

Approved February 23, 1988  
Date

MINUTES OF THE Senate COMMITTEE ON Agriculture

The meeting was called to order by Senator Allen at  
Chairperson

10:07 a.m./~~p.m.~~ on February 17, 1988n room 423-S of the Capitol.

All members were present ~~except~~

Committee staff present: Raney Gilliland, Legislative Research Department  
Jill Wolters, Revisor of Statutes Department

Conferees appearing before the committee: Doug Mays, Kansas Securities Commission  
Tom Wilson, State Grain Inspection Department  
Mark Smith, Kansas State Board of Mortuary Arts

Senator Allen called the committee to order and called on Doug Mays to request legislation.

Doug Mays gave copies of information to the committee (attachment 1) explaining his request for legislation concerning loan brokers.

Senator Karr made a motion the committee accept the request for the legislation requested by Mr. Mays. Senator Arasmith seconded the motion. Motion carried.

The Chairman called on Tom Wilson to request legislation.

Mr. Wilson gave copies of a proposed bill (attachment 2) to the committee and requested the legislation be introduced by the committee.

Senator Montgomery made a motion the committee introduce the legislation requested by Mr. Wilson. Senator Arasmith seconded the motion. Motion carried.

The Chairman announced the committee hearing to be for HB 2640 and HB 2641; then he asked staff to review the bills.

Staff explained the bills came from the Public Health and Welfare Summer Interim Committee. The bill would allow the removal of the requirement of citizenship in order to be a licensed veterinarian, dental hygienist or funeral director in Kansas. The bill also removes the requirement of being a citizen of Kansas in order to have a license to be a dental hygienist or a veterinarian. Staff explained the provisions of HB 2641 affects several regulatory boards. This bill would permit the boards to obtain information from out of state schools where applicants, applying for a Kansas license, had graduated.

In answer to a committee question, staff agreed that this bill allows foreigners to apply for a license in Kansas. It was stated the provisions of this bill, if passed, would bring Kansas in compliance with the rest of the world.

The Chairman called on Mack Smith to testify for HB 2640 and HB 2641.

Mr. Mack expressed support for both bills and requested the committee recommend them both for passage.

The Chairman declared the hearing completed for HB 2640 and HB 2641 and called for committee action.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Agriculture,  
room 423-S, Statehouse, at 10:07 a.m. ~~p.m.~~ on February 17, 19 88

Senator Montgomery made a motion the committee recommend HB 2640 and HB 2641 favorable for passage by their being placed on the Consent Calendar. Senator Norvell seconded the motion. Motion carried.

The Chairman called for committee action on committee minutes.

Senator Montgomery made a motion the committee minutes of February 9 and February 10 be approved. Senator Karr seconded the motion. Motion carried.

The Chairman adjourned the committee at 10:25 a.m.



STATE OF KANSAS



OFFICE OF THE SECURITIES COMMISSIONER

Landon State Office Building  
900 Southwest Jackson St., Suite 552  
Topeka, Ks 66612-1220  
(913) 296-3307

Mike Hayden,  
Governor

M. Douglas Mays  
Securities Commissioner

**Issue: Kansas Loan Brokers Act**

**I. Issue Definition.**

Enactment of a Loan Brokers Act that will empower the Securities Commissioner to regulate certain loan brokers and to prosecute fraudulent practices by these individuals within Kansas.

**II. Background.**

This Act is designed to give the Securities Commissioner authority to eliminate fraudulent loan brokers operating in our state. These are individuals who purport to be representing or have connections with sources who have large sums of money to lend farmers or businessmen. They promise, in return for an advance consideration (usually a percentage), that they will procure a loan from these third parties.

These people are nearly always con-artists who have neither any sources of funds or any intention of seeking loans for the person paying the fee. They prey upon individuals and families (particularly farmers) who, for whatever reason, find themselves in a difficult financial position. These victims are enticed by the promise of fresh capital with which to continue their operations. The perpetrator goes through the motions of filling out official looking forms and collecting fees only to disappear after a short time, leaving the victims with shattered dreams and in a worse financial position than ever.

Unfortunately, there is little that law enforcement authorities can do at this time. Under the laws as they presently exist, advance fee loan schemes basically fall through the cracks. The problem is two-fold.

