

MINUTES OF THE HOUSE INSURANCE COMMITTEE

The meeting was called to order by Chairman Clark Shultz at 3:30 P.M. on January 19, 2006 in Room 527-S of the Capitol.

All members were present except:

Representative Scott Schwab- excused

Committee staff present:

Melissa Calderwood, Kansas Legislative Research Department

Terri Weber, Kansas Legislative Research Department

Ken Wilke, Revisor of Statutes Office

Sue Fowler, Committee Secretary

Conferees appearing before the committee:

Jarrod Forbes, Kansas Department of Insurance, Topeka, KS

Representative Stephanie Sharp, District 26, Lenexa, KS

Representative Rob Olson, District 26 Olathe, KS

Harlan Parker, State Farm Independent Agent, Olathe, KS

Bill Sneed, State Farm, Topeka, KS

Larry McGill, Kansas Association of Insurance Agents, Topeka, KS

Lee Wright, Farmers Insurance, Overland Park, KS

Tom Pollard, Farmers Insurance, Lawrence, KS

Lynn Stohs, Blue Valley Insurance Agency, Marysville, KS

Dave Monaghan, American Family, Jefferson City MO

Eileen King, Kansas County Treasurers Association, Manhattan, KS

Dave Hanson, Kansas Association of Property and Casualties Insurance Companies, Topeka, KS

James Hanni, AAA Kansas Region and Public Affairs, Topeka, KS

Carmen Alldritt, Kansas Department of Revenue, Topeka, KS

Herb Schwartz, Schwartz and Associates, Olathe, KS

Leroy Brungardt, Schwartz and Associates, Topeka, KS

Larry McGill, Kansas Association of Insurance Agents, Topeka, KS

Representative Mike Kiegerl, District 43, Olathe, KS

Others attending:

See attached list.

Introduction of Bills:

Jarrod Forbes, Kansas Department of Insurance, requested the following bill introductions: (Attachment #1).

Risk-based Capital

An annual bill requiring a simple date change.

HIPAA

Amend K.S.A. 40-2258 Technical HIPAA change.

HMO Continuation of Coverage

Amend K.S.A. 40-3209 to allow for coverage by replacement policies similar to language in K.S.A. 40-2209(i).

Representative Kelsey moved for the introduction of the bills. Seconded by Representative Carter. Motion carried.

Representative Stephanie Sharp, District 26, requested a bill introduction requiring that the drivers license of a motorist involved in an accident be suspended until damages are paid. Representative Carter moved for the introduction of the bill. Seconded by Representative Dillmore. Motion carried.

Hearing on:

CONTINUATION SHEET

MINUTES OF THE House Insurance Committee at 3:30 P.M. on January 19, 2006 in Room 527-S of the Capitol.

HB 2553: Motor vehicles; prohibition on renewal of drivers' licenses at locations where automobile insurance is sold.

Melissa Calderwood, Kansas Legislative Research Department, gave a brief overview of **HB 2553**.

Proponents:

Representative Rob Olson, State Legislator, District 26, (Attachment #2), appeared before the committee in support of **HB 2553**.

Harlan Parker, State Farm Independent Agent, (Attachment #3), gave testimony in support of **HB 2553**.

Jarrod Forbes, Kansas Department of Insurance, (Attachment #4), gave testimony in support of **HB 2553**.

Bill Sneed, State Farm, (Attachment #5), presented testimony in support of **HB 2553**.

Lee Wright, Farmers Insurance, (Attachment #6), appeared before the committee in support of **HB 2553**.

Tom Pollard, Farmers Insurance, (Attachment #7), gave testimony in support of **HB 2553**.

Larry McGill, Kansas Association of Insurance Agents, (Attachment #8), presented testimony in support of **HB 2553**.

Lynn Stohs, Blue Valley Insurance Agency, (Attachment #9), appeared before the committee in support of **HB 2553**.

Dave Monaghan, American Family, (Attachment #10), presented written testimony in support of **HB 2553**.

Eileen King, Kansas County Treasurers Association, (Attachment #11), presented written testimony in support of **HB 2553**.

Dave Hanson, Kansas Association of Property and Casualties Insurance Companies, (Attachment #12) presented written testimony in support of **HB 2553**.

Opponents:

James Hanni, AAA Kansas Region and Public Affairs, (Attachment #13), gave testimony in opposition of **HB 2553**.

Carmen Alldritt, Kansas Department of Revenue, (Attachment #14), gave testimony in opposition of **HB 2553**.

Hearing closed on **HB 2553**

Hearing on:

HB 2545: Insurance agent license renewal; eliminates CED requirement for agents at least 70 years old.

Melissa Calderwood, Kansas Legislative Research Department, gave a brief overview of **HB 2545**.

Proponents:

Representative Kregieal, District 43, introduced the following presenter.

CONTINUATION SHEET

MINUTES OF THE House Insurance Committee at 3:30 P.M. on January 19, 2006 in Room 527-S of the Capitol.

Herb Schwartz, Schwartz and Associates, (Attachment #15), gave tetimony in support of **HB 2545**.

Opponents:

Leroy Brungardt, Kansas Department of Insurance, (Attachment #16), appeared before the committee in opposition of **HB 2545**.

Larry McGill, Kansas Association of Insurance Agents, (Attachment #17), appeared before the committee in opposition of **HB 2545**.

Hearing held open for additional testimony on **HB 2545**.

Next meeting will be Tuesday, January 24, 2006, 3:30 P.M. in Room 527-S.

Meeting adjourned at 5:48 P.M.



K a n s a s I n s u r a n c e D e p a r t m e n t

Sandy Praeger COMMISSIONER OF INSURANCE

HOUSE INSURANCE COMMITTEE
REQUEST FOR BILL INTRODUCTIONS
BY
THE KANSAS INSURANCE DEPARTMENT

JANUARY 19, 2006

Mr. Chairman and members of the Committee:

Thank you for allowing me to appear before you. Today I am asking for the introduction of three committee bills.

Risk-based Capital

This legislation is brought to you every year. It is a simple date change that adopts this years' Risk-based Capital requirements adopted by the Nation Association of Insurance Commissioners.

HIPAA

This legislation is also brought to you every year. It too is a simple date change, however this change is required by federal legislation.

HMO Continuation of Coverage

This legislation is designed to make the HMO laws match those that govern all other types of health insurance plans. The missing language was discovered by our department and various insurance carriers. I believe all interested parties will agree that this phrase is needed and was an oversight when the laws were originally passed.

Know that we will provide more details about these bills at the time of their hearings, but for now Mr. Chairman, I respectfully request these bills be introduced as committee bills.

Again, thank you for the opportunity to appear before you today, and I am happy to answer any questions you may have.

Jarrod Forbes
Government Affairs Officer

House Insurance
Date: 1-19-06
Attachment # 1

Robert (Rob) Olson
REPRESENTATIVE, 26TH DISTRICT
19050 W. 161st St.
Olathe, Kansas 66062
State Capitol, 182-W
Topeka, Kansas 66612-1504
785-296-7632
email: olson@house.state.ks.us



HOUSE OF
REPRESENTATIVES

Committee Assignments:
Environment
Financial Institutions
Transportation
Utilities

THE HOUSE COMMITTEE ON INSURANCE

By: REP. ROBERT OLSON

I am present to testify against the unfairness within the insurance industry

in the State of Kansas. The contract entered into by the Kansas Department of

Revenue and the American Automobile Association on April 1, 2005 represents a serious violation of free market principles.

