

Approved March 3, 1987
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

The meeting was called to order by Sen. Neil H. Arasmith at
Chairperson

9:00 a.m./~~p.m.~~ on February 26, 1987 in room 529-S of the Capitol.

All members were present except:

Senators Burke and Warren - Excused

Committee staff present:

Bill Wolff, Legislative Research
Bill Edds, Revisor of Statutes

Conferees appearing before the committee: None

The minutes of February 25 were approved.

The meeting began with the explanation by staff of a balloon of SB 66 regarding securities which had been previously heard. (See Attachment I.) With regard to the change on line 57, the chairman said that the result of this change is in the copies of the memorandum prepared by the Securities Commissioner. (See Attachment II.)

Sen. Karr had questions regarding lines 23 and 24 which Roger Walter of the Securities Commissioner's office answered by explaining that the language here corresponds with another section of the law. Mr. Walter also answered his questions as to registration fees and as to the stricken language in lines 68 through 110 which staff explained new subsection (d) picks up. Mr. Walter said that the standard that was in the statute was too restrictive so they wanted it set up under rules and regulations.

Sen. Kerr felt the committee would benefit from further knowledge of the background of the bill as far as the reasons for the changes. He distributed copies of a report on the prior Commissioner's Industry Advisory Committee which started the bill. (See Attachment III.)

Sen. Gordon said that the large volume of rules and regulations in the bill concerns him in that the committee may not fully understand what the result would be. The chairman said it allows more flexibility in such areas as offerings of cheap stock rather than the Commissioner having to come back to the legislature so often for changes. Sen. Gordon questioned further as to why the changes are needed. The chairman answered that it is because companies outside of Kansas do not want the hassle of dealing with Kansas' restrictions. Mr. Walter added that the changes will make rules and regulations already on the books more workable.

With regard to merit review laws, Sen. Kerr explained that the task force on economic development discussed the possibility of them being inhibitive to formation of capital. The University of Michigan and the American Bar Association are doing a study on this, and Kansas is part of the study. However, the committee's decision was not to do away with merit review laws but to go with the prior Commissioner's recommendations. Sen. Gannon asked if it would be advisable if legislation were delayed until the study is finished. Sen. Kerr felt this would not be necessary as the advisory committee had done a thorough study.

Sen. Kerr made a motion to adopt the Commissioner's suggested amendments, Sen. Strick seconded, and the motion carried.

Sen. Kerr made a motion to report SB 66 favorable for passage as amended, Sen. Strick seconded, and the motion carried.

The committee's attention was turned to SB 132 dealing with long-term care insurance which had been previously heard. The chairman recalled the two suggested changes: (1) to make it mandatory which has been withdrawn by Mr. Hummel and (2) to single out Alzheimer's Disease as supported by the Department of Aging. The chairman was

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,
room 529-S, Statehouse, at 9:00 ~~a.m.~~^{xxxx} ~~p.m.~~ on February 26, 1987.

not in favor of singling out one particular disease and noted that the bill does provide that the policy cannot be canceled if the disease develops after the policy is in effect. He also reminded the committee that a technical amendment on line 164 had been suggested. Staff said that this could have been a printer's error. Sen. Werts made a motion to amend line 164 as suggested if it is needed, Sen. Karr seconded, and the motion carried.

Sen. Karr made a motion to report SB 132 favorably as possibly amended, Sen. Strick seconded.

Sen. Werts began a discussion of the rates. The chairman had information from the Kansas Coalition on Aging which he had received since the hearing on the bill. The information indicated that the rates would be higher than stated at the hearing, but there was still support for the bill. Sen. Strick asked what the rates would be. The chairman answered that of the eight companies listed, the range is now from \$486 a year to a high of \$1135 a year. After further short discussion on the rates, the chairman called for a vote on the motion. The motion carried.

The meeting was adjourned.

SENATE COMMITTEE

ON

FINANCIAL INSTITUTIONS AND INSURANCE

OBSERVERS
(Please print)

DATE	NAME	ADDRESS	REPRESENTING
2/26	Doug Mays	Topeka	Sec Commissioner
2/26	Roger Watten	Topeka	"
2/26	Richard Harmon	Topeka	KS Life Assoc.
2/26	JACK ROBERTS	TOPEKA	BC-BS
2/26	Svetlana Weber	Topeka	KSOA
2/26	Marilyn Bratt	Lawrence	KINH
2/26	Harold Emery	Jewell	visitor
2/26	Ron Todd	Topeka	Pro Dept

SENATE BILL No. 66

By Legislative Commission on Kansas Economic Development

1-23

0016 AN ACT concerning securities; relating to certain expenses;
0017 deposit of securities in escrow; amending K.S.A. 17-1259 and
0018 repealing the existing section.