*attachment 1*

*2-17-88*

First is a question of jurisdiction. The Attorney General's Office under the Consumer Protection Act apparently is unable to prosecute such cases. The Securities Commissioner regularly receives referrals of the cases from the Attorney General and other agencies and, in fact, in the past, this office has issued cease and desist orders. Actual criminal prosecution of such cases, however, may be difficult, if not impossible. While it can be argued that advance fee loan schemes have many of the characteristics of a security, adequate case law exists for a defense attorney to plead otherwise.

The second problem is the difficulty in proving "intent" to defraud. These so-called loan brokers often go through the motions of finding a loan generally by issuing letters to other fraudulent loan brokers. When prosecuted, by producing copies of these communications, they can claim in their defense that they made an attempt to obtain the loan, but because of the applicants' dire financial situation, no prudent lender would lend them funds. This last statement is, in most cases, correct, which is the reason that led the victims, as a last resort, to the loan broker.

It is important that Kansas farmers and businessmen be protected from fraudulent advance fee loan schemes. The enactment of the Loan Brokers Act will allow the Kansas Securities Commissioner to take aggressive legal action against these unscrupulous individuals.

### **III. Recommendation.**

The Securities Commissioner strongly recommends the adoption of legislation essentially identical to that passed in Indiana in 1985.

### **IV. Fiscal Impact.**

No immediate fiscal impact is anticipated at this time. At the present level of activity existing staff of Special Investigators should be adequate.

### **V. Legislative Implications.**

This legislation requires the registration of loan brokers with the Office of the Securities Commissioner. Certain exemptions are granted to entities already regulated such as banks, savings and loans, securities broker-dealers, etc. (Section 3). The loan brokers applying for registration must disclose specific relevant facts relating to their background, track record, method of doing business, and criminal record (if any). They must post a bond and pay a fee. The Securities Commissioner may either grant a certificate (which must be renewed each year) or deny registration for good cause.

Once a broker is registered, he must provide a detailed disclosure statement to the loan applicant (Section 8). Failure to do so will result in suspension or revocation, or civil or criminal action by the Securities Commissioner (Section 10).

Realistically, given this and other states' experience with loan brokers, it is doubtful that there will ever be more than a handful of legitimate applications for registration. This legislation, however, will give the Securities Commissioner the legal tools necessary to prosecute those who are defrauding Kansas citizens through advance fee loan schemes.



# EXTENSION NEWS & FEATURES

Department of Extension Information  
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Manhattan, Kan. 66506  
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MAILED: Aug. 16, 1985

Con Artists Active  
Now in Rural Kansas

MANHATTAN--Called hapless victims of a recent rise in rural fraud, Kansas farmers were front-page news in the Aug. 13 Wall Street Journal. The newspaper said financially strapped farmers are making substantial "up-front" payments to con artists who are selling empty promises to provide or find loans.

This isn't the only scheme now operating in the state. Kansans also have been bilked by "agents" who are "buying" farmland for anonymous foreigners and by groups exchanging worthless paper for farm mortgages. More familiar hucksters are continuing business, as well, using extravagant claims to persuade farmers to buy everything from barns to windmills.

The loan scam may now be the biggest, however.

DeAnn Hupe, attorney for the state Board of Agriculture's farm advice hotline, FACTS, said she's getting calls every day about the supposed loan finders. Through her resource network, Hupe usually is able to give phoning farmers some hope of straightening out their problems. But she has to explain the loan schemes are, at best, suspect.

"Of course, some farmers won't believe me, because these people are very smooth. But often they're just selling dreams," Hupe said. "I'd like to get my hands on one so-called agent who's been operating in the southeast. When I've told farmers he's not what he claims, I've sometimes taken away their last hope. They know they won't be able to redeem their land. No miracle is going to happen."

Doug Beech, extension economist at Kansas State University, pointed out Kansas farmers are vulnerable now to dream merchants.

"We economists, the government, farm organizations and the news media have

all made clear that unless something changes, a good number of farmers are going to be out of business--and soon," Beech said. "Commodity prices are low, and farmland values are falling. Farmers are worried, even if they aren't deep in debt. Those who face losing the land grandpa homesteaded 100 years ago are about ready to try anything."

Kansas deputy attorney general Wayne Hundley admits the fraud problem seems insoluble.

