

MINUTES OF THE HOUSE INSURANCE COMMITTEE

The meeting was called to order by Chairman Clark Shultz at 3:35 P.M. on January 31, 2006 in Room 527-S of the Capitol.

All members were present except:

Representative Joe McLeland- 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:

Mike Mikkelson, Enterprise Leasing Company of Kansas, Stillwell, KS

Roy Worthington, Kansas Land Title Association, Manhattan, KS

Matthew Goddard, Heartland Community Bankers Association, Topeka, KS

Doug Wareham, Kansas Bankers Association, Topeka, KS

Others attending:

See attached list.

Hearing on:

HB 2159: Consumer protection; car rental agreements.

Proponent:

Mike Mikkelson, Enterprise Leasing Company of Kansas, (Attachment #1), appeared before the committee in support of **HB 2159**.

Hearing closed on **HB 2159**.

Hearing on:

HB 2659: Title insurance - title examination standards for title insurance policies.

Proponent:

Roy Worthington, Kansas Land Title Association, (Attachment #2), gave testimony in support of **HB 2659**.

Opponents:

Matthew Goddard, Heartland Community Bankers Association, (Attachment #3), gave testimony in opposition of **HB 2659**.

Doug Wareham, Kansas Bankers Association, (Attachment #4), presented written testimony in opposition of **HB 2659**.

Hearing closed on **HB 2659**.

Representative Grant moved to approve the committee minutes of January 26, 2006. Seconded by Representative Sharp. Motion passed.

Meeting adjourned at 4:57 P.M.

Next meeting will be Thursday, February 2, 2006, at 3:30 P.M., in Room 527-S.

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House Insurance Committee
Guest Sign Sheet
Tuesday, January 31, 2006

Name	Representing
Mike Mikkelsen	Enterprise Leasing Co of KS
Christine Peterson	Enterprise Leasing Co of KS
Nathan Weingart	Rep. Trimmer
Martha Jean Smith	KIMHA
Jim McBratt	Title Midwest
Dominic Kyjawa	KTLA
Roy Wirthinger	KANSAS LAND TITLE ASSN
Bill Brady	C.S.
Mark Woods	Rep Dillmore
Shanille Gunn	Rep Dillmore
RUSSELL MILLS	GACHES
Alex Kotyantz	P.I.A.
Matthew Goddard	Heartland Community Bankers Assoc.
Kathy Olsen	KS Bankers Assn
Doug Worham	"
Lee Wright	Farmers Ins.
John Peterson	Crystal Strategies
Jamie Ann Power	KS Assoc Health Plans

HOUSE INSURANCE COMMITTEE

House Bill 2159

Testimony of Michael Mikkelson, Enterprise Leasing Company of Kansas Jan 31, 2006

Support for HB 2159

- This legislation seeks to conform Kansas law with many other states – including our neighbors Missouri and Colorado – concerning certain responsibilities of renters when renting vehicles.
- According to Kansas law, a renter is fully responsible for any damages to the rental vehicle once they enter into a rental agreement.
- The renter, however, may choose to relieve himself or herself from this responsibility by purchasing – as part of the rental agreement – a collision damage waiver. Under this waiver, the rental company agrees not to pursue a renter for damages to the vehicle while in the possession of the renter.
- When this collision damage waiver statute was created several years ago, the legislature understood that while the waiver is a viable product and can certainly help those who do not have insurance or those who are insured but select to purchase the waiver anyway for convenience, the renter still should be required to act socially responsible with the rental vehicle.
- Therefore, lawmakers included several circumstances under which a rental company could void a waiver purchased by the renter. These current circumstances include:
 - When damages are caused intentionally by the renter or as a result of the renter's willful and wanton conduct.
 - If the renter was driving while intoxicated or under the influence of drugs.
 - If the renter was engaged in a speed contest.
- These are very reasonable conditions to place on the waiver. The waiver should not give the renter a license to act *socially* irresponsible.
- What HB 2159 seeks to do is to enact further reasonable, common-sense restrictions on the waiver so as to ensure further *social* responsibility upon the renter.
- So, what additional reasonable exclusions does the bill implement?
 - When the renter gives fraudulent information (suspended license)

