENTIRE DOCUMENT CAREFULLY

You originally obtained a mortgage from **CAPITOL FEDERAL**. Therefore you are one of a select group of homeowners who is eligible to take part in an exclusive mortgage rate reduction program. The authorized financial institution listed below is able to convert your existing mortgage to a newer lower fixed rate or adjustable rate mortgage. Upon qualification, your *monthly payments could be substantially lower, and you could save thousands of dollars over the term of the loan.

*See new mortgage calculations.

Please call the phone number listed below, and give the necessary information to qualify.

Loan information obtained through public record. Lender name listed for loan reference identification and comparison purposes only.

CURRENT MORTGAGE INFORMATION

\$180,000.00

ORIGINAL LOAN AMOUNT

\$1,079.19

CURRENT ESTIMATED PAYMENT

AUTHORIZED PROGRAM PROVIDER

MISSION MORTGAGE, L.L.C.

200 NE Missouri Dr
Lee's Summit, MO 64086

Contact: Anthony Atkins
816-916-1690

PREFERRED EQUITY BUILDER PROGRAM

ORIGINAL LOAN AMOUNT

\$180,000.00

PROPOSED PAYMENT RATE

1.95 %

PROPOSED MONTHLY PAYMENT

\$660.82

MONTHLY SAVINGS \$418.37

- NO UP FRONT FEES
- DEBT CONSOLIDATION
- HOME IMPROVEMENT LOANS

APR rates are approximate and are quoted as examples. Rates, items and loan amounts may vary on each loan, subject to equity and qualification.

Interest Rate Reduction Notification

PRSR STD
U.S. POSTAGE
PAID
SHAWNEE MSN KS
PERMIT NO. 636

PERSONAL & CONFIDENTIAL



975 20 7

RE: CAPITOL FEDERAL

3-5

EXAMPLE 2A

3-7

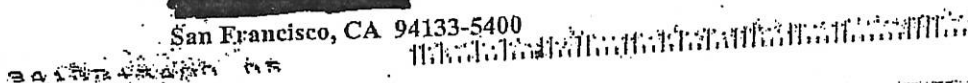
Loan Services
3535 Ross Ave St 100
San Jose CA 95124

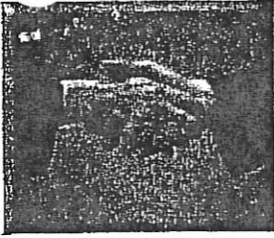


**VERY IMPORTANT INFORMATION REGARDING
YOUR RECENT ADJUSTABLE RATE LOAN WITH UNION BANK OF CALIFORNIA
PROPERTY LOCATED AT [REDACTED] SAN FRANCISCO CA 94133-5400
IT WILL COST YOU \$672 THIS MONTH NOT TO ACT TODAY!**

Michael [REDACTED]

[REDACTED]
San Francisco, CA 94133-5400





Very important information regarding your
recent loan with Union Bank of California

Call (800) 316-1002 Now!

Monday, May 19, 2003

Property Address: [REDACTED] San Francisco CA94133-5400

Dear Michael

IT WILL COST YOU \$672 THIS MONTH NOT TO ACT TODAY!

When you secured your mortgage 11/1/2002 in the amount of \$995,000 with Union Bank of California, your interest rate of 5.25% and payment of \$5,494 was probably very attractive. If you refinance your original loan of \$[REDACTED],

YOUR NEW PAYMENT FOR THE NEXT THREE YEARS WILL DROP TO 4,822

(EVEN IF YOU RECENTLY OBTAINED YOUR CURRENT LOAN)

FIXED RATE FOR 3 YEARS THEN 6 MONTH ADJUSTABLE

4.125% A.P.R. 3.98%*

Call for pricing for 2,5,7 15 and 30 year fixed

THIS IS AN ABSOLUTELY NO CLOSING COST LOAN - 0 POINTS 0 FEES

No closing costs of any kind! You can't lose!

IT'S FAST, EASY AND STREAMLINED!

CALL NOW! (800) 316-1002

Sincerely,

David A. Morgensen

David A. Morgensen

FOR AN IMMEDIATE RESPONSE CALL (408) 761-0147

Presented by Loan Services 3535 Ross Ave St 100. San Jose CA 95124 - www.loan-services.net Licensed through the California Dept of Real Estate. Minimum credit and seasoning requirements apply. This letter is not a guarantee of extension of credit. Rates are subject to change without notice.

Attention Daniel

EXAMPLE 3



Questions about your loan?
For quick answers call...1-800-371-9939
8 a.m. - 5 p.m. Mon. - Fri. Pacific Time

██
Duane ██
██
Pittsburg, CA 94565-6453

Consolidating your existing World Savings 1st mortgage of \$2██████████ and 2nd mortgage of \$██████████, could significantly reduce your total monthly mortgage payment. Your new 1st mortgage will be \$5██████████, and you will have the benefit of the same flexible payment options; plus you will eliminate your 2nd mortgage.

The Minimum Payment on your new mortgage coupon could look like this:

1 PAYMENT OPTIONS

Select your option on the Payment Coupon below.

Option 1 - Minimum Amount Due \$1,359.73

- Option 2 - Interest Only \$1,398.42
- Option 3 - Principal & Interest \$1,776.32
- Option 4 - 15-Year Payment Plan \$2,595.63

Or, you can choose a 30 year fixed rate loan and your new payment would be \$2,105.25.

