# REPORT OF MARKET CONDUCT EXAMINATION

Shelter Ins. Group
NAIC Group # 123

The following companies within the group were included in the exam:
Shelter Mutual Insurance Co. NAIC # 23388
Shelter General Insurance Co. NAIC # 23361

Shelter Group
1817 W. Broadway
Columbia, Missouri 65218

AS OF

March 31, 2010

BY

KANSAS INSURANCE DEPARTMENT
ETS# KS023-M36

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Honorable Sandy Praeger
Insurance Commissioner
Kansas Insurance Department
420 SW Ninth Street
Topeka, KS 66612-1603

Dear Commissioner Praeger:

In accordance with your respective authorization, and pursuant to K.S.A. 40-222, a market conduct examination has been conducted on the business affairs of:

Shelter Mutual Insurance Co. NAIC Co code: 23388
Shelter General Insurance Co. NAIC Co code: 23361

Shelter Group
1817 W. Broadway
Columbia, Missouri 65218

hereafter referred to as "Shelter" or "the Company", and the following report of such examination is respectfully submitted,

Lyle Behrens, CPCU, CIE, FLMI, ARM, ARe
Market Conduct Supervisor
Examiner in Charge

## PURPOSE AND SCOPE OF REVIEW

A targeted market conduct examination of the property and casualty companies of the Shelter Insurance Group was conducted pursuant to K.S.A. 40-222. The exam team reviewed claim files and complaints to determine if the Company was in compliance with applicable statutes, regulations and bulletins of the State of Kansas.

The audit was conducted according to the guidelines and procedures recommended in the NAIC Market Regulation Handbook 2008 (Handbook). The exam team utilized the standards and tests recommended in the Handbook and its tolerances of 7% was used for claim procedures and 10% was used for all other categories. The examination report is a report written by test rather than a report written by exception. This means all standard tests are described and results indicated.

The testing and file review for the Company's complaint and auto claims practices consisted of several samplings from the Company's corporate headquarters in Columbia, Missouri.

The examination included a review of the Company's complaint and claim files from January 1, 2008 to March 31, 2010.

General topics were covered in Interrogatories submitted to the Company for their written response. Subjects covered were Complaints and Claims. The responses received addressed the issues presented.

The examination included, but was **not limited to the following:**

COMPANY OVERVIEW
History and Profile
Prior Market Conduct Examination Reports
Fines and/or Penalties

COMPLAINT HANDLING
Record Keeping
Timely Response

CLAIMS
Claim Processing
Timeliness and Accuracy of Claim Payment
Proper Maintenance of Claim Files

## EXECUTIVE SUMMARY

The Kansas Insurance Department (KID) performed a market conduct examination of Shelter Mutual Insurance Company and Shelter General Insurance Company. The period of examination was January 1, 2008 through March 31, 2010. The exam focused on private passenger auto, though the companies write numerous other lines of business as well.

The examiners reviewed the company auto claim and complaint files in their corporate offices in Columbia, Missouri. A series of meetings were held with the Shelter staff that focused on their current operations. To supplement and verify the understanding of how the Company does business, a series of samples were selected for review to verify their procedures and practices in auto claims.

The examiners were impressed with the overall positive and professional performance by the Shelter staff and management to their policyholders. Some isolated errors were discovered, but overall no major problems that appeared to be business practices. One recommendation is being made in regards to handling total loss claims.

## RECOMMENDATION

1. The Company should review claims procedures to ensure claims are handled in accordance with Bulletin 2004-8. On one claim, the auto was initially determined to be a total loss. Then the company decided to get an estimate to see if it was repairable. This initial estimate was over 70% to repair with major front-end damage. The claim file appeared to indicate that it would be repaired unless the repair costs were 100% of the Actual Cash Value (ACV). With the first estimate there were notations in the file that a salvage title may be needed. Bulletin 2004-8 specifies that a company should total a vehicle when the total retail cost of repair meets or exceeds seventy-five (75%) percent of the retail value of the motor vehicle.

## DESK EXAMINATION/ON-SITE EXAMINATION

## COMPANY OVERVIEW

### History and Profile

History

The origin of Shelter Insurance Companies dates back to the formation of the lead company, Shelter Mutual Insurance Company (SMIC), in 1946. The company was originally chartered as MFA Mutual Insurance Company and operated as such until 1981, at which point the present title was adopted. Countryside Casualty Company was organized in 1957. In 1981 the name was changed to Shelter General Insurance Company (SGIC).

SMIC was incorporated under the laws of Missouri on August 31, 1945 and began writing automobile and homeowners risks on January 1, 1946. The Missouri Farmers Association, Inc., Columbia, Missouri, sponsored the company in 1946. The organization's business expanded in 1949 to include fire and allied lines of insurance.

SMIC is a wholly owned mutual insurance company. The policyholders elect a nine-member board of directors that oversee the management of the company. SGIC is a stock company owned by SMIC, and a nine-member board of directors oversees the management of SGIC. SMIC writes primarily personal lines automobile and property coverage for both preferred and standard risks.

2009 Written Premium in Kansas

2009 STATE PAGE EXHIBIT - 23388 - Shelter Mut Ins Co

| Line | Direct WP 2009 | Direct EP 2009 | Direct Losses Paid (Deducting Salvage) | Direct Losses Incurred | Direct Losses Unpaid |
|---|---|---|---|---|---|
| Fire | 1,197,466 | 1,127,865 | 966,218 | 928,640 | 114,046 |
| Allied lines | 3,147,129 | 2,975,265 | 4,017,920 | 3,986,173 | 420,988 |
| Farmowners multi peril | 1,432,539 | 1,365,979 | 1,392,226 | 1,401,547 | 254,109 |
| Homeowners multi peril | 20,853,258 | 19,563,725 | 16,052,268 | 15,702,177 | 6,226,195 |
| CMP | 2,311,116 | 2,289,356 | 2,030,077 | 793,282 | 1,076,719 |
| Inland marine | 372,688 | 361,787 | 170,979 | 199,646 | 50,567 |
| Other liability | 926,323 | 897,904 | 110,120 | 185,445 | 508,013 |
| PPA Total | 36,361,813 | 35,665,704 | 27,924,854 | 27,628,487 | 9,600,087 |
| Commercial Auto Total | 99,847 | 102,157 | 19,192 | 15,514 | 19,215 |
| Burglary and theft | 42,814 | 41,319 | 4,556 | -2,523 | 278 |
| Totals | 66,795,795 | 64,442,341 | 52,688,611 | 50,837,835 | 18,271,963 |

2009 STATE PAGE EXHIBIT - 23361 - Shelter Gen Ins Co

| Line | Direct WP 2009 | Direct EP 2009 | Direct Losses Paid (Deducting Salvage) | Direct Losses Incurred | Direct Losses Unpaid |
|---|---|---|---|---|---|
| Fire | 225,303 | 237,185 | 78,799 | 29,168 | 8,769 |
| Allied lines | 413,496 | 426,776 | 530,394 | 549,010 | 63,199 |
| Farmowners multiple peril | 0 | 0 | 0 | 0 | 0 |
| Homeowners multiple peril | 0 | 0 | 0 | 0 | 0 |
| CMP (liability portion) | 0 | 0 | 0 | 0 | 0 |
| Inland marine | 0 | 0 | 0 | 0 | 0 |
| Other liability | 0 | 0 | 0 | 0 | 0 |
| PPA Tot | 1,527,011 | 1,536,779 | 828,142 | 905,606 | 839,195 |
| Commercial Auto Tot | 640,769 | 639,741 | 303,996 | 94,575 | 904,997 |
| Totals | 2,806,579 | 2,840,481 | 1,741,331 | 1,578,359 | 1,816,160 |

Fines and/or Penalties

The NAIC I-Site database was reviewed. There was nothing noted that warranted follow-up by this exam team.

**Tests for Company Operations/Management**

**Standard 7**
Records are adequate, accessible, consistent and orderly and comply with state record retention requirements. K.S.A. 40-222 (a)(b)(c)&(g).

The Company provided the exam team with the necessary records and documents in a timely fashion.

The Company passed Standard 7.

**Standard 9**
The regulated entity cooperates on a timely basis with examiners performing the examinations. K.S.A. 40-222 (c)(g).

The Company was very cooperative and provided the exam team with the items requested within the time frames established for this exam.

The Company passed Standard 9.

## COMPLAINT HANDLING

**Policyholder Service and Complaints**

Shelter follows the definition of a complaint as established by each particular state in which they operate. For Kansas, a complaint is considered to be, "any written complaint primarily

expressing a grievance." Shelter's Customer Service Manual defines a complaint as an expression of dissatisfaction or protest.