- When the renter is using the vehicle to commit an illegal act
 - When the renter is using the vehicle to carry person or property for hire (Taxi Service)
 - If someone who is not an authorized driver (unknown to the rental company) causes the damage.
 - The renter takes the vehicle out of the country, unless authorized under the rental agreement.
 - Using the rental vehicle to tow anything or used on an unpaved road
 - Theft – unless the renter has possession of the original keys and files a police report within 24 hours of learning of the theft. (leaves keys in the vehicle unattended)
- These are common-sense exclusions that many states have already incorporated into their statutes. Missouri and Colorado have similar exclusions.
 - These ensure that the collision damage waiver gives the protection to the renter, but that the renter still acts socially responsible during the rental period.

KANSAS LAND TITLE ASSOCIATION
8621 E. 21ST NORTH
SUITE 150
WICHITA, KS 67206

January 31, 2006

To: House Insurance Committee

From: Roy Worthington, Chairman, Kansas Land Title Association Legislative Committee

Re: House Bill 2659

Dear Chairman and Committee Members:

The Kansas Land Title Association (KLTA) offers the following testimony and support for House Bill 2659:

1. 40-1102(e) – authorizes insurance companies to issue insurance “to insure titles to property and against loss by reason of defective titles or encumbrances”
2. 40-1136(g) defines a title insurance policy as: “a contract insuring or indemnifying owners of, or other persons lawfully interested in, real or personal property or any interest in real property, against loss or damage arising from any or all of the following conditions existing on or before the policy date and not excepted or excluded:
 1. defects in or liens or encumbrances on the insured title;
 2. unmarketability of the insured title;
 3. invalidity, lack of priority, or unenforceability of liens or encumbrances on the stated property;
 4. lack of legal right of access to land;
 5. unenforceability of rights in title to the land;
3. Unlike other forms of insurance, title insurance is not a form of casualty insurance. Title insurance is based on risk elimination prior to a real estate transaction being consummated, and then providing coverage for unforeseen and/or hidden defects existing at the date of the policy, that might arise following issuance of the policy. Therefore, title insurance must be based on a search and examination of the records and sound underwriting practices.
4. 40-235(b) was adopted in 1983 in order to ensure that title insurance policies issued in the State of Kansas provide the coverage intended by the laws of Kansas and expected by consumers. The statute provides that: “No preliminary or final policy or contract of insurance of the class authorized to be transacted in this state pursuant to paragraph (e) of KSA 40-1102, and amendments thereto, may be written unless and until the insurance company or its agent has caused to be conducted a reasonable search and examination of

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the title to the property involved and has caused to be made a determination of insurability of title and the risk in accordance with sound underwriting practices.”

5. A July 7, 2005 letter from Kansas Insurance Department concerning a filing of a title insurance product by First American Title Insurance Company, indicates the following: “nowhere in the Statute are the terms “reasonable search and examination” or “sound underwriting practice” defined. Therefore, when we ask a title company if their underwriting practices are sound and the search and examinations are reasonable, we have no Statutory basis to refute their assertion that the practices are sound and reasonable.”

6. It is the goal of the KLTA to protect the integrity of title insurance policies issued to consumers through the State of Kansas to ensure that they are receiving a product which will meet the statutory definition of a title insurance policy.

7. It would appear, in light of the statements from the Kansas Insurance Department, that a more objective standard of what is meant by a “reasonable search and examination” and what are “sound underwriting practices” are necessary in order for the Department to enforce the provisions of the Statute and not be forced to accept the subjective assertions of a title insurance underwriter that its product meets the requirement of the statute.