0019 *Be it enacted by the Legislature of the State of Kansas:*

0020 Section 1. K.S.A. 17-1259 is hereby amended to read as fol-
0021 lows: 17-1259. (a) When securities are registered by notification
0022 or by coordination or by qualification, they may be offered and
0023 sold by the issuer, any other person on whose behalf they are
0024 registered or by any registered broker-dealer. Every registration
0025 shall remain effective until revoked by the commissioner or until
0026 terminated upon request of the registrant with the consent of the
0027 commissioner. So long as a registration remains effective, all
0028 outstanding securities of the same class shall be considered to be
0029 registered for the purpose of any nonissuer distribution. A regis-
0030 tration statement relating to a security issued by a face-amount
0031 certificate company or a redeemable security issued by an
0032 open-end management company or unit investment trust, as
0033 those terms are defined in the investment company act of 1940,
0034 may be amended after its effective date so as to increase the
0035 securities specified therein as proposed to be offered. The com-
0036 missioner may permit the omission of any document or item of
0037 information from any registration statement. So long as the reg-
0038 istration statement remains effective the registrant shall file
0039 reports semiannually for securities registered by qualification
0040 and annually for securities registered by notification or coordi-
0041 nation and such reports shall include a balance sheet and a profit
0042 and loss statement for the issuer's most recent fiscal year and
0043 such other information as the commissioner may require.

0044 (b) Every person filing a registration statement shall pay a

registration; filing fees; reports on completion of registered offering;

a registered agent of the issuer

for one year after its effective date unless the commissioner by rule or order extends the period of effectiveness

No registration is effective while a stop order is in effect under K.S.A. 17-1260, and amendments thereto.

Upon completion of a registered offering a registrant shall file a final report of sales.

(1)

Attachment I
Senate F I & I -- 2/26/87

0045 filing fee computed upon the aggregate offering price of the
 0046 securities sought to be registered. The fee shall be .1% of the
 0047 amount registered up to \$200,000, plus .05% of that portion of the
 0048 amount registered which is in excess of \$200,000 and which does
 0049 not exceed \$300,000, plus .025% of that portion of the amount
 0050 registered which is in excess of \$300,000 and which does not
 0051 exceed \$500,000, plus .0125% of that portion of the amount
 0052 registered which is in excess of \$500,000, except that in no case
 0053 shall the fee be less than \$100 nor more than \$2,000 for each such
 0054 registration statement. The commissioner may prescribe a max-
 0055 imum amount of securities to be registered at any one time by a
 0056 face-amount certificate company or an open-end management
 0057 company or unit investment trust, as those terms are defined in
 0058 the investment company act of 1940. If a registration statement is
 0059 denied or withdrawn prior to the offering of any securities in this
 0060 state, the commissioner may refund 50% of the fee so paid.

fee of .05% of the maximum aggregate offering price at which the securities are to be offered in this state, but not less than \$100 or more than \$1,500 for each year of effectiveness. The commissioner may by rule and regulation set the maximum amount of securities that may be registered at any one time by a face-amount certificate company or an open-end management company or unit investment trust, as those terms are defined in the investment company act of 1940

voluntarily

being examined by the staff of the commissioner

0061 (c) The commissioner at the time of the granting of the
 0062 authorization to sell securities as herein provided, may deter-
 0063 mine and fix the maximum amount, which shall not exceed 15%,
 0064 that may be paid as or in the way of commission, advertising
 0065 expense and all other expenses from the sale of such securities,
 0066 but any profit resulting from a rise in the market value of
 0067 securities subsequent to their purchase by the sale of securities.
 0068 (d) (1) Before any authorization to sell securities shall be
 0069 issued by the commissioner as herein provided, all stock or
 0070 securities of any kind issued, or to be issued in payment of
 0071 property, patents, formulae, goodwill, promotion or intangible
 0072 assets shall be deposited by the person to whom they are to be
 0073 issued or by the company or promoter issuing them, with the
 0074 commissioner, or a depository approved by the commissioner in
 0075 this or any other state, to be held in escrow. The owners of such
 0076 securities shall not be entitled to withdraw such securities from
 0077 escrow until the company shall show to the satisfaction of the
 0078 commissioner that it has had sufficient earnings, after taxes, to
 0079 pay a dividend or dividends to all stockholders aggregating at
 0080 least 6%, but such dividend or dividends need not actually be
 0081 paid. If such dividend or dividends have not actually been paid,

