

Approved \_\_\_\_\_

*Clyde D. Graeber* (4/3/87)  
Date

MINUTES OF THE HOUSE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS.

The meeting was called to order by Clyde D. Graeber at \_\_\_\_\_  
Chairperson

3:30 ~~xxx~~/p.m. on March 31, 1987 in room 527-S of the Capitol.

All members were present except: Bob Ott, Excused  
Mary Jane Johnson, Excused

Committee staff present: Bill Wolff, Legislative Research  
Bruce Kinzie, Revisor of Statutes  
June Evans, committee secretary

Conferees appearing before the committee: Stan Lind, Kansas Association of Financial Serv.  
Senator Joe Warren  
Susan Seltsam, State Treasurer's Office

Chairman Clyde Graeber opened the meeting.

Hearing on SB 275. Mr. Stan Lind, Kansas Association of Financial Services, testified in favor of SB 275, a statute pertaining to the registration and regulation of investment certificates issued by investment companies. This bill clarifies the existing authorization that investment companies may invest the funds collected from the sale of investment certificates in loans secured by real estate mortgages, subject to the conditions and limitations set out above. (Attachment I).

Representative Sand moved and Representative Roenbaugh seconded to move SB 275 out of committee favorably. The motion carried.

Hearing on SB 120. Senator Warren testified for SB 120, an Act concerning bonds; relating to notification of certain persons prior to the calling of bonds before maturity; amending K.S.A. 10-129 and repealing the existing sections. Senator Warren testified that the State Treasurer needs to be notified and they will publish in the Kansas Register.

Susan Seltsman testified for the bill but asked for an amendment which Bruce Kinzie in the Revisor's Office will draft. Bruce read the amendment the Treasurer's Office is requesting which is two sentences and the committee agreed on this.

Bill Wolff explained this amendment was brought before the Senate Committee but it was much too complicated at that time. The Senate wanted a clean and simplified bill. It was felt the changes the State Treasurer's Office is now requesting would be helpful to the bill.

Representative Roenbaugh moved and Representative Justice seconded that we amend the bill. The motion carried.

Representative Wilbert moved and Representative Sand seconded that SB 120 be moved out of committee favorably. The motion carried.

Representative Gatlin asked that the minutes of March 26 be changed to reflect a motion of his was passed.

The meeting adjourned at 4:20 P.M.



AN ACT amending the Kansas Investment Certificate Act; relating to the regulation and standards of operation; amending K.S.A. 1986 Supp. 16-601 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 16-601 is hereby amended to read as follows:

**16-601.** Registration of investment certificates of investment companies; membership in guaranty fund corporation; regulations and standards of operation; unlawful acts; penalties. Application for registration of investment certificates by investment companies under the provisions of this act, shall be directed to the consumer credit commissioner as designated under K.S.A. 16-403, and acts amendatory thereof or supplemental thereto, who shall administer the provisions of this act as it applies to investment companies as defined by K.S.A. 16-630, and amendments thereto. When investment certificates are registered under this or any other provision of this act, the following standards of operation shall be required and maintained by the issuer:

(1) All evidences of indebtedness issued hereunder shall be called investment certificates.

(2) The investment certificate shall state or provide for: (a) The name and address of the issuer; (b) the name and address of the certificate owner; (c) the dollar amount of the certificates; (d) the stated rate of interest or method of declaring rate of interest; (e) a provision that the certificates may be repurchased by the issuer at the desire of the issuer or of the certificate owner in the same manner as prescribed for savings and loan associations shares in K.S.A. 17-5414, and amendments thereto; (f) a provision as to the manner in which the certificate may be assigned; (g) the priority of claim or right that the certificate shall have in relation to the other obligations of the issuer; (h) each certificate shall state that a copy of the prospectus of the issuing company shall be available to each certificate holder upon request; and (i) investment certificates authorized hereunder shall have printed thereon the words: "Funds in investment certificates owned by a single investor are protected up to an aggregate maximum of \$10,000 by the Kansas investment certificate guaranty fund corporation, a private corporation which is not an agency of the state of Kansas or of the federal government."

~~(3)~~ The amount of investment certificates outstanding at any time shall not exceed the amount prescribed in this subsection based upon the total paid in and unimpaired capital, undivided profit and surplus of the issuing company as follows: (a) For companies up to \$300,000, the ratio shall not exceed 4½ times; (b) for companies between \$300,001 and \$500,000, the ratio shall not exceed ~~6.638~~ times; (c) for companies over \$500,000, the ratio shall not exceed 10 times.

~~(4)~~ Each issuing company shall maintain and have on hand at all times the equivalent of 10% of all outstanding certificates in: (a) Cash; (b) securities of the federal government or agency thereof or securities insured or guaranteed by the federal government or agency thereof; or (c) securities of the state of Kansas or agency thereof or general obligation bonds of any subdivision of the state of Kansas.