"We Kansans are very trusting people. If a person isn't too slick in appearance or talk, we tend to believe him. The real difficulty in enforcement for us, though, is that these people tend to hit one or two places and then move on to another state," Hundley said. "Farm fraud does seem to be on the increase. We're planning to set up an agricultural section in our Consumer Protection and Antitrust Division, simply to handle rural complaints."

Kansas' securities commissioner may have the most effective way of stopping scams, however, because violation of securities law is a felony. A year ago, the commissioner issued a cease-and-desist order for a group of interrelated companies that required advance fees for negotiating unconventional, low interest loans.

"That fell within the definition of an investment contract, as included in the Kansas Securities Act," said Commissioner John Wurth. "Companies or persons dealing in investment contracts must register prior to making any sales. These didn't. And since we issued the cease-and-desist order, they've basically made no attempt to register their program in our office."

Named in the 1984 order were, among others, Gerald and Marie Champagne, operating business as Financial Business Brokers in Georgia, and Bobby Ryder, doing business as Lease Banc, Inc., in Wichita.

FACTS attorney Hupe said she is still getting calls about contracts with this group.



In addition, she's learned other "agents" are offering deals, which usually are "backed" by lenders who prefer to remain anonymous. Reports have placed these supposed lenders in California, Colorado, Texas, Iraq, and unnamed banks in Kansas City and Miami.

Although one agent has advertised in a farm publication, most farmers learn about these deals by word-of-mouth. The agents may write letters, but actual contracts rarely surface. One agent does, however, require farmers to sign an agreement which says if they reveal his name or the name of the lending business, they automatically will forfeit their advance payment.

Farmers have paid such agents and companies from \$2,500 to \$7,500, Hupe added. Some of that cash has gone to agents as a "finders" or "appraisal" fee, and some has gone directly to companies as a "loan processing fee." The agents imply the loan processing is a mere formality. But Hupe has yet to hear of a farmer who's actually received any money.

Instead, she hears that companies are blaming their non-payment on the securities commissioner and his unnecessary roadblocks to their doing business in Kansas.

Kansas law requires full disclosure from those dealing in securities, Commissioner Wurth explained. That includes demonstrating that individuals or companies, in fact, have money to loan. It also includes proving their program is the same as advertised and is "fair, just and equitable."

Worth has a small staff and can investigate possible violators only if his office hears about them.

An Ag Alert Network, based in the Iowa attorney general's office, gathers and distributes both rumors and facts about traveling con artists. The network's designed to help states see patterns, be aware of impending trouble and perhaps gather enough evidence to prosecute, Hundley said.

"But as these people move, they put new little twists on their scam. So,

the attorney generals on the network often aren't able to see the connections until people have made 15 to 20 hits," Hundley added.

This leaves farmers with the major responsibility for protecting themselves against fraud, said Sam Brownback, ag law specialist for K-State extension and a practicing attorney.

He reminds farmers, "There are no money trees out there. If someone makes an offer that seems too good to be true, it probably is. If someone won't tell you who he or she is representing, you have a right to be suspicious. If someone tries to rush you into signing a check, that should make you cautious."

Brownback advises rural residents to approach unusual financial arrangements with the same caution they'd use if selling their land.

"You'd never hand over your deed without checking to see the person could pay," he said. "So, check to see if you're getting a legitimate, practical loan offer."

Possible places to check include the family accountant, attorney and/or banker. Farmers also can call the following to get additional information or to report suspicious business practices:

- o Their local county attorney.
- o Toll-free FACTS hotline: 1-800-321-FARM.
- o Attorney general's toll-free consumer protection line: 1-800-432-2310.
- o Kansas securities commissioner: 1-913-296-3307.

"Sometimes if farmers can absorb a loss without going under, they just won't admit they've swallowed a fish story," Hundley said. "But that won't provide any protection for their neighbor down the road or across the state line."

-30-

K.W. Ward  
Extension Communications Specialist

Agricultural Economics  
Public Affairs

AN ACT concerning the regulation of loan brokers.

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

**Section 1.** As used in this act, "commissioner" refers to the securities commissioner appointed under K.S.A. 75-6301 and amendments thereto.

**Section 2.** As used in this act, "loan" means any agreement to advance money or property in return for the promise to make payments for the money or property.