(2) Every person filing an application to amend or extend an effective registration statement shall pay a fee of \$100. If an application to amend increases the maximum aggregate offering price of securities to be offered in this state, an additional fee shall be paid based upon the increase in such price calculated in accordance with the rate and annual minimum and maximum fees specified in paragraph (1) of this section.
 (3) The commissioner may by rule and regulation set a fee not to exceed \$100 for an application or filing made in connection with any exemption from securities registration.

0082 the evidence submitted to the commissioner, to show that the
 0083 company has had such sufficient earnings, shall be in permanent
 0084 documentary form or transcribed oral testimony, or both, and
 0085 such documents and transcribed testimony shall be retained as
 0086 part of the permanent files of the commissioner. Such earnings
 0087 shall not include gains from sale of capital assets or the sale of
 0088 depreciable property or real or personal property used in trade or
 0089 business and in case of dissolution or insolvency during the time
 0090 such securities are held in escrow the owners of such securities
 0091 shall not participate in the assets until after the owners of all
 0092 other securities shall have been paid in full. No assignment or
 0093 transfer of such securities shall be made unless, upon application
 0094 therefor, the commissioner shall find that such assignment or
 0095 transfer would be in keeping with the purpose of this act except
 0096 this subsection (d)(1) shall not apply to securities entitled to
 0097 registration by notification. It shall be unlawful for any person in
 0098 whose name any of the securities deposited in escrow were
 0099 issued, to sell, contract to sell, or offer to sell, any of the securi-
 0100 ties until after they are released from escrow.

0101 (2) Whenever it is determined that a security which has been
 0102 escrowed with the Kansas securities commissioner, pursuant to
 0103 subsection (d)(1) of this section for three consecutive years after
 0104 voluntary dissolution or revocation of the corporate charter, the
 0105 Kansas securities commissioner may destroy such stock. The
 0106 securities commissioner shall maintain a permanent record of all
 0107 stock destroyed. Such record shall include: (A) Name of issuer,
 0108 (B) stock certificate number, (C) number of shares represented
 0109 by the certificate, (D) name of the owner of the stock certificate,
 0110 and (E) CUSIP number if applicable.

(d) Before any authorization to sell securities shall be issued by the commissioner as herein provided, all stock or securities of any kind issued, or to be issued, for consideration less than the public offering price or for consideration other than cash may be required to be deposited in escrow according to such conditions as the commissioner shall provide by rule and regulation.

0111 (e) (d) The commissioner shall keep a register showing the
 0112 issuer, date of registration, amount in number of dollars, of the
 0113 securities registered.

(e)

(f)

0114 (f) (e) Neither the commissioner nor any employee of the
 0115 securities department shall be interested as an officer, director,
 0116 or stockholder in securing any authorization to sell securities
 0117 under the provisions of this act.

(g)

0118 (g) (f) For application for an exemption, pursuant to subsec-

0120 application for an amendment to a registration, there shall be
0121 paid to the commissioner a registration fee of \$10. A reregistra-
0122 tion shall not be considered to be an amendment of a registration
0123 under this section.

0124 Sec. 2. K.S.A. 17-1259 is hereby repealed.

0125 Sec. 3. This act shall take effect and be in force from and
0126 after its publication in the statute book.

Upon termination of a registration the filing of a final report as required by section (a) shall satisfy the filing requirements of K.S.A. 17-1261(m)(3), and amendments thereto.

M E M O R A N D U M

TO: Senator Arasmith, Chairperson;
and Members of the Senate Committee
on Financial Institutions and Insurance

FROM: Steven C. Wassom, CPA
SW Chief Securities Regulatory Auditor
Office of the Securities Commissioner

DATE: February 23, 1987

RE: Senate Bill No. 66

This memorandum summarizes the rationale and estimated fiscal impact of amendments to S.B. 66 as proposed by the Office of the Securities Commissioner of Kansas.

