

Approved March 1, 1988
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 29, 1988 in room 529-S of the Capitol.

All members were present except:

Senators Gannon, Harder, and Reilly - Excused

Committee staff present:

Bill Wolff, Legislative Research
Bill Edds, Revisor of Statutes

Conferees appearing before the committee:

M. Douglas Mays, Securities Commissioner
Alice Devine, Kansas State Board of Agriculture

The minutes of February 26 were approved.

The hearing began on SB 675 concerning the regulation of loan brokers. Mr. Douglas Mays, Securities Commissioner, testified in support of the bill and offered technical amendments to it. (See Attachments I and II.) He explained that the bill had been introduced by the Agriculture Committee because its impact is almost exclusively on farmers.

The Chairman asked what the penalty is for failure to register, and Mr. Mays answered that it is a Class E felony. Sen. Gordon expressed his concerns as to how the bill would affect the legitimate broker and if it would require more personnel. Mr. Mays explained that all regulated financial services are exempt from the bill and that there are next to no loan brokers in Kansas now, and if they are legitimate, they would welcome this bill. He also called attention to the technical amendment regarding CPAs. As to the concern about hiring more personnel, Mr. Mays said it would not be necessary.

Sen. Werts had questions as to how the bill would relate to the home improvement contractor who arranges for financing for the customer and in doing so, sells the loan. Roger Walter, counsel for the Securities Commissioner, answered that the answer lies in Section 16, page 11, of the bill where the contractor would be exempted from everything except the anti-fraud section. Sen. Kerr asked how a person would come under this act if he offers a service of putting together a business plan for someone so that that person can procure a loan and asks for up-front money for the service. Mr. Mays said he would not come under the bill unless there is an explicit contract that sets out that the fee is for obtaining a loan.

Sen. Karr said that in his area similar activity as described by Mr. Mays took place. Money was being asked for in two forms: (1) to help them do an appraisal, but there weren't appraisers and (2) money for auctioneering or advertizing. Sen. Karr asked if this bill covers these "legitimate services" to get a loan. Mr. Walter answered that if the fee was charged for services, the act would not cover it, but it would be covered under deceptive practices.

With regard to the technical corrections, staff passed out a balloon of the bill. (See Attachment III.)

Alice Devine, Kansas State Board of Agriculture, stood to express her support of SB 675.

Attention was turned to the balloon of the bill. Sen. Karr asked if the wording in the balloon matches what was requested by Mr. Mays. Staff said the wording is different only on page 10 of the balloon, although it is not a substantial difference. On lines 364-371, "engaged" is changed to "acting" as a CPA. Sen. Werts

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.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,
room 529-S, Statehouse, at 9:00 a.m./~~p.m.~~ on February 29, 1988.

asked why public accountants was stricken under Section 16. Staff explained that Kansas does not regulate public accountants.

Sen. Kerr said that on page 4, item 8, of the balloon, the cost of a certified audit could be a significant investment. Mr. Mays said that a legitimate loan broker would welcome an audit, however, it could be lowered to a review which is not as expensive, or he would be willing to eliminate it from the bill.

Sen. Kerr made a motion to strike everything after "fiscal year" on page four, lines 130-133, of the balloon, Sen. Werts seconded, and the motion carried.

The Chairman asked Mr. Mays how prevalent this type activity is, and Mr. Mays answered that it comes and goes. There was not much last year, but prior to that, there was more. They prey on farmers during bad times.

Sen. Karr made a motion that the other clean-up amendments be inserted in the bill, Sen. Gordon seconded, and the motion carried.

Sen. Strick made a motion to report SB 675 favorable for passage as amended, Sen. Werts seconded, and the motion carried.

The meeting was adjourned.

SENATE COMMITTEE

ON

FINANCIAL INSTITUTIONS AND INSURANCE

OBSERVERS
(Please print)

| DATE | NAME | ADDRESS | REPRESENTING |
|------|-----------------|---------|-------------------------------|
| 2/29 | JOE A. MORRIS | TOPEKA | KLSI |
| 2/29 | ALVIN G. DENNIS | Topeka | Ks State Board of Agriculture |
| 2/29 | ROGER WATTS | TOPEKA | Ks Sec Com |
| " | Doug Mays | " | Ks Sec. Commissioner |
| " | Tom Peterson | Topeka | KSCPA |
| " | J. Stanger | " | CCC |
| " | LARRY MAGILL | " | IIAK |

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 I

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
Umberger Hall 129
Manhattan, Kan. 66506
913-532-5804

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

STATE OF KANSAS



OFFICE OF THE SECURITIES COMMISSIONER

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(913) 296-3307

Mike Hayden,
Governor

M. Douglas Mays
Securities Commissioner

M E M O

TO: Senator Neil H. Arasmith
FROM: M. Douglas Mays, Securities Commissioner
DATE: February 29, 1988
RE: Senate Bill No. 675; Technical corrections

Please consider the following technical corrections to SB675 for recommendation to the Senate Committee on Financial Institutions and Insurance. We have been advised that SB675 is set for hearing at 9:00 a.m. on Monday, February 29, 1988.