Call our Customer Service Department at (800)371-9939, and get your free Mortgage Analysis and Estimated Property Value Evaluation. We look forward to serving your real estate finance needs.

In service,

Customer Service Department

Licensed by the California Dept. of Real Estate License # 01007333. APR's not calculated.



EXAMPLE



WORLD SAVINGS

HOW MAY WE HELP YOU?

RE:

FREE APPRAISAL

FREE APPRAISAL

FREE APPRAISAL

Call to lock in Today's LOW LOW Rates..... While they last.

LOWER YOUR CURRENT MORTGAGE PAYMENT

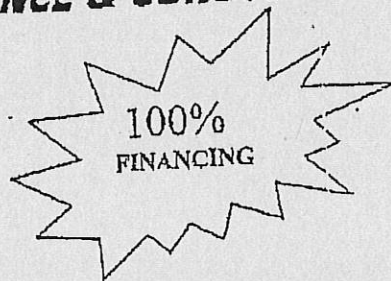
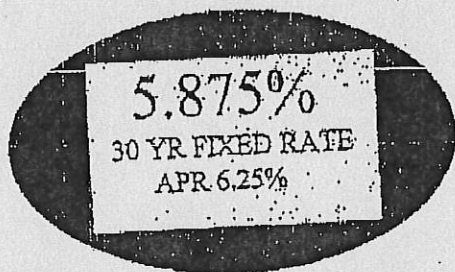
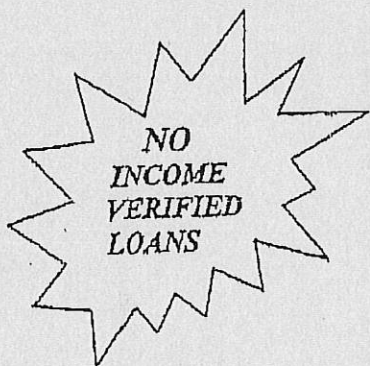
OR

REDUCE 30 YEAR TERM TO 15 YEARS!!!!

30 YEAR FIXED 5.875% / 15 YEAR 5.25%

PURCHASE NOW!!

REFINANCE & CONSOLIDATE...



CASH OUT & LOWER PAYMENTS

Consolidate all your bills into one low monthly payment
ASK US ABOUT OUR 100% NO EQUITY LOANS & HOME EQUITY 2ND TRUST DEEDS

Big Savings!

COMPARE THE PAYMENT AFTER YOU PAY OFF ALL YOUR DEBTS

Apply over the phone in just 5 minutes.....

ASK FOR DAVID:

Voice mail pager (888) 525-2109 (24 hrs)



WE WILL SAVE YOU MONEY GUARANTEED!!
"LENDING MILLIONS TO HOMEOWNERS FOR OVER 15 YEARS"

RATES AND TERMS SUBJECT TO CHANGE WITHOUT NOTICE. MORTGAGE LENDER LICENSED BY THE CALIF. DEPT. OF REAL ESTATE (1132559)
CALIF. DEPT. OF REAL ESTATE (916) 227-0931

3-10

December 6, 2002

***3-DIGIT 945 Re: WORLD SAVINGS BANK

Fred [REDACTED]

[REDACTED]
Concord, CA 94520

|||||

Available Conversion Option

Monday December 16 – Monday December 30, 2002

Closed Dec 24 & 25 To Observe Holiday

Dear Mr. & Ms. [REDACTED]

You have been selected to participate in an authorized *Conversion Option* test program.

We are waiting for your call during the time period mentioned above to verify and update the information we have on your file. A recent audit of your WORLD SAVINGS BANK has created an opportunity for you to reduce your monthly payments by hundreds of dollars each month. Based on the information we have in your file, you may qualify for a loan conversion option to a 30-year fixed rate loan currently at a range of 5.75%-6.375%, or a much lower payment on an ARM loan.

This conversion offers an *Equity Builder* option, which may reduce your loan term to about 23 years on a 30-year loan. Once the information is confirmed and resubmitted, you will be able to select from the multiple program conversions.

Call at your earliest opportunity to expedite this process. There is no cost or obligation for this analysis.

CALL IMMEDIATELY (800) 840 4140 between the hours of 9:30 a.m. and 7:00 p.m. (weekdays).

Authorization #:MB-070278

Sincerely,
Loan Audit Department

S.F.G. is an affiliate of Novistar Home Loan Inc. licensed by the D.O.C. - License # 413 0377. All loans and terms subject to final approval. Quotes based on conforming loan amounts of \$300,699 and below. No APR calculated because a range was quoted.



March 16, 2005

To: Senate Committee on Financial Institutions and Insurance

From: Kathleen Taylor Olsen, Kansas Bankers Association

Re: HB 2205: Unauthorized Use of Lender's Name

Madam Chair and Members of the Committee:

Thank you for the opportunity to appear before you today in support of **HB 2205**, which would provide a streamlined pathway to stop the practice of the unauthorized use a lender's name in a solicitation for products or services. As you can see by the examples that I have attached to my testimony, the use of the lender's name in these solicitations is misleading to the recipient who is a current customer of the lender.

