MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

Held in Room 519 S, at the Statehouse at 10:00 a. m./p. m., on February 22, 1979.

All members were present except: Senator Gaar

The next meeting of the Committee will be held at 12:00 a. m./p. m., on February 22, 1979.

these minutes of the meeting held on ~~XXXXXXXXXXXXXXXXXX~~, 19~~XXX~~ were considered, corrected and approved.

Elwaine Pomeroy
Chairman

The conferees appearing before the Committee were:

Senator John Crofoot
Walter Scott - Association of Credit Bureaus, Inc.
Dwight Keen - Securities Commissioner
John D. Minnick - J. D. Minnick & Company

Staff present:
Art Griggs - Revisor of Statutes
Jerry Stephens - Legislative Research Department
Wayne Morris - Legislative Research Department

Senate Bill No. 231 - Crime of dealing in false identification documents. The author of the bill, Senator Crofoot, explained the bill, which is designed to prohibit the sale of false identification in Kansas. Also, it would prohibit ads appearing in certain magazines and student newspapers.

Senate Bill No. 376 - Collection agencies, wage garnishment limitations. Walt Scott testified in support of the bill. A copy of his statement is attached. He feels the present law takes away some of the rights which should not be denied to a collection agency. Particularly because of changes in the Federal laws, the present prohibition against garnishment when a collection has been referred to an agency is not necessary. Committee discussion with him followed.

Senate Bill No. 389 - Changes in securities commissioner statutes. Dwight Keen, the State Securities Commissioner, testified in support of the bill. He explained that a blue ribbon advisory committee was formed and the matters in this bill have met with the approval of that committee. He stated the bill would create no additional financial impact in his office. He reviewed the provisions of the bill and explained it to the committee. Committee discussion with him followed. In answer to a question from the chairman, the commissioner stated that the blue ribbon advisory committee has never been convened and met together, but simply reviews suggestions submitted by the commissioner which suggestions are mailed out to members of the advisory committee.

CONTINUATION SHEET

Minutes of the Senate **Committee on** Judiciary February 22, 19 79.

SB 389 continued -

John Minnick testified with regard to the bill, and pointed out concerns that he had with various provisions of the bill. Committee discussion with him followed. Senator Parrish requested him to furnish the committee with a copy of his statement outlining his suggestions.

The meeting adjourned.

These minutes were read and approved by the committee on 4-25-79.

2-22-79

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Walter M. Scott	Topeka	Assoc. Credit Bureaus
Lowell Q. Nilson	Jamestown City	" "
Donald C. Miller	Topeka	
William C. Brightfield	Overland Park	Metro Service Program
Howard E. Wheeler	Topeka	Burlington Wheeler Inc
Dwight KEEN	~~TOPEKA~~ TOPEKA	SECURITIES COMMISSIONER
Bruce B Moore	Topeka	Dept of Workers Comp
Dick Smith	"	" " "
Bill Morrissey	"	"
Kent Sagle	~~KACI~~ Topeka	KACI
Don Schmanke	Topeka	KJOCS
Larry Hopgood	Topeka	KACI
Jack McElgunn	Wichita	Coleman Co
John D. Minnis	Topeka	J.D. Minnis & Co.
Bud GRANT	TOPEKA	KACI
Ratner	Topeka	KPLDA
Marla Haase	"	Daily Courier
Marty Hardy	Ogden	Ogden Senn-Editor

2-22-79

KANSAS SHERIFFS' ASSOCIATION

February 21, 1979

Senator Elwaine Pomeroy, Chairperson
Senator Jack Steineger, Vice-chairperson
Senator Don Allegrucci, Member
Senator Arnold Berman, Member
Senator Paul Burke, Member
Senator Norman Gaar, Member
Senator Frank Gaines, Member
Senator Ron Hein, Member
Senator Paul Hess, Member
Senator William Mulich, Member
Senator Jim Parrish, Member
Senator John Simpson, Member
Senator Merrill Werts, Member
Senate Judiciary Committee
State House
Topeka, Kansas 66612

Re: S.B. 231

Dear Senators:

The Kansas Sheriffs Association supports the above bill making it a crime to deal in false identifications.