Allowing motorist to renew their licenses at one business that provides insurance, but not another constitutes an unfair advantage. I urge the committee to carefully consider the Ramifications of allowing this to continue. My hope is that Bill No. 2553 will be recommended by the committee and that this obstacle to a fair and balanced business environment will be removed.



Harlan C Parker Insurance Agency, Inc.

Auto-Life-Health-Home and Business

E-mail: harlan.parker.b617@statefarm.com

13095 S Murlen, Suite 180

P O Box 4000-344

Olathe, KS 66063

Office: 913-782-3310 Fax: 913-782-4879

January 18, 2006

RE: HB 2553

Dear Honorable Representative,

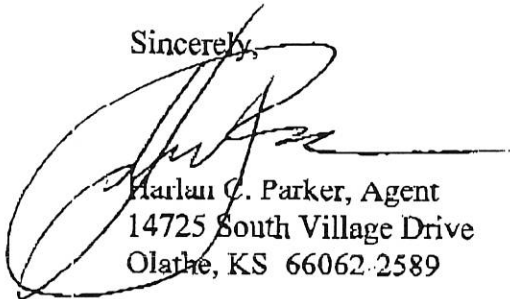
As a constituent and independent business owner, it has been brought to my attention that the Kansas Department of Revenue (KDR) has approved using AAA offices, throughout the state of Kansas, to administer the renewal of drivers' licenses.

This program gives an unfair competitive advantage to AAA in the sale of insurance, since all of their offices in Kansas are also licensed to sell auto and homeowners insurance. Although the insurance portion of the business is said to be sold in a different area of the AAA offices, this program still provides AAA with government-sponsored access to potential auto and homeowner insurance customers. That's not fair to other insurance agents throughout the state.

The insurance business is extremely competitive. I have been a State Farm Agent in Olathe, Kansas, for more than 26 years. As an agent for State Farm, I am a sole proprietor and work very hard and spend thousands of dollars to attract new customers and retain policyholders. It is disheartening to know the State of Kansas is giving AAA, and its insurance agents, this unfair competitive advantage.

Please favorably consider this legislation which will stop the continuation of this program as it provides an unfair competitive advantage in the sale of insurance products and elevates the profile of AAA by using governmental resources.

Sincerely,



Harlan C. Parker, Agent
14725 South Village Drive
Olathe, KS 66062-2589

House Insurance
Date: 1-19-06
Attachment # 3



Kansas Insurance Department

Sandy Praeger COMMISSIONER OF INSURANCE

COMMENTS ON
HB 2553
PROHIBITING CERTAIN CONTRACTS RELATING TO DRIVERS LICENSES
BEFORE THE
HOUSE COMMITTEE ON INSURANCE

Mr. Chairman and members of the Committee:

Thank you for allowing me to appear on behalf of the Kansas Insurance Department. The department supports HB 2553 on the basis of fairness.

The department perceives the current contracts issued by the Kansas Department of Revenue that HB 2553 addresses as unfair. We believe that if these contracts are to continue, than they should be issued to each and every group that seeks them.

However, we do believe that the best practice is to not allow entities that sell or are authorized to sell property and casualty insurance to also be renewing drivers licenses. Our concern is with the potential for inappropriate cross marketing of products.

Thank you for allowing me to testify before you today, and I would be happy to answer any questions you may have.

Jarrod Forbes
Government Affairs Officer

House Insurance
Date: 1-19-06
Attachment # 4

Polsinelli | Shalton
Welte | Suelthaus_{PC}

Memorandum

TO: THE HONORABLE CLARK SHULTZ, CHAIRMAN
HOUSE INSURANCE COMMITTEE

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

RE: H.B. 2553

DATE: JANUARY 18, 2006

Mr. Chairman, Members of the Committee: My name is William Sneed and I am Legislative Counsel for The State Farm Insurance Companies. State Farm is the largest insurer of homes and automobiles in Kansas. State Farm insures one out of every three cars and one out of every four homes in the United States. We appreciate the opportunity to present our thoughts regarding H.B. 2553. Please be advised that we support H.B. 2553 and urge the Committee's favorable action.

During the spring of 2005, several of our agents contacted my client, inquiring as to how an insurance agency could also house a driver's license renewal office. The immediate concern of our agents was the ability to "cross-sell," and if nothing else, to get customers "in the door." We contacted the Kansas Insurance Department, and the Department in turn set up a meeting with the Department of Revenue. Ultimately a group of industry people met with Secretary Wagnon and her staff. Secretary Wagnon listened to our concerns and informed us that the renewal station at AAA in Lawrence was a pilot project that would run through the middle of August, and that she would review the situation in July of 2005. On July 13, 2005, Secretary Wagnon informed the Kansas Insurance Department through Mr. Bob Tomlinson, Assistant Commissioner, that the Department of Revenue continued to believe the project in Lawrence was a success, that they were going to continue it after the 90-day pilot project time frame, and that they would most likely expand the project in the Wichita and Topeka areas. Thereafter, during the fall of 2005 members of the insurance industry met with the Governor's staff with respect to this issue. These discussions culminated in a letter dated October 21, 2005 written to Mr. Findlay memorializing the industry's concern. After repeated attempts to procure a response to that letter, as of this date we have still received nothing further from the Governor's office.

One AmVestors Place
555 Kansas Avenue, Suite 301
Topeka, KS 66603
Telephone: (785) 233-1446
Fax: (785) 233-1939

House Insurance
Date: 1-19-06
Attachment # 5

This is a very simple issue dealing with fairness. Our agents are locally-owned, small business people competing in the marketplace. Any appearance, directly or indirectly, of one agency having a foothold over another is simply not fair, particularly if such an appearance is put forth by the government. Attached is a copy of a photo taken of the Lawrence establishment when it first opened its driver's license renewal office. Whether intended or not, this accurately demonstrates our agents' concern. We believe H.B. 2553 should be passed, and we urge this Committee's favorable action.

We appreciate the opportunity to present this testimony, and if you have any questions, please feel free to contact me.

Respectfully submitted,



William W. Sneed

WWS:kjb
Attachments

019646 / 032884
WWSNE 1276754

October 21, 2005

Mr. Troy Findley
Chief of Staff
Office of the Governor
300 SW 10th Avenue, Room 226-S
Topeka, Kansas 66612-1504

Re: Kansas Department of Revenue and AAA Agreement

Dear Troy,

We sincerely appreciate the time you, Jeremy Anderson and Matt All took from your schedules to hear our concerns regarding the Department of Revenue's contract with AAA of Kansas. As a follow up, we want to re-iterate the following issues that were raised during our meeting.

Competitive Advantage

The State's goal of identifying and using various private vendors to provide services to Kansans in underserved areas is commendable. However, we urge the State to also consider whether the delivery of services by a particular vendor creates a competitive advantage. This is particularly true when the service being provided creates implicit or explicit cross marketing opportunities and fosters the appearance of a state endorsement of a private sector product.

The agreement between AAA and the Kansas Department of Revenue creates such opportunities and appearances. The contract states that AAA agents may offer but not solicit other AAA products to consumers renewing their drivers' licenses. The agreement explicitly sanctions direct marketing. Regardless of the difference between "offer" and "solicit", the mere existence of the cross marketing opportunities may tempt AAA agents to sell AAA products and services to license renewers.