Misleading direct mail marketing has grown exponentially since both Congress and the Kansas legislature (along with many other state legislatures) have enacted tough restrictions on telemarketing. The confusion that is caused by a document with the lender's name prominently displayed at the top is two-fold:

- 1) The customer is led to believe that the document is from the lender or someone related or affiliated with the lender; or
- 2) The customer is led to believe that the lender disclosed sensitive personal information to another company to allow the other company to solicit business from the customer.

While some of the solicitations for products indicate what company the solicitation is from and that the loan information was obtained through public record, these disclosures are usually at the bottom in miniscule typeset. These solicitations result in the lender named having to handle many phone calls from customers who are either confused about the source of the solicitation, or from customers who are very angry that the lender would share sensitive personal information with another entity.

We believe **HB 2205** addresses this problem in two ways. First, it attempts to regulate these types of solicitations by requiring either the consent of the lender to the solicitation or in lieu of consent, a clear and conspicuous statement in bold-faced type of the origin of the solicitation.

Secondly, the bill provides a streamlined mechanism for stopping any entity that is in violation of these restrictions by providing that in an injunction action, the lender will not have to prove actual damages. Harm to the lender is presumed, and the bill provides for the award of attorney fees and costs to the prevailing party.

In conclusion, we support **HB 2205** for addressing a problem, the incidence of which has grown very recently and which can be very damaging to a lender's reputation. Thank you and we ask that you act favorably on **HB 2205**.

Attachment 4
3/16/05
F.I.I.

TO: [REDACTED]
[REDACTED]
[REDACTED]

RE: The University National Bank

Dear [REDACTED]

Upon review of your mortgage information, we have determined that you are now eligible to reduce your mortgage payment, and may have the potential to receive cash back. A reduced rate mortgage would provide an immediate savings of approximately \$254.28¹ per month, or more importantly \$91,540.19² over the lifetime of the loan.

In addition, we may be able to save you hundreds of dollars every month by eliminating expensive credit card debt and hefty automobile payments. It is likely that we can also put thousands of dollars into your pocket immediately, greatly improving your cash position.³

We are excited to inform you that there are **No Up Front Costs** and **No Out Of Pocket Expenses** for this refinancing of your home loan. This is very important because it enables you to enjoy substantial and immediate savings.

Please call (913) 515-1503 so that you can start saving today!

Yours truly,

Dana Self

Dana Self
Loan Officer

P.S. Please mention 'Reduced Rate Mortgage Offer' when calling.

Reis Enterprises, Inc., 6800 West 64th Street, Suite 104, Shawnee Mission, KS 66202 Phone: (888) 439-0036
License Numbers: MO 04-1019 / KS 2004-4590

¹Approximate savings due to constant fluctuation in interest rates and credit. Exact savings to be determined at the time of loan approval. ²Assuming performing loan held to term with typical interest rate. ³Assuming sufficient home equity and suitable debt to income levels.

from Mortgage Protection Insurance Svcs. Complete and Return

Lender:
CENTRAL NAT'L BK

On the web at:
www.ehomeguard.com

To Borrower:



[Redacted Name]

Dear [Redacted Name]

You are entitled to participate in a low cost Mortgage Protection Program which can protect your \$121,100.00 Loan in case of an unexpected tragedy. Who would pay your house payment if you or a co-borrower died? ▶ Your family would still have to make your monthly mortgage payments without this type of plan from Mortgage Protection Insurance Svcs. SEE BELOW - Plans can include a choice of Life benefits with or without money back options

[Redacted Name] your benefits can include:

- **Death** - Pays off your \$121,100.00 loan in the event of your death from Accidental or Natural Causes
- **Return of premiums** - Returns your premiums if the benefits are not used by the end of the mortgage term
- **Knowing the [Redacted Name] family will not lose their home no matter what the tragedy**

For complete details at no cost or obligation complete and return this form in the enclosed postage paid envelope or go to www.ehomeguard.com for information & quotes.

DATE OF BIRTH

SEX

HEIGHT

WEIGHT

SMOKER?

Have you ever had:

High Blood Pressure/High Cholesterol?

Heart Attack, Stroke or Cancer?

Diabetes?

Borrower

Male Female

ft. in

lbs.

Yes No

Yes No

Yes No

Yes No

Occupation: _____

Phone #: () _____

Best time to call: _____

*Your first Name: _____

(EHOME-Douglas County)

Cellular # (Optional): _____

Spouse/Co-borrower

Male Female

ft. in

lbs.

Yes No

Yes No

Yes No

Yes No

Occupation: _____

Work # () _____

Home Work



02-03-04

CENTRAL NAT'L BK - \$121,100.00 - [Redacted]

On the web at www.ehomeguard.com

*Available in most states. All coverage information provided by Mortgage Protection Insurance Svcs. Lic. OC28287
6939 Sunrise Bl Citrus Heights, Ca 95610 Fax 916.723.8770. Not affiliated with any lending institution. Benefits and carriers will vary for coverages, and are subject to underwriting approval, product limitations and availability.

4-3

February 10, 2004

Eliminate years and thousands off your loan!

*Listed for loan reference only.

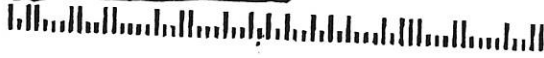
Call for your free benefits summary!

CENTRAL NAT'L BK*

One time offer: **\$200 off enrollment**

100/7/123

Offer code: **P-0326-12772783 NP**
Expires: **March 26, 2004**



Loan Amount: **\$121100**

Attention Borrower:

For most people, their mortgage is their largest monthly expense. However, the majority of people are not paid on a monthly basis. Many new and existing homeowners are requesting the option of a bi-weekly payment schedule.