Your favorable support of this needed legislation will be appreciated by our members.

Because of a prior commitment, I will not be able to appear in person to support this bill.

Respectfully yours,

Robert Tilton

Robert E. Tilton

RET:th

2-22-79

KANSAS GARNISHMENT LAW
K.S.A. 60-2310(d)

Under Article 23, entitled "Exemptions", K.S.A. 2310(d) provides as follows:

> "(d) Assignment of account. If any person, firm or corporation sells or assigns his or her account to any person or collecting agency, or sends or delivers the same to any collector or collecting agency for collection, then such person, firm or corporation or the assignees of either, shall NOT have nor be entitled to the benefits of wage garnishment. ..."

QUESTION

Does the public welfare of Kansas require the continuation of the prohibition of wage garnishment when an account has been assigned or delivered to a collection agency?

HISTORY

The above subsection first appeared in the Kansas Section laws of 1913, Chapter 232, paragraph 2. This subsection next appeared in the general statutes of Kansas 1923 Revision under the heading of "Application of Wages to Payment of Debts". In 1949, the statute was continued under 60-3495 under the heading of "Exemption of Personal Earnings of Heads of Families from Attachment or Garnishment; Amount; Court Costs; Procedure". This subsection was not amended at that time. In 1963, the statute was changed from 60-3495 to 60-2310, which is the present citation with amendments up through 1978.

It is unfortunate that there are no minutes or reports indicating the legislative intent because of the early enactment of this law. The only history that this writer has been able to

obtain from members in the collection industry is that in the early days of this state, certain collection agencies took it upon themselves to file suit and file both prejudgment and post-judgment garnishments, which of course is prevented from happening under the present Kansas laws requiring representation by attorneys on behalf of others. In 1965, the Kansas Supreme Court, in construing the constitutionality of this case, reported the possible history in 195 Kan. 586, 592, Wagner v. Mahaffey:

> "In enacting the specific proviso in question perhaps the legislature had in mind to protect the dependents of wage earners from repeated harassment by professional collection agencies."

It is incongruous to this writer to understand the reasoning of the Supreme Court, in that collection agencies are not able to garnish on their own behalf, how this "quote" would apply.

OTHER APPLICABLE LAWS

The Consumer Credit Protection Act - Title III, effective July 1, 1970, has no such provision and only requires that the state's garnishment laws can be preempted by the federal law only if its terms are less restrictive. It should be pointed out here that Kansas has adopted these restrictions so that under the present state and federal law, the earnings of a judgment debtor cannot be subject to garnishment unless they exceed 25% of the aggregate disposable earnings for that work week or multiple thereof and that the aggregate disposable earnings for that work week or multiple thereof exceed an amount equal to 30 times the federal minimum hourly wage. There are further restrictions under

this law that not more than one garnishment may issue during any one month. Further protections are provided under the paragraphs concerning "Sickness Preventing Work" and "Support Orders".

The Congress of the United States next passed the Fair Debt Collection Practices Act, effective March 20, 1978, which further provided for the protection from harassment or intimidation by collection agencies. It might be pointed out at this time that if a consumer so elects, he can notify the collection agency in writing to stop all collection efforts concerning that debt. This of course leaves no alternative but for the creditor or collector to forward the collection for legal action. This writer is attaching a pamphlet which is distributed by the Associated Credit Bureaus, Inc., Collection Service Division, marked Attachment "A", which provides a brief summary of the provisions contained in this Act.

REQUESTED ACTION

It would appear to this writer that due to the above protections already afforded consumer debtors, this particular prohibition could either be completely eliminated or an amendment as follows:

> "(d) Assignment of account. If any person, firm or corporation sells or assigns his or her account to any person or collecting agency, or sends or delivers the same to any collector or collecting agency for collection, then such person, firm or corporation or the assignees of either, shall NOT have nor be entitled to the benefits of wage garnishment, *unless such wage garnishment, after judgment, is handled by an attorney licensed to practice under the laws of the State of Kansas."*

COMMENTS

This writer, after personally attempting to survey all the states' garnishment laws, has failed to find this provision in any of the other 49 states.