Absent any direct solicitation, the renewal of a driver's license at a AAA office bestows branding opportunities on AAA for AAA insurance and financial services products. Every Kansan renewing their license at a AAA office will be exposed to AAA marketing and products; either overtly through solicitations or signage or simply by the fact that the renewal occurs at a AAA office. These branding opportunities in an office that performs

a government function may be perceived by consumers as a state endorsement of AAA products.

We applaud the State's goal of offering services to underserved areas; we question whether an insurance agent or an insurer is the best mechanism to deliver this particular service.

Privacy Concerns

In addition, the events of 9-11 have demonstrated that driver licenses must be issued in strict compliance with state and federal law. Further, the confidentiality of driver license information must be maintained, as theft and misuse of personal information has dramatically increased. We are concerned that AAA employees may not possess the requisite experience or training to perform these tasks. We believe that in the absence of adequate training, such an important government function should not be contracted to a private entity but remain the sole responsibility of the State.

Vendor Selection

We realize that the state incurs significant costs in setting up a driver's license renewal facility in the private sector. This expense may create economic barriers to allowing all agents interested in providing this service the opportunity to do so. The ability of agents to participate is further complicated by the lack of any published criteria on what is an underserved area and, on an individual basis, how an agent qualifies to offer this service. In fact, no public bidding process was involved in the selection of AAA. Our agents were unaware that the state was even contemplating this program, until the plan was announced.

Both Secretary Wagnon and the Governor have indicated through written correspondence that they would allow other insurers to participate in this program. However, as indicated during our meeting, none of the representative insurers have been approached about joining the program even though they have made inquiries to the DMV as to how this may be accomplished.

Given the economic barriers to participation and the underserved area precondition we question whether it will ever be possible to offer this program without creating an unfair competitive advantage to the detriment of those agents who can not participate.

Conclusion

Our agents are deeply concerned about the competitive advantage this program offers. Their concern prompted our meeting. In light of the above, we urge the state of Kansas to cease operation with AAA so these issues may be resolved to the satisfaction of all interested parties. Thank you for your kind attention.

Sincerely,

Catherine A Rankin
State Farm Insurance
One State Farm Plaza, A3
Bloomington, IL 61710

David Monaghan, CPCU
Government Affairs Counsel
Box 1786
Jefferson City, MO 65102

Lee Wright
Farmer's Insurance
Kansas State Office
10850 Lowell
Overland Park, Kansas 66210

Larry Magill
Kansas Association of Insurance
815 S.W. Topeka Avenue
Topeka, Kansas 66612

Joe Thesing
NAMIC
3601 Vincennes Road
Indianapolis, Indiana 46268

Tony Kimmi
Farm Bureau Mutual Insurance Company
2627 KFB Plaza
Manhattan, KS 66502

Cc: David Monaghan
Lee Wright
Larry Magill
Joe Thesing
Tony Kimmi
Jeremy Anderson
Matt Alt
James Hanni

Bcc: Carra Simmons
Tara Eubanks
Steve McManus
David L. Hill
Garrett K. Williams
Brent Wooten
John Ashenfelter
Natalie Brunson-Wheeler

Kansas Travel & Insurance

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January 19, 2006

Testimony on HB 2553 for House Insurance Committee
By Lee Wright, Governmental Affairs Representative

Mr. Chairman and Members of the Committee. My name is Lee Wright and I represent Farmers Insurance. Thank you for this opportunity to appear in support of House Bill 2553.

Farmers Insurance has been doing business in Kansas since 1930. We are very proud to have over 1,800 employees working in Kansas and more than 300 exclusive Farmers Agents serving customers throughout our state.

Farmers Insurance believes the current AAA/DMV contract to permit driver license renewal facilities in AAA offices puts our agents at a competitive disadvantage in the marketplace. By promoting a sizeable increase in walk-in traffic for AAA offices, state government is essentially partnering with AAA agents to provide insurance customer leads. HB 2553 would prohibit this arrangement.

This issue is primarily an agent issue, and passage of HB 2553 would afford all property and casualty insurance agents a fair and level playing field on which to compete. It was, in fact, a Farmers agent in Lawrence, Mr. Tom Pollard, who first alerted my company in May 2005 of the AAA/DMV arrangement. Tom contacted me to inquire if I knew who he could contact in government to permit a driver license renewal station in his own insurance office.

Last summer, we advised our agency force the DMV had announced it was considering expanding license renewal operations to other AAA offices in Kansas. Alarmed by this news, many Farmers Agents took time to write Department of Revenue Secretary, Joan Wagnon, to express their concerns about the program. Yet to my knowledge, none of those agents ever received a response from the Secretary.

Because the insurance agent is the one most affected by this AAA/DMV arrangement, we thought the Committee would be well served to hear from one of our agents. With the Chairman's permission, I would like to introduce Tom Pollard, from Lawrence, who can provide you an agent's perspective on this matter.

Thank you.

House Insurance
Date: 1-19-06
Attachment # 6



FARMERS

Thomas J Pollard
2420 Iowa St Suite E
Lawrence, Kansas 66046
Bus. (785)843-7511
Fax (785)749-5700
Tpollard1@farmersagent.com

RE: AAA Drivers License Renewal

Let me start by explaining the direct writer insurance system at Farmers Insurance Group. We are appointed to Farmers Insurance Group and this gives us the right to be total entrepreneurs. We are free to advertise our agencies, hire employees, find our clients and pay all state and local taxes associated with being an independent business owner in Kansas. Our offices support the State of Kansas with tax dollars.

I open the Lawrence Journal World newspaper one morning to see that AAA Insurance is now offering a state sponsored service of driver's license renewals. On the way to work that morning I saw a big banner across the front of our local AAA Insurance office announcing this service. I could not understand why the state would do this. After bringing this to the attention on my state office, I called the DOT and asked for more detailed information on this subject. After a long conversation I was told by the State of Kansas that the program was open to any insurance office in the state and was given the name of Carmen Aldridge to contact about setting up the program. I called Ms. Aldridge and after many attempts finally received an e-mailed regarding the requirements. She also told me the program was not as open as I had been told. She informed me that the State of Kansas had to approve my agency based on criteria set up by the DOT.

In every conversation I was told that this did not give a marketing advantage to AAA. I feel very strongly that the State of Kansas is helping to subsidize the marketing efforts of AAA by driving people into their offices. At a time of restricted marketing avenues, I feel this program would give AAA a big advantage.

Let's just look at the Do Not Call laws. My agency cannot call anyone to solicit insurance who appears on the Don Not Call list and that we do not have a prior relationship with. Those walking into AAA Insurance renewing their driver's license could be offered a product other than insurance, such as their travels subscriptions, therefore establishing a business relationship bypassing the Do Not Call regulations. This business relationship gives AAA an unfair advantage being able to call and get an X-date. X-date is the expiration date of a personal insurance policy. Insurance companies have paid thousands of dollars to obtain these dates to solicit for new insurance customers. AAA would be obtaining this information basically for free giving them an unfair marketing advantage over other insurance agencies in the area.

All insurance agencies want to sell insurance. I would love to have the State of Kansas send me 300 or 400 new prospects a month. I have been told by the State of Kansas that none of these offices will ask about insurance when someone renews their driver's license. Even if this is true, which I will never believe, there is nothing keeping AAA from contacting them at another time to solicit their business. If your livelihood is

House Insurance
Date: 1-19-06
Attachment # 7

insurance and you have someone in front of you, you better ask them or you are not in business long.