~~(5)~~ Each company shall file with the commissioner a complete audit annually, and within 90 days after the close of the company's fiscal year, which shall be prepared by an independent certified public accountant in accordance with generally accepted accounting procedures.

~~(6)~~ No issuing company shall advertise nor give any premium, discount, gift or rebate in excess of an amount prescribed by regulation of the commissioner to induce the purchase of its certificates.

~~(7)~~ No issuing company shall make any loan, directly or indirectly, to any director or officer of the issuing company in an aggregate of more than \$2,500, nor shall any director or officer of such issuing company become obligated to such issuing company as a comaker, endorser, guarantor or in other capacity other than as set out above.

Sec. 2.

by an investment company

investment

6.5

Sec. 3.

investment

Sec. 4.

investment

Sec. 5.

investment

Sec. 6.

investment

Sec. 7.

~~(8)~~ No investment company shall make any loan, purchase any installment sales contract or buy or enter into any lease of personal property, directly or indirectly, to, from or with any person or company, corporation or firm, including in the liabilities of the company or firm, the liabilities of the several members thereof, in an amount in excess of 10% of the unimpaired capital and surplus of the issuer, except that this restriction shall not apply to any loan to any majority-owned affiliate or subsidiary Kansas corporation of the issuer or its parent which is also an investment company as that term is defined in K.S.A. 16-630, and any amendments thereto, except that loans secured by mortgages on real estate located in Kansas or in a state adjacent to Kansas where the total mortgage indebtedness is not more than 85% of appraised value may be made in an amount not in excess of 15% of the paid-in and unimpaired capital and surplus of the issuer. The percentage limitation stated in this subsection shall not apply to the purchase of commercial paper which has a quality rating by Moody's Investor's Service of not less than prime-1 or prime-2 or Standard and Poor's Corporation of A1 or A2.

, surplus and undivided profits

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loans secured by real estate mortgages when the total mortgage indebtedness is in excess of 85% of appraised value to the extent that the loan is insured against the default of the mortgagor by the federal or state government or an agency thereof or by a private mortgage insurance company

or to a real estate mortgage that is eligible for purchase by the Federal National Mortgage Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation, or if the investment company has a commitment to sell the said note and mortgage.

~~(9)~~ No company shall allow the investment of funds obtained from the sale of certificates to be made that is not inherent to the principal business of a licensed lender under the Kansas uniform consumer credit code, except that this restriction shall not apply to: (a) Any majority-owned affiliate or subsidiary company of the issuer which does not issue certificates but which is engaged in the same type of business in Kansas; (b) loan contracts when the proceeds of the loan are used for business or agricultural purposes, installment sales contracts or leases of personal property when used for agricultural or business purposes; ~~or~~ (c) the purchase of commercial paper as described and limited in subsection (8) of this section.

Sec. 8.

investment

or to loans secured by real estate mortgages

(7) of this act

Sec. 9.

~~(10)~~ Before the commissioner may authorize a company to issue investment certificates, it must have a minimum capitalization of \$150,000, ~~except that this subsection shall not apply to any supervised lender corporation authorized to issue investment certificates prior to July 1, 1982.~~

an investment

Sec. 10.

~~(11)~~ All statutes, rules, regulations and restrictions pertaining to the issuance of investment certificates shall apply equally to any majority-owned affiliate or the subsidiary of any company or corporation as well as to the parent.

investment

~~(12)~~ Each investment company shall maintain a blanket fidelity bond upon all officers, employees and directors when performing the duties of an officer or employee of the company in a sum not less than \$25,000. Notwithstanding the foregoing the fidelity bond upon the managing and executive officers of the issuing company shall not be in an amount less than 1/10 of the amount that the total of the outstanding certificate exceeds the net worth of the company as of December 31 of the preceding calendar year, or \$1,500,000, whichever is lesser.

Sec. 11.

Sec. 12.

investment company

~~(13)~~ For all purposes the issuer shall be permitted to have outstanding at all times an amount of investment certificates not to exceed the amount of the aggregate authorization without regard to the subsequent repurchase of investment certificates.

Sec. 13.

~~(14)~~ A written opinion from an attorney licensed to practice in Kansas shall accompany each application in reference both to the legality of the requested issuance and also in reference to the status of the certificate obligation as to priority of creditors.

for an authorization to issue investment certificates

~~(15)~~ Each application shall include a prospectus which shall be updated within three months after the close of the fiscal year of each company. Such updated prospectus must be approved by the commissioner.

Sec. 14.

for an authorization to issue investment certificates

~~(16)~~ The total amount of all outstanding certificates of the company shall not at any time exceed the total amount of unpledged notes and contracts receivable, cash, cash equivalent instruments, securities of the federal government or agency thereof or securities insured or guaranteed by the federal government or agency thereof and securities of the state of Kansas or agency thereof or general obligation bonds of any subdivision of the state of Kansas.