8. Apparently, the opponents of this bill seem concerned that some products that are on file with the Department of Insurance as title insurance products, and which are used to offer a form of limited title insurance for second mortgage liens and home equity loans, could not meet the standards set forth in the proposed bill. However, contained in the First American Title Insurance Company application for its limited title insurance product, the following statements are made: “In the states in which the product has already been filed and approved, we have first obtained approval of the form and rate and then structured the search and exam process to comply with state law and in accordance with local custom and practice. First American makes every effort to comply with specific search and examination requirements that are peculiar to certain states Because state requirements vary, our search and examination practices necessarily vary from state to state.” So, it would appear if Kansas had a more precise definition of “reasonable search and examination” and “sound underwriting practices”, the underwriters would comply with the statutory requirements.

9. There are certain products, which do not purport to be title insurance but which offer some protection for a lender’s position in second mortgages and which have been approved as casualty insurance. While the KLTA does not agree with the filing of such products as casualty insurance, and one such product has been outlawed in California and other states, this bill would not change the status of those products as casualty insurance.

10. KLTA is interested in protecting the sanctity of title for consumers in the State of Kansas, and to ensure that purchasers of title insurance receive a quality protect, based on a search and examination of the title and sound underwriting practices. To permit title insurance to be issued which is based on less than a thorough search and examination of

the title and which based on less than sound underwriting practices, is not in the best interest of the consumer. Therefore, the Kansas Insurance Department must given the power to effectively enforce the provisions of KSA 40-235(b).

11. The requirement for the 25 year search is based upon the Kansas Marketable Title Act, KSA 58-3401, et seq., which in part states that “any person who has the legal capacity to own land in this state and who has an unbroken chain of title of record to any interest in land for 25 years or more shall be deemed to have a marketable record title to that interest.” Reference to title standards of the Kansas Bar Association is to provide a reference to title standards first adopted in 1939 and which have been used by real estate practitioners in Kansas for many years and which have been referred to by the Kansas Supreme Court as a “useful guide” to the title examiner.

12. It is the hope that the proposed bill will enable the Department of Insurance to more effectively enforce the provisions of KSA 40-235(b).

Kansas Land Title Association

Roy H. Worthington
Chairman, Legislative Committee



Matthew S. Goddard, Vice President

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To: House Insurance Committee

From: Matthew Goddard
Heartland Community Bankers Association

Date: January 31, 2006

Re: House Bill 2659

The Heartland Community Bankers Association appreciates the opportunity to appear before the House Insurance Committee to share our concerns regarding House Bill 2659.

House Bill 2659 essentially defines "reasonable search and examination." Current law requires that a reasonable search and examination be performed before a contract of title insurance can be issued but does not set a standard as to what constitutes a reasonable search and examination. This bill is in response to innovative new title insurance products that certain segments of the title industry do not believe fulfill the requirement of a reasonable search and examination. By defining "reasonable search and examination" in a particular way, proponents of the bill hope to do away with this new product. Unfortunately, Kansas consumers are the biggest beneficiaries of this product and would stand to lose the most with enactment of HB 2659.

Various national title companies such as First American and Chicago Title have recently developed title insurance products for second mortgages that do not rely on an actual search of county records. Instead, a lender making a second mortgage loan (essentially any mortgage secured by a lien in a second or subsequent position), reviews the borrower's credit report and the legal description of the property subject to the loan and obtains a "Borrower's Agreement" that states the loan applicant has fully disclosed any and all liens or mortgages against the property. This is considered the search and examination. All this is done as part of the normal underwriting process by the lender and, as long as the proper procedures are followed, the loan is automatically insured under a master policy.

House Bill 2659 makes several attempts to end use of these new products. First, the bill requires that the search and examination be conducted by a title insurance agent or an employee of a title insurance company. That requirement would force lenders to go outside their own underwriting process and rely on a third-party to issue the insurance. Furthermore, House Bill 2659 mandates that the search and examination must include a search for a *minimum* period of 25 consecutive years of all applicable records from county, state and federal offices. Such an extensive search would add time and cost to the loan process. These new standards would apply not only to second mortgages, but also to all title work in the state of Kansas.