The section references under Sec. 16 of the bill are incorrect because Sections 1 and 2 of the bill draft as submitted were combined with Sec. 3 and re-referenced as Sec. 1. The corrected references under Sec. 16 should be "... sections 2, 3, 4, 6, 7, 8, 14 and 15 of this act:".

Sec. 16.(a)(2) should be revised to "any certified public accountant with a permit to practice under K.S.A. 1-310, while engaged in practice as a certified public accountant;". This correction is necessary because only certified public accountants are regulated under the accountancy statutes and therefore, non-certified public accountants should not be exempted from the proposed act.

Sec. 6(b)(8) should be revised to "financial statements in conformity with generally accepted accounting principles as of the end of the last fiscal year of the loan broker, examined and reported on by a certified public accountant in accordance with generally accepted auditing standards;". This change is also necessary to be consistent with provisions of Kansas accountancy statutes.

The changes affecting CPA's above are supported by KSCPA, whose Executive Director, T. C. Anderson, has been in contact with this office.

MDM:dec

Attachment II

SENATE BILL No. 675

By Committee on Agriculture

2-19

0016 AN ACT concerning the regulation of loan brokers.

0017 *Be it enacted by the Legislature of the State of Kansas:*

0018 Section 1. As used in this act:

0019 (a) "Commissioner" refers to the securities commissioner
0020 appointed under K.S.A. 75-6301, and amendments thereto.

0021 (b) "Loan" means any agreement to advance money or prop-
0022 erty in return for the promise to make payments for the money or
0023 property.

0024 (c) "Loan broker" means any person who, in return for any
0025 consideration from any person, promises to procure a loan for any
0026 person or assist any person in procuring a loan from any third
0027 party, or who promises to consider whether or not to make a loan
0028 to any person. Loan broker does not include:

0029 (1) Any bank, savings bank, trust company, savings and loan
0030 association, credit union or any other financial institution regu-
0031 lated by any agency of the United States or any state except any
0032 person who is a financial institution solely because of a license to
0033 make consumer loans under K.S.A. 16a-2-302, and amendments
0034 thereto, or solely because of a similar license from another state;

0035 (2) any person authorized to sell and service loans for the
0036 federal national mortgage association or the federal home loan
0037 mortgage corporation, issue securities backed by the government
0038 national mortgage association, make loans insured by the de-
0039 partment of housing and urban development, make loans
0040 guaranteed by the veterans administration, or act as a corre-
0041 spondent of loans insured by the department of housing and
0042 urban development or guaranteed by the veterans administra-
0043 tion;

0044 (3) any insurance company; or

0045 (4) any person arranging financing for the sale of the person's
0046 product.

0047 (d) "Creditor" means any person to whom a loan is initially
0048 payable on the face of the note or contract evidencing the loan.

0049 Sec. 2. It shall be unlawful for any person to engage in the
0050 business of loan brokering unless registered under this act.

0051 Sec. 3. (a) In order to be registered under this act a loan
0052 broker shall file an application for registration with the commis-
0053 sioner. The application for registration shall contain:

0054 (1) The disclosure document required under subsection (b)
0055 of section 6 and the form of the disclosure statement proposed to
0056 be used under subsection (b)(1) of section 6;

0057 (2) consent to service of process under subsection (e);

0058 (3) evidence of the bond required in subsection (b); and

0059 (4) a fee of \$250.

0060 (b) A loan broker must maintain a bond satisfactory to the
0061 commissioner in the amount of \$25,000, which shall be in favor
0062 of the state.

0063 (c) Whenever the provisions of this act have been complied
0064 with, the commissioner shall issue a certificate of registration to
0065 the applicant, authorizing the applicant to engage in the business
0066 of loan brokering.

0067 (d) An application for registration becomes effective 30 days
0068 after it is filed, unless an order of the commissioner establishes
0069 an earlier effective date. Every registration is effective until
0070 January 1 of the year after it goes into effect.