Sec. 15.

an investment

~~(17)~~ No company issuing investment certificates shall provide or allow the certificates to be subordinated to any other obligation of the issuer, except that the pledging of collateral shall not be deemed as subordination.

Sec. 16.

~~(18)~~ Any director, officer or employee of an investment company who asks for or receives, or consents or agrees to receive any commission, emolument, or gratuity or any money, property or thing of value for procuring or endeavoring to procure for any person any loan from such company, or the purchase or discount of any note, contract, or other obligation or property by such company, upon conviction, shall be guilty of a class C felony.

Sec. 17.

, other than as a part of the compensation for the officer, employee or director,

~~(19)~~ Any director, officer or employee of any investment company who knowingly receives or possesses any of its property otherwise than in payment of a just demand, or with intent to defraud, omits to make or cause to be made a full and true entry thereof in its books and accounts or concurs in omitting to make any material entry thereof, upon conviction, shall be guilty of a class C felony.

Sec. 18.

Sec. 19.

~~(20)~~ Any director, officer or employee of an investment company who knowingly makes or concurs in making or publishing any false entry in its books or records, any written report, exhibit or statement of its affairs or pecuniary condition containing any material statement which is false, or having the custody of its books willfully refuses or neglects to make any proper entry in such books as required by law, or to exhibit or allow the same to be inspected or extracts to be taken therefrom by the commissioner or the commissioner's deputies or investigators, upon conviction, shall be guilty of a class C felony.

~~(21)~~ No director, officer or employee of an investment company shall purchase, directly or indirectly, or be interested in the purchase of, any of the company's assets for amount less than the then current market value thereof and any such purchase may not be made without the express approval of the board of directors of the company. Every person violating this section shall be liable to the company for twice the market value of the assets so purchased.

Sec. 20.

~~(22)~~ Every director of an investment company who: (a) In case of the fraudulent insolvency of such company, shall have participated in such fraud; or (b) willfully does any act as director which is expressly forbidden by law or willfully omits to perform any duty imposed by law, upon conviction, shall be guilty of a class A misdemeanor. The insolvency of a company is deemed fraudulent for the purposes of this section, unless its affairs appear upon investigation to have been administered clearly, legally, and with the same care and diligence that agents receiving a compensation for their services are bound, by law, to observe.

Sec. 21

an investment

~~(23)~~ A director, officer or employee of an investment company, who concurs in any vote or act by which it is intended to make a loan or purchase a contract in violation of this law, upon conviction, shall be guilty of a class A misdemeanor.

Sec. 22.

Sec. 23.

~~(24)~~ Any director, officer or employee of any investment company, who makes or maintains, or attempts to make or maintain, a deposit of such company's funds with any other person on condition, or with the understanding, express or implied, that the person receiving such deposit make a loan or advance, directly or indirectly, to any director, officer, or employee of the company so making or maintaining or attempting to make or maintain such deposit, upon conviction, shall be guilty of a class A misdemeanor.

Sec. 24.

~~(25)~~ Every officer or employee of any investment company who sells investment certificates knowing that the company is insolvent, upon conviction, shall be guilty of a class A misdemeanor.

investment



~~(26)~~ Any director, officer, agent or employee of any investment company, who willfully makes a false or untrue entry in any book or record or in any report, or statement of the business, affairs, or condition, or in connection with any transaction of such company, with intent to deceive any officer, director or employee thereof, or any agent or examiner, private or official, employed or lawfully appointed to examine into its condition or any of its affairs or transactions, or to any public officer who has authority to examine into its affairs or transactions, or who, with like intent, willfully omits to make new entry of any matter particularly pertaining to the business property condition, affairs, transactions, assets or accounts of such company in any book, record, report, statement of such company, or who with like intent alters, abstracts, conceals, or destroys any book, record, report, statement of such company made, written, or kept, or required to be made, written, or kept by such person or under such person's direction, upon conviction, shall be guilty of a class C felony.

Sec. 25

~~(27)~~ The investment company shall become a member of the Kansas investment certificate guaranty fund corporation and qualify as a member before the issuance of any investment certificates.

Sec. 26. Every

~~(28)~~ The investment company shall be incorporated in the state of Kansas as a corporation for profit.

Sec. 27. Every

~~(29)~~ The authority to issue investment certificates shall be nontransferable, except with the prior written consent of the commissioner and the investment certificate guaranty fund corporation.

Sec. 28.

~~(30)~~ The authority to issue investment certificates shall not be acquired by the purchase of the common stock, or the stock which exercises voting control of a company authorized to issue investment certificates without the prior written consent of the commissioner and the investment certificate guaranty fund corporation.

Sec. 29.

History: L. 1961, ch. 117, § 2; L. 1981, ch. 90, § 1; L. 1982, ch. 91, § 1; L. 1983, ch. 77, § 1; July 1.

Sec. 30. K.S.A. 16-601 is hereby repealed.

Sec. 31. This act shall take effect and be in force from and after its publication in the statute book.