It has been argued by some that if we had more garnishments, the bankruptcy rate would increase. If this argument were true, it is this writer's question that in a survey conducted in 1976, Kansas was tied for 5th of all 50 states in number of bankruptcies, totaling 148, per 100,000 population (in Shawnee County in 1978, 240 personal bankruptcies). Comparing our population to the population of the other states, it would appear that this has little bearing on the garnishment statutes. (See Attachment "B", How States Compare in Personal Bankruptcies.)

Of primary importance is the consideration of who will pay for these debts if those that incur the obligation can escape that responsibility. As noted above, a debtor merely has to notify the collection agency to quit any further contact and force the creditor or collection agency to forward said matter for legal action. Upon the institution of legal action, the attorney representing said creditor or collection agency can obtain a judgment but is then stopped from collecting this if the debtor, even though gainfully employed and earning sufficient wages, merely refuses to apply any of his earnings toward payment of this debt.

Historically, collection agencies handled those debts which attorneys are either unable or refuse to handle due to the necessity of having personnel to trace and handle the certain collection procedures. It might be brought to your attention that these pro-

cedures afford a valuable service to the business, medical and governmental community in that they handle all sizes of accounts and provide a multitude of "rates" to these merchants and medical people which is considerably lower than the normal 50% charged by an attorney, on small collections. A further service provided by collection agencies is the forwarding of accounts to another state or jurisdiction within the state so that just debts might be paid and returned to the community wherein they were incurred. A representative list of clients of collection agencies in Shawnee County is attached as indicative of the class of users (Attachment "C").

It can only be stressed that this prohibition, with all the protections provided under both the federal and state acts, appears to be totally outdated (1913) and of little purpose. Being a taxpayer in Shawnee County, I know that whenever I collect a just debt, when the debtor has refused to pay in the past, that it either lowers the cost of goods that I purchase or the taxes that I pay to support the institutions involved. This outdated creature of statute has served its usefulness.

Respectfully submitted,

Walter N. Scott, Jr.
Attorney for and registered
lobbyist for the Credit Bureau
of Topeka and the Associated
Credit Bureaus of Kansas

attorney. Generally, the only time a collector may discuss the debt with your employer, or any uninvolved third party, is with your specific permission.

Does the law allow collectors to seek my current address or place of employment?

Yes. When seeking that type of information on a debtor in preparation for collecting a debt, the debt collector can contact anyone he reasonably believes can assist in finding out the debtor's address, home telephone number and place of employment. The key restriction on the collector when seeking location information is that he not reveal the existence of the debt or discuss it with third-party sources of information.

What should I do if I am the victim of illegal collection tactics?

If you believe you have been subjected to unethical collection tactics, you should immediately contact the manager or owner of the collection agency involved. All ethical collectors support this law and will correct any activities that may be in violation of it. If the owner or manager of the agency is unresponsive to your complaint, you should consider contacting the original credit granter, your attorney or the Federal Trade Commission. The best procedure, however, is to *first* attempt to work out the problem with the collector.

What are the penalties for violating the law?

As with most consumer legislation, Congress recognized that despite the very best efforts of businesses, occasional errors would be made. Taking this into account, the law provides protection for the ethical collector who may make an occasional error if that collector has "reasonable procedures" to avoid unintentional violations.

Collectors, however, are subject to civil suits that will award the successful consumer his actual damages, reasonable attorney's fees and additional damages of up to $1,000. There are also provisions for class action suits against collectors.

Before suing a debt collector, all consumers should be aware that the law also protects the ethical collector against nuisance or harassing lawsuits. If the court finds that a consumer's lawsuit was brought in bad faith and for the purpose of harassment, the consumer may be required to pay the cost of the collector's defense.

What if I simply refuse to pay a debt?

If a consumer informs a collector in writing that he refuses to pay the debt, the collector will stop his collection efforts for the debt in question. It should be remembered, however, that if the collector and creditor can no longer attempt to recover the debt, it may force them into taking legal action against a consumer who refuses to pay and this could result in attachment of assets or wage garnishment, if permitted by state law.