Whether or not the title industry has legitimate concerns about what meets the technical definition of search and examination, the beneficiary of these innovative products are without a doubt Kansas consumers and HCBA would encourage committee members to keep that in mind when considering

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HB 2659. Title insurance premiums are determined by the amount of the loan. For example, a title insurance policy for a \$50,000 second mortgage may cost somewhere between \$250 and \$300. The response time for a title search ranges anywhere from a few days to a few weeks, depending on the borrower's location.

Using the new product from First American as an example, the premium for title insurance with one of the new products targeted by HB 2659 is only \$45 on a loan amount less than \$100,000. The turnaround time is almost instantaneous since there is no special underwriting for the title insurance other than the lender's normal underwriting process. Again, with passage of HB 2659, the cost of the title insurance would be in the hundreds of dollars and the timeframe would be multiple days if not weeks. The quicker and cheaper alternative would no longer be available. These new products are clearly beneficial for Kansas consumers.

Finally, one remaining concern with HB 2659 is the competitive disadvantage at which it places Kansas lenders. With these innovative alternatives to traditional title searches and insurance, Kansas banks, savings and loans and credit unions are able to accelerate the loan approval process since title insurance must be issued before a loan can close. If these alternative products are no longer available, it will take lenders days if not weeks to approve a loan and the would-be borrower must wait all that time.

The competitive disadvantage would occur when large institutions decide to bypass title insurance altogether. A large national bank doing business in Kansas could decide to self-insure its risk for the sake of quick loan approvals and saving premium dollars. Since the risks of a loss are relatively small, the large lender would have sufficient volume to self-insure. Unfortunately, most if not all Kansas lenders lack the volume needed to self-insure and would instead be forced to purchase a more expensive and time consuming title insurance policy. This allows the large bank to offer consumers cheaper and quicker loans.

To illustrate, since 1998, HCBA's for-profit subsidiary has seen over 13,000 loans insured under title search alternative product master policies. All of these loans were insured using an alternative to traditional title insurance that, although very similar to these new products, was not actual title insurance and thus would be unaffected by HB 2659. In that time span, there has only been one claim. A lender with hundreds of second mortgages a month could afford to self-insure but more modest volume lenders could not.

Although there are some products that offer an alternative to traditional title insurance that would not be impacted by HB 2659, they do not offer the same advantages as the products that the bill would prohibit. These advantages include price, the lack of a deductible and better coverage. The bill would also stifle other future innovations in the title marketplace.

House Bill 2659 would add to the cost and time it takes for Kansas citizens to get a loan. Although we have primarily voiced concern with the impact of the bill on second mortgages, the 25-year search requirement would inconvenience and cost borrowers on purchase money mortgages as well.

HCBA appreciates the Committee's consideration of our concerns and we respectfully request that the House Committee on Insurance **not** recommend HB 2659 favorable for passage.



Date: January 31, 2006
To: House Insurance Committee
From: Doug Wareham, Kansas Bankers Association
Re: **HB 2659: Title Insurance**

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to submit written testimony in opposition to H.B. 2659. The restrictions outlined in H.B. 2659 will eliminate the use of an alternative title program for home equity loans to a maximum of \$250,000. The program in question is administered by Mortgage Protection Insurance Services, Inc. and is commonly referred to as a FACT Master Equity Loan Policy. This policy protects banks against losses resulting from undisclosed liens, fraud, forgery and unpaid taxes unknown to the lender. FACT Master Equity Loan Policies are currently used by many Kansas bankers and are approved by both the Kansas Insurance Department and Office of the State Bank Commissioner as a means of providing title security as required by K.A.R. 17-11-18b.

The Kansas Bankers Association has partnered with Title Midwest, Inc. whose subsidiary Mortgage Protection Insurance Services, LLC offers this product. Our concern is that H.B. 2659, as currently drafted, will eliminate a less-expensive and less time consuming alternative for protecting the bank against the losses described above. Simply put, homeowners should not be required to bear the burden of another full title search when securing a second mortgage.

If the House Insurance Committee chooses to establish new standards for performing title searches, KBA respectfully asks that those standards account for all approved forms of title insurance including the alternative title program (FACT) offered by Mortgage Protection Insurance Services.