In closing, again I would like to say that I feel very deeply that this is making the playing field unbalanced by giving AAA an unfair advantage. I do not see the State of Kansas helping Target or Wal-Mart in their marketing efforts and do not feel they should help AAA either.

Kansas Association of Insurance Agents



Testimony on House Bill 2553
Before the House Insurance Committee
By Larry Magill
January 19, 2006

Thank you mister chairman and members of the committee for the opportunity to appear today in support of HB 2553, a measure introduced by Representative Olson. My name is Larry Magill and I represent the Kansas Association of Insurance Agents. We have approximately 425 member agencies across the state and another 125 branch offices that employ a total of approximately 2,500 people. Our members write roughly 70% of the business property and liability insurance in Kansas and 35% of the personal insurance. Independent agents are free to represent a number of different insurance companies.

Un-level Playing Field

Since last spring, our association along with others in the insurance industry, has been working with the Kansas Department of Revenue in an attempt to resolve our concerns with the test pilot they began with the AAA's Lawrence office to offer drivers license renewal services. Our concern is based on the fact that AAA offers insurance to their customers, and by virtue of the status given them by the Department of Revenue, appear to be preferred providers of auto insurance. This makes it look like AAA is the authorized, endorsed, sanctioned and approved state auto insurance agency in Lawrence Kansas. Its kind of the "mother of all Good House Keeping Seals of Approval", if you will.

This concept by DOR creates an un-level playing field among the 23,000 resident insurance agents in Kansas that no amount of tweaking by DOR will fix.

Significant Cost Barriers

For one, there are significant cost barriers to prevent the Department of Revenue from allowing this service to be offered by any agency that wanted the competitive advantage. It is our understanding that the state supplied AAA with approximately \$20,000 in equipment to undertake the pilot plus the cost of a T-1 line at an estimated \$500/month. I do not know if the state or AAA is paying the cost of the T-1 line to provide broadband internet access.

This makes it impossible for the state to allow every willing agency to offer the service. In fact the Department of Revenue has stated that they only intend to offer the option in "underserved" areas, which hasn't been defined.

No Competitive Bids

The contract was awarded to AAA without competitive bids. In fact, it was simply announced after the fact that the Department of Revenue was implementing the new program. If it had been subject to competitive bidding, perhaps the bidder would have offered to pay the cost of equipment and broadband access. In fact, one carrier requested that they be advised of any similar opportunities and they never where.

House Insurance
Date: 1-19-06
Attachment # 8

But this is somewhat beside the point. Even though a fair process was not followed in awarding the existing contract, no amount of competitive bidding will eliminate the fact that a handful of competitors will appear to have favored status in this state to the detriment of all others.

Cross-Selling Will Occur

My youngest son Mark, who was home from college last November, went into the AAA office in Lawrence to renew his drivers license and was asked if he wanted a quote on his auto insurance. They even told him that, "they had an insurance special for people renewing their license". But trust me, AAA doesn't want to insure him!

The contract has a vague phrase in it under section (11) that "AAA may offer its service and products for sale to any DMV customer on AAA Premises, but may not solicit the sale of such products or services directly to DMV customers." The problem is a provision like that is virtually impossible to police.

Security a Concern

In view of the significant role that drivers licenses play in establishing a person's identity and even citizenship to a certain extent, we think the state should maintain the tightest control over issuance of licenses including renewals. This important government function should not be farmed out to anyone willing to offer Monday and Saturday hours.

There Are Better Solutions

We applaud the Department of Revenue's efforts to provide drivers license renewal services over extended and more convenient hours. However, we urge them to look for a solution that will not involve granting a huge competitive advantage to one insurance agency out of thousands.

We urge the Committee to pass HB 2533 out favorably. We would be happy to answer questions or provide additional information. Thank you for your consideration of this issue.



Lynn Stohs
Agency Manager, Blue Valley Insurance Agencies Inc
Testimony on HOUSE BILL # 2553

I would like to thank Chairman Shultz for the opportunity to come before this committee this afternoon to express my support for House Bill # 2553. I would also like to thank my Representative Sharon Schwarz for following up on my inquiry last fall concerning this issue, and for her phone call yesterday morning to inform me of this hearing.

I am Lynn Stohs, an independent insurance agent in Marysville, a small town 100 miles northwest of Topeka. I was a teacher many years ago, but for the last 17 years I have worked as an insurance agent. I spent almost 50 years of my life in the Marysville area, going to school and raising my family. And I plan on spending the rest of my life there, working in the insurance business.

This is why I took advantage of the opportunity to be here today. I would like see that all insurance agents be able to compete on an even playing field so that I can continue to provide a livelihood for my family. Unfortunately, unfair actions by the State are putting this hope at risk for insurance agents across Kansas. That is why it is essential that this legislation be put into law.

Last fall, I was surprised and concerned to learn that efforts were under way to allow AAA offices to issue renewal drivers' licenses. In effect, the State of Kansas is sending many potential customers to one specific company that sells auto insurance, so that citizens can get their drivers' licenses renewed. As an insurance agent, I am concerned that the convenience of pricing auto insurance while renewing a drivers' license will slowly drain our customer base. I enjoy what I am doing and do not want this occupation and my dream to be put in jeopardy. Besides the fairness issue, there is also a serious security concern with non-state employees handling this sensitive state function.

The state's role should not be to play favorites between private entities in the insurance industry, especially at the expense of insurance agents like myself. House Bill #2553 would restore the level playing field and ensure that no insurance agent, and no insurance company, be given an unfair advantage.

I thank you once again for the opportunity today to express my thoughts on this legislation.



January 16, 2006

Representative Clark Shultz
Kansas State Capitol
Room 115-S
300 SW 10th Street
Topeka, KS 66612

Re: American Family Insurance's support for House Bill 2553

WRITTEN TESTIMONY

Dear Chairman Shultz and Members of the House Insurance Committee:

American Family Insurance provides automobile insurance coverage to approximately sixteen percent of the private passenger automobile insurance market in Kansas. We offer automobile insurance and other products through some 260 agents who reside throughout the state.

This letter serves to indicate American Family's support for House Bill 2553. The legislation appears to strike the proper balance by continuing to provide consumers the convenience of renewing driver's licenses at private businesses and also ensures that the state does not provide any insurance producer a competitive advantage by providing such services.

A competitive insurance marketplace is in the best interest of consumers, producers and insurers and we believe that House Bill 2553 serves that goal.

Sincerely,

A handwritten signature in black ink, appearing to read "David Monaghan".

David Monaghan

House Insurance
Date: 1-19-06
Attachment # 10



TREASURER'S OFFICE

R. Eileen King, CFM, CFE
County Treasurer

110 Courthouse Plaza
Manhattan, Kansas 66502-0108
Phone: 785-537-6320
Fax: 785-537-6326
E-mail: eking@rileycountyks.gov
Website: www.rileycountyks.gov

TO: House Insurance Committee
FROM: Eileen King, Riley County Treasurer & Rep of KCTA
DATE: January 19, 2006
RE: HB 2553 - *Written Testimony*

The Kansas County Treasurer's Association (KCTA) supports HB 2553. Over the past 10 years 74 County Treasurer's have taken on doing Driver's Licenses in our office. This has benefited the customers as well as the State. The customers are able to renew their driver's license and renew their tags at the same place. The State benefits because the employees in the Treasurers' offices are already agents of the State and the State doesn't have to add employees to their payroll.

Since the AAA Insurance office in Lawrence has been doing driver's license, I have fielded complaints from insurance agencies in Manhattan that they aren't able to do the same. They would like to have the same advantages that AAA in Lawrence does. They have even pointed out that it is a potential conflict of interest.