**Section 3. (a)** As used in this act, "loan broker" means any person who, in return for any consideration from any person, promises to procure a loan for any person or assist any person in procuring a loan from any third party, or who promises to consider whether or not to make a loan to any person. "Loan broker" does not include:

(1) Any bank, savings bank, trust company, savings and loan association, credit union, or any other financial institution regulated by any agency of the United States or any state except any person who is a financial institution solely because of a license to make consumer loans under K.S.A. 16a-2-302 and amendments thereto or solely because of a similar license from another state;

(2) Any person authorized to sell and service loans for the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, issue securities backed by the Government National Mortgage Association, make loans insured by the Department of Housing and Urban Development, make loans

guaranteed by the Veterans Administration, or act as a correspondent of loans insured by the Department of Housing and Urban Development or guaranteed by the Veterans Administration;

(3) Any insurance company; or

(4) Any person arranging financing for the sale of the person's product.

(b) As used in this act, "creditor" means any person to whom a loan is initially payable on the face of the note or contract evidencing the loan.

**Section 4.** It shall be unlawful for any person to engage in the business of loan brokering unless registered under this act.

**Section 5.** (a) In order to be registered under this act a loan broker shall file an application for registration with the commissioner. The application for registration must contain:

(1) The disclosure statement required under section 8(b) of this act and the form of the disclosure statement proposed to be used under section 8(d) of this act;

(2) Consent to service of process under subsection (e);

(3) Evidence of the bond required in subsection (b); and

(4) A fee of \$250.

(b) A loan broker must maintain a bond satisfactory to the commissioner in the amount of \$25,000, which shall be in favor of the state.

(c) Whenever the provisions of this chapter have been complied with, the commissioner shall issue a certificate of registration to the applicant, authorizing the applicant to engage in the business of loan brokering.

(d) An application for registration becomes effective on the thirtieth day after it is filed, unless an order of the commissioner establishes an earlier effective date. Every registration is effective until January 1 of the year after it goes into effect.

(e) Every applicant for registration shall file with the commissioner, in such form as the commissioner by rule or order prescribes, an irrevocable consent appointing the secretary of state to be the applicant's agent to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant arising from the violation of any provision of this act. Service shall be made in accordance with article 3 of chapter 60 of the Kansas Statutes.

**Section 6.** (a) A loan broker may not continue engaging in the business of loan brokering unless the broker's registration is renewed annually. A loan broker shall renew the registration by filing with the commissioner, at least 30 days before the expiration of the registration, an application containing any information the commissioner may require to indicate any material change from the information contained in the applicant's original application or any previous application.

(b) An application for renewal must be accompanied by a fee of \$100.

**Section 7.** All fees and funds accruing from the administration of this chapter shall be accounted for by the commissioner and shall be deposited with the treasurer of state who shall deposit them in the state general fund.

**Section 8.** (a) At least seven days before the time any person signs a contract for the services of a loan broker, or seven days before the loan broker receives any consideration upon the contract, whichever occurs first, the loan broker must provide to the contracting person a written disclosure statement that meets the requirements set forth in subsection (b).

(b) A disclosure statement shall consist of the following:

(1) The cover sheet shall be entitled in at least 10 point boldface capital letters "DISCLOSURES REQUIRED BY KANSAS LAW." Under this title shall appear the statement in at least 10 point type that "The Kansas securities commissioner has not reviewed and does not approve, recommend, endorse, or sponsor any loan brokerage contract. The information contained in this disclosure has not been verified by the commissioner. If you have any questions see an attorney before you sign a contract or agreement." Nothing except the title and the required statement shall appear on the cover sheet.

(2) The disclosure document shall contain the following information:

(A) The name and form of organization of the broker, the names under which the broker has done, is doing, or intends to do business, and the name of any parent organization or affiliate of the broker.

(B) the names, addresses, and titles of the broker's officers, directors, trustees, general partners, general managers, principal executives, and any other person performing similar duties.

(C) the length of time the broker has conducted business as a loan broker.

(D) a full and detailed description of the actual services that the loan broker undertakes to perform for the prospective borrower.

(E) the number of loan brokerage contracts the broker has entered into within the past 12 months.

(F) the number of loan brokerage contracts in which the broker has successfully obtained a loan for the prospective borrower within the last 12 months and the dollar amount of the loans.

(G) a balance sheet and statement of operations for the loan broker's last fiscal year, prepared in accordance with generally accepted accounting principals by a certified or independent public accountant.

(H) a specific statement of the circumstances under which the broker will be entitled to obtain or retain consideration from the party with whom the broker contracts.

