

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 8, 2006 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
Bev Beam, Committee Secretary

Conferees appearing before the committee:

Michael Mikkelson, Enterprise Leasing Co. Of Kansas
Roy Worthington, Kansas Land Title Association
Kathy Olsen, KBA

Others attending:

See attached list.

The Chair called the meeting to order. The Chair said Minutes of February 28, March 1 and March 2 would be approved at the end of the meeting.

The Chair opened the hearing on **(HB 2159) - An act concerning consumer protection; relating to damage waivers.**

The Chair called on Melissa Calderwood for an overview.

Ms. Calderwood said **(HB 2159)** is amended into the Kansas Collision Damage Waiver Act and specifically creates a new definition of "Authorized Driver" to mean the lessee, the lessee's spouse, if the spouse is a licensed driver and meets the lessor's minimum requirement; any person who operates a motor vehicle during an emergency situation; and any person listed by the lessor on the lessee's contract as an authorized driver. She said the bill also creates the following additional exclusions under the collision damage waiver when the rental transaction is based on fraudulent information supplied by the renter; the damage arises out of the use of the vehicle while committing or otherwise engaged in a criminal act that would be a felony in which the use of the automobile is substantially related to the nature of the criminal activity; the damage arises out of the use of the vehicle to carry persons or property for hire; the damage occurs while the vehicle is operated by someone other than the authorized driver; the damage occurs during the use of the vehicle outside of the United States unless such use is authorized by the rental agreement; towing or pushing anything, or operating the vehicle off road; and the loss is due to the theft of the rental vehicle.

Ms. Calderwood said the bill also amends the current exclusions by replacing the term "lessee" with "authorized driver" and by specifying that damages caused by the authorized driver of the rental motor vehicle while driving intoxicated or under the influence of an illegal or unauthorized drug, or combination of alcohol and any drug are excluded.

The loss of theft is further clarified beginning in line 31. The lessee would be presumed to have no liability from any loss due to theft if an authorized driver has possession of the ignition key furnished by the lessor, has proof that keys to the rental motor vehicle were taken by duress, or an authorized driver establishes that the key was not in the vehicle at the time of the theft and an authorized driver files an official report of theft with the police or another law enforcement agency within 24 hours of learning of the theft and reasonably cooperates with the police or agency in providing information about the theft. Finally, the bill also would allow that the presumption regarding loss due to theft is a presumption affecting the burden of proof which the lessor may rebut by establishing that an authorized driver committed, aided, or abetted the commission of the theft.

CONTINUATION SHEET

MINUTES OF THE Senate Financial Institutions and Insurance Committee at 9:30 A.M. on March 8, 2006 in Room 234-N of the Capitol.

She said the bill was introduced by the House Insurance Committee at the request of Enterprise Leasing Company whose representative indicated that the bill would ensure that the collision damage waiver gives protection to the renter and also would enact additional reasonable, common-sense restrictions on the waiver to ensure further social responsibility upon the renter. There were no opponents to the bill at the House Committee hearing.

The House Committee on Insurance amended the bill to replace some of the references to “lessee” with the new term defined in the bill, “authorized driver.” Current waiver exclusions were amended to define drugs as those that are illegal or unauthorized. Another amendment specified that a criminal act would be a felony in the exclusion provision for damages arising out of use of the vehicle when committing the act. Additional amendments were adopted to clarify off road activities and to allow for the authorized driver to provide proof that the keys to the rental motor vehicle were taken while under duress.

The Chair called Michael Mikkelson, Enterprise Leasing Co. Of Kansas for his testimony. Mr. Mikkelson said this legislation seeks to conform Kansas law with many other states, including 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, he said. The renter, however, may choose to relieve himself or herself from this responsibility by purchasing a collision damage waiver as part of the rental agreement. Under this waiver, the rental company agrees not to pursue a renter for damages to the vehicle while in the possession of the renter. Mr. Mikkelson said when this collision damage waiver statute was created, 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.

Mr. Mikkelson said these are very reasonable conditions to place on the waiver. The waiver should not give the renter a license to act socially irresponsible.

He said (**HB 2159**) seeks to enact further reasonable, common-sense restrictions on the waiver so as to ensure further social responsibility upon the renter.

He said the bill also implements the following additional reasonable exclusions:

- . When the renter gives fraudulent information (suspended license);
- . When the renter is using the vehicle to carry persons 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 off road
- . Theft, unless the renter has possession of the original keys; has proof the keys were taken by duress, or can establish that the keys were not in the vehicle at the time of the theft and files a police report within 24 hours of learning of the theft.

CONTINUATION SHEET

MINUTES OF THE Senate Financial Institutions and Insurance Committee at 9:30 A.M. on March 8, 2006 in Room 234-N of the Capitol.