The major concern that I have is security. Homeland Security is making the laws for issuing driver's licenses more restrictive. As agents of the state all of our employees are required to sign a consent form for Electronic Communication Systems. Governmental employees are held to a higher level of scrutiny than employees of private institutions. The fact that the State of Kansas has little if any authority over the employees in an insurance agency is a concern to me. The Treasurer's offices that used to do CDL Driver's License can no longer do them because of the new federal regulations. Shouldn't the State of Kansas be as concerned regarding the security of the issuance? Since several of the 911 terrorists had valid Driver's license, I believe the State of Kansas should be thinking about increasing the security rather than letting non-governmental entities provide a essential governmental function.

It is possible for counties of all sizes to provide this function. Riley County began doing Driver's license renewals and ID cards in 1997, to help with the overflow from the full service driver's station. It has worked very well, even in a County of our size. Other counties can provide this service, if they want to. The Department of Motor Vehicles has an excellent working relationship with us and they will assist us in any way possible.

I would appreciate your consideration and support for HB 2553.

Thank You

House Insurance
Date: 1-19-06
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Law Offices
GLENN, CORNISH, HANSON & KARNs
CHARTERED
800 SW Jackson - Suite 900
Topeka, Kansas 66612
785-232-0545

TESTIMONY ON HB 2553 - WRITTEN TESTIMONY
January 19, 2006

TO: **House Insurance Committee**

RE: House Bill No. 2553

Mr. Chairman and Members of the Committee:

Thank you for this opportunity to appear before the Committee. I am David Hanson and am appearing on behalf of the Kansas Association of Property and Casualty Insurance Companies whose members are domestic insurance companies in Kansas, and also on behalf of PCI, the Property Casualty Insurers Association of America, with over 1,000 members in the U.S. and member companies in KS writing about 41.5% of premiums for Kansas property and casualty coverage.

Our state association and PCI join other industry representatives in supporting the provisions of HB 2553. While we appreciate the intent of making governmental services more accessible to Kansas citizens, we are concerned when the provision of those services might lead to confusion as to potential endorsement by the state of selected insurance producers and the competitive advantage afforded to those producers. The insurance market in Kansas is very competitive and a level playing field is essential to maintain a competitive market. If all producers are not given equal opportunity to provide the same services, then none should be allowed. House Bill 2553 reflects this position by not allowing contracts for renewal of driver's licenses at any office or business location of any insurance producer selling motor vehicle liability insurance. This would not prohibit the department of revenue from contracting with other businesses in order to make such services more accessible to Kansas citizens.

We therefore support House Bill 2553 and urge your favorable consideration of the Bill.

Respectfully,



DAVID A. HANSON

TESTIMONY
James R. Hanni,
AAA Executive Vice President, Kansas Region & Public Affairs
January 19, 2006

Mr. Chairman...Members of the Committee...thank you for allowing me the opportunity to visit with you regarding House Bill 2553. I'm here as a resource, would like to tell you about what we are doing for the citizens of Kansas with the driver license renewal pilot project in our Lawrence office, how it got started and why. I have heard what the concerns are. I am here to address those and provide information for which you may not be familiar.

By way of background, I think it is critical to understanding our interest in this issue to understand us and our reason for being. AAA is a not-for-profit, tax-paying federation of 59 auto clubs in the U.S. that was founded in 1902 by auto enthusiasts with a traffic safety/motorist interest and purpose, as well as one of providing desired member services to our dues-paying members. There are about 230,000 AAA members in Kansas.

AAA Clubs were one of the first to advocate for roads in this country and we were instrumental in passage of the interstate highway system federal legislation in the 1950's. AAA clubs put up the first road directional and mileage signs in this country.

We helped author the first graduated driver license law in Kansas and have been active in many issues of traffic safety, including child passenger safety; truck safety; Student Auto Skills contests that reward and promote auto technician careers; teen driving safety; Drinking & driving awareness programs...all aimed at saving lives of our most vulnerable citizens children – teens-- and we are turning our attention now to the emerging problem of senior mobility. In order to be accredited as an AAA club, clubs must meet a standard that requires active traffic safety programming.

Three years ago we created an AAA Kansas Traffic Safety Fund that has already funded over \$50,000 in projects, including the purchase of child passenger technician training seats donated to the Kansas Highway Patrol and the Kansas Safety Belt Education Office. We have run radio spots to remind motorists of distractions and deer on Kansas highways. And just last week we made a dent in teen driver education by distributing over 1,700 copies of AAA's Driver-ZED computerized driver risk education tool to help teens make better decisions when they get out on the road. We're working with the Kansas Highway Patrol right now on the production of a seat belt awareness video targeted at Kansas teens.

Good driver licensing laws are important as well and we are THE publisher of the national digest of motoring laws, the handbook of law enforcement as they work with interstate licensing issues across the country. I have provided each of you a copy of the current digest, with our compliments. AAA also produces the "license to learn" driver education curriculum which, to my knowledge, is THE curriculum

used by everyone teaching driver education in Kansas, you now have one of our driver improvement course training booklets, also with our compliments. We are the exclusive issuer of International Driver Permits.

In other words, our interest in Driver License renewal is NOT motivated by selling insurance. It is motivated, in part, by our heritage in traffic safety and our interest in driver licensing.

As a matter of fact, the reason we introduced the idea of handling driver license renewals in AAA offices was how well it has served citizens in other states we serve and the fact that about 30 AAA clubs provide these services in 24 other states across the country, according to AAA club records.

As I mentioned, we came to the Division of Motor Vehicles Director and her staff with the idea, based on exceptional experience in other states. We already had know-how in driver license renewal. We have seven AAA offices in Kansas.

We have facilities with a floor plan and room to serve the public & the driver license format, since we are already taking passport photos...and the exclusive issuer of international driving permits. We have staff heavily trained with a service orientation, and that has been borne out big-time in the level of service we provide DMV clients. We get 'em in and we get 'em out, with friendly service. It's a private sector approach to service.

We offer retail hours the DMV doesn't have. We are open later each night of the week, until 6 p.m., and we are open on Saturdays. We are open on Mondays when the DMV is closed. It was a natural.

We agreed to conduct a pilot project out of our Lawrence office. The Lawrence office is on the opposite end of town from the DMV office in north Lawrence, in Lawrence's fast growing south and west side, at Clinton Parkway and Kasold in the Parkway Center.

The pilot program has featured AAA employees...employees at our cost, using our facility, ready-made, at our cost. The state provides their equipment and system, data line, training and oversight. There is no exclusivity in our program...the state is free to accept offers from other vendors if they wish.

The state wins in several ways: They extend a wider range of service – high quality service (faster/friendlier) at more convenient hours to the public - and they do so without any of the principal expenses of labor and overhead – hardly any cost. Citizens benefit from a special offer available to DMV visitors who join AAA.

AAA wins, too: We provide additional motorist public affairs services to extend our purpose of assisting motorists and we are able to better justify our hours and

personnel to serve our members with an additional reason for traffic. We also benefit from a few additional members.

Most importantly, the taxpaying public wins: They get great service – more convenient location - hours more convenient to their work schedules – access to joining AAA at a reduced rate.

There is NO insurance reason for doing it. As a matter of fact, we put that in writing and will continue to do so to prove our point. We can't help that we have an insurance agency, but keeping insurance solicitation out of the DMV picture is very doable. The AAA staff that serve DMV renewal patrons spend the rest of their time providing AAA member service, providing maps, tourbooks, triptiks routings, international driver permits, passport photos and sell travelers checks. None of them are licensed insurance agents.