Listed below are some of the advantages:

Bi-Weekly Payment	Monthly Payment
<ol style="list-style-type: none"> 1. Smaller payments. (ex. \$500 Bi-Weekly) 2. Can be set up to match your pay schedule. 3. Save thousands over the term of the loan. 	<ol style="list-style-type: none"> 1. Larger payments. (ex. \$1,000 Monthly) 2. Does not match most pay schedules. 3. No savings without additional commitment.

- Most homeowners do not pre-pay their mortgages. It takes self-discipline and consistency. The **BI-Weekly Mortgage Program** is safe, automatic, and easy to budget. Stop writing checks. No more stamps or visits to the mailbox. No more worries about forgetting to make a mortgage payment.
- The bi-weekly program is a **simple, logical** option to reduce the term of your loan while building equity faster. There are 26 biweekly periods in a year, which will be equivalent to one extra mortgage payment per year. Every penny goes to reduce your principal. 52 weeks → 26 biweekly drafts → 13 payments = **\$\$ SAVINGS!**
- The BI-Weekly Mortgage Program is offered by Home Mortgage Services. The funds are **FDIC Insured** and paid from the administrator to the lender on a monthly basis.

Here are some comparisons of our program to others:

Ours	Theirs
<ol style="list-style-type: none"> 1. \$195.00 one time offer after special. 2. Program transfers to any lender at no cost. 3. Annual mortgage summary available. 	<ol style="list-style-type: none"> 1. \$195.00 - \$595.00 2. Limited transferability. 3. Minimal availability.

To take advantage of the Bi-Weekly Mortgage Program savings and the limited time, non-refundable processing fee of \$195.00, call an Enrollment Specialist at 1-800-251-1315 weekdays from 8:00 AM to 9:00 PM (CST). With one phone call, you could enroll today and be on your way to reducing the life of your loan. After choosing your start date, your bi-weekly payment will be automatically withdrawn from your designated bank account with a standard \$2.95 transfer fee. Compare this small charge to the thousands of dollars you can save by participating in this program. Have your monthly mortgage statement, coupon book or original loan documents available and begin your mortgage savings process today!

* **\$195.00 OFFER EXPIRES MARCH 26, 2004**

(SEE BACK)⇒

*Notice: Information provided by Home Mortgage Services, 1400 Santa Fe Drive, Weatherford, Texas 76086. HMS is not affiliated, connected, associated with, or sponsored by the lender. Loan information obtained through public record. Lender name listed for loan reference identification purpose only.

4-4

GLENN, CORNISH, HANSON & KARNS, CHARTERED

800 SW Jackson - Suite 900

Topeka, Kansas 66612

785-232-0545

Kansas Insurance Guaranty Association

David A. Hanson, general counsel

Overview

Since the late 1960s, state guaranty associations have evolved, largely being driven by external pressures. In 1970, the Kansas Insurance Guaranty Association system was created with relatively broad provisions of coverage for insureds and claimants whose insurer became insolvent. The insolvencies at that time were largely personal lines and the persons protected were largely individuals and small businesses, so the broad provisions of coverage were workable.

In recent years, the guaranty association laws in other states have been amended to restore coverage to its intended purpose, namely, to provide a safety net for individuals and small businesses who would be harmed the most financially by the insolvency of their insurer. The recent efforts to amend guaranty association provisions began as a response to the commercial lines insolvencies of the mid-1980s, in which guaranty fund assessments soared to pay the claims of large commercial lines policyholders. The guaranty fund claimants of the 1980s and 1990s changed from individuals and small business to major US corporations, which had the resources to withstand the insolvency of one of their insurers and the ability to choose a financially solvent insurer in the first place. It should also be noted that the guaranty associations are the payor of the last resort and therefore exhaustion of all other solvent coverage is generally required before the guaranty associations will provide coverage. Often, commercial claimants against the guaranty funds had other solvent coverage or replaced their insolvent coverage quickly, but yet taxed the guaranty fund system with large commercial claims. Finally, guaranty fund coverage was intended to be limited. There are statutory caps and exclusions from coverage in place in all states. Because of the multi-state nature of the risks insured, the commercial lines claims have caused problems in the state guaranty fund system by being able to forum shop for coverage among the funds.

Most recently, guaranty fund assessments have reached record levels due to another round of commercial lines insolvencies, which is marked by the largest property-casualty insurers that have ever become insolvent. States like Kansas, which have not made the necessary adjustments in their guaranty fund law to limit commercial lines coverage and to refocus coverage on individuals and small businesses, are hit particularly hard. In addition, the state guaranty fund laws are really showing their age in the context of the current insolvencies. The variety of commercial insurance products that the guaranty funds have recently encountered present new legal, operational and financial challenges that the 35 year old guaranty fund laws do not clearly address and resolve.