0071 (e) Every applicant for registration shall file with the com-
0072 missioner, in such form as the commissioner prescribes by rules
0073 and regulations, an irrevocable consent appointing the secretary
0074 of state to be the applicant's agent to receive service of any
0075 lawful process in any noncriminal suit, action or proceeding
0076 against the applicant arising from the violation of any provision
0077 of this act. Service shall be made in accordance with article 3 of
0078 chapter 60 of the Kansas Statutes Annotated.

0079 Sec. 4. (a) A loan broker may not continue engaging in the
0080 business of loan brokering unless the broker's registration is
0081 renewed annually. A loan broker shall renew the registration by

0082 filing with the commissioner, at least 30 days before the expira-
0083 tion of the registration, an application containing any information
0084 the commissioner may require to indicate any material change
0085 from the information contained in the applicant's original appli-
0086 cation or any previous application.

0087 (b) An application for renewal must be accompanied by a fee
0088 of \$100.

0089 Sec. 5. All fees and funds accruing from the administration of
0090 this act shall be accounted for by the commissioner and shall be
0091 deposited with the state treasurer who shall deposit them in the
0092 state general fund.

0093 Sec. 6. (a) At least seven days before the time any person
0094 signs a contract for the services of a loan broker, or seven days
0095 before the loan broker receives any consideration upon the
0096 contract, whichever occurs first, the loan broker must provide to
0097 the contracting person a written disclosure document that meets
0098 the requirements set forth in subsection (b).

0099 (b) A written disclosure statement shall contain the following
0100 information:

0101 (1) A disclosure statement which shall be the cover sheet and
0102 shall be entitled in at least 10 point boldface capital letters
0103 "DISCLOSURES REQUIRED BY KANSAS LAW." Under this
0104 title shall appear the statement in at least 10 point type that "The
0105 Kansas securities commissioner has not reviewed and does not
0106 approve, recommend, endorse or sponsor any loan brokerage
0107 contract. The information contained in this disclosure has not
0108 been verified by the commissioner. If you have any questions
0109 see an attorney before you sign a contract or agreement." Noth-
0110 ing except the title and the required statement shall appear on
0111 the cover sheet;

0112 (2) the name and form of organization of the broker, the
0113 names under which the broker has done, is doing, or intends to
0114 do business, and the name of any parent organization or affiliate
0115 of the broker;

0116 (3) the names, addresses and titles of the broker's officers,
0117 directors, trustees, general partners, general managers, principal
0118 executives and any other person performing similar duties;

0119 (4) the length of time the broker has conducted business as a
0120 loan broker;

0121 (5) a full and detailed description of the actual services that
0122 the loan broker undertakes to perform for the prospective bor-
0123 rower;

0124 (6) the number of loan brokerage contracts the broker has
0125 entered into within the past 12 months;

0126 (7) the number of loan brokerage contracts in which the
0127 broker has successfully obtained a loan for the prospective bor-
0128 rower within the last 12 months and the dollar amount of the
0129 loans;

0130 (8) ~~a balance sheet and statement of operations for the loan~~
0131 ~~broker's last fiscal year, prepared in accordance with generally~~
0132 ~~accepted accounting principals by a certified or independent~~
0133 ~~public accountant;~~

0134 (9) a specific statement of the circumstances under which the
0135 broker will be entitled to obtain or retain consideration from the
0136 party with whom the broker contracts; and

0137 (10) any other information the commissioner may require by
0138 rules and regulations.

0139 (c) A loan broker shall amend the disclosure document re-
0140 quired by subsection (b) whenever necessary to prevent it from
0141 containing any false or misleading statement of a material fact
0142 and shall deliver a copy of the amended disclosure document to
0143 the commissioner on or before the date of the amendment.

0144 (d) A loan broker shall deliver to any person who proposes to
0145 become obligated for a loan an estimated disclosure document if
0146 the creditor would be required to deliver to the person a dislo-
0147 sure document under the Truth-in-Lending Act (15 U.S.C.
0148 1601-1667e) for the transaction. The estimated disclosure docu-
0149 ment shall:

0150 (1) Be delivered to the person before the person becomes
0151 contractually obligated on the loan; or

0152 (2) be delivered or placed in the mail to the person not later
0153 than three business days after the person enters into an agree-
0154 ment with the loan broker whichever occurs first. The estimated
0155 disclosure document must contain all of the information and be

financial statements in conformity with generally accepted accounting principles as of the end of the last fiscal year of the loan broker, examined and reported on by a certified public accountant, in accordance with generally accepted auditing standards.