The Company has a standing Market Conduct Compliance Committee that meets at least quarterly. The Committee reviews aggregate data about complaints and refers any questions back to the Customer Communications Department. The committee membership includes nine persons who are officers or management personnel.

Summaries are produced monthly focusing on the volume of complaints handled, who handled them, and a breakdown by department and state. An Executive Vice President to whom the Director of Customer Communications reports reviews these summaries. Reports required by K.S.A. 40-2404 (10) are produced at the end of each year to reconcile records for retention purposes. Some states also send a listing of Department of Insurance Complaints so they can be reconciled each year against the Company's complaint log.

**Complaint Handling Procedures**

The Customer Service Manual defines a complaint for the Customer Service Representatives as an expression of dissatisfaction or protest. The complaint system logs telephone contact from customers as well as written complaints.

The Customer Service Manual provides a complete description of the complaint handling process and Consumer Affairs Tracking System in which all telephone contacts and written complaints are logged.

The Customer Communications Department handles serious complaints as well as all Department of Insurance complaints, communications to the CEO, and other written complaints that most states require to be logged.

All written complaints are forwarded to the Customer Communications Department and logged into the Consumer Affairs Tracking System. After research is conducted, the Customer Communications Department responds to the inquirer with supporting documentation as needed. Copies of complaint-related correspondences are maintained by Customer Communications per guidelines of each state.

**Tests for Complaint Handling** (See Appendix I for the wording of the appropriate statute or regulation)

**Standard 1**
All complaints are recorded in the required format on the company complaint register. K.S.A. 40-2404 (10).

> The Company provided the exam team with a copy of the complaint log. It complied with the information required in K.S.A. 40-2404 (10).

The Company passed Standard 1.

**Standard 2**
The regulated entity has adequate complaint handling procedures in place and communicates such procedures to policyholders. K.A.R. 40-1-34, Sections 5(a) & 6

The Company provided the exam team with a copy of Shelter's "Training Guide Complaint Manual". This document spells out the procedures the company follows in handling a complaint and entering the information into their complaint tracking system.

The Company passed Standard 2.

**Standard 3**
The regulated entity takes adequate steps to finalize and dispose of the complaint in accordance with applicable statutes, rules and regulations, and contract language. K.A.R. 40-1-34, Section 6.

Two complaints were referred back to the company because the exam team did not feel that Shelter had handled the initial claim and subsequent complaint in accordance with Kansas statutes.

| Type | Sample | Errors | %Pass |
|---|---|---|---|
| KS DOI Complaints | 103 | 2 | 98% |
| Company Complaints | 13 | 0 | 100% |

- Shelter violated K.S.A. 40-235 by misrepresenting policy provisions to KID during the course of the complaint investigation. One complaint received by KID was in regards to insufficient repairs of a 2002 hail loss. When these insufficient repairs were discovered in August of 2007, Shelter denied the claim, citing a five-year statute of limitations. However, Shelter remained under a continuing duty to remedy the insufficient repairs of 2002; the five-year statute of limitations would not begin to run until Shelter wrongfully denied the insured's request to repair his siding on March 31, 2008. By wrongfully denying this claim, Shelter is in violation of K.S.A. 40-2404 (9)(f).

- One complaint was regarding a claim that Shelter failed to total out a vehicle where the damages were 87% of the ACV. KID issued Bulletin 2004-8 in November of 2004 spelling out the Department's position that a company shall "total a vehicle when the total retail cost of repair meets or exceeds seventy-five (75%) percent of the retail value of the motor vehicle." Shelter is in violation of Bulletin 2004-8, which the Commissioner promulgated pursuant to the authority given by K.S.A. 40-103. It appears that Shelter applied a different standard in adjusting this claim from their other auto claims reviewed in this exam, and arbitrarily used the position that the damages had to be 100% of ACV before the vehicle was a total loss. Company guidelines indicate that suspected hidden damage may be considered, and the other claim files reviewed during this exam that had high initial damage estimates also allowed a cushion for supplements and made the vehicles total losses. Shelter did not attempt in

good faith to effectuate a prompt, fair and equitable settlement of this particular claim and is in violation of K.S.A. 40-2404(9)(f).

The Company passed Standard 3.

**Standard 4**
The time frame within which the company responds to complaints is in accordance with applicable statutes, rules and regulations. K.A.R. 40-1-34, Sections 6, & 8(a)&(c).

| Type | Sample | Errors | %Pass |
|---|---|---|---|
| KS DOI Complaints | 103 | 0 | 100% |
| Company Complaints | 13 | 0 | 100% |

The Company passed Standard 4.

**CLAIM HANDLING**

**Tests for Claims** (See Appendix I for the wording of the appropriate statute or regulation)

**General Company Claim Standards**

**Standard 1**
The initial contact by the regulated entity with the claimant is within the required time frame. K.A.R. 40-1-34, Sections 6(a)&(d)

| Type | Sample | Errors | %Pass |
|---|---|---|---|
| Paid Auto Claims | 50 | 0 | 100% |
| No Pay Claims | 50 | 0 | 100% |
| Total Losses Salvage Title issued | 50 | 1 | 98% |
| Collision Loss >10K w/o Salvage Title | 50 | 0 | 100% |

- On one claim the company failed to promptly provide proper claim forms as required by K.A.R. 40-1-34, Section 6(d).

The Company passed Standard 1.

**Standard 2**
Timely investigations are conducted. K.A.R. 40-1-34, Sections 7 & 8(c)

| Type | Sample | Errors | %Pass |
|---|---|---|---|
| Paid Auto Claims | 50 | 0 | 100% |
| No Pay Claims | 50 | 0 | 100% |
| Total Losses Salvage Title issued | 50 | 1 | 98% |
| Collision Loss >10K w/o Salvage Title | 50 | 0 | 100% |

- On one claim the investigation was not completed in a timely manner, and was in violation of K.A.R. 40-1-34, Section 7.

The Company passed Standard 2.

**Standard 3**
Claims are resolved in a timely manner. K.A.R. 40-1-34, Sections 8(a)&(c).

| Type | Sample | Errors | %Pass |
|---|---|---|---|
| Paid Auto Claims | 50 | 0 | 100% |
| No Pay Claims | 50 | 0 | 100% |
| Total Losses Salvage Title issued | 50 | 0 | 100% |
| Collision Loss >10K w/o Salvage Title | 50 | 1 | 98% |

- One claim did not have the supplement damage amount paid in a timely fashion. This is a violation of K.A.R. 40-1-34, Section 8(a).

The Company passed Standard 3.

**Standard 4**
The regulated entity responds to claim correspondence in a timely manner. K.A.R. 40-1-34, Sections 6(a)&(d).

| Type | Sample | Errors | %Pass |
|---|---|---|---|
| Paid Auto Claims | 50 | 0 | 100% |
| No Pay Claims | 50 | 0 | 100% |
| Total Losses Salvage Title issued | 50 | 0 | 100% |
| Collision Loss >10K w/o Salvage Title | 50 | 0 | 100% |

The Company passed Standard 4.

**Standard 5**
Claim files are adequately documented. K.A.R. 40-1-34, Sections 4, 6(a) & 8(b)

| Type | Sample | Errors | %Pass |
|---|---|---|---|
| Paid Auto Claims | 50 | 0 | 100% |
| No Pay Claims | 50 | 0 | 100% |
| Total Losses Salvage Title issued | 50 | 0 | 100% |
| Collision Loss >10K w/o Salvage Title | 50 | 1 | 98% |

- One claim file lacked adequate documentation to determine why a specific amount was paid on a total loss, which is a violation of K.A.R. 40-1-34, Section 4.

The Company passed Standard 5.

**Standard 6**
Claims are properly handled in accordance with policy provisions and applicable statutes (including HIPAA), rules and regulations. K.A.R. 40-1-34, Sections 5(a), 8, & 9; K.S.A. 40-3110.

| Type | Sample | Errors | %Pass |
|---|---|---|---|
| Paid Auto Claims | 50 | 0 | 100% |
| No Pay Claims | 50 | 0 | 100% |
| Total Losses Salvage Title issued | 50 | 3 | 94% |
| Collision Loss >10K w/o Salvage Title | 50 | 1 | 98% |

Total Loss sample

- On one claim, two Shelter insureds were involved in an accident, and the deductible was not waived. This is a violation of K.A.R. 40-1-34, Section 5(a).

- On two claims the company failed to itemize and give specific dollar amount for the reduction of depreciation of a vehicle in their settlement offer. This is a violation of K.A.R. 40-1-34, Section 9(f).

Collision Loss greater than 10K

- On one claim, the tax and title fees were not calculated into the total loss payment. This is a violation K.A.R. 40-1-34 ,Section 9(a)(1).

The Company passed Standard 6.