The state guaranty association system is based on the approach embodied in the NAIC Model Post Assessment Property-Casualty Guaranty Fund Act, and also more recently, on the model guaranty fund legislation of the National Conference of Insurance Guaranty Funds (NCIGF), the association of the state guaranty funds. In addition, the NCIGF commissioned a special task force that reviewed the new issues from recent insolvencies and recommended legislative solutions. The suggested changes to the Kansas Insurance Guaranty Association law in 2005 are the priority issues that we believe need to be enacted in Kansas, including the following:

1. **Covered claim clarifications – amending K.S.A. 40-2903**
2. **Guaranty Association trigger – amending K.S.A. 40-2903 and 40-2906**
3. **Extent covered claims payable – amending K.S.A. 40-2906**
4. **Claim bar date – amending K.S.A. 40-2906**
5. **Exhaustion and offset other insurance – amending K.S.A. 40-2910**
6. **Fabe cure – amending K.S.A. 40-3641**

1. Covered claim clarifications:

The proposed amendments relating to the residency of claimants and the location of property that has been damaged will help clarify the intent of the limitations in our existing law. Clarifications to what is considered a “covered claim” also would confirm that punitive or exemplary damages are not included in a “covered claim”, unless coverage for those types of damages was provided in the policy of the insolvent insurer.

It should also be noted that Guaranty Association coverage comes after the claimant has exhausted all other insurance coverage. The Guaranty Association payments are intended to be the last resort. If there is no Guaranty Association coverage because of these restrictions, the claimants can still file claims against the liquidator of the insolvent insurer's estate, either for the full amount of their claims or the amount in excess of the Guaranty Association's coverage limits. Thus, limiting or eliminating guaranty fund coverage does not mean that those claimants will not receive some distribution out of the estate.

2. Guaranty Association trigger:

This proposed legislation would clarify that an insolvent insurer would be defined not just as one who is determined to be insolvent, but also against whom a final order of liquidation has been entered by a court of competent jurisdiction in the insurer's state of domicile. Kansas is one of a handful of states that still triggers Guaranty Association coverage upon a "finding of insolvency." This could trigger the Kansas Guaranty Association at an earlier date than other states in a multi-state insolvency. For example, the Kansas Guaranty Association could be triggered to pay covered claims of an insurer in rehabilitation, while guaranty fund coverage in other states for the same insurer would be triggered only after a court order of liquidation has been issued. Guaranty Association coverage is intended to provide claimants with a limited payment as a last resort after the insolvency of their insurer. Guaranty fund coverage is not intended to be used to rehabilitate a financially troubled insurer, which could happen under current Kansas law.

3. Extent covered claims payable:

Kansas Insurance Guaranty Association currently limits payment of covered claims to an amount in excess of \$100, but less than \$300,000. The first \$100 of a claim is therefore treated as a deductible and not paid. The \$100 deductible made sense when the laws were first enacted, but the cost of administration now seems to exceed any benefits from it. The Guaranty Association laws were enacted 35 years ago largely to respond to personal lines insolvency. While the \$100 deductible might have been a meaningful amount several decades ago, in the current law and practice, the costs of processing thousands of claims and applying the \$100 deductible often burdens the Guaranty Association without any of the intended benefits. This is especially true when we are trying to get a claim settled and we agree upon an amount and then have to explain that the first \$100 is not payable. The proposed amendments would also clarify that coverage is limited to the first \$300,000 of a claim, consistent with the concept that the Guaranty Association should be the payor of last resort.

4. Claim bar date:

When the guaranty associations were originally created, a claims filing bar date was not an issue, as most insolvencies were personal lines insurers whose policies had no claims tail. The insureds and claimants knew whether or not they had a claim under their policy almost immediately. When commercial lines insurers became insolvent, however, the estates often involved long tail claims, and state liquidation courts began allowing long periods of time in which to file a claim against the estate and the Guaranty Association. This places an increased financial and administrative burden on the Guaranty Association, and makes the Association's liability seemingly endless. Many such long tail claims were from mass tort claims, and complex environmental and other coverage for policyholders and claimants not intended to be the primary beneficiaries of guaranty fund coverage. We are proposing the bar date be set at the earlier of 18 months after the order of liquidation or the final date set by the court for filing claims in the liquidation. An independent bar date for the guaranty fund has solved this problem in many other states. A listing of other states is attached..

Guaranty Fund Bar Dates

STATE	BAR DATE?	CITE	SAME AS LIQUIDATOR'S?
Alabama	Yes	§27-42-8 (a) (1)	Yes
Alaska	Yes	§21.80.060	Yes
Arizona	Yes	§20-679	Yes – 4 months from the date of notice to creditors
Arkansas	Yes	§23-90-111 (c)	Yes
California	Yes	Ins. §1063.1 (c) (1) (iii)	Yes (of the domiciliary state)
Colorado	Yes	§10-4-508 (1) (a)	Yes
Connecticut	Yes	§38a-841 (1) (a) (ii) (B)	No – 2 years from the date of insolvency
Delaware	Yes	18 Del. Code §4208 (a) (iii)	No – the earlier of 24 months after the date of the order of liquidation or the liquidator's bar date
District of Columbia	Yes	§31-1319 (a) (24) (6) (1)	No – the earlier of the liquidator's deadline or 18 months from the order of liquidation
Florida	Yes	§631.68	No – settlement or suit must be instituted within one year of liquidator's bar date
Georgia	Yes	§33-36-11 (a)	Yes
Hawaii	Yes	§431:16-108	Yes
Idaho	Yes	§41-3608 (1) (a)	No—the earlier of 18 months after the order of liquidation or the liquidator's bar date
Illinois	Yes	§215 ILCS 5/194	No—the earlier of 18 months after the order of liquidation or the liquidator's bar date
Indiana	Yes	§27-6-8-4 (4)	No – claim must be both timely with liquidator and within 1 year of liquidation order
Iowa	Yes	§515B.17	Yes
Kansas	No		
Kentucky	Yes	§304.33-360	No—the earlier of 12 months after the order of liquidation or the liquidator's bar date
Louisiana	Yes		No—the earlier of 5 years after the order of liquidation or the liquidator's bar date
Maine	Yes	24-A M.R.S. §4438 (1) (A) (3)	No – the earlier of 24 months after the date of the order of liquidation or the liquidator's bar date
Maryland	Yes	Md. Ins. Code §9-226	No—the earlier of 18 months after the order of liquidation or the liquidator's bar date
Massachusetts	No		
Michigan	Yes	§500.7925 (1) (c)	Yes – (of the domiciliary state)
Minnesota	Yes	§60C.09	Yes, except for workers comp claims and excused late filings under 60B.37
Mississippi	No		
Missouri	Yes	§375.775 (1) (a)	No – no later than the final date set by the court for filing against the liquidator, except that if the time first set is one year or less from the date of insolvency and the court grants a filing extension, claims must be filed with the association no later than the new date set by the court or one year after the date of insolvency, whichever occurs first