But folks, just to show you how crazy this bill...and opposition to our program is...we have four – count 'em, four producing agents in the entire state of Kansas working for our AAA club. One in Lawrence, two in Topeka and one in our West Wichita office. No agents in East Wichita, no agents in Pittsburg, Manhattan or Hutchinson.

The pilot project in Lawrence has been successful from both the citizen's...the taxpaying public's standpoint, and AAA's.

We would expect now an opportunity to respond to an RFP for extension of what we do...to other locale's where we have offices. Most notably, our East Wichita office, where currently there is no DMV service between 21st & Amidon in northwest Wichita...and Andover to the extreme east. An east Wichita DMV office was closed at Park Lane a couple years ago in East Wichita, reducing service to Kansas' largest city. The Division of Motor Vehicles should be allowed to contract with someone to fill that void, and AAA Kansas looks forward to competing for that opportunity.

If others can dedicate the staff and service, these or better hours of service, parking and the facility to help extend better service to citizens at less cost, the way Carmen Alldritt and her people have been doing through our pilot program in Lawrence, all the better for the citizens and taxpayers of Kansas.

Well, AAA must be making a killing on this, right? Don't forget our purpose! Here are our numbers, and YTD Lawrence pilot results:

- 1,716 driver license renewals from mid-May through December
- \$3,432 in \$2 DMV service fees generated.
- \$12,735 labor costs-additional staff hired-DMV (no benefits taken)
- \$14,651 total estimated costs due to DMV (with representative 10% of our overhead expenses considered)
- Net Loss = \$11,219

- Other revenue generated: \$6,120 est. from 153 memberships purchased over a 7.5 month period.
- 24% of DMV renewals were handled when the state DMV was closed.
- 50% of the DMV renewals were our own members
- 17.5% of non-members bought a AAA membership

I also would ask every member of this committee to ask constituents in any of the communities we have an office if they think this bill is a good idea....if they think AAA should be prevented from offering driver license renewal service that extend better service, longer hours, availability on Mondays and Saturdays and do so for much, much less cost than if it were stand-alone.

I think I know the answer. The only concerns are from the insurance industry and zero complaints from the public.

Not one insurance quote has been given to any DMV customer and not one piece of insurance business has been written by us. We made a written agreement to that effect. It can be audited if necessary.

I am proud to be a part of a partnership in government that has worked for the good of the public and the taxpayer like this one and I urge you NOT to recommend such a bill that prohibits something that clearly helps the taxpaying public.

AAA Kansas Lawrence Member/Non-Member Activity Summary May - December, 2005

	DMV Rnwls	AAA Mbr. Renewal	Non-Mbr. Renewal	New Mbr. Joined	Mondays	Saturdays	Mon & Sat Combined	Mon & Sat % of Total
May	241	117	124	13	49	35	84	34.9%
Jun	303	143	160	26	65	27	92	30.4%
Jul	241	130	111	14	30	32	62	25.7%
Aug	240	122	118	26	48	21	69	28.8%
Sep	193	92	101	27	19	21	40	20.7%
Oct	179	90	89	23	37	26	63	35.2%
Nov	165	78	87	9	24	15	39	23.6%
Dec	<u>154</u>	71	<u>83</u>	<u>15</u>	<u>12</u>	<u>12</u>	24	15.6%
	1,716	694	873	153	284	189	410	23.9%
DMV % Non Mbrs----->			50.9%					
Non-Mbr. Conversion Rate				17.5%				
Av. Mo.	215				36	24	59	27.6%

INCOME AND EXPENSES FOR DMV PILOT PROJECT
AAA LAWRENCE DISTRICT OFFICE
MAY-DECEMBER 2005

13-6

INCOME

DMV Renewals \$3,432 1,716 renewals (May-Dec) x \$2.00
TOTAL INCOME \$3,432

EXPENSES

Compensation for 1 DMV employee 12,735 May-Dec salary; opted out for 401K and health insurance benefits
Lawrence Overhead Expenses - 10% \$1,916 representing a 8 mth. period (Apr-Nov), as Dec. not available
TOTAL EXPENSES \$14,651

NET INCOME (LOSS) (\$11,219)

OTHER

New Mbr. Joined \$6,120 153 Non-Members joined x \$40 per membership*
TOTAL OTHER \$6,120

*membership is a not for profit operation; the dues revenue is 100% allocated to services that need to be provided, so can't be taken in consideration of the profitability

17-1





13-8

13-8



K A N S A S

JOAN WAGNON, SECRETARY OF

DEPARTMENT OF REVENUE
DIVISION OF VEHICLES

KATHLEEN SEBELIUS, GOVERNOR

MEMORANDUM

TO: Rep. Clark Shultz, Chairman
House Insurance Committee

FROM: Carmen Alldritt, Director
Kansas Division of Vehicles

DATE: January 19, 2006

SUBJECT: HB 2553 – Drivers' License Renewals

In 1991 the state started a unique partnership with the Kansas County Treasurers, to process drivers' license renewals in their offices. As of this date we partner with 77 counties. In three counties, we actually share office space with the treasurers. Most County Treasurers provide renewals, new licenses for students completing driver education, duplicates, instruction permits and identification cards. Treasurers that do not offer drivers' license services often cite lack of space in their courthouses. The state has 37 drivers' license offices across Kansas. We process approximately 700,000 licenses annually, which include renewals and replacements, as well as first time drivers' licenses and identification cards.

Our mission, at the Department of Revenue, is to provide accurate, efficient service to all Kansans. Our drivers' license offices work four, ten-hour days, Tuesday – Friday. In some locations this can result in lines and can be hard on folks taking time off work and those who have to travel some distance to a full-service station.

In May of 2005 we entered into a pilot project with AAA in Lawrence, to process drivers' license renewals. AAA offers renewal service only. They do not issue new licenses, duplicates or do name/address changes.

The state's investment in the pilot project includes training and support. Our vendor provides the equipment. This is exactly the same arrangement we have with County Treasurers. We also pay \$300.00 per month for dsl/communication lines. AAA offers Monday-Saturday service. If the state were to offer Monday-Saturday service just in this one office, the cost would be approximately \$235,000 per year. Since May, AAA has processed @1800 licenses. AAA charges a \$2.00 service fee to provide this valuable service. This is the same fee charged at many Treasurers' offices.

Since this has been a pilot project, there was no RFP issued. As the ongoing reviews of this project clearly show increased service to drivers' license renewal applicants at low cost to the state, we feel this has been a win/win project for not only the state but for the many residents of Lawrence and surrounding communities.

I would respectfully ask the committee to allow this valuable service, which clearly benefits many Kansans, to continue.

Thank you for your consideration, and I will answer any questions you may have.

Conferee Supporting HB 2545

Thank you Mr. Chairman and members of the committee. My name is Herb Schwartz and I have been an insurance agent, broker and general agent for 60 years. I am here in support of HB 2545 which would exempt insurance agents over 70 years of age from the requirement of continuing education to keep their license. This makes sense for several reasons. I should also point out to the committee that thirteen states have laws on the books which correspond to this bill.