**Standard 7**
Regulated entity claim forms are appropriate for the type of product.

The exam team did not specifically test for this standard. In the normal review of the sample claim files, any reserving abnormalities would have been reviewed, and the examiner would have noted it. There were no issues with the files that were reviewed.

**Standard 8**
Claim files are reserved in accordance with the company's established procedures.

The exam team did not specifically test for this standard. In the normal review of the sample claim files, any issues that the Company raised regarding claim forms would have been reviewed, and the examiner would have noted it. There were no issues with the files that were reviewed.

**Standard 9**
Denied and closed-without-payment claims are handled in accordance with policy provisions and state law. K.A.R. 40-1-34 Section 8(a),(b)&(c).

| Type | Sample | Errors | %Pass |
|---|---|---|---|
| No Pay Claims | 50 | 0 | 100% |

The Company passed Standard 9.

**Standard 10**
Canceled benefit checks and drafts reflect appropriate claim handling practices. K.A.R. 40-1-34, Sections 5(f), 8(a)&(c); K.S.A. 40-3110.

The exam team did not specifically request copies of the canceled checks. The last diary entry by the adjuster in a claim files indicates a draft request was made and closing the file. The company provided a transaction log as part of the claim file which showed the dates, amount and payee of all checks by line of coverage and claimant. This log also showed the dates and amounts of any reserve changes. The exam team felt comfortable with this documentation and did not feel a physical review of cancelled checks was necessary.

The Company passed Standard 10.

**Standard 11**
Claim handling practices do not compel claimants to institute litigation, in cases of clear liability and coverage, to recover amounts due under policies by offering substantially less than is due under the policy. K.S.A. 40-2404 (9)(f)&(g).

The exam team did not specifically test for this standard. In the normal review of the sample claim files, any attempts to not settle a claim fair and promptly would have been reviewed, and the examiner would have noted it. There were no issues with the files that were reviewed.

**SUMMARIZATION**

1. The Company should review claims procedures to ensure claims are handled in accordance with Bulletin 2004-8. On one claim in which the initial estimate was over 70% to repair with major front-end damage, the claim file appeared to indicate that it would be repaired unless the repair was 100% of the Actual Cash Value (ACV). With the first estimate there were notations in the file that a salvage title may be needed. Bulletin 2004-8 specifies that a company should total a vehicle when the total retail cost of repair meets or exceeds seventy-five (75%) percent of the retail value of the motor vehicle.

## CONCLUSION

I would like to acknowledge the cooperation and courtesy extended to the examination team by Randa Rawlins and the staff of the Shelter Insurance Group.

The following examiners of the Office of the Commissioner of Insurance in the State of Kansas participated in the review:

**Market Conduct Division**

| | |
|---|---|
| Lyle Behrens | Mary Lou Maritt |
| Supervisor | Market Conduct Examiner |

Respectfully submitted,

_____

Lyle Behrens, CPCU, CIE, FLMI, ARM, ARe

# APPENDIX I

## A. REGULATIONS

### K.A.R. 40-1-34. UNFAIR CLAIMS SETTLEMENT PRACTICES MODEL REGULATION

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Section 1. Authority

Section 1 is not adopted.

Section 2. Scope

This regulation applies to all persons and to all insurance policies and insurance contracts except policies of Workers' Compensation insurance. This regulation is not exclusive, and other acts, not herein specified, may also be deemed to be a violation of K.S.A. 40-2404, and amendments thereto.

Section 3. Definitions

The definitions of "person" and of "insurance policy or insurance contract" contained in K.S.A. 40-2404, and amendments thereto shall apply to this regulation and, in addition, where used in this regulation:

(a) "Agent" means any individual, corporation, association, partnership or other legal entity authorized to represent an insurer with respect to a claim;
(b) "Claimant" means either a first party claimant, a third party claimant, or both and includes such claimant's designated legal representative and includes a member of the claimant's immediate family designated by the claimant;
(c) "First party claimant" means an individual, corporation, association, partnership or other legal entity asserting a right to payment under an insurance policy or insurance contract arising out of the occurrence of the contingency or loss covered by such policy or contract;
(d) "Insurer" means a person licensed to issue or who issues any insurance policy or insurance contract in this State;
(e) "Investigation" means all activities of an insurer directly or indirectly related to the determination of liabilities under coverages afforded by an insurance policy or insurance contract;
(f) "Notification of claim" means any notification, whether in writing or other means acceptable under the terms of an insurance policy or insurance contract, to an insurer or its agent, by a claimant, which reasonably apprises the insurer of the facts pertinent to a claim;
(g) "Third party claimant" means any individual, corporation, association, partnership or other legal entity asserting a claim against any individual, corporation, association, partnership or other legal entity insured under an insurance policy or insurance contract of an insurer; and
(h) "Workers' Compensation" includes, but is not limited to, Longshoremen's and Harbor Workers' Compensation.

Section 4. File and Record Documentation

The insurer's claim files shall be subject to examination by the (Commissioner) or by his duly appointed designees. Such files shall contain all notes and work papers pertaining to the claim in such detail that pertinent events and the

dates of such events can be reconstructed.

Section 5. Misrepresentation of Policy Provisions

(a) No insurer shall fail to fully disclose to first party claimants all pertinent benefits, coverages or other provisions of an insurance policy or insurance contract under which a claim is presented.
(b) No agent shall conceal from first party claimants benefits, coverages or other provisions of any insurance policy or insurance contract when such benefits, coverages or other provisions are pertinent to a claim.
(c) No insurer shall deny a claim for failure to exhibit the property without proof of demand and unfounded refusal by a claimant to do so.
(d) No insurer shall, except where there is a time limit specified in the policy, make statements, written or otherwise, requiring a claimant to give written notice of loss or proof of loss within a specified time limit and which seek to relieve the company of its obligations if such a time limit is not complied with unless the failure to comply with such time limit prejudices the insurer's rights.
(e) No insurer shall request a first party claimant to sign a release that extends beyond the subject matter that gave rise to the claim payment.
(f) No insurer shall issue checks or drafts in partial settlement of a loss or claim under a specific coverage which contain language which release the insurer or its insured from its total liability.

Section 6. Failure to Acknowledge Pertinent Communications

(a) Every insurer, upon receiving notification of a claim shall, within ten working days, acknowledge the receipt of such notice unless payment is made within such period of time. If an acknowledgement is made by means other than writing, an appropriate notation of such acknowledgement shall be made in the claim file of the insurer and dated. Notification given to an agent of an insurer shall be notification to the insurer.
(b) Every insurer, upon receipt of any inquiry from the insurance department respecting a claim shall, within fifteen working days of receipt of such inquiry, furnish the department with an adequate response to the inquiry.
(c) An appropriate reply shall be made within ten working days on all other pertinent communications from a claimant which reasonably suggest that a response is expected.
(d) Every insurer, upon receiving notification of claim, shall promptly provide necessary claim forms, instructions, and reasonable assistance so that first party claimants can comply with the policy conditions and the insurer's reasonable requirements. Compliance with this paragraph within ten working days of notification of a claim shall constitute compliance with subsection (a) of this section.

Section 7. Standards for Prompt Investigation of Claim

Every insurer shall complete investigation of a claim within thirty days after notification of claim, unless such investigation cannot reasonably be completed within such time.

Section 8. Standards for Prompt, Fair and Equitable Settlements Applicable to All Insurers

(a) Within fifteen working days after receipt by the insurer of properly executed proofs of loss, the first party claimant shall be advised of the acceptance or denial of the claim by the insurer. No insurer shall deny a claim on the grounds of a specific policy provision, condition, or exclusion unless reference to such provision, condition, or exclusion is included in the denial. The denial must be given to the claimant in writing and the claim file of the insurer shall contain a copy of the denial.
(b) Where there is a reasonable basis supported by specific information available for review by the insurance regulatory authority that the first party claimant has fraudulently caused or contributed to the loss by arson, the insurer is relieved from the requirements of this subsection. Provided, however, that the claimant shall be advised of the acceptance or denial of the claim within a reasonable time for full investigation after receipt by the insurer of a properly executed proof of loss.
(c) If the insurer needs more time to determine whether a first party claim should be accepted or denied, it shall so notify the first party claimant within fifteen working days after receipt of the proofs of loss, giving the reasons more time is needed. If the investigation remains incomplete, the insurer shall,

forty-five days from the date of the initial notification and every forty-five days thereafter, send to such claimant a letter setting forth the reasons additional time is needed for investigation.

(d) Section 8(d) is not adopted.

(e) An insurer shall not attempt to settle a loss with a first party claimant on the basis of a cash settlement which is less than the amount the insurer would pay if repairs were made, other than in total loss situations, unless such amount is agreed to by the insured.