Guaranty Fund Bar Dates

STATE	BAR DATE?	CITE	SAME AS LIQUIDATOR'S?
			For claims arising from insolvencies after Sept 1, 2000, the earlier of 18 months after the final order of liquidation or the liquidator's bar date
Montana	No		
Nebraska	Yes	§44-2406 (2)	Yes – only timely filed claims with the receiver will be forwarded to fund
Nevada	Yes	§687A.033 (2) (c)	No – the earlier of the liquidator's bar date or 18 months after the date of the order of liquidation
New Hampshire	Yes		No—the earlier of 36 months after the order of liquidation or the liquidator's bar date
New Jersey	Yes		The liquidator's bar date unless unusual hardship can be shown; For insolvencies pending after 1996, the later of 1 year after the effective date of the 1996 amendments or the liquidator's bar date;
New Mexico	No		
New York	No		
North Carolina	Yes	§58-48-35 (a) (1)	Yes
North Dakota	Yes	Plan of Operation	No—the earlier of 18 months after the order of liquidation or the liquidator's bar date;
Ohio	Yes	§3955.08 (A) (1)	No – the earlier of the liquidator's bar date or 18 months after the order of liquidation
Oklahoma	Yes	36 Okla. St. §2014	Yes
Oregon	Yes	§734.510	Yes
Pennsylvania	Yes	§40.P.S.221.37	Yes
Rhode Island	Yes	§27-34-8 (a) (1) (iii)	Yes
South Carolina	Yes	§38-31-60 (a) (iv) (2)	No – the earlier of the liquidator's bar date or 18 months after the order of liquidation
South Dakota	Yes	§58-29A-6B	No – the earlier of the liquidator's bar date or 18 months after the order of liquidation
Tennessee	Yes	§56-12-121 (a)	No – the earlier of the liquidator's bar date or 18 months after the order of liquidation
Texas	Yes	Ins. Art. 21.28-C, §8 (d)	No – the later of the liquidator's bar date or 18 months after the order of liquidation
Utah	Yes	§31A-28-207 (5) (i)	No – also see 31A27-315 and 31A-27-328 – liquidator's bar date but allows for discretion if won't prejudice liquidation proceeding
Vermont	Yes	8 V.S.A. §3615 (a) (i)	No – liquidator's bar date but not more than 3 years after determination of insolvency
Virginia	Yes	§38.2 – 1512	Yes
Washington	Yes	§48.32.030 (4)	Yes
West Virginia	Yes	§33-26-8 (1) (a)	Yes
Wisconsin	Yes	§646.13 (c)	No – the earlier of the liquidator's extended bar date or 18 months after the order of liquidation
Wyoming	Yes	§26-31-111 (c)	Yes

5. Exhaustion and offset of other insurance:

As in most states, current law in Kansas specifies that a claim that may be covered under several policies must first exhaust coverage under policies other than the insolvent insurer and that any covered claim payable by the Guaranty Association is reduced by any recovery from such other insurance. These provisions help assure that the Guaranty Association is the payor of last resort and also prevents the potential for a double recovery by the claimant. Our proposed amendments are intended to reinforce these concepts and clarify that the exhaustion and offset requirements apply to all claims under any kind of insurance, regardless of whether first party or third party claims, and including claims under accident and sickness insurance, health insurance and workers' compensation coverage similar to provisions adopted in some of the other states. There are amendments to this section that we have worked on with Mr. Wilke in the Revisor's Office that clarify that these provisions as amended should apply to all claims that have not been paid by the effective date of the act.

6. Fabe cure amendments

Enacted in 1797, the federal superpriority statute, 31 U.S.C. § 3713, provides that claims of the federal government shall be paid first when any person indebted to the federal government becomes insolvent. The statute also imposes personal liability on persons, such as receivers, who violate the law and pay others first.