A consumer's decision to inform the collector that he refuses to pay is a serious one and should not be done hastily. Refusal to pay a just debt may limit a consumer's ability to receive credit in the future because the delinquency can become part of the consumer's credit history for up to seven years.

Will this law enable some people to avoid paying their bills?

No. Some individuals will always attempt to avoid paying their debts, but the law does not provide any specific means to accomplish this. The dual purposes of the law are to set national standards for conduct in the collection industry and to eliminate any competitive advantage unethical collectors have enjoyed in the past. Congress clearly recognized that it is in the interests of all consumers for debts to be collected, because it will aid in controlling business and professional losses and therefore hold down prices. While standards of conduct have been set on a national basis, there is nothing in the law to prevent collection agencies from using energetic collection methods so long as they do not harass or deceive the debtor.

Associated Credit Bureaus, Inc.
Collection Service Division

Form E-30 Ptd. in U.S.A. 12/77

Consumers, Collectors and the Fair Debt Collection Practices Act

In America's credit-oriented economy, consumer debt is at an all-time high and the collection of past-due accounts has become a major problem for businesses of all types. At any given moment there are approximately $44.5 million in unpaid, overdue bills in this country and many of them are referred to independent collection agencies. The majority of these collectors perform a valuable service both to their credit granter clients and to the consumer public because their collection efforts reduce losses and, therefore, help to hold the line on prices.

The publicity given to unethical tactics of a small percentage of debt collectors, however, sometimes overshadows the beneficial work done by the great majority of ethical collectors. Not only do independent collectors help keep prices down, but many actively participate in credit and debt counseling services for individuals with financial problems.

Responding to problems caused by the conduct of the unethical few, Congress passed the Fair Debt Collection Practices Act (FDCPA). Effective March 20, 1978, this law addresses the problems of unfair or deceptive collection tactics.

As the national trade association for the credit reporting and collection service industries, Associated Credit Bureaus, Inc., supported the passage of the Fair Debt Collection Practices Act. We believe this law will provide the necessary protection for consumers from unfair collection practices, while not placing an unreasonable burden on ethical collectors. This pamphlet has been prepared to assist you in understanding the protections this law affords.

If I owe past-due bills, what does this law do for me?

The FDCPA provides you with assurances of fair and ethical treatment by outlawing certain collection tactics and setting a basic national standard of conduct for professional "third-party" collectors. This law DOES NOT provide consumers with a means to avoid paying their legal debts.

Does the law cover everybody who collects debts?

In general, the only debt collectors covered by this law are independent, or "third-party," collectors who collect debts for others. The law does not cover credit granters collecting their own accounts or attorneys who collect for their clients.

What types of debts are covered by this law?

The collection of debts primarily for family or personal purposes such as medical expenses, retail purchases and the like are the ones covered. The collection of commercial debts for business purposes are not covered by the Act.

What if a collector tries to collect a debt I don't owe?

No collector wants to spend time and effort talking to the wrong consumer about a debt and all ethical collectors have procedures to correct problems such as these. If you do not owe the debt the collector has written to you about, contact him immediately and provide him with the facts supporting your position.

If you challenge the validity of the debt in writing within 30 days of his first notice to you, the collector will halt his collection efforts until he has received verification from the creditor. Once the creditor has responded, the collector will verify the debt to you in writing. If the creditor is unable to verify the debt, the collector will cease his collection efforts.

What if I won't pay a debt for a faulty product or inadequate service?

The Fair Debt Collection Practices Act does not deal with this type of problem between a consumer and a creditor. However, consumers should not wait until an account has been turned over to a collector before complaining about faulty merchandise or inadequate service. You should attempt to resolve the problem with the creditor before the account ever gets to a collection stage. Otherwise, it might appear that you are using this technique to further delay payment. However, there are cases where a consumer has pursued a legitimate complaint, yet the account is still turned over to a collector.

In this situation most debt collectors are prepared to assist in clarifying the problem in order to arrive at a solution that is satisfactory to all. If you don't intend to pay a bill because the product was faulty, or similar reasons, contact the collector immediately and explain the problem to him. He's prepared to listen and will try to help.

