Approved Clyde Graeber 3/29/90
Date

MINUTES OF THE HOUSE COMMITTEE ON Commercial and Financial Institutions.

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

3:30 ~~a~~p.m./p.m. on March 15, 1990 in room 527-S of the Capitol.

All members were present except: Representatives J. C. Long and George Teagarden, Excused.

Committee staff present: Bill Wolff, Research Department
Bruce Kinzie, Revisor of Statutes
June Evans, Secretary

Conferees appearing before the committee: Michael Heitman, Kansas Banking Department
Douglass Mays, Kansas Securites Commissioner

The Chairman called the meeting to order and stated that no action was taken on HB 2992 at the last meeting on March 13 as one member of the Committee suggested the wording be changed to better state the intent of the bill.

Michael Heitman, Kansas Banking Department, was the first conferee, amending the wording to read as follows: "The legality of a loan or written commitment to advance funds under the provisions of subsection a and b, whichever occurs first shall be determined as of the date the loan or written commitment to advance funds is made."

After discussion, Representative Schauf moved that HB 2992 be taken off the Table and amended with the above change of wording. Representative Green seconded the motion and the motion carried.

Representative Dillon moved and Representative Cates seconded that HB 2992 be passed out of committee as amended. The motion carried. Representative Shallenburger voted "No" and wished to be recorded. (See Attachment #1)

The Chairman stated that HB 2993 that was heard earlier, and members thought it was passed out as amended. Representative Shallenburger suggested after reading the minutes that HB 2993 did not pass out "as amended". The bill was referred back to the committee from the Clerk per the request of the Chairman. The Bank Commissioner requested this bill; therefore, it was placed again before the Committee.

Staff reviewed the former amendments considered by the Committee. After discussion Representative King moved and Representative Cates seconded the acceptance of the formerly made amendment. The motion carried.

Representative Schauf moved and Representative Eckert seconded that HB 2993 be moved out of Committee as amended. The motion carried.

The Chairman opened the hearing on HB 3017, an Amendment to K.S.A. 17-1266 (a) of the Kansas Securities Act to grant the Securities Commissioner the power to bar or suspend any person from association with any registered broker-dealer or investment advisor in Kansas. (See Attachment #2)

Doug Mays, Securities Commissioner testified this change is needed for two reasons: (1) Individuals who have had their licenses revoked for violations of the Securities Act are immediately re-entering the industry to assuming non-licensed positions within securities firms. This "back door" approach allows them to circumvent the law and perform the same activities (including criminal behavior) for which their original registration was revoked. They generally represent themselves either as owners or executives with no managerial responsibilities, or as "independent" consultants who have contracted with the firm.

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.

(2) A number of cases have issued an order to revoke an agent licensed to conduct business in Kansas but residing in another state (there are approximately 35,000 such agents). The hearing was closed.

The Chairman opened the hearing on HB 3018, an Act relating to securities; concerning violations; penalties; amending K.S.A. 17-1267 and repealing the existing section.

Doug Mays, Securities Commissioner, stated that presently, violations of the Kansas Securities Act are unclassified felonies, punishable by a fine of up to $5,000 or imprisonment of up to three years, or both, for each violation. Classification of these crimes is necessary for two reasons: (1) Defense attorneys have repeatedly entered motions that charges be dismissed because the statute does not specifically classify a violation of the Act as a felony. Fortunately, each judge has ruled that, based on case law and the severity of the punishment outlined in the statute, violations of the Act are indeed felonious.

(2) By classifying securities fraud as a D felony, it will differentiate it from all other violations of the Act, acknowledging the extreme seriousness of the crime. Individuals who perpetrate these crimes generally prey upon middle-income retirees, in many cases wiping out the "nest-egg" that they have spent their lives accumulating. The hearing was closed. (See Attachment #3).

The hearing was opened on HB 3019, an Act relating to securities; concerning exempt securities; amending K.S.A. 17-1261 and repealing the existing section.

Doug Mays, Securities Commissioner testified that the 30 day prior to inception of a plan is unworkable and would like to delete that requirement. Another item Mr. Mays requested to to increase the filing fee from $50.00 to $100.00 for church filing fees. (See Attachment #4).

Representative Roper moved and Representative Dillon seconded to change the church filing fee from $50.00 to $100. The motion carried.

The Chairman asked the Committee what their wishes were regarding HB 3017.

Representative Shallenburger moved and Representative Roper seconded that HB 3017 be placed on the Consent Calendar. The motion carried.

Representative Wilbert moved and Representative Roper seconded that HB 3018 be placed on the Consent Calendar. The motion carried.

Representative Wilbert moved and Representative Dillon seconded that HB 3019 be placed on the Consent Calendar as amended and the motion carried.

The meeting adjourned at 4:15 P.M.

