

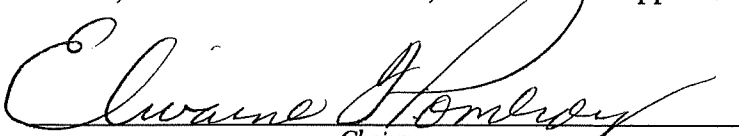
MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

Held in Room 519 S., at the Statehouse at 10:00 a. m./p.m., on March 12, 1979.

All members were present except: Senators Berman and Mulich

The next meeting of the Committee will be held at 10:00 a. m./p.m., on March 13, 1979.

~~These minutes of the meeting held on xxxxxxxxxxxxxxxxxxxxxx, 19xx were considered, corrected and approved~~


Chairman

The conferees appearing before the Committee were:

- Representative Timothy O'Sullivan
- Gene Olander - Shawnee County District Attorney
- Max Moses - Kansas County and District Attorneys Association
- Judy Teusink - Kansas Women's Political Caucus
- Representative John Solbach

Staff present:

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

Senate Bill No. 389 - Changes in securities commissioner statutes. Ballooned copies of the bill showing previous amendments were distributed to committee members. Following committee discussion, Senator Steineger moved to eliminate the provision that no fee will be charged to an investment adviser who does not maintain custody/^{of} customer's moneys; Senator Parrish seconded the motion. Following further committee discussion, Senator Parrish made a substitute motion to amend the bill to provide that the examination fee in such case would be at the rates of \$15 and \$10, and the examination fees for broker and dealer to be \$100 and \$50; Senator Hess seconded the motion, and the substitute motion carried.

House Bill No. 2351 - Name to be given a child when adopted. Representative O'Sullivan, one of the authors of the bill, testified in support of it. Committee discussion with him followed.

Representative Solbach, one of the other authors of the bill, also testified in support of the bill, and related personal experiences concerning the matter.

Following committee discussion, Senator Gaar moved to report

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

HB 2351 continued -

the bill favorably; Senator Hess seconded the motion, and the motion carried.

House Bill No. 2188 - Mileage rate for out-of-state witnesses. Gene Olander testified in support of the bill. Committee discussion with him followed. Senator Burke moved to report the bill favorably; following further committee discussion, he withdrew his motion. Senator Gaar moved to amend the bill by desexing it; Senator Hess seconded the motion and the motion carried. Senator Burke moved to report the bill favorably as amended; Senator Hess seconded the motion, and the motion carried.

House Bill No. 2124 - Criminal trespass in divorce cases. Max Moses testified in support of the bill. He stated it would provide a mechanism for getting an abusive individual outside the home.

Judy Teusink testified in support of the bill. She stated it would be of help to battered women. She stated that House Bill 2619 is in the House Federal and State Affairs Committee; she related difficulties that that bill had encountered, as well as problems of its predecessor.

Gene Olander testified in support of the bill.

Senator Garr moved to amend the bill by desexing it; Senator Parrish seconded the motion, and the motion carried. The chairman suggested that the bill be held in committee as a possible vehicle, in the event that House Bill 2619 runs into difficulty.

Mr. Griggs reviewed some of the house bills in the committee, including House Bill 2106, House Bill 2123, House Bill 2426, House Bill 2174, House Bill 2177, and House Bill 2612. The chairman called attention to the combined hearing with the Federal and State Affairs Committee on Senate Bill 357 next Thursday.

The meeting adjourned.

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

3-12-79

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Max Mor Lynn M. O'Leary Patt Conlon	Topeka Topeka	KJAA Deputy AF
Bill Wacker Marilyn Wacker	Pillsbury Topeka	Paul's & Carol
DUD GRANT	Topeka	KAEI
Judy Zusink	Topeka	KWPC
Margaret F. Worshon	Dodge City, KS.	
Marianne Williams	Dodge City, KS.	
Jane Killeen	Dodge City, KS.	
Kathryn Sughree	Dodge City	State Rep.
Jean May	Fredonia, Kansas	

0082 company act of 1940" means the federal statutes of those names.