Over the last two decades, the federal government began to aggressively assert the 200 year old federal superpriority statute in state insurance receiverships, arguing that it preempts the state priority provisions on all types of claims in an insurer insolvency. In *U.S. Department of Treasury v. Fabe*, 508 U.S. 491 (1993), the U.S. Supreme Court gave its interpretation of the federal superpriority statute vs. state insurance priority laws. The court said that under McCarran-Ferguson, Congress had preserved for the states the right to regulation the business of insurance. As such, state laws giving priority to administrative expenses and claims of policyholders could be paid before the claims of the federal government, because those provisions were enacted for the purposes of insurance regulation. However, giving priority to other classes of claims such as employee wage claims, over the federal government did not regulate the business of insurance and are preempted by the federal superpriority statute.

After *Fabe*, the state guaranty associations have been active in amending the priority provisions in the state liquidation laws to confirm to the *Fabe* ruling. Under the revised state laws, administrative expenses are a Class 1 priority. All claims under policies, including those of the federal government, are Class 2 priorities. All other claims of the federal government (non-policy) are now in Class 3.

Without these amendments, if the federal government prevails, and there may be a substantial number of federal claims in an insurer insolvency, the federal government may well take all of the remaining assets of an insolvent insurer's estate. The states could be left with little or no funding even to administer the insolvent insurer's estate, leaving it to the state to appoint and compensate

a receiver and staff for an insolvent insurer. The guaranty funds, which pay covered claims up to the statutory caps, would also have no assets in an insolvent insurer's estate to look to be reimbursed for the claims of policyholders and third party claimants that they have paid. Kansas is in a small minority of states that have not yet adopted the "Fabe cure" provisions.

States Enacting Fabe Cure Legislation

- | | |
|--------------------|--------------------|
| 1. Arizona 1997 | 21. Missouri |
| 2. Arkansas 1997 | 22. Montana |
| 3. California 1997 | 23. Nevada |
| 4. Colorado | 24. New Hampshire |
| 5. Connecticut | 25. New York |
| 6. Delaware | 26. North Carolina |
| 7. Florida | 27. North Dakota |
| 8. Georgia | 28. Ohio |
| 9. Hawaii | 29. Oklahoma |
| 10. Idaho | 30. Oregon |
| 11. Indiana | 31. Pennsylvania |
| 12. Illinois | 32. South Carolina |
| 13. Iowa | 33. Tennessee |
| 14. Kentucky | 34. Texas |
| 15. Louisiana | 35. Utah |
| 16. Maryland | 36. Vermont |
| 17. Massachusetts | 37. Virginia |
| 18. Michigan | 38. Washinton |
| 19. Minnesota | 39. West Virginia |
| 20. Mississippi | 40. Wisconsin |

States That Have Not Enacted Fabe Cure

- | | |
|---------------|-----------------|
| 1. Alabama | 6. New Mexico |
| 2. Alaska | 7. Puerto Rico |
| 3. Kansas | 8. Rhode Island |
| 4. Maine | 9. South Dakota |
| 5. New Jersey | 10. Wyoming |

Again, there are amendments to this section that Mr. Wilke has helped prepare that clarify that these provisions as amended should apply to all claims that have not been paid by the effective date of the act and the effective date is then changed to publication in the Kansas Register.

1 any kind of insurance, whether such claim is a first party or third party
2 claim, and shall include, without limitation, accident and health insur-
3 ance, workers' compensation, Blue Cross and Blue Shield and all other
4 coverages except for policies of an insolvent insurer. Any amount payable
5 on a covered claim under this act shall be reduced by the amount of any
6 recovery under such other insurance policy.

7 (b) Any person having a claim which may be recovered under more
8 than one insurance guaranty association or its equivalent shall seek re-
9 recovery first from the association of the place of residence of the insured
10 except that if it is a first party claim for damage to property with a per-
11 manent location, from the association of the location of the property, and
12 if it is a workmen's compensation claim, from the association of the res-
13 idence of the claimant. Any recovery under this act shall be reduced by
14 the amount of the recovery from any other insurance guaranty association
15 or its equivalent.

16 (c) The provisions of this section, as amended, shall apply to all
17 claims, whether currently pending or brought after July 1, 2005.

18 Sec. 5. K.S.A. 40-3641 is hereby amended to read as follows: 40-
19 3641. The priority of distribution of claims from the insurer's estate shall
20 be in accordance with the order in which each class of claims is herein
21 set forth. Every claim in each class shall be paid in full or adequate funds
22 retained for such payment before the members of the next class receive
23 any payment. No subclasses shall be established within any class. The
24 order of distribution of claims shall be:

25 (a) Class 1. The costs and expenses of administration during rehabil-
26 itation and liquidation including, but not limited to the following;

27 (1) The actual and necessary costs of preserving or recovering the
28 assets of the insurer;

29 (2) compensation for all authorized services rendered in the rehabil-
30 itation and liquidation;

31 (3) any necessary filing fees;

32 (4) the fees and mileage payable to witnesses;

33 (5) authorized reasonable attorney fees and other professional serv-
34 ices rendered in the rehabilitation and liquidation;

35 (6) the reasonable expenses of a guaranty association or foreign guar-
36 anty association for unallocated loss adjustment expenses in handling
37 claims.

38 (b) Class 2. Reasonable compensation to employees for services per-
39 formed to the extent they do not exceed two months of monetary com-
40 pensation and represent payment for services performed within one year
41 before the filing of the petition for liquidation or, if rehabilitation pre-
42 ceeded liquidation, within one year before the filing of the petition for
43 rehabilitation. Principal officers and directors shall not be entitled to the

which have not been paid prior to
the effective date of this act

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1 ~~(g) Class 7.~~ (h) Class 8. Surplus or contribution notes, or similar
2 obligations, and premium refunds on assessable policies. Payments to
3 members of domestic mutual insurance companies shall be limited in
4 accordance with law.