What collection tactics have been prohibited by this law?

Debt collectors may not make threats of violence, use obscene language, make harassing telephone calls or calls at times known to be inconvenient, impersonate government officials or attorneys, misrepresent a consumer's legal rights, obtain information under false pretenses, collect more than is legally due, misuse postdated checks or hold debtors up to public ridicule.

Collectors also are prohibited from discussing your debt with third parties such as a neighbor, friend or employer unless the collector has your permission or the consent of a court.

Will credit bureaus still get information from collection agencies?

Yes. Congress recognized that accurate credit information includes information on debts placed for collection. Collection agencies still can report the status of their accounts to credit bureaus. Also, the Act requires that if a debt has been reported to a credit bureau, and the collector later learns it is disputed, he must report the dispute to the bureau.

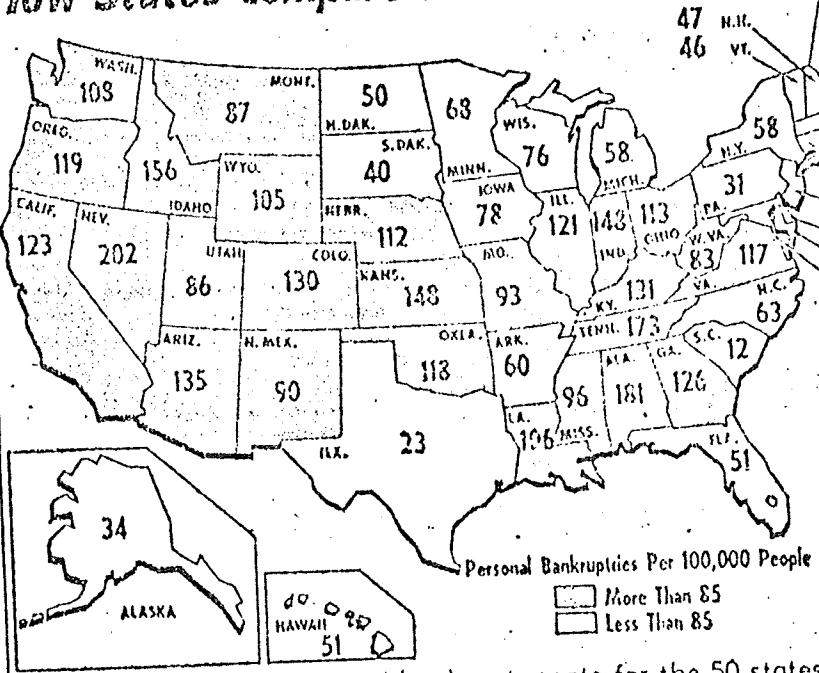
Can a debt collector add additional charges or interest to an account?

This cannot be done unless state law allows it or the original credit agreement you signed expressly allows such charges or interest to be added.

Can a collector call my employer about my past-due bills?

No. The collector can discuss your debt only with you, your spouse, your attorney, or a credit bureau. He may also discuss it with his attorney or the credit granter's

How States Compare in Personal Bankruptcies



The map shows the personal bankruptcy rate for the 50 states and the District of Columbia. Personal bankruptcies in the U.S. averaged 85 per 100,000 population for the year that ended on June 30, 1977, according to the National Consumer Finance Assn. Nevada had the highest bankruptcy rate, at 202 per 100,000 population, followed by Alabama at 181. South Carolina enjoyed the lowest rate at 12 per 100,000. Texas had the second lowest rate at 23.

Nev. 202
Ala. 181
Ky. 148
Ind. 148
Tenn. 173

Sept. 19, 1978

ATTACHMENT "B"

PARTIAL LIST OF SUBSCRIBERS

A

All City Appliance & TV Service
A. A. Appleton, DDS
Avenue Animal Hospital

B

Ray Beers Clothing
Lonnie J. Bevens, DDS
Dr. F. C. Beelman
Drs. Bowen & Bowen
Briman's Leading Jewelers
Burkhardt Plumbing
Buttreys
Byers Optical Service

