

SESSION OF 2003

SUPPLEMENTAL NOTE ON SENATE BILL NO. 66

As Amended by House Committee on
Commerce and Labor

Brief*

SB 66, as amended, concerns title insurance and amends one section of the Kansas Unfair Trade Practice Act commonly referred to as the Kansas Controlled Business Law. The bill changes the percentage of business a title agent or real estate broker may place with a title insurance company in which the agent or broker has a financial interest from 20 percent to not more than 70 percent of its gross operating revenues for the preceding six months from controlled business. The bill continues the exemption for counties 10,000 and under population from any limitation on controlled business.

Further, the bill as amended, requires a real estate broker affiliated with a title insurer or a title agent who refers a customer to an affiliated title insurer to provide to the customer a written disclosure, in 10 point type: that the agent or broker has an ownership or financial interest in the title insurer; that the broker may benefit financially from the referral; and, that the customer has a right to choose any title insurer.

The House Committee on Commerce and Labor made the following changes:

- ! changes the upper limit of percentage of business that a title agent or real estate broker may place with a title insurance company in which the agent or broker has an interest from 80 percent to 70 percent;
- ! includes definitions of associate, financial interest, person, producer of title business and refer;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org/klrd>

- ! requires disclosure when title insurance policy is ordered to a person when there is reason to believe that the person was referred by a producer who has a financial interest in the title insurer or title agent. The disclosure must be in writing and include language that the consumer is not obligated to use the title insurer or agent in which the referring producer has a financial interest. Also required in the disclosure will be the names and telephone numbers of not less than three other title insurers or agents that operate in the county where the property is located. If there are fewer than three insurers or agents are operating in the county, the disclosure will include all title insurers or agents operating in that county.
- ! includes penalty provisions for violations of requirements in the bill can be a fine imposed by the Commissioner of Insurance in an amount equal to five times the premium for the title insurance and, if licensed under the Real Estate Brokers' and Salespersons License Act, can be liable to the purchaser of the title insurance in an amount equal to the title instance.
- ! provides that other violations of actions prohibited in the bill can result in a cause of action against the violating title insurer or title agent that, in addition to other remedies or damages provided by law, to such equitable or injunctive relief as the court deems proper. In addition, the court may award court costs and reasonable attorney fees to the successful party.
- ! requires that, within 90 days at the end of each business year, each title insurer or title agent file with the Department of Insurance and any title insurer with which the title agent maintains an underwriting agreement, a report, under penalty of perjury, stating the percent to closed title orders originating from controlled business. Failure to comply can be grounds for suspension or revocation of a license or other disciplinary action.
- ! deletes the provision requiring a written disclosure be provided to the customer in 10 point type.

Background

SB 66, as originally introduced, was recommended by the Kansas Realtors Association whose representatives explained that passage of

the bill will allow “one-stop shopping” for the purchase of residential real estate, and increase competition for title insurance. Competition should benefit consumers with lower costs and increased levels of service.

The bill was opposed by the Kansas Land Title Association whose representative explained that the original law was passed to address significant problems involving controlled business title insurance companies which were detrimental to the healthy functioning of competition in the title insurance industry.

The fiscal note prepared by the Division of the Budget indicates passage of the bill will increase the number of title insurance companies the Insurance Department will have to regulate; however, the Department would absorb any cost increase resulting from the bill.