(f) If a claim is denied for reasons other than those described in section 8(a) and is made by any other means than writing, an appropriate notation shall be made in the claim file of the insurer.

(g) Insurers shall not fail to settle first party claims on the basis that responsibility for payment should be assumed by others except as may otherwise be provided by policy provisions.

(h) Insurers shall not continue negotiations for settlement of a claim directly with a claimant who is neither an attorney nor represented by an attorney until the claimant's rights may be affected by a statute of limitations or a policy or a contract time limit, without giving the claimant written notice that the time limit may be expiring and may affect the claimant's rights. Such notice shall be given to first party claimants thirty days and to third party claimants sixty days before the date on which such time limit may expire.

(i) No insurer shall make statements which indicate the rights of a third party claimant may be impaired if a form or release is not completed within a given period of time unless the statement is given for the purpose of notifying the third party claimant of the provision of a statute of limitations.

Section 9. Standards for Prompt, Fair and Equitable Settlements Applicable to Automobile Insurance

(a) When the insurance policy provides, for the adjustment and settlement of automobile total losses on the basis of actual cash value or replacement with another of like kind and quality, one of the following methods must apply:

(1) The insurer may elect to offer a replacement automobile which is a specific comparable automobile available to the claimant, with all applicable taxes, license fees and other fees incident to transfer of evidence of ownership of the automobile paid, at no cost other than any deductible provided in the policy. The offer and any rejection thereof must be documented in the claim file.

(2) The insurer may elect to pay a cash settlement, based upon the actual cost, less any deductible provided in the policy, to purchase a comparable automobile including all applicable taxes, license fees and other fees incident to transfer of evidence of ownership of a comparable automobile. Such cost shall be determined by any source or method for determining statistically valid fair market value that meets both of the following criteria:

(A) The source or method's database, including nationally recognized automobile evaluation publications, shall provide values for at least eighty-five percent (85%) of all makes and models of private passenger vehicles for the last fifteen (15) model years taking into account the values for all major options for such vehicles; and

(B) The source, method, or publication shall provide fair market values for a comparable automobile based on current data available for the local market area as defined in subsection (j)(2).

(3) When an automobile total loss is settled on a basis which deviates from the methods and criteria described in subsection (a)(1) and (a)(2)(A) and (B) of this section, the deviation must be supported by documentation giving the particulars of the automobile condition and the basis for the deviation. Any deviations from such cost, including deductions for salvage, must be measurable, discernible, itemized and specified as to dollar amount and shall be appropriate in amount. The basis for such settlement shall be fully explained to the claimant.

(b) Where liability and damages are reasonably clear, insurers shall not recommend that third party claimants make claim under their own policies solely to avoid paying claims under such insurer's insurance policy or insurance contract.

(c) Insurers shall not require a claimant to travel unreasonably either to inspect a replacement automobile, to obtain a repair estimate or to have the automobile repaired at a specific repair shop.

(e) If an insurer prepares an estimate of the cost of automobile repairs, such estimate shall be in an amount for which it may be reasonably expected the damage can be satisfactorily repaired. The insurer shall give a copy of the estimate to the claimant and may furnish to the claimant the names of one or more conveniently located repair shops.

(f) When the amount claimed is reduced because of betterment or depreciation all information for such reduction shall be contained in the claim file. Such deductions shall be itemized and specified as to dollar amount and shall be appropriate for the amount of deductions.

(g) When the insurer elects to repair and designates a specific repair shop for automobile repairs, the insurer shall cause the damaged automobile to be restored to its condition prior to the loss at no additional cost to the claimant other than as stated in the policy and within a reasonable period of time.

(h) Insurers shall include consideration of applicable taxes, license fees, and other fees incident to transfer of evidence of ownership in third party automobile total losses and shall have sufficient documentation relative to how the settlement was obtained in the claim file. A measure of damages shall be applied which will compensate third party claimants for the reasonable loss sustained as the proximate result of the insured's negligence.

(i) A claimant has the right of recourse if the claimant notifies the insurer, within thirty (30) days after the receipt of the claim draft, that claimant is unable to purchase a comparable automobile for the amount of the claim draft. Upon receipt of this notice, the insurer shall reopen its claim file within five (5) business days, and one of the following actions shall apply.

(1) the Insurer shall either pay the claimant the difference between the market value as determined by the insurer and the cost of the comparable vehicle of like kind and quality which the claimant has located, or negotiate and effect the purchase price of this vehicle for the claimant; or

(2) the insurer may elect to offer a replacement in accordance with provisions of subsection 9(a)(1).

(j) As used in this regulation the following terms shall have the following meanings:

(1) comparable automobile means a vehicle of the same make, model, year, style and condition, including all major options of the claimant vehicle;

(2) local market area means the fifty (50) mile area surrounding the place where the claimant vehicle was principally garaged.

## B. STATUTES

**K.S.A. 40-103. Supervision of commissioner.** The commissioner of insurance shall have general supervision, control and regulation of corporations, companies, associations, societies, exchanges, partnerships, or persons authorized to transact the business of insurance, indemnity or suretyship in this state and shall have the power to make all reasonable rules and regulations necessary to enforce the laws of this state relating thereto.

**K.S.A. 40-222. Examination of condition of company, when; report, disclosure; suspension or revocation of certificate; notice and hearing.** (a) Whenever the commissioner of insurance deems it necessary but at least once every five years, the commissioner may make, or direct to be made, a financial examination of any insurance company in the process of organization, or applying for admission or doing business in this state. In addition, at the commissioner's discretion the commissioner may make, or direct to be made, a market regulation examination of any insurance company doing business in this state.

(b) In scheduling and determining the nature, scope and frequency of examinations of financial condition, the commissioner shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants and other criteria as set forth in the examiner's handbook adopted by the national association of insurance commissioners and in effect when the commissioner exercises discretion under this subsection.

(c) For the purpose of such examination, the commissioner of insurance or the persons appointed by the commissioner, for the purpose of making such examination shall have free access to the books and papers of any such company that relate to its business and to the books and papers kept by any of its agents and may examine under oath, which the commissioner or the persons appointed by the commissioner are empowered to administer, the directors, officers, agents or employees of any such company in relation to its affairs, transactions and condition.

(d) The commissioner may also examine or investigate any person, or the business of any person, in so far as such examination or investigation is, in the sole discretion of the commissioner, necessary or material to the

examination of the company, but such examination or investigation shall not infringe upon or extend to any communications or information accorded privileged or confidential status under any other laws of this state.

(e) In lieu of examining the financial condition of a foreign or alien insurance company, the commissioner of insurance may accept the report of the examination made by or upon the authority of the company's state of domicile or port-of-entry state until January 1, 1994. Thereafter, such reports as they relate to financial condition may only be accepted if:

(1) The insurance department conducting the examination was at the time of the examination accredited under the national association of insurance commissioners' financial regulation standards and accreditation program; or

(2) the examination is performed under the supervision of an accredited insurance department, or with the participation of one or more examiners who are employed by such an accredited insurance department and who after a review of the examination work papers and report state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department.

(f) Upon determining that an examination should be conducted, the commissioner or the commissioner's designee shall appoint one or more examiners to perform the examination and instruct them as to the scope of the examination. In conducting an examination of financial condition, the examiner shall observe those guidelines and procedures set forth in the examiners' handbook adopted by the national association of insurance commissioners. The commissioner may also employ such other guidelines or procedures as the commissioner may deem appropriate.

(g) The refusal of any company, by its officers, directors, employees or agents, to submit to examination or to comply with any reasonable written request of the examiners shall be grounds for suspension or refusal of, or nonrenewal of any license or authority held by the company to engage in an insurance or other business subject to the commissioner's jurisdiction. Any such proceedings for suspension, revocation or refusal of any license or authority shall be conducted in accordance with the provisions of the Kansas administrative procedures act.

(h) When making an examination under this act, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants or other professionals and specialists as examiners, the reasonable cost of which shall be borne by the company which is the subject of the examination.

(i) Nothing contained in this act shall be construed to limit the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state.

(j) Nothing contained in this act shall be construed to limit the commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report in the furtherance of any legal or regulatory action which the commissioner may, in the commissioner's sole discretion, deem appropriate.

(k) (1) No later than 30 days following completion of the examination or at such earlier time as the commissioner shall prescribe, the examiner in charge shall file with the department a verified written report of examination under oath. No later than 30 days following receipt of the verified report, the department shall transmit the report to the company examined, together with a notice which shall afford such company examined a reasonable opportunity of not more than 30 days to make a written submission or rebuttal with respect to any matters contained in the examination report.