0156 in the form required by the Truth-in-Lending Act (15 U.S.C.
0157 1601-1667e) and regulations under the act. However, the annual
0158 percentage rate, finance charge, total of payments and other
0159 matters required under the Truth-in-Lending Act (15 U.S.C.
0160 1601-1667e) shall be adjusted to reflect the amount of all fees and
0161 charges of the loan broker that the creditor could exclude from an
0162 estimated disclosure document. The estimated disclosure docu-
0163 ment must state at the top in at least 10 point type: "The
0164 following is an estimated disclosure document showing your
0165 loan transaction as if the fees and charges you are scheduled to
0166 pay us were charged to you directly by the creditor." After the
0167 estimated disclosure document is delivered to any person, the
0168 loan broker shall deliver to the person an additional statement
0169 redisclosing all items if the actual annual percentage rate will
0170 vary from the annual percentage rate contained in the original
0171 estimated disclosure by more than 0.125%. Any required addi-
0172 tional disclosure document shall be delivered or placed in the
0173 mail before consummation of the loan or after three days from
0174 when the information that requires redisclosure becomes avail-
0175 able, whichever occurs first.

0176 Sec. 7. To be enforceable, every contract for the services of a
0177 loan broker shall be in writing and signed by all contracting
0178 parties.

0179 The borrowing party shall retain a copy of the signed contract
0180 at the time it is signed.

0181 Sec. 8. (a) The commissioner may deny, suspend or revoke
0182 the registration of a loan broker if the loan broker:

0183 (1) Fails to maintain the bond required under section 3 of this
0184 act;

0185 (2) is insolvent;

0186 (3) has violated any provision of this act;

0187 (4) has filed with the commissioner any document or state-
0188 ment containing any false representation of a material fact or
0189 omitting to state a material fact; or

0190 (5) has been convicted, within 10 years before the date of the
0191 application, renewal or review, of any crime involving fraud or
0192 deceit.

0193 (b) The commissioner may not enter a final order denying,
0194 suspending or revoking the registration of a loan broker without
0195 prior notice to all interested parties, opportunity for a hearing
0196 and written findings of fact and conclusions of law. The com-
0197 missioner may by summary order deny, suspend or revoke a
0198 registration pending final determination of any proceeding
0199 under this section. Upon the entry of a summary order, the
0200 commissioner shall promptly notify all interested parties that it
0201 has been entered, of the reasons for the summary order and, that
0202 upon receipt by the commissioner of a written request from a
0203 party, the matter will be set for hearing which shall be conducted
0204 in accordance with the provisions of the Kansas administrative
0205 procedures act. If no hearing is requested and none is ordered by
0206 the commissioner, the order remains in effect until it is modified
0207 or vacated by the commissioner. If a hearing is requested or
0208 ordered, the commissioner, after notice of the hearing has been
0209 given to all interested persons and the hearing has been held,
0210 may modify or vacate the order or extend it until final determi-
0211 nation.

0212 Sec. 9. (a) The commissioner may do the following:

0213 (1) Adopt rules and regulations to implement this act;

0214 (2) make investigations and examinations:

0215 (A) In connection with any application for registration of any
0216 loan broker or any registration already granted; or

0217 (B) whenever it appears to the commissioner, upon the basis
0218 of a complaint or information, that reasonable grounds exist for
0219 the belief that an investigation or examination is necessary or
0220 advisable for the more complete protection of the interests of the
0221 public;

0222 (3) charge as costs of investigation or examination all reason-
0223 able expenses, including a per diem prorated upon the salary of
0224 the commissioner or employee and actual traveling and hotel
0225 expenses. All reasonable expenses are to be paid by the party or
0226 parties under investigation or examination;

0227 (4) issue notices and orders, including cease and desist no-
0228 tices and orders, after making an investigation or examination
0229 under subsection (2). The commissioner may also bring an action

0230 on behalf of the state to enjoin a person from violating this act.
0231 The commissioner shall notify the person that an order or notice
0232 has been issued, the reasons for it and that a hearing will be set
0233 in accordance with the provisions of the Kansas administrative
0234 procedures act after the commissioner receives a written request
0235 from the person requesting a hearing;

0236 (5) sign all orders, official certifications, documents or papers
0237 issued under this act or delegate the authority to sign any of
0238 those items to a deputy;

0239 (6) hold and conduct hearings;

0240 (7) hear evidence;

0241 (8) conduct inquiries with or without hearings;

0242 (9) receive reports of investigators or other officers or em-
0243 ployees of the state of Kansas or of any municipal corporation or
0244 governmental subdivision within the state;

0245 (10) administer oaths or cause them to be administered;

0246 (11) subpoena witnesses and compel them to attend and
0247 testify;

0248 (12) compel the production of books, records and other doc-
0249 uments; and

0250 (13) order depositions to be taken of any witness residing
0251 within or without the state. The depositions shall be taken in the
0252 manner prescribed by law for depositions in civil actions and
0253 made returnable to the commissioner.