(I) any other information the commissioner may require by rule or order.

(c) A loan broker shall amend the disclosure statement required by subsection (b) whenever necessary to prevent it from containing any false or misleading statement of a material fact and shall deliver a copy of the amended disclosure statement to the commissioner on or before the date of the amendment.

(d) A loan broker shall deliver to any person who proposes to become obligated for a loan an estimated disclosure statement

if the creditor would be required to deliver to the person a disclosure statement under the Truth-in-Lending Act (15 U.S.C. 1601-1667-e) for the transaction. The estimated disclosure statement:

(1) Shall be delivered to the person before the person becomes contractually obligated on the loan; or

(2) Shall be delivered or placed in the mail to the person not later than three business days after the person enters into an agreement with the loan broker;

whichever occurs first. The estimated disclosure statement must contain all of the information and be in the form required by the Truth-in-Lending Act (15 U.S.C. 1601-1667e) and regulations under the Act. However, the annual percentage rate, finance charge, total of payments, and other matters required under the Truth-in-Lending Act (15 U.S.C. 1601-1667e) shall be adjusted to reflect the amount of all fees and charges of the loan broker that the creditor could exclude from a disclosure statement. The disclosure statement must state at the top in at least 10 point type: "The following is an estimated disclosure statement showing your loan transaction as if the fees and charges you are scheduled to pay us were charged to you directly by the creditor." After the estimated disclosure statement is delivered to any person, the loan broker shall deliver to the person an additional statement redisclosing all items if the actual annual percentage rate will vary from the annual percentage rate contained in the original estimated disclosure by more than 0.125%. Any required additional disclosure statement shall be



delivered or placed in the mail before consummation of the loan or after three days from when the information that requires redisclosure becomes available, whichever occurs first.

**Section 9.** To be enforceable, every contract for the services of a loan broker shall be in writing and signed by all contracting parties. The borrowing party shall retain a copy of the signed contract at the time it is signed.

**Section 10.** (a) The commissioner may deny, suspend, or revoke the registration of a loan broker if the loan broker:

(1) Fails to maintain the bond required under section 5 of this act;

(2) Is solvent;

(3) Has violated any provision of this act;

(4) Has filed with the commissioner any document or statement containing any false representation of a material fact or omitting to state a material fact;

(5) Has been convicted, within 10 years before the date of the application, renewal, or review, of any crime involving fraud or deceit.

(b) The commissioner may not enter a final order denying, suspending, or revoking the registration of a loan broker without prior notice to all interested parties, opportunity for a hearing, and written findings of fact and conclusions of law. However, the commissioner may by summary order deny, suspend, or revoke a registration pending final determination of any proceeding under this section. Upon the entry of a summary order, the commissioner shall promptly notify all interested

parties that it has been entered, of the reasons for the summary order, and that upon receipt by the commissioner of a written request from a party, the matter will be set for hearing which shall be conducted in accordance with the provisions of the Kansas administrative procedures act. If no hearing is requested and none is ordered by the commissioner, the order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of the hearing has been given to all interested persons and the hearing has been held, may modify or vacate the order or extend it until final determination.

**Section 11.** (a) The commissioner may do the following:

(1) Adopt rules and regulations to implement this act.

(2) Make investigations and examinations:

(A) In connection with any application for registration of any loan broker or any registration already granted; or

(B) whenever it appears to the commissioner, upon the basis of a complaint or information, that reasonable grounds exist for the belief that an investigation or examination is necessary or advisable for the more complete protection of the interests of the public.

(3) Charge as costs of investigation or examination all reasonable expenses, including a per diem prorated upon the salary of the commissioner or employee and actual traveling and hotel expenses. All reasonable expenses are to be paid by the party or parties under investigation or examination.

(4) Issue notices and orders, including cease and desist

notices and orders, after making an investigation or examination under subsection (2). The commissioner may also bring an action on behalf of the state to enjoin a person from violating this act. The commissioner shall notify the person that an order or notice has been issued, the reasons for it, and that a hearing will be set in accordance with the provisions of the Kansas administrative procedures act after the commissioner receives a written request from the person requesting a hearing.

(5) Sign all orders, official certifications, documents, or papers issued under this act or delegate the authority to sign any of those items to a deputy.

(6) Hold and conduct hearings.

(7) Hear evidence.