1. Most agents over 70 will be working part-time only and the expense and time getting CE credits is a hardship for these people.
2. These are the most experienced agents who will benefit little from the time spent in these sessions.
3. Because of these factors, many older agents will quit rather than bother with renewal. This makes them worse off and instead of producing taxable income, they will not contribute to the Kansas economy.
4. These most experienced agents will not adversely affect the consumers of Kansas in any way as they are still subject to their carriers educational requirements. They are also required to carry errors and omission insurance.
5. There are 65 thousand agents and brokers in the state according to the state insurance commissioners of which about 1 or 2 percent would be affected by this bill.

Thank you for your attention. I stand ready for questions.



Kansas Insurance Department

Sandy Praeger COMMISSIONER OF INSURANCE

TO: HOUSE INSURANCE COMMITTEE MEMBERS
FROM: KANSAS INSURANCE DEPARTMENT
RE: HB 2545
DATE: January 19, 2006

Mr. Chairman & Members of the House Insurance Committee

My name is LeRoy Brungardt and I am currently the Director of the Agents Division of the Kansas Insurance Department which administers the continuing education (CE) program for insurance agents. CE was introduced in its present form on May 1, 1989. Since that time, we have had no exemptions from the CE requirement. All agents are responsible for attaining their requirement every two years.

My purpose today is to speak against HB 2545 introducing an exemption for agents that are age 70 or older. The request for this exemption has come up over the years and there has been only one other time that it was put into a form of changing the statute. The bill at that time was not adopted.

Our position is much the same as it was when the original bill was adopted in 1989. At that time it was crafted by the Department, the agent's associations and the industry. All parties were in concert that if you were licensed that CE should be a requirement regardless of age. That belief

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is still one that the Department supports and one that we believe the professional associations would also support.

There are approximately 22,000 resident agents subject to the CE requirement. Of these, there are around 750 that are age 70 or older. The CE requirement is 12 hours every two years for life/health agents and 12 hours every two years for property/casualty agents. There are reduced hours for title agents, crop only agents and pre-need agents.

Normally, agents will attend classroom sessions to attain these hours. However, over the last 8-10 years many more self-study courses and online courses have become available for agents to attain these hours. Our Department is always available to help the agents when they are in need of information about various CE vendors.

It is not difficult to attain the hours if the agent is vigilant within the two years of their compliance period to obtain choices for themselves. It is difficult for them to attend classes or get the self-study and online course if they wait to the last 30 days of their two-year period. Even then, over the years we have had some success in helping them.

In this block of about 750 agents, there are some that have been in the business for many years. There are some that have just arrived in this business with not much experience since this has become a second career after they retired.

The insurance business is constantly changing with new products, some of which these agents would be dealing with. Knowledge about these products would be important to them as they

serve their clientele. Agents that have been in the business for decades can testify to this ever changing environment.

Insurance companies themselves can testify that their products have changed and will continue to change in the future and the education of that is important to the agents. The ability and knowledge that agents have is a key for marketing their products.

Because of this, the Department believes that it is important that there be no exemption for any agents, regardless of age. We humbly ask you to consider our points in speaking against the adoption of HB 2545.

If there are any questions, I will be glad to answer them.

Kansas Association of Insurance Agents



Testimony on House Bill 2545 Before the House Insurance Committee By Larry Magill January 19, 2006

Thank you mister chairman and members of the committee for the opportunity to appear today in opposition to HB 2545, which would exempt agents over 70 from meeting Kansas' continuing education law. My name is Larry Magill and I represent the Kansas Association of Insurance Agents. We have approximately 425 member agencies across the state and another 125 branch offices that employ a total of approximately 2,500 people. Our members write roughly 70% of the business property and liability insurance in Kansas and 35% of the personal insurance. Independent agents are free to represent a number of different insurance companies.

Raises Uniformity and Constitutional Issues

We are concerned that this measure would make Kansas' insurance agents licensing and continuing education law non conforming with the national standards and, more importantly, unconstitutional. We are still trying to run down a copy of the Attorney General's opinion regarding the realtor's continuing education law that grandfathered older members of their profession. The Attorney General ruled that was unconstitutional around the mid-80's and the next year the Realtors corrected it.

The Kansas Insurance Department tells us that only about 8 states have a grandfather provision similar to this.

Creates Non-resident Licensing Problems

Currently if you meet the continuing education law of your home state, no other state imposes its continuing education requirements on you, because you have a non-resident license in that state. If this is enacted and an agent over 70 is licensed in other states, it is possible that agent will need to meet the continuing education requirement of each state where they hold non-resident licenses, even if that is 49 other states.

Valid For All Ages

Regardless of a person's age, continuing education is important. A recently licensed 70 year old would never have to meet continuing education requirements under this proposal, although they might not have any relevant experience to fall back on in the insurance industry. The purpose of continuing education laws is to raise the professionalism of all in the industry and to protect all consumers from errors. New risk transfer mechanisms, insurance products, tax laws, federal and state laws dealing with insurance, new exposures like cyber exposures are being created and the insurance professional needs to attend continuing education classes to stay on top of the body of insurance knowledge, regardless of age.

Convenient Options Available

Continuing education classes are available on line, by correspondence class, through self-study and in convenient classrooms around the state. A person would not have to drive to meet the CE requirements in Kansas.

We urge the Committee not to act favorably on this bill. Please let me know if I can provide any additional information or answer questions.

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STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

November 12, 1981

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3731
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 81-251

Honorable David L. Webb
State Representative
Box 163
Stilwell, Kansas 66085

Re: Personal and Real Property--Real Estate Brokers
and Salesmen--Educational Requirements

Synopsis: The provisions of K.S.A. 1980 Supp. 58-3046(g), whereby certain licensees are exempted from compliance with the continuing education requirements imposed by the Real Estate Brokers' and Salespersons' License Act, constitute an unreasonable, arbitrary and capricious classification, and are violative of the equal protection clause of the Federal Constitution. Since said exemption is an inseparable part of the whole scheme and purpose of the educational requirements imposed by the subject act, all such requirements, as set forth in K.S.A. 1980 Supp. 58-3046, are unconstitutional and void. Cited herein: K.S.A. 1980 Supp. 58-3034, 58-3039, 58-3046; L.1978, ch. 219, §1; U.S. Const., Amend. XIV, §1.

*

*

*

Dear Representative Webb:

You request our opinion as to the constitutionality of subsection (g) of K.S.A. 1980 Supp. 58-3046. Said subsection is part of the "Real Estate Brokers' and Salespersons' License Act," K.S.A. 1980 Supp. 58-3034 et seq., and is a "grandfather" clause which exempts certain licensees from compliance with the "continuing education" requirements imposed by the act. The subsection (which will hereinafter be referred to as "the grandfather clause") provides as follows:

"No person who has been continuously and actively licensed as a real estate broker or salesperson in this state for a period of five (5) or more years immediately prior to July 1, 1980, shall be required to submit evidence of attendance of courses of instruction as provided by this section."

Initially, we would like to note that we have issued previous opinions concerning statutes prescribing continuing education requirements for real estate brokers and salespersons. In Kansas Attorney General Opinion No. 79-314, we opined that the continuing education requirements imposed by L.1978, ch. 219, §1 (now repealed) were proper subjects of state regulation under the police power, and were valid and enforceable. However, it should be noted that L.1978, ch. 219, §1, which was repealed upon enactment of the Real Estate Brokers' and Salespersons' License Act by the 1980 Kansas Legislature, did not include a provision similar to the "grandfather clause."