C

Candletree Apartments
Capital City State Bank
Cardiovascular & Thoracic Surgeons
Dr. K. W. Carlson
Carlson Plumbing Co.
Dr. William Carriger
City of Topeka (Water and Refuse)
Jim Clark Chrysler-Plymouth-Fiat
Club Travel Agency
Drs. Cook, Cassidy, Clark, Cook & Woods
Commercial Office Supply
Dick Cook Septic Tank
Crane and Co., Inc.
Cummings Equipment & Supply
Cunningham-Shields Clothing

D

Davis Sport Cycles, Inc.
Howard A. Dexter, DDS
Dale D. Dickson, DDS
Robert D. Durst, Jr., MD

E

Einsteins
The Executive Inn
Dr. Francis Everhart

F

Forbes Credit Union

G

Jack L. Garhan, DDS
Gas Service Company
Charles O. Good, DDS
Charles P. Graham, Jr., MD
The Grayce Shops, Inc.
Gregg Tire Company

H

Dr. M. Martin Halley
R. H. Hamilton, DDS
Hubert L. Harris, M.D.
Harrison Garage
Heifner Nursery & Garden Center
Herman's Beef & Sausage House
Hillers Farm Dairy
Home Drug Pharmacy
Hubbell's Central Service

I

Inn Operations, Inc.
Interstate Truck Center, Inc.

J

Jaquith Pharmacies
Jayhawk Aviation Center, Inc.
Hayhawk Heating & Cooling

K

Karlan Furniture
Haler E. Kennedy, DDS, PA
Kent-Brown Chevrolet
King Travel Service, Inc.
Dr. Ronald D. Kleiner
Knoll Welding Supply, Inc.
Philip E. Knowland, DDS
Ernest D. Kovarik, MD

L

L & L Carpet Cleaners
Robert E. Lacy, DDS
Lohman Jewelers
Lord's Flowers
The Lawrence Shopper

M

Ed Marling Stores, Inc.
McCaig Co., Inc.
Duane K. McCarter, MD
Dr. Donald Mahrle
John W. McClellan, MD
McElroy's Inc.
John R. McFarland, DDS
Lou McKernan Lincoln-Mercury, Inc.

Dean Melkus, DDS
Memorial Hospital
Midwest Insurors
Midwestern Music
M. D. Morris, MD
Dr. Dellyn H. Motley
Calvin Mounkes Mobil Oil

N

Dr. Richard Nabours
John P. Neal, DDS
Dr. J. R. Niver
Dr. William Nice
Noller Leasing Company

O

Opthalmology, PA
Orthopedic Associates, PA

P

Pelletier's
Petro's Surgical Appliances
Dr. Benson M. Powell
Dr. William Powell
Harold W. Powers, MD
Ralph R. Preston, MD
Pruitt Appliance Service

R

Radiology & Nuclear Medicine
Roach Hardware, Inc.
Warren E. Roberts, MD
James H. Robinson, DDS
Rosemary Gardens Florists
Ryder Truck Rental, Inc.

S

Sargent Insurance, Inc.
St. Francis Hospital
Santa Fe Credit Union
Schaffert-Grimes Drug
Schendel Quality Pest Control
Lester Schneider, Chiropractor
Shawnee Animal Hospital
Dale Sharp, Inc.
Shawnee County Treasurer
Dr. C. E. Sherwood
Shrake Electric, Inc.
Lawrence R. Smith, DDS
Steve Smith Cameras, Inc.
South City Animal Hospital
Shawnee County - Personal Property Taxes
Jesse L. Spearman, MD
Stanley's Flowers
Lloyd K. Stinson, DDS
Stormont-Vail Hospital
Herschel L. Stroud, DDS

T

Drs. Tappan, Gleason, Ransdell,
VandeGarde & Robinson
Topeka Allergy Clinic
Topeka Medical Center (35 doctors)
Topeka Daily Legal News

W

Washburn Medical Park Optical
W. Dan Weaver, M.D.
Darrell J. Weber, MD
Whelan's, Inc.
Dr. Marvin H. Wilson
Wolfe's Camera Shop
C. Bruce Works, Attorney
C. Edward Webber, DDS