(8) Conduct inquiries with or without hearings.

(9) Receive reports of investigators or other officers or employees of the state of Kansas or of any municipal corporation or governmental subdivision within the state.

(10) Administer oaths, or cause them to be administered.

(11) Subpoena witnesses, and compel them to attend and testify.

(12) Compel the production of books, records, and other documents.

(13) Order depositions to be taken of any witness residing within or without the state. The depositions shall be taken in the manner prescribed by law for depositions in civil actions and made returnable to the commissioner.

(b) If any person refuses to obey a subpoena issued under

this act, the commissioner may make application to any court of competent jurisdiction to order the person to appear before the commissioner and produce documentary evidence or give evidence as directed in the subpoena. The failure to obey the order of the court shall be subject to punishment by the court as contempt of court.

(c) No person shall be excused from complying with a subpoena on the ground that the testimony or evidence required may tend to incriminate the person or subject the person to a penalty or forfeiture. No individual may be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter, or thing which the individual is compelled to testify or produce evidence, after claiming the privilege against self-incrimination. However, the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(d) In any prosecution, action, suit, or proceeding based upon or arising out of this chapter, the commissioner may sign a certificate showing compliance or noncompliance with this chapter by any loan broker. This shall constitute prima facie evidence of compliance or noncompliance with this act and shall be admissible in evidence in any section at law or in equity to enforce this act.

**Section 12.** Copies of any statement or document filed with the commissioner, and copies of any records of the commissioner, certified to by the commissioner are admissible in any prosecution, action, suit, or proceeding based upon, or arising

out of or under, the provisions of this act to the same effect as the original of the statement, document, or record would be if actually produced.

**Section 13.** (a) If the commissioner determines, after notice and opportunity for a hearing, that a person has violated this act, the commissioner may, in addition to all other remedies, impose a civil penalty upon the person in an amount not to exceed \$5,000 for each violation.

(b) The commissioner may bring an action in the district court of Shawnee County to enforce payment of any penalty imposed under this section.

**Section 14.** Any person who violates this act, in connection with a contract for the services of a loan broker, is liable to any person damaged by the violation, for the amount of the actual damages suffered, interest at the legal rate, and attorney's fees. If a loan broker violates any provision of this act, in connection with a contract for loan brokering services, the contract is void, and the prospective borrower is entitled to receive from the loan broker all sums paid to the loan broker.

**Section 15.** Any person who willfully violates this act commits a class E felony.

**Section 16.** (a) If a transaction for which a loan broker has charged any fee or collected any costs is rescinded by any person under the provisions of the Truth-in-Lending Act (15 U.S.C. 1601-1667e) within 20 calendar days after a notice of the rescission has been delivered to the creditor, the loan broker shall return to the person any money or property that has been

given to the loan broker, including property or money the loan broker delivered or directed to third parties.

(b) For purposes of calculating the time period during which a person may avoid a contract under K.S.A. 50-640 and amendments thereto, a contract with a loan broker shall be considered to be a sale of services that occurs on the date the person receives the disclosure statement required by section 8(d) of this act.

**Section 17.** (a) Each loan broker agreement shall be given an account number and all instruments taken in connection with that agreement must bear this number. Each loan broker shall keep and maintain the following records or their equivalent:

(1) A loan broker agreement register that consists of a chronological listing of all loan broker agreements that have been entered into. For each loan broker agreement the register must contain the following:

- (A) The account number.
- (B) the date of the agreement.
- (C) the name of the borrower or any proposed borrower.
- (D) the amount of any fees charged.
- (E) the cost and type of any insurance required.

(2) A file for each borrower or proposed borrower that contains the following:

(A) The name and address of the borrower or any proposed borrower.

(B) a copy of the signed loan broker agreement.

(C) a copy of any other papers or instruments used in

connection with the loan broker agreement and signed by the borrower or any proposed borrower, including a copy of the disclosure statement required by section 8(d) of this act that contains an acknowledged receipt by the borrower or any proposed borrower.

(D) if a loan was obtained for the borrower, the name and address of the creditor.

(E) if a loan is accepted by the borrower, a copy of the loan agreement.

(F) the amount of the loan broker's fee that the borrower has paid. If there is an unpaid balance, the status of any collection efforts.

(3) All receipts from or for the account of borrowers or any proposed borrowers and all disbursements to or for the account of borrowers or any proposed borrowers, recorded so that the transactions are readily identifiable.