5 ~~(h) Class 8.~~ (i) Class 9. The claims of shareholders or other owners
6 in their capacity as shareholders.

7 ~~For any claims other than claims which are currently pending or in-~~
8 ~~stituted on or after July 1, 2005, the provisions of this section in existence~~
9 ~~on June 30, 2005, shall apply. The provisions of this section, as~~
10 ~~amended, shall apply to all claims, whether currently pending or~~
11 ~~brought after July 1, 2005.~~

12 Sec. 6. K.S.A. 40-2903, 40-2906, 40-2909, 40-2910 and 40-3641 are
13 hereby repealed.

14 Sec. 7. This act shall take effect and be in force from and after its
15 publication in the [statute book].

which have not been paid prior to
the effective date of this act

Kansas register

Kansas Association of Insurance Agents



Testimony on House Bill ~~240~~ 2326
Before the House Insurance Committee
By ~~Larry Magill~~ Daniel Magill
March 16, 2005

Thank you madam Chair and members of the Committee for the opportunity to appear today in support of House Bill 2326 which makes a number of substantive changes to the Kansas Guaranty Fund. My name is Daniel Magill and I am representing the Kansas Association of Insurance Agents. We have approximately 550 member agencies and branches throughout the state and our members write approximately 70% of the commercial insurance in Kansas. Our members are independent agents free to represent many different insurance companies.

The Kansas Guaranty Fund is the safety net for Kansas consumers and businesses that provides limited protection from the insolvency of their admitted insurance company. As such, our association views it as an extremely important part of insurance regulation in Kansas. The changes before you in HB 2326 are the result of close cooperation with Dave Hanson of PCI, and in its current form, we can support this bill.

We think this is a good updating of the current Guaranty Fund act and so long as the amendments made in House Insurance Committee remain, we support the passage of this bill. Thank you for your time today. We would be happy to provide additional information or to answer your questions.

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Kansas Insurance Department

Sandy Praeger COMMISSIONER OF INSURANCE

Date: March 16, 2005

To: Senator Ruth Teichman, Chair of Senate Financial Institutions and Insurance Committee

From: Kelly Levi, Government and Public Affairs Director, Kansas Insurance
Department

Subject: Information Regarding Individual Health Insurance Policies as it relates to HB 2366

Yesterday, the Committee on Financial Institutions and Insurance requested further information regarding individual health insurance policies – particularly in relationship to an amendment made on the floor of the Kansas House of Representatives on HB 2366.

HB 2366 Floor Amendment Background: The Kansas Insurance Department has researched the particular consumer complaint which prompted this floor amendment. In this case, this consumer believed that his or her insurance company, Fortis, changed its deductible in the middle of a policy term. However, KID determined that the company did not change the deductible in the middle of a policy term. What did occur was that Fortis closed an entire block of business.¹

Whenever a company closes a block of business, the company must offer a new similar health policy if it has such a policy. Fortis did so in this case and complied with the law. Therefore, the consumer in question had several months to find different insurance if the new Fortis policy did not meet with his or her desired insurance coverage. KID does not consider this situation to be a systematic problem since we received only one complaint about this specific sort of incident, and believes the amendment is unnecessary.

Individual Health Insurance Policy Cancellation Complaints : The committee also asked KID to provide information regarding the number of complaints filed with KID in situations where individual health policies have been cancelled mid-term for various reasons besides a closed block of business. KID is unable to provide an exact count of the number of complaints on these issues due to its method of cataloging complaints. However, the Consumer Assistance Division of KID believes there are very few complaints of this nature. The reason for this belief is that there is a very limited set of circumstances when a company can change the policy contract during a term, or eliminate coverage during a term when offering individual health policies. Therefore very few consumers have problems with this currently.

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Current Law Regarding Non-renewal of Individual Health Insurance Policies:

Consumers are protected in Kansas by allowing only a few reasons for an insurance company offering individual health insurance to non-renew their policies. Under current law the following are the allowable reasons for non-renewing Individual Health Insurance Policies Pursuant to K.S.A. 40-2257:

- 1). Failure of policyholder to pay premium.
- 2). Fraud or misrepresentation of material fact by the policyholder.
- 3). The insurer non-renews the entire block of policy forms statewide. *
- 4). Policyholder no longer lives in the policy enrollment area (if policies were offered through enrollment area) or no longer lives in an area that the insurer is authorized to do business. Coverage must be terminated uniformly and not be based on any health status related factor of covered individuals.
- 5). If coverage is made through one or more bona fide associations and membership of the insured person ceases. Coverage must be terminated uniformly and not be based on any health status related factor of covered individuals.

Note: In addition to the above stated reasons, if the policyholder exhausts all of the policy benefits and reaches the policy lifetime maximum then the policy will no longer continue to provide benefits.

¹In the case of a closed block of business (3), all policyholders of a particular policy form in Kansas would have their current policy form terminated after the company met certain notice requirements detailed in K.S.A. 40-2257. Policyholders cannot be singled out to have their coverage terminated. If another similar policy form by the same carrier is available it must be offered to each affected policyholder without regard to health status. If the same company does not offer a similar policy that company is restricted from issuing any similar policies for a time period of five years.