In Kansas Attorney General Opinion No. 80-189, we construed the provisions of the subject grandfather clause in relation to the requirement of "continuous and active" licensure. However, in said opinion we were not asked to consider the constitutionality of the grandfather clause, nor did we opine relative thereto. Therefore, we now consider said issue for the first time.

"Grandfather clauses" are common in licensing statutes, and the meaning and legal basis for such clauses is discussed at 51 Am.Jur.2d Licenses and Permits, §36:

"The term 'grandfather clause' is sometimes used to describe licensing legislation provisions that extend certain prerogatives to persons who are established in the activities affected by the legislation at the time it is adopted. Such a clause is often inserted in licensing legislation that is concerned with the regulation of a particular activity under the view that persons who have properly carried on the activity for some time, or who are engaged therein as of a specified date, may be presumed to have the qualifications that are needed for carrying on the activity and that must be demonstrated by examination or documentary evidence by those who seek a license after a specified date."
(Footnotes omitted.)

Likewise, in the annotation at 4 A.L.R.2d 662, it is stated that

"the purpose of a grandfather clause is to exempt from the statutory regulations imposed for the first time on a trade or profession those members thereof who are then engaged in the newly regulated field on the theory that they who have acceptably followed such profession or trade for a period of years, or who are engaged therein on a certain date, may be presumed to have the qualifications which subsequent entrants to the field must demonstrate by examination.

. . . .

"Such provisions are generally held to be not such a discrimination as to violate constitutional rights of those seeking to engage in an occupation, profession, or business." 4 A.L.R.2d at 670. (Footnotes omitted.)

In State v. Creditor, 44 Kan. 565 (1890), the Kansas Supreme Court considered the constitutionality of the first Kansas law regulating the practice of dentistry, which law included a "grandfather clause" exempting dentists engaged in practice (at the time of passage of the act) from the requirement of graduation from a dental college. The court held that

"[t]he act cannot be held to unduly discriminate between persons or classes, and unconstitutional because it exempts those engaged in the practice within the state when the law was enacted from the necessity of obtaining a diploma." 44 Kan. at 568.

Although "grandfather clauses" have generally been upheld, they also have been struck down where, under the particular facts, an unreasonable, arbitrary, and capricious classification has been created. See, e.g., Wiggins v. City of Jacksonville, 311 So.2d 406 (Fla., 1975). Thus, the subject grandfather clause, whereby certain real estate brokers and salespersons are exempted from "continuing education" requirements, must be examined to determine whether the provisions thereof are consonant with the equal protection clause of the Federal Constitution.

In determining whether a statute concerning occupational licensing offends the equal protection clause, there is a presumption of constitutionality, and it is the duty of one attacking the statute

to sustain the burden of proof. State ex rel. Schneider v. Liggett, 223 Kan. 610, 616 (1978). The "rational relationship" test is to be employed, Id. at 617, and the validity of the statutory classification depends upon the following factors:

"A classification employed in the exercise of police power cannot be made arbitrarily. Any distinctions inherent in a particular classification must furnish a proper and reasonable basis for such a classification. The concept of equality of all citizens under the law is, of course, basic to our free society. We have stated that classifications may not be created arbitrarily, discriminatorily or unreasonably, or the principle of equality would be violated. There must be some difference in character, condition, or situation, to justify distinction, and this difference must bear a just and proper relation to the proposed classification and regulation; otherwise, the classification is forced and unreal, and greater burdens are, in fact, imposed on some than on others of the same desert." (Emphasis added.) Id. at 618.

Two classes of real estate brokers and salespersons are created by K.S.A. 1980 Supp. 58-3046, for the purpose of imposing continuing education requirements: brokers and salesperson who have been continuously and actively licensed for a period of five or more years prior to July 1, 1980, and those who have not been so licensed. In accordance with the above-quoted authority, we must consider whether the differences between the two classes bear a "just and proper relation" to the differing continuing education requirements imposed upon each by the statute.

While there are undoubtedly differences between the two classes of real estate brokers and salespersons created by K.S.A. 1980 Supp. 58-3046, we find it difficult to imagine any coherent reason for distinguishing between the two classes in regard to continuing education requirements. The purpose of imposing such requirements is to ensure that real estate brokers and salespersons are cognizant of changes in statutory and case law relating to real estate transactions, and of other contemporary developments in the real estate field. It does not follow that because a real estate broker has been continuously and actively licensed for five or more years that he or she is more diligent in keeping abreast of contemporary real estate developments than brokers who have not been so licensed.

Indeed, the antithesis may, in some cases, be more accurate, i.e., brokers and salespersons who have been licensed a short period of time, having passed the examination required by K.S.A. 1980 Supp. 58-3039, may be more knowledgeable concerning contemporary real estate practices than those who have held licenses for a longer period of time.

In our judgment, there is no rational basis for imposing continuing education requirements, as a precondition to license renewal, upon one group of licensees, and not imposing such requirements upon another group of licensees. In the language of the Liggett case, supra, the classification is "forced and unreal," and "greater burdens are imposed upon some than others of the same desert." Therefore, it is our opinion that the provisions of K.S.A. 1980 Supp. 58-3046(g), whereby certain licensees are exempted from compliance with the continuing education requirements imposed by the Real Estate Brokers' and Salespersons' License Act, constitute an unreasonable, arbitrary and capricious classification, and are violative of the equal protection clause of the Federal Constitution.

Having reached the above conclusion, we believe that it is appropriate to consider the validity of the continuing education requirements set forth in K.S.A. 1980 Supp. 58-3046, upon excision of the invalid grandfather clause. The Real Estate Brokers' and Salespersons' License Act contains a "severability clause," K.S.A. 1980 Supp. 58-3075, which provides as follows:

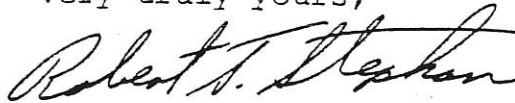
"If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable."

The Kansas Supreme Court has upheld the legislative intent expressed in severability clauses, subject to the qualification that where the void and valid parts of a statute are so interconnected that they cannot be separated without doing violence to the legislative intent, the statute as a whole must fall. State, ex rel. v. City of Overland Park, 215 Kan. 700, 711 (1974); State v. Next Door Cinema Corp., 225 Kan. 112 (1978). The court has refused to find objectionable provisions of an act severable where the elimination of such provisions would change the scope of the act and make it applicable to persons who the legislature expressly declared were not to be included. Boyer v. Ferguson, 192 Kan. 607, 616 (1964); State, ex rel., v. Consumers Warehouse Market, 185 Kan. 363, 372 (1959). In such circumstances, it has been held that the invalid provisions are such an integral and inseparable part of the whole scheme and purpose of the law that they may not be severed, despite the inclusion of a severability clause. Boyer v. Ferguson, supra at 615.

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Applying the above stated principles to the matters considered herein, it must be recognized that the application of the continuing education requirements, in the absence of the unconstitutional grandfather clause, would change the scope of the subject act, in that brokers and salespersons continuously and actively licensed for a period of five or more years prior to July 1, 1980, would be subject to the requirements, whereas the legislature expressly declared that they were to be exempted. In view of this fact, and in accordance with the above-cited cases, it is our opinion that the unconstitutional grandfather clause is an inseparable part of the whole scheme and purpose of the educational requirements imposed by the Real Estate Brokers' and Salespersons' License Act, and that such clause is not severable. Therefore, in our judgment, all educational requirements imposed by K.S.A. 1980 Supp. 58-3046 are unconstitutional and void.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



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RTS:BJS:TRH:jm