(4) A general ledger that shall be posted at least monthly, and a trial balance sheet and profit and loss statement prepared within 30 days of the commissioner's request for the information.

(5) A copy of:

(A) All advertisements, pamphlets, circulars, letters, articles, or communications published in any newspaper, magazine, or periodical;

(B) scripts of any recording, radio, or television announcement; and

(C) any sales kits or literature;  
to be used in solicitation of borrowers.

(b) The records listed in subsection (a) shall be kept for a period of six years in the loan broker's principal office and must be separate or readily identifiable from the records of any other business that is conducted in the office of the loan broker.

**Section 18.** (a) The following persons are exempt from the requirements of sections 4, 5, 6, 8, 9, 16, and 17 of this act:

(1) Any attorney while engaging in the practice of law.

(2) Any certified public accountant, public accountant, or accounting practitioner holding a certificate or registered under K.S.A. 1-302 and amendments thereto while acting as a certified public accountant.

(3) Any person licensed as a real estate broker or salesperson under K.S.A. 58-3039 and amendments thereto while rendering services in the ordinary course of a transaction in which a license as a real estate broker or salesperson is required.

(4) Any broker-dealer, agent, or investment advisor registered under K.S.A. 17-1254 and amendments thereto.

(5) Any person whose fee is wholly contingent on the successful procurement of a loan from a third party and to whom no fee, other than a bona fide third party fee, is paid before the procurement. However, a person described in this subdivision shall comply with section 8(d) of this act unless the creditor pays the fee directly to the broker without any additional cost being charged to the borrower.

(6) Any person who is a creditor, or proposed to be a



creditor, for any loan.

(b) As used in this section, "bona fide third party fee" includes fees for:

- (1) Credit reports, appraisals, and investigations; and
- (2) If the loan is to be secured by real property, title examinations, an abstract of title, title insurance, a property survey, and similar purposes.

(c) As used in this section, "successful procurement of a loan" means that a binding commitment from a creditor to advance money has been received and accepted by the borrower.

(d) The burden of proof of any exemption or classification provided in this act is on the party claiming the exemption or classification.

**Section 19.** A loan broker shall not, in connection with a contract for the services of a loan broker, either directly or indirectly, do any of the following:

- (1) Employ any device, scheme, or artifice to defraud.
- (2) Make any untrue statements of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of circumstances under which they are made, not misleading.
- (3) Engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.

SENATE BILL NO. \_\_\_\_\_

By Committee on Agriculture

AN ACT concerning the grain inspection department; relating to fees; amending K.S.A. 34-103a and repealing the existing section.

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

Section 1. K.S.A. 34-103a is hereby amended to read as follows: 34-103a. (a) The Kansas state grain inspection department shall collect from an applicant requesting services a fee for such services rendered by the department. Such fees shall be determined and fixed by the director by rules and regulations. Prior to determining and fixing such fees, the director shall consider recommendations thereon by the state grain advisory commission. Such fees shall not be more than the amounts shown in the following fee schedule:

|  | Not more<br>than |
|--|------------------|
| Hopper car, per inspection or reinspection.....                | \$ 20.00         |
| Extra sample secured at time of original, per<br>request.....  | 6.00             |
| New sample secured after original, per request....             | 7.00             |
| Boxcar direct transfer, per inspection or<br>reinspection..... | 10.00            |
| Extra sample secured at time of original, per<br>request.....  | 5.00             |
| New sample secured after original, per request....             | 6.00             |
| Truck or trailer, per inspection or reinspection.....          | 10.00            |
| Extra sample secured at time of original, per<br>request.....  | 5.00             |
| Bin inspection, plus applicable sampler hourly rate..          | 7.00             |
| Submitted sample inspection, per sample.....                   | 7.00             |