(2) Within 30 days of the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiners workpapers and enter an order:

(A) Adopting the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, regulation or prior order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure such violations; or

(B) rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation or information, and refiling pursuant to subsection (k); or

(C) call and conduct a fact-finding hearing in accordance with K.S.A. 40-281 and amendments thereto for purposes of obtaining additional documentation, data, information and testimony.

(3) All orders entered as a result of revelations contained in the examination report shall be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner workpapers and any written submissions or rebuttals. Within 30 days of the issuance of the adopted report, the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.

(4) Upon the adoption of the examination report, the commissioner shall hold the content of the examination report as private and confidential information for a period of 30 days except to the extent provided in paragraph (5). Thereafter, the commissioner may open the report for public inspection so long as no court of competent jurisdiction has stayed its publication.

(5) (A) Except as provided in paragraph (B), nothing contained in this act shall prevent or be construed as prohibiting the commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, at any time to:

(i) The insurance department of this or any other state or country;

(ii) law enforcement officials of this or any other state or agency of the federal government or any other country; or

(iii) officials of any agency of another country.

(B) The commissioner shall not share any information listed in paragraph (A) unless the agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this act.

(6) In the event the commissioner determines that regulatory action is appropriate as a result of any examination, the commissioner may initiate any proceedings or actions as provided by law.

(7) All working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the commissioner or any other person in the course of an examination made under this act must be given confidential treatment and are not subject to subpoena and may not be made public by the commissioner or any other person, except to the extent otherwise specifically provided in K.S.A. 45-215 et seq. and amendments thereto. Access may also be granted to the national association of insurance commissioners. Such parties must agree in writing prior to receiving the information to provide to it the same confidential treatment as required by this section, unless the prior written consent of the company to which it pertains has been obtained.

Whenever it appears to the commissioner of insurance from such examination or other satisfactory evidence that the solvency of any such insurance company is impaired, or that it is doing business in violation of any of the laws of this state, or that its affairs are in an unsound condition so as to endanger its policyholders, the commissioner of insurance shall give the company a notice and an opportunity for a hearing in accordance with the provisions of the Kansas administrative procedure act. If the hearing confirms the report of the examination, the commissioner shall suspend the certificate of authority of such company until its solvency shall have been fully restored and the laws of the state fully complied with. The commissioner may, if there is an unreasonable delay in restoring the solvency of such company and in complying with the law, revoke the certificate of authority of such company to do business in this state. Upon revoking any such certificate the commissioner shall commence an action to dissolve such company or to enjoin the same from doing or transacting business in this

**K.S.A. 40-235. Misrepresentations regarding policy terms; title insurance policies, search and examination requirements.** (a) No insurance company or fraternal benefit society doing business in this state, and no officer, director, solicitor or other agent thereof, shall make, issue or circulate, or cause to be issued or

circulated, any estimate, illustration, circular or statement of any sort misrepresenting the terms of any policy issued or to be issued by it or the benefits or advantages promised thereby, or the dividends or share of the surplus to be received thereon, or shall use any name or title of any policy or class of policies misrepresenting the true nature thereof. No officer, director, solicitor or agent of any insurance company shall make any misrepresentation to any person insured in any company for the purpose of inducing or tending to induce a policyholder in any company to lapse, forfeit or surrender such policyholder's insurance.

(b) No preliminary or final policy or contract of insurance of the class authorized to be transacted in this state pursuant to paragraph (e) of K.S.A. 40-1102, and amendments thereto, and as further defined in subsection (g) of K.S.A. 40-1136, 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.

(1) For owner's policies of title insurance and loan policies of title insurance insuring purchase money mortgages, such search and examination shall be conducted by a title insurance agent or an employee of a title insurance company licensed to do business in this state or an abstracter licensed to do business in this state. The search and examination shall be based upon a search of all applicable records of the county, state and federal offices in which the real estate is located, as may pertain to the marketability of title for a minimum period of 25 years, or from the date of the previously issued title insurance policy, whichever period is less.

(2) For the purposes of this provision, "sound underwriting practices" shall be defined 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.

**K.S.A. 40-2125. Violation of insurance laws; failure to file reports; penalties; emergency temporary cease and desist orders; definitions.** (a) If the commissioner determines after notice and opportunity for a hearing that any person has engaged or is engaging in any act or practice constituting a violation of any provision of Kansas insurance statutes or any rule and regulation or order thereunder, the commissioner may in the exercise of discretion, order any one or more of the following:

(1) Payment of a monetary penalty of not more than $1,000 for each and every act or violation, unless the person knew or reasonably should have known such person was in violation of the Kansas insurance statutes or any rule and regulation or order thereunder, in which case the penalty shall be not more than $2,000 for each and every act or violation;

(2) suspension or revocation of the person's license or certificate if such person knew or reasonably should have known that such person was in violation of the Kansas insurance statutes or any rule and regulation or order thereunder; or

(3) that such person cease and desist from the unlawful act or practice and take such affirmative action as in the judgment of the commissioner will carry out the purposes of the violated or potentially violated provision.

(b) If any person fails to file any report or other information with the commissioner as required by statute or fails to respond to any proper inquiry of the commissioner, the commissioner, after notice and opportunity for hearing, may impose a civil penalty of up to $1,000, for each violation or act, along with an additional penalty of up to $500 for each week thereafter that such report or other information is not provided to the commissioner.

(c) If the commissioner makes written findings of fact that there is a situation involving an immediate danger to the public health, safety or welfare or the public interest will be irreparably harmed by delay in issuing an order under subsection (a)(3), the commissioner may issue an emergency temporary cease and desist order. Such order, even when not an order within the meaning of K.S.A. 77-502 and amendments thereto, shall be subject to the same procedures as an emergency order issued under K.S.A. 77-536 and amendments thereto. Upon the entry of such an order, the commissioner shall promptly notify the person subject to the order that: (1) It has been entered, (2) the reasons therefor and (3) that upon written request within 15 days after service of the order the matter will

be set for a hearing which shall be conducted in accordance with the provisions of the Kansas administrative procedure act. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to the person subject to the order, shall by written findings of fact and conclusions of law vacate, modify or make permanent the order.

(d) For purposes of this section:

(1) "Person" means any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyd's insurer, fraternal benefit society and any other legal entity engaged in the business of insurance, rating organization, third party administrator, nonprofit dental service corporation, nonprofit medical and hospital service corporation, automobile club, premium financing company, health maintenance organization, insurance holding company, mortgage guaranty insurance company, risk retention or purchasing group, prepaid legal and dental service plan, captive insurance company, automobile self-insurer or reinsurance intermediary. The term "person" shall not include insurance agents and brokers as such terms are defined in K.S.A. 2009 Supp. 40-4902 and amendments thereto.

(2) "Commissioner" means the commissioner of insurance of this state.

**K.S.A. 40-2404**. **Unfair methods of competition or unfair and deceptive acts or practices; title insurance agents, requirements; disclosure of nonpublic personal information; rules and regulations**. The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(1) *Misrepresentations and false advertising of insurance policies.* Making, issuing, circulating or causing to be made, issued or circulated, any estimate, illustration, circular, statement, sales presentation, omission or comparison which:

(a) Misrepresents the benefits, advantages, conditions or terms of any insurance policy;

(b) misrepresents the dividends or share of the surplus to be received on any insurance policy;

(c) makes any false or misleading statements as to the dividends or share of surplus previously paid on any insurance policy;

(d) is misleading or is a misrepresentation as to the financial condition of any person, or as to the legal reserve system upon which any life insurer operates;

(e) uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof;

(f) is a misrepresentation for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion or surrender of any insurance policy;

(g) is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy; or

(h) misrepresents any insurance policy as being shares of stock.

(2) *False information and advertising generally.* Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, misrepresentation or statement with respect to the business of insurance or with respect to any person in the conduct of such person's insurance business, which is untrue, deceptive or misleading.

(3) *Defamation.* Making, publishing, disseminating or circulating, directly or indirectly, or aiding, abetting or encouraging the making, publishing, disseminating or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of any person, and which is calculated to injure such person.

(4) *Boycott, coercion and intimidation.* Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of the business of insurance, or by any act of boycott, coercion or intimidation monopolizing or attempting to monopolize any part of the business of insurance.

(5) *False statements and entries.* (a) Knowingly filing with any supervisory or other public official, or knowingly making, publishing, disseminating, circulating or delivering to any person, or placing before the public, or knowingly causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false material statement of fact as to the financial condition of a person.

(b) Knowingly making any false entry of a material fact in any book, report or statement of any person or knowingly omitting to make a true entry of any material fact pertaining to the business of such person in any book, report or statement of such person.

(6) *Stock operations and advisory board contracts.* Issuing or delivering or permitting agents, officers or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance. Nothing herein shall prohibit the acts permitted by K.S.A. 40-232, and amendments thereto.

(7) *Unfair discrimination.* (a) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.