Y

Dr. Theodore Young

Z

William R. Zagar, DDS
Zercher Photo

J. D. Minnick & Company
INVESTMENT COUNSEL

John D. Minnick, J.D., President
Robert L. Robinson, J.D., Vice President

Main Office • 1415 S. Topeka
Topeka, Kansas 66612
(913) 357-4450
Regional Office • 520 E. Cooper, Suite 22
Aspen, Colorado 81611
(303) 925-9577

February 22, 1979

Senator Elwaine Pomeroy
Chairman, Senate Judiciary Committee
State Capitol Building
Topeka, Kansas 66612

Dear Senator Pomeroy:

RE: Senate Bill No. 389 Concerning Regulation of Investment Advisers

As a follow-up to my presentation before your Committee on February 22, 1979 regarding Senate Bill No. 389, I would like to briefly outline below my concerns about this bill.

I. Section 3. K.S.A. 17-1254(b)
Lines 0201 to 0207:

> "The applicant shall be registered if the commissioner finds that the applicant (and, in the case of a corporation or partnership, the officers, directors or partners) is a person of good character and reputation, that the applicant's knowledge of the securities business and the applicant's financial responsibility are such that the applicant is a suitable person to engage in the business...."

The above phrasing is far too vague to be of any use in insuring uniform enforcement. The phrase "securities business" is too general and does not recognize the differences in training and experience that are required of a broker-dealer as compared to an investment adviser, or

a broker-dealer as compared to an agent, or as an investment adviser as compared to an agent.

In addition, the section does not make clear what the standard for ascertaining what "financial responsibility" would be, nor does it define what is "a suitable person to engage in the business...."

II. Section 3. K.S.A. 17-1254(b)
Line 0215 to 0216:

> "...pass a written examination as evidence of knowledge of the securities business."

Again, the above phrasing does not make any distinction between brokers, investment advisers, and agents. More properly, it should identify them at least by class and provide for written examinations that are appropriate to their respective professions.

III. Section 3. K.S.A. 17-1254(c)
Lines 0221 to 0230:

> "Before registering any broker-dealer, agent or investment adviser, the Commissioner may, by rule, require such broker-dealer, agent or investment adviser to enter into, and file in the office of the Commissioner a bond in a sum of not less than five thousand dollars ($5,000) and not more than twenty-five thousand dollars ($25,000) and may determine its conditions. No bond shall be required of any registrant whose net capital, which shall be defined by rule, exceeds one hundred thousand dollars ($100,000), nor shall a bond be required of any agent of such registrant."

The aforementioned section should exempt from the bonding requirement those investment advisers who do not have actual custody, or access to, the funds of their clients. The Federal Government has already recognized this exemption under Section 412 of ERISA which governs the bonding of all fiduciaries. Under this section the

Labor Department has issued temporary regulations on exceptions from bonding for all those who do not directly, or their subordinates, "handle plan funds." The latest edition of Prentice-Hall's Service on Pension and Profit Sharing Plans clearly sets forth this exemption on page 1317 of their service under the heading "Fiduciary Responsibility Under the Labor Law." This commentary by Prentice-Hall is dated February 2, 1979.

In addition, on Wednesday, February 21, 1979, I contacted representatives of the Meade Insurance Company and the Foltz-Roepke Insurance Agencies, both located in Topeka, Kansas, and I inquired of them what the cost would be for such a bonding requirement. Both companies responded that their master indexes, which cover the various types of surety bonds, did not provide for surety bonds covering investment advisers. The insurance companies' representatives also contacted the Kemper Insurance Company and the Aide Insurance Company and were informed that those companies did not have this type of surety bond available. In addition, neither of the two representatives that I had discussions with could render even a "ball park" estimate of what such bonding could cost.

Most importantly, in view of the position of the federal laws that exempt investment advisers from bonding requirements if they do not have custody or access to their clients' funds, I believe that any bonding requirement that would be incorporated in Senate Bill No. 389 should provide for an exemption for investment advisers who do not have custody or access to client funds. To do otherwise would simply increase the cost of doing business unnecessarily for small to medium size investment advisers who do not have a minimum net capital of $100,000 and who do not have custody of their clients' assets. In the case of our firm, the assets are kept either in segregated custodial accounts at the trust department of federal banks or in segregated brokerage firm accounts which are insured up to $300,000 by the SIPC. To require a surety bond under these circumstances is simply unjustified.