0083 (j) "Security" means any note; stock; treasury stock; bond;
0084 debenture; evidence of indebtedness; certificate of interest or
0085 participation in any profit-sharing agreement; collateral-trust
0086 certificate; preorganization certificate or subscription; transfer-
0087 able share; investment contract; voting-trust certificates; thrift
0088 certificates or investment certificates, or thrift notes issued by
0089 investment companies; certificate of deposit for a security; cer-
0090 tificate of interest in oil and gas royalties; leases or mineral deeds;
0091 or, in general, any interest or instrument commonly known as a
0092 "security," or any certificate of interest or participation in, tem-
0093 porary or interim certificate for, guarantee of, or warrant or right
0094 to subscribe to or purchase, any of the foregoing. "Security" does
0095 not include any insurance or endowment policy or annuity con-
0096 tract under which an insurance company promises to pay money
0097 either in a lump sum or periodically for life or some other
0098 specified period.

0099 (k) "State" means any state, territory, or possession of the
0100 United States, as well as the District of Columbia and Puerto
0101 Rico.

0102 (l) "Investment adviser" means any person who, for compen-
0103 sation, engages in the business of advising others, either directly
0104 or through publications or writings, as to the value of securities or
0105 as to the advisability of investing in, purchasing, or selling se-
0106 curities, or who, for compensation and as a part of a regular
0107 business, issues or promulgates analyses or reports concerning
0108 securities. The term does not include (1) a bank, savings and loan
0109 association, credit union, or trust company; (2) a lawyer, ac-
0110 countant, engineer, or teacher whose performance of these ser-
0111 vices is solely incidental to the practice of his or her profession;
0112 (3) a broker-dealer whose performance of these services is solely
0113 incidental to the conduct of his or her business as a broker-dealer
0114 and who receives no special compensation for them; (4) a pub-
0115 lisher of any bona fide newspaper, news magazine, or business or
0116 financial publication of general, regular, and paid circulation; (5)
0117 a person who has no place of business in this state if (A) his or her
0118 only clients in this state are other investment advisers, broker-

management consultant

0193 *state as an investment adviser unless such person is registered*
0194 *under this section as an investment adviser or as a broker-dealer*
0195 *or such person's only clients in this state are investment compa-*
0196 *nies as defined in the investment company act of 1940 or insur-*
0197 *ance companies.*

0198 (b) A broker-dealer ~~or~~, agent *or investment adviser* may be
0199 registered after filing with the commissioner a written applica-
0200 tion containing such relevant information and in such form as the
0201 commissioner may require. The applicant shall be registered if
0202 the commissioner finds that ~~he~~ *the applicant* (and, in the case of a
0203 corporation or partnership, the officers, directors or partners) is a
0204 person of good character and reputation, that ~~his~~ *the applicant's*
0205 knowledge of the securities business and ~~his~~ *the applicant's*
0206 financial responsibility are such that ~~he~~ *the applicant* is a suitable
0207 person to engage in the business, that ~~he~~ *the applicant* has
0208 supplied all information required by the commissioner and that
0209 ~~he~~ *the applicant* has paid the necessary fee. The commissioner
0210 may require as a condition of registration that the applicant (and,
0211 in the case of a corporation or partnership, the officers, directors
0212 or partners *or in the case of an investment adviser any person who*
0213 *represents or will represent the investment adviser in doing or*
0214 *performing any acts or functions which make him or her an*
0215 *investment adviser*) pass a written examination as evidence of
0216 knowledge of the securities business: ~~Provided, That~~. In deter-
0217 mining the character and reputation of the applicant, the com-
0218 missioner shall take into consideration any felony conviction of
0219 such person, but such a conviction shall not automatically
0220 operate as a bar to registration.

0221 (c) Before registering any broker-dealer ~~or~~, agent *or invest-*
0222 *ment adviser* the commissioner ~~shall~~ *may by rule* require such
0223 broker-dealer ~~or~~, agent *or investment adviser* to enter into and file
0224 in the office of the commissioner a bond in a sum of not less than
0225 five thousand dollars (\$5,000) and not more than twenty-five
0226 thousand dollars (\$25,000) and ~~may determine its conditions~~. No
0227 bond shall be required of any ~~registrant~~ whose net capital, which
0228 shall be defined by rule, exceeds one hundred thousand dollars
0229 (\$100,000), nor shall a bond be required of any agent of such

investment advisor who does not maintain
custody of customers' moneys, securities
or property, or any

0600 costs, and reasonable attorney's fees, less the amount of any
0601 income received on the security, upon the tender of the security,
0602 or for damages if he *or she* no longer owns the security. Damages
0603 are the amount that would be recoverable upon a tender less (1)
0604 the value of the security when the buyer disposed of it, and (2)
0605 interest at six percent (6%) per annum from the date of disposi-
0606 tion.

