

## HOUSE BILL No. 2663

By Committee on Insurance

Requested by Sean Miller on behalf of the Kansas Land Title Association

2-1

1 AN ACT concerning insurance; relating to title insurance; allowing title  
2 insurance agents to submit escrow, settlement and closing funds  
3 through certain real-time or instant payment systems; amending K.S.A.  
4 40-1137 and repealing the existing section.

5  
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 40-1137 is hereby amended to read as follows: 40-  
8 1137. A title insurance agent may operate as an escrow, settlement or  
9 closing agent, provided that:

10 (a) All funds deposited with the title insurance agent in connection  
11 with an escrow, settlement or closing shall be submitted for collection to,  
12 invested in or deposited in a separate fiduciary trust account or accounts in  
13 a qualified financial institution no later than the close of the next business  
14 day, in accordance with the following requirements:

15 (1) The funds shall be the property of the person or persons entitled to  
16 them under the provisions of the escrow, settlement or closing agreement  
17 and shall be segregated for each depository by escrow, settlement or  
18 closing in the records of the title insurance agent in a manner that permits  
19 the funds to be identified on an individual basis;

20 (2) the funds shall be applied only in accordance with the terms of the  
21 individual instructions or agreements under which the funds were  
22 accepted; and

23 (3) an agent shall not retain any interest on any money held in an  
24 interest-bearing account without the written consent of all parties to the  
25 transaction.

26 (b) Funds held in an escrow account shall be disbursed only:

27 (1) Pursuant to written authorization of buyer and seller;

28 (2) pursuant to a court order; or

29 (3) when a transaction is closed according to the agreement of the  
30 parties.

31 (c) A title insurance agent shall not commingle the agent's personal  
32 funds or other moneys with escrow funds. In addition, the agent shall not  
33 use escrow funds to pay or to indemnify against the debts of the agent or  
34 of any other party. The escrow funds shall be used only to fulfill the terms  
35 of the individual escrow and none of the funds shall be utilized until the

1 necessary conditions of the escrow have been met. All funds deposited for  
2 real estate closings, including closings involving refinances of existing  
3 mortgage loans, which exceed \$2,500 shall be in one of the following  
4 forms:

5 (1) Lawful money of the United States;

6 (2) wire transfers such that the funds are unconditionally received by  
7 the title insurance agent or the agent's depository;

8 (3) cashier's checks, certified checks, teller's checks or bank money  
9 orders issued by a federally insured financial institution and  
10 unconditionally held by the title insurance agent;

11 (4) funds received from governmental entities, federally chartered  
12 instrumentalities of the United States or drawn on an escrow account of a  
13 real estate broker licensed in the state or drawn on an escrow account of a  
14 title insurer or title insurance agent licensed to do business in the state; ~~or~~

15 (5) other negotiable instruments ~~which~~ *that* have been on deposit in  
16 the escrow account at least 10 days; *or*

17 (6) *a real-time or instant payment through the FedNow service*  
18 *operated by the federal reserve banks or the clearing house payment*  
19 *company's real-time payments (RTP) system.*

20 (d) Each title insurance agent shall have an annual audit made of its  
21 escrow, settlement and closing deposit accounts, conducted by a certified  
22 public accountant or by a title insurer for which the title insurance agent  
23 has a licensing agreement. The title insurance agent shall provide a copy of  
24 the audit report to the commissioner within 30 days after the close of the  
25 calendar year for which an audit is required. Title insurance agents who are  
26 attorneys and who issue title insurance policies as part of their legal  
27 representation of clients are exempt from the requirements of this  
28 subsection. However, the title insurer, at its expense, may conduct or cause  
29 to be conducted an annual audit of the escrow, settlement and closing  
30 accounts of the attorney. Attorneys who are exclusively in the business of  
31 title insurance are not exempt from the requirements of this subsection.

32 (e) The commissioner may promulgate rules and regulations setting  
33 forth the standards of the audit and the form of audit report required.

34 (f) If the title insurance agent is appointed by two or more title  
35 insurers and maintains fiduciary trust accounts in connection with  
36 providing escrow and closing settlement services, the title insurance agent  
37 shall allow each title insurer reasonable access to the accounts and any or  
38 all of the supporting account information in order to ascertain the safety  
39 and security of the funds held by the title insurance agent.

40 (g) Nothing in this section is intended to amend, alter or supersede  
41 other laws of this state or the United States, regarding an escrow holder's  
42 duties and obligations.

43 Sec. 2. K.S.A. 40-1137 is hereby repealed.

1       Sec. 3. This act shall take effect and be in force from and after its  
2       publication in the statute book.