IV. Section 3. K.S.A. 17-1254(d)
Lines 0251 to 0259:

> "Every registration under this section shall expire on the first day of March in each year but any registration for the succeeding year shall be issued upon written application and payment of the fee and the making and filing of a bond as herein provided without filing a further statement or furnishing any further information unless specifically required by the commissioner. Application for renewals must be made not later than February 1 and not earlier than January 1 in each year; otherwise, they shall be treated as original applications."

Section 3. K.S.A. 17-1254(f)
Lines 0272 to 0275:

> "...and each investment adviser shall be one hundred dollars ($100) and the fee for renewal of each broker-dealer registration and each investment adviser shall be fifty dollars ($50)."

The two sections set forth above are in excess of the filing requirements imposed on investment advisers by the Federal Investment Advisers' Act of 1940. The federal law requires that investment advisers file an extensive initial application but does not require subsequent annual filings unless there have been any changes in the investment advisers' business structure since the original filing. Under the federal system, if there are any subsequent changes in the information provided in the original filing, e.g. changes in personnel, legal proceeding against adviser, if any, changes in fee structure, etc., then the adviser must submit a timely amended filing for which there is no charge.

Under the proposed provisions each investment adviser would be required to file a renewal application form even if there were no changes on the renewal application as compared to the initial filing. In addition, there

would be a $50 charge for the annual renewal filing which could, in many cases, simply be for a duplicate of the original filing. I would suggest that the proposed section be drawn along lines similar to the federal system which requires amended filings as they become necessary. To proceed under the proposed provision would simply be creating unnecessary paper work, the cost of which is going to be at the expense of not only the investment adviser but the already overburdened staff of the Securities Commissioner's office. Finally, I find repugnant the idea of paying $50 a year to file a potentially duplicate document which, under the proposed law, I would have already paid $100 to file to meet the initial requirement.

V. Section 7, K.S.A. 1978 Supp. 17-1270(d)
Lines 0660 to 0674:

> "The books and records of every person issuing or guaranteeing any securities subject to the provisions of this act, and of every broker-dealer or investment adviser registered under this act, shall, as the commissioner deems necessary or appropriate in the public interest or for the protection of investors, be subject at any time, or from time to time, to such periodic or special examinations by the commissioner, or such accountant or examiner as the commissioner may determine. The person, broker-dealer or investment-adviser subject to the examination shall pay a fee for each examiner or accountant employed to make such examination of not to exceed one hundred dollars ($100) for each day or fraction thereof, plus the actual expenses, including the cost of transportation of said accountant or examiner, while absent from his or her office for the purpose of making such examination.

The above provision increases the cost of an accountant 400%. The way the provision is worded, an accountant could charge the investment adviser $100 for a fraction of a day. I believe this provision could result in

simply encouraging unnecessary examinations because of the attractive fee schedule under this provision. I would also suggest that for those investment advisers who do not have custody of their clients' assets that there either be an exemption provided or that any accountant examination be charged at a substantially lower cost per day, or fraction thereof, than exists under the proposed legislation.

Finally, I would like to express my thanks to the Committee for having been given the opportunity to present my views as a small investment adviser on this proposed legislation. I am certainly willing to provide any additional input that you might possibly desire. For a long time I have believed that minimum qualifications and regulations governing investment advisers in the state of Kansas should be implemented. The proposed legislation has considerable merit and is similar to the legislation that has been adopted by Missouri and other states.

However, I also believe that it should not be drafted to favor only the large banks, insurance companies and investment adviser firms. The modifications to the proposed legislation, which I have suggested, will allow for an upgrading in the qualifications of investment advisers, will protect investers by requiring surety bonds in cases where investment advisers have custody of assets, and will not create an unreasonable financial and administrative burden on the small investment adviser.

Respectfully submitted,

J. D. MINNICK & COMPANY

John D. Minnick
President

JDM/mc