These are common-sense exclusions that many states have already incorporated into their statutes. These exclusions ensure that the collision damage waiver gives the protection to the renter, but that the renter still acts socially responsible during the rental period. (Attachment 1)

The Chair closed the hearing on (**HB 2159**) and opened the hearing on (**HB 2659**) - **an act concerning insurance; relating to examinations of title.**

The Chair called on Melissa Calderwood for an overview of (**HB 2659**). Ms. Calderwood said, (**HB 2659**) as amended by the House Committee on Insurance would amend requirements for determination of the insurability of a title to property by allowing that searches and examinations of titles be conducted for owner's policies of title insurance and loan policies of title insurance insuring purchase money mortgages by a title insurance agent or employee of a title insurance company licensed to do business in this state or an abstracter licensed to do business in this state. Searches and examinations are to be based upon a search of 25 years, or from the date of the previously issued title insurance policy, whichever period is less, of all applicable records of the county, state, and federal offices in which the real estate is located, specific to the marketability of title. The bill also would provide a definition of "sound underwriting practices" as underwriting practices promulgated by the underwriter which has an agency agreement with the licensed title insurance company or which comply with the seventh edition of the title standards promulgated by the Kansas Bar Association as copyrighted in 2005.

(**HB 2659**) was introduced by the House Committee on Insurance at the request of the Kansas Land Title Association whose representative indicated the bill would enable the Insurance Department to more effectively enforce the provisions of K.S.A. 40-235(b) by providing more precise definitions of "reasonable search and examination" and "sound underwriting practices." Opponents to the bill at the House Committee hearing were the Heartland Community Bankers' Association and the Kansas Bankers' Association.

The Chair called on Roy Worthington, Kansas Land Title Association, for his testimony. Mr. Worthington said, title insurance is not a casualty form of insurance. Unlike life or homeowner's insurance, title insurance is based on risk elimination before the real estate transaction is consummated. Because of that, there is a requirement that there be a thorough search and examination of the title before the policy is issued or the real estate transaction is consummated. In July of last year, a letter from the Kansas Insurance Department concerning a filing of a title insurance product by First American Title Insurance Company, indicates that 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.

Mr. Worthington said 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. He said 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.

The requirement for the minimum 25-year search is based upon the Kansas Marketable Title Act 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.

Mr. Worthington said this amendment is the result of a compromise with the bankers' association to allow for limited coverage title insurance products used by some banks to insure second mortgages and home equity mortgages – those limited coverage title insurance products are based on a limited search and examination of the records. (Attachment 2)

CONTINUATION SHEET

MINUTES OF THE Senate Financial Institutions and Insurance Committee at 9:30 A.M. on March 8, 2006 in Room 234-N of the Capitol.

The Chair called on Kathy Olsen, K.B.A. She said the KBA just wanted to confirm they were concerned initially with the bill and that the amendments have relieved our concerns.

The Chair closed the hearing on **(HB 2659)**.

The Chair called for a motion to approve minutes of February 28, March 1 and March 2. Senator Barnett so moved. Senator Wysong seconded. Motion passed.

The meeting adjourned at 10:30 a.m. The next meeting of this Committee is scheduled for March 9, 2006.

FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE GUEST LIST

DATE: March 8, 2006

NAME	REPRESENTING
DANIEL MACILL	KATA
Alex Kotoyantz	P.I. A
Lee Wright	Farmers Ins.
David Hanson	K's INS ASSA'S
Richard Wilkerson	Farmers Alliance
Kathy Olsen	K's Bankers Assn.
Matthew Goddard	KCOA
Natalie Haag	Security Benefit
Roy WORTHINGTON	KS LAND TITLE ASSON
Mike Mikkelsen	Enterprise Rent-A-Car
Linda Jones	KID

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

House Bill 2159

Testimony of Michael Mikkelson, Enterprise Leasing Company of Kansas March 08, 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)

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- When the renter is using the vehicle to commit a felonious 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 off road.
 - Theft – unless the renter:
 - has possession of the original keys,
 - has proof the keys were taken by duress,
 - or can establish that the keys were not in the vehicle at the time of the theft
 - **and** files a police report within 24 hours of learning of the theft
- These are common-sense exclusions that many states have already incorporated into their statutes. Missouri ,Colorado, Indiana, Louisiana, Massachusetts, Rhode Island, Utah, Nevada, Wisconsin, Texas and Iowa 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

March 8, 2006

To: Senate Financial Institutions and Insurance Committee

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

Re: House Bill 2659

Dear Chairperson 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 thorough 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 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

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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. 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 product, based on a thorough 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 be given the power to effectively enforce the provisions of KSA 40-235(b).

9. 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.

10. Section (b) (1) of the bill was amended to provide that only owner’s policies of title insurance and loan policies of title insurance insuring purchase money mortgages will be subject to the new definition of what constitutes a reasonable search and examination. This amendment is the result of a compromise with the bankers association to allow for limited coverage title insurance products used by some banks to insure second mortgages and home equity mortgages – these limited coverage title insurance products are based on a limited search and examination of the records.

11. 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