(b) Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees or rates charged for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever.

(c) Refusing to insure, or refusing to continue to insure, or limiting the amount, extent or kind of coverage available to an individual, or charging an individual a different rate for the same coverage solely because of blindness or partial blindness. With respect to all other conditions, including the underlying cause of the blindness or partial blindness, persons who are blind or partially blind shall be subject to the same standards of sound actuarial principles or actual or reasonably anticipated experience as are sighted persons. Refusal to insure includes denial by an insurer of disability insurance coverage on the grounds that the policy defines "disability" as being presumed in the event that the insured loses such person's eyesight. However, an insurer may exclude from coverage disabilities consisting solely of blindness or partial blindness when such condition existed at the time the policy was issued.

(d) Refusing to insure, or refusing to continue to insure, or limiting the amount, extent or kind of coverage available for accident and health and life insurance to an applicant who is the proposed insured or charge a different rate for the same coverage or excluding or limiting coverage for losses or denying a claim incurred by an insured as a result of abuse based on the fact that the applicant who is the proposed insured is, has been, or may be the subject of domestic abuse, except as provided in subpart (v). "Abuse" as used in this subsection (7)(d) means one or more acts defined in subsection (a) or (b) of K.S.A. 60-3102 and amendments thereto between family members, current or former household members, or current or former intimate partners.

(i) An insurer may not ask an applicant for life or accident and health insurance who is the proposed insured if the individual is, has been or may be the subject of domestic abuse or seeks, has sought or had reason to seek medical or psychological treatment or counseling specifically for abuse, protection from

abuse or shelter from abuse.

(ii) Nothing in this section shall be construed to prohibit a person from declining to issue an insurance policy insuring the life of an individual who is, has been or has the potential to be the subject of abuse if the perpetrator of the abuse is the applicant or would be the owner of the insurance policy.

(iii) No insurer that issues a life or accident and health policy to an individual who is, has been or may be the subject of domestic abuse shall be subject to civil or criminal liability for the death or any injuries suffered by that individual as a result of domestic abuse.

(iv) No person shall refuse to insure, refuse to continue to insure, limit the amount, extent or kind of coverage available to an individual or charge a different rate for the same coverage solely because of physical or mental condition, except where the refusal, limitation or rate differential is based on sound actuarial principles

(v) Nothing in this section shall be construed to prohibit a person from underwriting or rating a risk on the basis of a preexisting physical or mental condition, even if such condition has been caused by abuse, provided that:

(A) The person routinely underwrites or rates such condition in the same manner with respect to an insured or an applicant who is not a victim of abuse

(B) the fact that an individual is, has been or may be the subject of abuse may not be considered a physical or mental condition; and

(C) such underwriting or rating is not used to evade the intent of this section or any other provision of the Kansas insurance code.

(vi) Any person who underwrites or rates a risk on the basis of preexisting physical or mental condition as set forth in subsection (7)(d)(v), shall treat such underwriting or rating as an adverse underwriting decision pursuant to K.S.A. 40-2,112, and amendments thereto.

(vii) The provisions of subsection (d) shall apply to all policies of life and accident and health insurance issued in this state after the effective date of this act and all existing contracts which are renewed on or after the effective date of this act.

(8) *Rebates.* (a) Except as otherwise expressly provided by law, knowingly permitting, offering to make or making any contract of life insurance, life annuity or accident and health insurance, or agreement as to such contract other than as plainly expressed in the insurance contract issued thereon; paying, allowing, giving or offering to pay, allow or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or giving, selling, purchasing or offering to give, sell or purchase as inducement to such insurance contract or annuity or in connection therewith, any stocks, bonds or other securities of any insurance company or other corporation, association or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract.

(b) Nothing in subsection (7) or (8)(a) shall be construed as including within the definition of discrimination or rebates any of the following practices:

(i) In the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance. Any such bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the company and its policyholders;

(ii) in the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in

an amount which fairly represents the saving in collection expenses; or

(iii) readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year.

(9) *Unfair claim settlement practices.* It is an unfair claim settlement practice if any of the following or any rules and regulations pertaining thereto are: (A) Committed flagrantly and in conscious disregard of such provisions, or (B) committed with such frequency as to indicate a general business practice.

(a) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;

(b) failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

(c) failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

(d) refusing to pay claims without conducting a reasonable investigation based upon all available information;

(e) failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;

(f) not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear;

(g) compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds;

(h) attempting to settle a claim for less than the amount to which a reasonable person would have believed that such person was entitled by reference to written or printed advertising material accompanying or made part of an application;

(i) attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of the insured;

(j) making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made;

(k) making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

(l) delaying the investigation or payment of claims by requiring an insured, claimant or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;

(m) failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; or

(n) failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

(10) *Failure to maintain complaint handling procedures.* Failure of any person, who is an insurer on an insurance policy, to maintain a complete record of all the complaints which it has received since the date of its last

examination under K.S.A. 40-222, and amendments thereto; but no such records shall be required for complaints received prior to the effective date of this act. The record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of the complaints, the date each complaint was originally received by the insurer and the date of final disposition of each complaint. For purposes of this subsection, "complaint" means any written communication primarily expressing a grievance related to the acts and practices set out in this section.

(11) *Misrepresentation in insurance applications.* Making false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money or other benefit from any insurer, agent, broker or individual.

(12) *Statutory violations.* Any violation of any of the provisions of K.S.A. 40-216, 40-276a, 40-2,155 or 40-1515 and amendments thereto.

(13) *Disclosure of information relating to adverse underwriting decisions and refund of premiums.* Failing to comply with the provisions of K.S.A. 40-2,112, and amendments thereto, within the time prescribed in such section.

(14) *Rebates and other inducements in title insurance.* (a) No title insurance company or title insurance agent, or any officer, employee, attorney, agent or solicitor thereof, may pay, allow or give, or offer to pay, allow or give, directly or indirectly, as an inducement to obtaining any title insurance business, any rebate, reduction or abatement of any rate or charge made incident to the issuance of such insurance, any special favor or advantage not generally available to others of the same classification, or any money, thing of value or other consideration or material inducement. The words "charge made incident to the issuance of such insurance" includes, without limitations, escrow, settlement and closing charges.

(b) No insured named in a title insurance policy or contract nor any other person directly or indirectly connected with the transaction involving the issuance of the policy or contract, including, but not limited to, mortgage lender, real estate broker, builder, attorney or any officer, employee, agent representative or solicitor thereof, or any other person may knowingly receive or accept, directly or indirectly, any rebate, reduction or abatement of any charge, or any special favor or advantage or any monetary consideration or inducement referred to in (14)(a).

(c) Nothing in this section shall be construed as prohibiting:

(i) The payment of reasonable fees for services actually rendered to a title insurance agent in connection with a title insurance transaction;

(ii) the payment of an earned commission to a duly appointed title insurance agent for services actually performed in the issuance of the policy of title insurance; or

(iii) the payment of reasonable entertainment and advertising expenses.

(d) Nothing in this section prohibits the division of rates and charges between or among a title insurance company and its agent, or one or more title insurance companies and one or more title insurance agents, if such division of rates and charges does not constitute an unlawful rebate under the provisions of this section and is not in payment of a forwarding fee or a finder's fee.

(e) As used in paragraphs (e) through (i)(7) of this subpart, unless the context otherwise requires:

(i) "Associate" means any firm, association, organization, partnership, business trust, corporation or other legal entity organized for profit in which a producer of title business is a director, officer or partner thereof, or owner of a financial interest; the spouse or any relative within the second degree by blood or marriage of a producer of title business who is a natural person; any director, officer or employee of a producer of title business or associate; any legal entity that controls, is controlled by, or is under common control with a producer of title business or associate; and any natural person or legal entity with whom a producer of title business or associate has any agreement, arrangement or understanding or pursues any course of conduct, the

purpose or effect of which is to evade the provisions of this section.

(ii) "Financial interest" means any direct or indirect interest, legal or beneficial, where the holder thereof is or will be entitled to 1% or more of the net profits or net worth of the entity in which such interest is held. Notwithstanding the foregoing, an interest of less than 1% or any other type of interest shall constitute a "financial interest" if the primary purpose of the acquisition or retention of that interest is the financial benefit to be obtained as a consequence of that interest from the referral of title business.

(iii) "Person" means any natural person, partnership, association, cooperative, corporation, trust or other legal entity.

(iv) "Producer of title business" or "producer" means any person, including any officer, director or owner of 5% or more of the equity or capital or both of any person, engaged in this state in the trade, business, occupation or profession of:

(A) Buying or selling interests in real property;

(B) making loans secured by interests in real property; or

(C) acting as broker, agent, representative or attorney for a person who buys or sells any interest in real property or who lends or borrows money with such interest as security.