*attachment 2*  
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|---|-----------------|
| Warehouse sample-lot inspection, per sample.....  | 10.00           |
| Diverter-type sample at points outside inspection<br>point switching limits, plus applicable sampler<br>hourly rate and mileage.....  | 10.00           |
| Barge inspection or reinspection, per 1,000 bu. or<br>fraction.....   | 5.00            |
| All reinspections of above carriers based on file<br>sample.....  | 7.00            |
| Initial checktest and approve country point<br>diverter-type samplers and train elevator sampler,<br>plus hourly and travel time rate and mileage.....  | 60.00           |
| Diverter-type review checktest visits at country<br>points, hourly rate plus mileage.....   | 16.00           |
| Checktesting diverter-type samplers at terminal<br>points, hourly rate (with one hour minimum fee)...   | 16.00           |
| Protein initial or reinspection.....  | 5.00            |
| <del>Factor-only-analysis---class-only.....</del>   | <del>5.00</del> |
| <del>Factor-only-determination,-moisture.....</del>   | <del>3.00</del> |
| <u>Factor only determination, one factor.....</u>   | <u>5.00</u>     |
| <u>Factor only determination, 2 or more factors, per<br/>factors (not to exceed full grade fee).....</u>  | <u>5.00</u>     |
| Each approved statement requested in addition to<br>grade requirement.....  | 5.00            |
| Duplicate certificate.....  | 3.00            |
| Stowage examination, hopper or boxcar, per request...   | 10.00           |
| Stowage examination, barge, per request.....  | 15.00           |
| DHV count.....  | 7.00            |
| Charge for services performed on overtime (after<br>eight hours per day) by state grain personnel upon<br>request by grain industry, including Saturdays,<br>Sundays and holidays, per overtime hour..... | 16.00           |
| Charge per hour for sampler or weigher by special<br>arrangement, per man.....  | 16.00           |
| Edible bean inspection (official warehouse lot), per<br>certificate.....  | 25.00           |

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| Edible bean inspection (official car sample), per certificate.....   | 25.00            |
| Edible bean inspection (official truck sample), per certificate.....   | 20.00            |
| Edible bean inspection (submitted sample), per certificate.....  | 15.00            |
| Edible bean inspection sampling fee, check weighing or checkloading, per hour.....   | 16.00            |
| <del>Hopper-car,-boxcar-or-direct-transfer,-per-weight....</del>   | <del>8.00</del>  |
| <u>Hopper car, boxcar or direct transfer, per class I weight, 100% supervision (Minimum of 2 cars weighed per hour or hourly charges apply on top of weighing charge).....</u> | <u>8.00</u>      |
| <u>Hopper car, boxcar or direct transfer per class II weight, 25% supervision.....</u>   | <u>5.00</u>      |
| Barge weight, per 1,000 bu. or fraction.....   | 5.00             |
| Truck or trailer, per weight.....  | 8.00             |
| House transfer weight, per 1,000 bu. or fraction.....  | 5.00             |
| Weigh-up, annual, per 1,000 bu. or fraction.....   | 3.00             |
| In weighing, sacked cars, per manhour.....   | 16.00            |
| Out weighing, sacked cars, with count, per manhour...  | 16.00            |
| Out weighing, sacked cars, with count and weight each sack, per manhour.....   | 16.00            |
| Hopper scale per test.....   | 150.00           |
| Hopper scale per F.G.I.S. test, plus hourly charge on site.....  | 150.00           |
| Hopper scale at points where certified weights are not issued, plus mileage and subsistence.....   | 150.00           |
| <del>Checktesting-large-weights.....</del>   | <del>75.00</del> |
| <del>Fee-per-hour,-checktesting-large-weights.....</del>   | <del>11.00</del> |
| Mileage charge for special trips by the hopper testing scale truck, per mile.....  | 1.25             |
| Labor of scale inspector for repair work outside inspector's regular inspecting or adjusting of scale, per hour.....   | 16.00            |

Charge for services performed on call in or call back after designated working hours by state grain personnel upon request by grain industry, including Saturdays, Sundays and holidays, per hour (with two hours minimum fee).....:..... 16.00

(b) Where any service is performed in a business community where the department does not regularly maintain an inspection station, the department may charge for subsistence and transportation of personnel and equipment from the headquarters of such personnel to such point and return. Such charges shall be set by adoption of rules and regulations as provided by law. The director may fix the manner in which the charges are collected.

(c) If any person, warehouse or railroad corporation or any of their agents or employees refuses or prevents the officers of the department from having access to their scales, elevators, warehouses and other places in the regular performance of their duties in inspecting, sampling, sampling for inspection and weighing grain or other property in accordance with the tenor and meaning of this act or any law now in force or that may be enacted in relation to the same, such persons or corporations shall be guilty of a misdemeanor.

Sec. 2. K.S.A. 34-103a is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the Kansas register.