0607 (b) Every person who directly or indirectly controls a seller
0608 liable under subsection (a), every partner, officer, or director (or
0609 person occupying a similar status or performing similar func-
0610 tions) or employee of such a seller who materially aids in the sale,
0611 and every broker-dealer or agent who materially aids in the sale is
0612 also liable jointly and severally with and to the same extent as the
0613 seller, unless the nonseller who is so liable sustains the burden of
0614 proof that he *or she* did not know, and in the exercise of reason-
0615 able care could not have known, of the existence of the facts by
0616 reason of which the liability is alleged to exist. There is con-
0617 tribution as in cases of contract among the several persons so
0618 liable.

0619 (c) Any tender specified in this section may be made at any
0620 time before entry of judgment. Every cause of action under this
0621 statute survives the death of any person who might have been a
0622 plaintiff or defendant. No person may sue under this section (1) if
0623 the buyer received a written offer, before suit and at a time when
0624 he *or she* owned the security, to refund the consideration paid,
0625 together with interest at six percent (6%) per annum from the date
0626 of payment, less the amount of any income received on the
0627 security, and he *or she* failed to accept the offer within thirty (30)
0628 days of its receipt, or (2) if the buyer received such an offer before
0629 suit and at a time when he *or she* did not own the security, unless
0630 he *or she* rejected the offer in writing within thirty (30) days of its
0631 receipt. *An action pursuant to this section must be commenced*
0632 *within* ~~one year after discovery of the grounds therefor but in no~~
0633 ~~event may such an action be commenced after~~ three years ~~from~~
0634 *the date of the sale.*

0635 (d) No person who has made or engaged in the performance of
0636 any contract in violation of any provision of this act or any rule or

after

0674 her office for the purpose of making such examination. *For the*
 0675 *purpose of avoiding unnecessary duplication of examinations, the*
 0676 *commissioner* ~~insofar as the commissioner deems it practicable in~~
 0677 ~~administering this subsection, may cooperate with the securities~~
 0678 ~~administrators of other states, the securities and exchange com-~~
 0679 ~~mission, and any national securities exchange or national securi-~~
 0680 ~~ties association registered under the securities exchange act of~~
 0681 ~~1933.~~

0682 (e) The commissioner may require any registered broker-
 0683 dealer, *registered investment adviser* or ~~any~~ issuer who has regis-
 0684 tered securities under this act to file a semiannual report con-
 0685 taining such reasonable information, except with respect to
 0686 securities exempt under K.S.A. 1978 Supp. 17-1261 or transac-
 0687 tions exempt under K.S.A. 1978 Supp. 17-1262, as the commis-
 0688 sioner may believe necessary regarding the financial condition of
 0689 such person and the securities sold in this state by such person.
 0690 Each such report shall be accompanied by a filing fee of five
 0691 dollars (\$5).

0692 (f) The commissioner may from time to time adopt, amend,
 0693 and revoke such rules and regulations ~~and~~, *orders and* forms as
 0694 may be necessary to carry out the provisions of this act. In
 0695 prescribing rules and regulations and forms, the commissioner
 0696 may cooperate with the securities administrators of the other
 0697 states and the securities and exchange commission with a view to
 0698 effectuating the policy of this statute to achieve maximum uni-
 0699 formity in the form and content of registration statements, appli-
 0700 cations, and reports wherever practicable. All rules and regula-
 0701 tions and forms of the commissioner shall be published. No
 0702 provision of this act imposing any liability applies to any act done
 0703 or omitted in good faith in conformity with any rule and regula-
 0704 tion, form, or order of the commissioner, notwithstanding that the
 0705 rule and regulation, form or order may later be amended, revoked
 0706 or rescinded or be determined by judicial or other authority to be
 0707 invalid for any reason. Every hearing in an administrative pro-
 0708 ceeding shall be public unless the commissioner in his or her
 0709 discretion grants a request joined in by all the respondents that
 0710 the hearing be conducted privately.

, except that no such fee shall be charged to an investment adviser who does not maintain custody of customers' moneys, securities or other property

may cooperate with other proper authorities