(v) "Refer" means to direct or cause to be directed or to exercise any power or influence over the direction of title insurance business, whether or not the consent or approval of any other person is sought or obtained with respect to the referral.

(f) (f) No title insurer or title agent may accept any order for, issue a title insurance policy to, or provide services to, an applicant if it knows or has reason to believe that the applicant was referred to it by any producer of title business or by any associate of such producer, where the producer, the associate, or both, have a financial interest in the title insurer or title agent to which business is referred unless the producer has disclosed to the buyer, seller and lender the financial interest of the producer of title business or associate referring the title insurance business.

(g) No title insurer or title agent may accept an order for title insurance business, issue a title insurance policy, or receive or retain any premium, or charge in connection with any transaction if: (i) The title insurer or title agent knows or has reason to believe that the transaction will constitute controlled business for that title insurer or title agent, and (ii) 70% or more of the closed title orders of that title insurer or title agent during the 12 full calendar months immediately preceding the month in which the transaction takes place is derived from controlled business. The prohibitions contained in this subparagraph shall not apply to transactions involving real estate located in a county that has a population, as shown by the last preceding decennial census, of 10,000 or less.

(h) Within 90 days following the end of each business year, as established by the title insurer or title agent, each title insurer or title agent shall file with the department of insurance and any title insurer with which the title agent maintains an underwriting agreement, a report executed by the title insurer's or title agent's chief executive officer or designee, under penalty of perjury, stating the percent of closed title orders originating from controlled business. The failure of a title insurer or title agent to comply with the requirements of this section, at the discretion of the commissioner, shall be grounds for the suspension or revocation of a license or other disciplinary action, with the commissioner able to mitigate any such disciplinary action if the title insurer or title agent is found to be in substantial compliance with competitive behavior as defined by federal housing and urban development statement of policy 1996-2.

(i)(1) No title insurer or title agent may accept any title insurance order or issue a title insurance policy to any person if it knows or has reason to believe that such person was referred to it by any producer of title business or by any associate of such producer, where the producer, the associate, or both, have a financial interest in the title insurer or title agent to which business is referred unless the producer has disclosed in writing to the person so referred the fact that such producer or associate has a financial interest in the title

insurer or title agent, the nature of the financial interest and a written estimate of the charge or range of charges generally made by the title insurer or agent for the title services. Such disclosure shall include language stating that the consumer is not obligated to use the title insurer or agent in which the referring producer or associate has a financial interest and shall include the names and telephone numbers of not less than three other title insurers or agents which operate in the county in which the property is located. If fewer than three insurers or agents operate in that county, the disclosure shall include all title insurers or agents operating in that county. Such written disclosure shall be signed by the person so referred and must have occurred prior to any commitment having been made to such title insurer or agent.

(2) No producer of title business or associate of such producer shall require, directly or indirectly, as a condition to selling or furnishing any other person any loan or extension thereof, credit, sale, property, contract, lease or service, that such other person shall purchase title insurance of any kind through any title agent or title insurer if such producer has a financial interest in such title agent or title insurer.

(3) No title insurer or title agent may accept any title insurance order or issue a title insurance policy to any person it knows or has reason to believe that the name of the title company was pre-printed in the sales contract, prior to the buyer or seller selecting that title company.

(4) Nothing in this subpart (i) shall prohibit any producer of title business or associate of such producer from referring title business to any title insurer or title agent of such producer's or associate's choice, and, if such producer or associate of such producer has any financial interest in the title insurer, from receiving income, profits or dividends produced or realized from such financial interest, so long as:

(a) Such financial interest is disclosed to the purchaser of the title insurance in accordance with part (i)(1) through (4) of this subpart;

(b) the payment of income, profits or dividends is not in exchange for the referral of business; and

(c) the receipt of income, profits or dividends constitutes only a return on the investment of the producer or associate.

(5) Any producer of title business or associate of such producer who violates the provisions of paragraphs (i)(2) through (i)(4), or any title insurer or title agent who accepts an order for title insurance knowing that it is in violation of paragraphs (i)(2) through (i)(4), in addition to any other action which may be taken by the commissioner of insurance, shall be subject to a fine by the commissioner in an amount equal to five times the premium for the title insurance and, if licensed pursuant to K.S.A. 58-3034 et seq., and amendments thereto, shall be deemed to have committed a prohibited act pursuant to K.S.A. 58-3602, and amendments thereto, and shall be liable to the purchaser of such title insurance in an amount equal to the premium for the title insurance.

(6) Any title insurer or title agent that is a competitor of any title insurer or title agent that, subsequent to the effective date of this act, has violated or is violating the provisions of subpart (i), shall have a cause of action against such title insurer or title agent and, upon establishing the existence of a violation of any such provision, shall be entitled, in addition to any other damages or remedies provided by law, to such equitable or injunctive relief as the court deems proper. In any such action under this subsection, the court may award to the successful party the court costs of the action together with reasonable attorney fees.

(7) The commissioner shall also require each title agent to provide core title services as required by the real estate settlement procedures act.

(j) The commissioner shall adopt any regulations necessary to carry out the provisions of this act.

(15) *Disclosure of nonpublic personal information.* (a) No person shall disclose any nonpublic personal information contrary to the provisions of title V of the Gramm-Leach-Bliley act of 1999 (public law 106-102). The commissioner may adopt rules and regulations necessary to carry out this section. Such rules and regulations shall be consistent with and not more restrictive than the model regulation adopted on September 26, 2000, by the national association of insurance commissioners entitled "Privacy of consumer financial and

health information regulation".

(b) Any rules and regulations adopted by the commissioner which implement article V of the model regulation adopted on September 26, 2000, by the national association of insurance commissioners entitled "Privacy of consumer financial and health information regulation" shall become effective on and after February 1, 2002.

(c) Nothing in this paragraph (15) shall be deemed or construed to authorize the promulgation or adoption of any regulation which preempts, supersedes or is inconsistent with any provision of Kansas law concerning requirements for notification of, or obtaining consent from, a parent, guardian or other legal custodian of a minor relating to any matter pertaining to the health and medical treatment for such minor.

**K.S.A. 40-3110. Same; primary status of benefits, exception; when payable; time limitation on claims; overdue payments.** (a) Except for benefits payable under any workmen's compensation law, which shall be credited against the personal injury protection benefits provided by subsection (f) of K.S.A. 40-3107, personal injury protection benefits due from an insurer or self-insurer under this act shall be primary and shall be due and payable as loss accrued, upon receipt of reasonable proof of such loss and the amount of expenses and loss incurred which are covered by the policy issued in compliance with this act. An insurer or self-insurer may require written notice to be given as soon as practicable after an accident involving a motor vehicle with respect to which the insurer's policy of motor vehicle liability insurance affords the coverage required by this act. No claim for personal injury protection benefits may be made after two (2) years from the date of injury.

(b) Personal injury protection benefits payable under this act shall be overdue if not paid within thirty (30) days after the insurer or self-insurer is furnished written notice of the fact of a covered loss and of the amount of same, except that disability benefits payable under this act shall be paid not less than ever two (2) weeks after such notice. If such written notice is not furnished as to the entire claim, any partial amounts supported by written notice is overdue if not paid within thirty (30) days after such written notice is furnished. Any part or all of the remainder of the claim that is subsequently supported by written notice is overdue if not paid within thirty (30) days after such written notice is so furnished: *Provided*, That no such payment shall be deemed overdue where the insurer or self-insurer has reasonable proof to establish that it is not responsible for the payment, notwithstanding that written notice has been furnished. For the purpose of calculating the extent to which any personal injury protection benefits are overdue, payment shall be treated as being made on the date a draft or other valid instrument which is equivalent to payment was placed in the United States mail in a properly addressed, postpaid envelope, or, if not so posted, on the date of delivery. All overdue payments shall bear simple interest at the rate of eighteen percent (18%) per annum.

## C. Miscellaneous

**Bulletin 2004-8**

Attached is a Kansas Department of Revenue - Division of Motor Vehicles – Titles and Registration Bureau Memorandum from Title Manager Ray Wilk dated June 23, 2004 which, among other statutory provisions, set forth amended definitions of salvage motor vehicle and salvage title requirements. See Attachment.

It is the Kansas Insurance Department's position that amended K.S.A. 8-197 requires insurance companies and self-insurers to total a vehicle when the total retail cost of repair meets or exceeds seventy-five (75%) percent of the retail value of the motor vehicle. The foregoing excludes exterior cosmetic damage that results from windstorm or hail. K.S.A. 8-197(b)(2)(B) and (C).

Furthermore, the "retail value of a motor vehicle" is the actual cash value and the retail fair market value of the motor vehicle. K.S.A. 8-197(b)(7)(A) and (B).