0254 (b) If any person refuses to obey a subpoena issued under
0255 this act, the commissioner may make application to any court of
0256 competent jurisdiction to order the person to appear before the
0257 commissioner and produce documentary evidence or give evi-
0258 dence as directed in the subpoena. The failure to obey the order
0259 of the court shall be subject to punishment by the court as
0260 contempt of court.

0261 (c) No person shall be excused from complying with a sub-
0262 poena on the ground that the testimony or evidence required
0263 may tend to incriminate the person or subject the person to a
0264 penalty or forfeiture. No individual may be prosecuted or subject
0265 to any penalty or forfeiture for or on account of any transaction,
0266 matter or thing which the individual is compelled to testify or

0267 produce evidence, after claiming the privilege against self-in-
0268 crimination. However, the individual so testifying shall not be
0269 exempt from prosecution and punishment for perjury committed
0270 in so testifying.

0271 (d) In any prosecution, action, suit or proceeding based upon
0272 or arising out of this act, the commissioner may sign a certificate
0273 showing compliance or noncompliance with this act by any loan
0274 broker. This shall constitute prima facie evidence of compliance
0275 or noncompliance with this act and shall be admissible in evi-
0276 dence in any section at law or in equity to enforce this act.

0277 Sec. 10. Copies of any statement or document filed with the
0278 commissioner, and copies of any records of the commissioner,
0279 certified to by the commissioner are admissible in any prosecu-
0280 tion, action, suit or proceeding based upon, or arising out of or
0281 under, the provisions of this act to the same effect as the original
0282 of the statement, document or record would be if actually pro-
0283 duced.

0284 Sec. 11. (a) If the commissioner determines, after notice and
0285 opportunity for a hearing, that a person has violated this act, the
0286 commissioner may, in addition to all other remedies, impose a
0287 civil penalty upon the person in an amount not to exceed \$5,000
0288 for each violation.

0289 (b) The commissioner may bring an action in the district
0290 court of Shawnee county to enforce payment of any penalty
0291 imposed under this section.

0292 Sec. 12. Any person who violates this act, in connection with
0293 a contract for the services of a loan broker, is liable to any person
0294 damaged by the violation, for the amount of the actual damages
0295 suffered, interest at the legal rate, and attorney fees. If a loan
0296 broker violates any provision of this act, in connection with a
0297 contract for loan brokering services, the contract is void, and the
0298 prospective borrower is entitled to receive from the loan broker
0299 all sums paid to the loan broker.

0300 Sec. 13. Any person who willfully violates this act commits a
0301 class E felony.

0302 Sec. 14. (a) If a transaction for which a loan broker has
0303 charged any fee or collected any costs is rescinded by any person

0304 under the provisions of the Truth-in-Lending Act (15 U.S.C
0305 1601-1667e) within 20 calendar days after a notice of the rescis-
0306 sion has been delivered to the creditor, the loan broker shall
0307 return to the person any money or property that has been given
0308 to the loan broker, including property or money the loan broker
0309 delivered or directed to third parties.

0310 (b) For purposes of calculating the time period during which
0311 a person may avoid a contract under K.S.A. 50-640, and amend-
0312 ments thereto, a contract with a loan broker shall be considered
0313 to be a sale of services that occurs on the date the person receives
0314 the disclosure document required by subsection (d) of section 6.

0315 Sec. 15. (a) Each loan broker agreement shall be given an
0316 account number and all instruments taken in connection with
0317 that agreement must bear this number. Each loan broker shall
0318 keep and maintain the following records or their equivalent:

0319 (1) A loan broker agreement register that consists of a chron-
0320 ological listing of all loan broker agreements that have been
0321 entered into. For each loan broker agreement the register shall
0322 contain the following:

0323 (A) The account number;

0324 (B) the date of the agreement;

0325 (C) the name of the borrower or any proposed borrower;

0326 (D) the amount of any fees charged; and

0327 (E) the cost and type of any insurance required.