The primary objective of the amendments is to increase the administrative efficiency of the securities registration process for this office as well as the securities industry. The changes are intended to clarify and simplify securities registration procedures without substantially changing the overall regulatory effect of the Act.

The fiscal impact of proposed rates in section (b) of K.S.A. 17-1259 has been evaluated by applying the rates to actual registrations and exemption filings during the first seven months of FY 1987. Based on recent trends, it is anticipated that the fiscal impact of proposed simplified fee rates would be similar in FY 1988 and subsequent years. The Table below compares the annualized FY 1987 fee revenues based on actual data through January 31, 1987 for current and proposed rates.

<u>Description</u>	<u>Amount Registered</u>	<u>Fee Revenues</u>		
		<u>Current Rates</u>	<u>Proposed Rates</u>	<u>Increase (Decrease)</u>
Debt Offerings	\$ 1,025,995,000	\$ 59,163	\$ 58,337	\$ (826)
Equity Offerings	10,804,389,000	392,609	389,016	(3,595)
Mutual Funds	9,480,111,000	490,960	573,895	82,935
	<u>\$21,310,495,000</u>	942,732	1,021,248	78,516
Registration Extension Fees *		--	75,000	75,000
Total Registration Fees		942,732	1,096,248	153,516
Exemption Filings		14,780	60,780	46,000
TOTALS		<u>\$957,512</u>	<u>\$1,157,028</u>	<u>\$199,516</u>

* Extension fees are based on mutual fund offerings which are continuous. The total impact from original and extended mutual fund registrations is therefore, an increase of approximately \$158,000. Based on the aggregate amount of mutual funds registered and extended, the increase in fees is less than 1 cent (\$.008) per \$1,000 registered. This impact is extremely minimal for each mutual fund registered.

Explanation of Revenue Increases

The projected amount at proposed rates for mutual funds is based on the assumption that the Commissioner will continue to establish, by regulation, a maximum amount that may be registered at one time by each mutual fund. Therefore, this authority has been retained in section (b) of K.S.A. 17-1259, although it was inadvertently deleted from the original amendment to section (b).

The amount of the increase in total registration fees is the approximate median in a projected range of the minimum and maximum potential revenues. The actual revenues will be affected by securities market conditions, general economic conditions, and the maximum registration amount established for mutual funds by regulation.

The potential increase in fees for exemption filings is based on 920 actual filings during 1986 at the rate of \$50 per filing. The rate of \$50 was used to approximate an average rate for the various types of exemptions (actual rates to be established by regulation).

REGULATION OF SECURITIES IN KANSAS

The Commission believes strongly that securities regulation should be considered as an integral part of Kansas' economic development strategy for several reasons. State securities laws and regulations often send a signal to outside investors about the attractiveness of investing in that state. Also, careful liberalization of Kansas securities regulations within the existing merit review system can increase the flow of capital into Kansas and increase access of Kansas businesses to global capital markets.

The Industry Advisory Committee has done an outstanding job in making recommendations to carefully modify some of the more restrictive regulations. The Commission supports the recommendations that still require some form of legislative action:

- ② -- Repeal the existing statute requiring shares to be held in escrow until the potential exists to pay 6 percent dividends. The escrow requirement would then be established by regulation, releasing escrow after (1) three years from the date of the close of the offering; (2) the securities have traded for 125 percent of the offering price for 45 consecutive days; or (3) if the company is able to pay a 6 percent dividend after one year or a 10 percent dividend after two.
- ① -- Replace the statute placing a 15 percent commissions and expense ceiling on all issues with a statute allowing the Commissioner discretion to waive the ceiling for small (less than \$3 million) issues.

*Let Commissioner
out it*

The Commission also recommends that the Industry Advisory Committee continue to study proposals to liberalize securities regulation and increase the flow of capital into and within Kansas. Some of the new proposals the Advisory Committee should consider are:

- Establishing a nonseasoned issuer exemption and an issuer registration exemption by filing, similar to those in place in Wisconsin since April.
- Establishing a "sophisticated investor" exemption, where a certain level of net worth would be assumed to obviate the need for strict merit review.

- Establishing an exemption for Kansas issuers. Less stringent requirements for Kansas-based businesses could make the state more attractive to relocating companies and outside investors, as well as enhancing the ability of current Kansas firms to market securities.

The Commission also recommends that the 1987 Legislature consider the forthcoming ABA study, now expanded to include Kansas, of the impact of securities regulation on the flow of capital.