Pursuant to K.S.A. 8-198, the attached Memorandum, and K.A.R. 40-1-34, insurance companies and self-insurers shall document their claim files regarding written notification requirements for applying for a salvage title.

If you have any question regarding this Bulletin, please contact Ed Sable at 420 SW 9th Street, Topeka, Kansas 66612 by telephone at (785) 296-7825 or email at esable@ksinsurance.org or drichard@ksinsurance.org.

**Kansas Department of Revenue - Division of Motor Vehicles – Titles and Registration Bureau Memorandum**

**Changes Resulting from the Bill**

- New definitions of what is a salvage vehicle;
- Requires that a vehicle meeting the definition of a salvage vehicle and assigned to an insurance company be titled as a salvage vehicle within 30 days;
- Requires insurance companies to notify the owner retaining a salvage vehicle of the owner's obligation to apply for a salvage title within 30 days of the notice;
- Requires insurance companies making a damage settlement to notify the division when a vehicle meets the definition of a salvage vehicle and the owner is retaining a vehicle;
- Requires the division to reflect salvage status so that only a salvage title can be issued thereafter;
- Makes it a class C non-person misdemeanor for failure to apply for a salvage title as provided for in this law.
- Requires the Kansas Highway Patrol to affix a notice to a vehicle indicating it is a rebuilt salvage vehicle.
- Makes it a class A non-person misdemeanor to remove, obliterate or alter the rebuilt salvage notice attached by the Kansas Highway Patrol.

**Statutes Amended by this Bill**

The definition of a salvage vehicle and been amended and expanded. KSA 8-197(b)(2)(A) has been amended to add "other than a late model vehicle".

KSA 8-197(b)(2)(B) and (C) are new definitions of a salvage vehicle, which state:

(B) a late model vehicle which is of a type required to be registered in this state and which has been wrecked or damaged to the extent that the total cost of repair at retail is 75% or more of the fair market value of the motor vehicle immediately preceding the time it was wrecked or damaged and such condition was not merely exterior cosmetic damage to such vehicle as a result of windstorm or hail; or

(C) a motor vehicle, which is of a type required to be registered in this state that the insurer determines is a total loss and for which the insurer takes title;

KSA 8-197(b)(6), (7-A & B) and (8) are new definitions for section (B) above which state:

(6) ''late model vehicle'' means any motor vehicle which has a manufacturer's model year designation of or later than the year in which the vehicle was wrecked or damaged or any of the six preceding years;

(7) ''fair market value'' means the retail value of a motor vehicle as:

(A) Set forth in a current edition of any nationally recognized compilation, including an automated database of retail value; or

(B) determined pursuant to a market survey of comparable vehicles with regard to condition and equipment;

(8) ''cost of repairs'' means the estimated or actual retail cost of parts needed to repair the vehicle plus the cost of labor computed by using the hourly labor rate and time allocations for automobile repairs that are customary and reasonable. Retail costs of parts and labor rates may be based upon collision estimating manuals or electronic computer estimating systems customarily used in the automobile industry. The total cost of repairs to rebuild or reconstruct the vehicle shall not include the cost of repairing, replacing or reinstalling tires, sound system, or any sales tax on parts or materials to rebuild or reconstruct the vehicle.

KSA 8-198(c) is amended to strike any reference to salvage vehicle and salvage titles. (This section now addresses non-highway vehicles and non-highway titles, only.

KSA 8-198(d)(1 through 8) are new requirements concerning salvage and rebuilt salvage. These new requirements are the same as non-repairable vehicles have had concerning requiring notification to claimants and applying for a salvage title.

(d) (1) Except as otherwise provided by this section, the owner of a vehicle that meets the definition of a salvage vehicle shall apply for a salvage title before the ownership of the motor vehicle is transferred. In no event shall such application be made more than 30 days after the vehicle is determined to be a salvage vehicle.

(2) Every insurance company, which pursuant to a damage settlement, acquires ownership of a vehicle that has incurred damage requiring the vehicle to be designated a salvage vehicle, shall apply for a salvage title within 30 days after the title is assigned and delivered by the owner to the insurance company, with all liens released.

(3) Every insurance company which makes a damage settlement for a vehicle that has incurred damage requiring such vehicle to be designated a salvage vehicle, but does not acquire ownership of the vehicle, shall notify the vehicle owner of the owner's obligation to apply for a salvage title for the motor vehicle, and shall notify the division of this fact in accordance with procedures established by the division. The vehicle owner shall apply for a salvage title within 30 days after being notified by the insurance company.

(4) The lessee of any vehicle which incurs damage requiring the vehicle to be designated a salvage vehicle shall notify the lessor of this fact within 30 days of the determination that the vehicle is a salvage vehicle.

(5) The lessor of any motor vehicle which has incurred damage requiring the vehicle to be titled as a salvage vehicle, shall apply for a salvage title within 30 days after being notified of this fact by the lessee.

(6) Every person acquiring ownership of a motor vehicle that meets the definition of a salvage vehicle, for which a salvage title has not been issued, shall apply for the required document prior to any further transfer of such vehicle, but in no event, more than 30 days after ownership is acquired.

(7) Every purchaser of a salvage vehicle, whether assigned a salvage title or a regular certificate of title with the form specified in paragraph (2) of subsection (b) attached, shall make application to the county treasurer of the county in which such person resides for a new salvage title, in the same manner and under the same condition as for an application for a certificate of title under K.S.A. 8-135, and amendments thereto. Such application shall be in the form prescribed by the director of vehicles and shall contain substantially the same provisions as required for an application under subsection (c)(1) of K.S.A. 8-135, and amendments thereto. In addition, such application shall provide a place for the applicant to certify that the vehicle for which the application for salvage title is made is a salvage vehicle, and other provisions the director deems necessary. Each application for a salvage title shall be accompanied by a fee of $10 and if the application is not made to the county treasurer within the time prescribed by K.S.A. 8-135, and amendments thereto, for making application for a certificate of title thereunder, an additional fee of $2.

(8) Failure to apply for a salvage title as provided by this subsection shall be a class C nonperson misdemeanor.

KSA 8-198(f)(3)(B) is the requirement that the highway patrol affix a notice to the vehicle that denotes the vehicle as a rebuilt salvage vehicle.

(B) As part of the inspection for a rebuilt salvage title conducted under KSA 8-116a, and amendments thereto, the Kansas highway patrol shall attach a notice affixed to the left door frame of the rebuilt salvage vehicle indicating the vehicle identification number of such vehicle and that such vehicle is a rebuilt salvage vehicle. In addition to any fee allowed under KSA 8-116a, and amendments thereto, a fee of $5 shall be collected from the owner of such vehicle requesting the inspection for the notice required under this paragraph. All moneys received under this paragraph shall be remitted in accordance with subsection (e) of KSA 8-116a and amendments thereto.

(C) Failure to apply for a rebuilt salvage title as provided by this paragraph shall be a class C non-person misdemeanor.

New section 4 of this bill addresses the consequences of removing, obliterating or altering the rebuilt salvage notice affixed to a vehicle. This section may be place in the general area of all the rest of the salvage statutes, KSA 8-197 through 8-199.

New Sec 4. It shall be unlawful for any person to remove, obliterate or alter any notice required to be attached to a rebuilt salvage vehicle, as defined under KSA 8-197, and amendments thereto, in accordance with paragraph (3) of subsection (f) of KSA 8-198, and amendments thereto. A violation of this section shall be a class A non-person misdemeanor.

**Consequences of this Bill**

One item not addressed by this bill is when does a vehicle move past the salvage definition and become a non-repairable. The definition of a non-repairable vehicle was not amended by this legislation, so the current practice will still apply. One thing is clear, for late model vehicles, the total cost of repairs will be greater than 75% of the pre-accident value.

Vehicles declared a total loss, meeting the definition of a salvage vehicle, must now be titled as such. If the vehicle is not so titled, the owner will not be able to renew the registration and if sold, the new owner will be issued a salvage title.

**Changes in Forms and Processing**

When you notify customers retaining a salvage vehicle of their obligation to obtain a salvage title, you may satisfy the statutory requirement of notifying the division of vehicles by sending a carbon copy of the customer notice to:

Titles and Registrations Bureau
915 SW Harrison St Rm 155
Topeka, KS 66626

There will be no other changes in our current processes or procedures. Insurance companies applying for salvage titles will submit their applications and TR-13 forms in the same manner as always. However, the counties and the division reserve the right to request additional documentation at any time to ensure the proper formula is being employed to calculate the percent of repair cost and vehicle value.

The effective date of this legislation is July 1, 2004. If you have any questions, you may contact the Titles and Registrations Bureau at (785) 296-3621.