0328 (2) A file for each borrower or proposed borrower shall con-
0329 tain the following:

0330 (A) The name and address of the borrower or any proposed
0331 borrower;

0332 (B) a copy of the signed loan broker agreement;

0333 (C) a copy of any other papers or instruments used in con-
0334 nection with the loan broker agreement and signed by the
0335 borrower or any proposed borrower, including a copy of the
0336 disclosure document required by subsection (d) of section 6 that
0337 contains an acknowledged receipt by the borrower or any pro-
0338 posed borrower;

0339 (D) if a loan was obtained for the borrower, the name and
0340 address of the creditor;

0341 (E) if a loan is accepted by the borrower, a copy of the loan
0342 agreement; and

0343 (F) the amount of the loan broker's fee that the borrower has
0344 paid. If there is an unpaid balance, the status of any collection
0345 efforts.

0346 (3) All receipts from or for the account of borrowers or any
0347 proposed borrowers and all disbursements to or for the account
0348 of borrowers or any proposed borrowers, recorded so that the
0349 transactions are readily identifiable.

0350 (4) A general ledger that shall be posted at least monthly, and
0351 a trial balance sheet and profit and loss statement prepared
0352 within 30 days of the commissioner's request for the information.

0353 (5) A copy of:

0354 (A) All advertisements, pamphlets, circulars, letters, articles
0355 or communications published in any newspaper, magazine or
0356 periodical;

0357 (B) scripts of any recording, radio or television announce-
0358 ment; and

0359 (C) any sales kits or literature to be used in solicitation of
0360 borrowers.

0361 (b) The records listed in subsection (a) shall be kept for a
0362 period of six years in the loan broker's principal office and must
0363 be separate or readily identifiable from the records of any other
0364 business that is conducted in the office of the loan broker.

0365 Sec. 16. (a) The following persons are exempt from the re-
0366 quirements of sections ~~4, 5, 6, 8, 9, 16 and 17~~ of this act:

2, 3, 4, 6, 7, 8, 14 and 15

0367 (1) Any attorney while engaging in the practice of law;

0368 (2) any certified public accountant, ~~public accountant or ac-~~
0369 ~~counting practitioner holding a certificate or registered under~~
0370 ~~K.S.A. 1-302~~, and amendments thereto, while acting as a certified

with a permit to practice under K.S.A. 1-310

0371 public accountant;

0372 (3) any person licensed as a real estate broker or salesperson
0373 under K.S.A. 58-3039, and amendments thereto, while rendering
0374 services in the ordinary course of a transaction in which a license
0375 as a real estate broker or salesperson is required;

0376 (4) any broker-dealer, agent or investment advisor registered
0377 under K.S.A. 17-1254, and amendments thereto;

0378 (5) any person whose fee is wholly contingent on the suc-
0379 cessful procurement of a loan from a third party and to whom no
0380 fee, other than a bona fide third party fee, is paid before the
0381 procurement. However, a person described in this subdivision
0382 shall comply with subsection (d) of section 6 unless the creditor
0383 pays the fee directly to the broker without any additional cost
0384 being charged to the borrower; and

0385 (6) any person who is a creditor, or proposed to be a creditor,
0386 for any loan.

0387 (b) As used in this section, "bona fide third party fee" in-
0388 cludes fees for:

0389 (1) Credit reports, appraisals and investigations; and

0390 (2) if the loan is to be secured by real property, title exami-
0391 nations, an abstract of title, title insurance, a property survey and
0392 similar purposes.

0393 (c) As used in this section, "successful procurement of a
0394 loan" means that a binding commitment from a creditor to
0395 advance money has been received and accepted by the bor-
0396 rower.

0397 (d) The burden of proof of any exemption or classification
0398 provided in this act shall be on the party claiming the exemption
0399 or classification.

0400 Sec. 17. A loan broker shall not, in connection with a con-
0401 tract for the services of a loan broker, either directly or indirectly,
0402 do any of the following:

0403 (1) Employ any device, scheme or artifice to defraud;

0404 (2) make any untrue statements of a material fact or omit to
0405 state a material fact necessary in order to make the statements
0406 made, in the light of circumstances under which they are made,
0407 not misleading; or

0408 (3) engage in any act, practice or course of business that
0409 operates or would operate as a fraud or deceit upon any person.

0410 Sec. 18. This act shall take effect and be in force from and
0411 after its publication in the statute book.