Date: 3/15/90

GUEST REGISTER

NAME	ORGANIZATION	ADDRESS
Michael S. Heitman	Banking Dept	Topeka
W. Newton Male	" "	"
Leland Brooks	" "	"
Doug Mays	Securities Commissioner	"
Jack Wright	Kansas Credit Union League	Topeka

(5) the total liability in the form of notes or drafts to any bank of any person, copartnership, association or corporation, including in the liability of a copartnership or association the greatest of the individual liabilities of the respective members thereof *other than limited partners who, under the limited partnership agreement, are not liable for the debts or actions of the limited partnership, and, except as provided herein for the liability of a limited partner*, and including in the liability of a member of a copartnership or association the liability of the copartnership or association, may exceed limitations otherwise imposed by this ~~section~~ subsection by 10% of the amount of the capital stock paid in and unimpaired and the unimpaired surplus fund of such bank provided that such total liability is secured as to payment by first lien or liens upon real estate in fee simple, to the extent of the value thereof, having an appraised value of not less, than twice the amount by which such total liability exceeds limitations otherwise imposed by this section, and where such excess liability is secured by lien instrument under the terms of which any installment payments are sufficient to amortize the entire principal amount of such excess liability within a period of not more than 20 years;

(6) the limitations of this ~~section~~ subsection shall not apply to time deposits which are considered to be loans to the extent such time deposits are insured by: (A) The federal deposit insurance corporation or its successors; or (B) the federal savings and loan insurance corporation or its successors~~.~~ .

~~(7) the legality of a loan hereunder shall be determined as of the date the loan is made.~~

~~(8)~~ the whole or that portion of any loan which is secured as to payment by a time deposit of the borrower in the bank in an amount equal to 115% of the amount of the indebtedness shall be exempt from any limitation under this subsection ~~(a).~~ (b) The

~~(b) (9) the~~ liability of any active officer or employee of any bank shall not exceed 5% of the amount of its paid-in and unimpaired capital stock and unimpaired surplus fund. Any loan made to any officer first must be approved by the board of directors and entered upon their minutes where the total liability of the officer to the bank, including the loan made, will exceed $10,000.

The limitations on liability of any active officer or employee under this subsection, shall be subject to the provisions of paragraphs 1 through 7 of subsection (a).

(c) The legality of a loan under the provisions of subsection (a) or (b), shall be determined as of the date the loan is made.

~~(c) (b)~~ For purposes of this section, the term "unimpaired surplus fund" includes all capital accounts (other than capital stock) derived from either paid-in capital funds or retained earnings, not subject to known charges, and which are considered interchangeable by resolution of the bank's board of directors. The state bank commissioner, with approval of the state banking board, may further define d

Att. 1

Atch #1

the term "unimpaired surplus fund" by regulation, and the provisions of article 4 of chapter 77, of the Kansas Statutes Annotated shall not be applicable to such regulation or regulations.

~~(d)~~ [c] The commissioner may order any excess loan reduced to the legal limit, and after 60 days from the receipt of the commissioner's order no bank shall carry the excess of such loan and a failure to comply with any order made hereunder shall be grounds for the hearing provided in K.S.A. 9-1805, and amendments thereto.

Sec. 2. K.S.A. 1989 Supp. 9-1104 is hereby repealed.

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

(e)

I. **HB 3017 Summary:** An amendment to K.S.A. 17-1266(a) of the Kansas Securities Act to grant the Securities Commissioner the power to bar or suspend any person from association with any registered broker-dealer or investment advisor in Kansas.

II. **Fiscal Impact:** None

III. **Policy Implications/Background:**
The power to bar individuals from the securities industry in Kansas is necessitated for two reasons. First, we are finding with alarming frequency that individuals who have had their licenses revoked for violations of the Securities Act are immediately reentering the industry by assuming non-licensed positions within securities firms. This "back-door" approach allows them to circumvent the law and perform the same activities (including criminal behavior) for which their original registration was revoked. They generally represent themselves either as owners or executives with no managerial responsibilities, or as "independent" consultants who have contracted with the firm.

Second, we have had a number of cases in which we have issued an order to revoke an agent licensed to conduct business in Kansas but residing in another state (there are approximately 25,000 such agents). In many cases, the agent simply withdraws his registration through the Central Registration Depository (CRD) system. This, since one cannot revoke a license that no longer exists, often negates the original proceeding and frustrates the administrative process. In most cases, the agent's record goes unblemished, allowing him to continue, unabated, his activities in other states. In addition, technically, since no final sanction was ever taken against the agent, he may at some future date successfully reapply to Kansas for registration.

A number of state (including Oklahoma), the U.S. Securities and Exchange Commission, and the National Association of Securities Dealers (NASD), have this power and have found it a valuable tool for removing the "bad apples" from the securities industry.

IV. **Impact on Other State Agencies:** None anticipated.

Atch #2

I. **HB 3018 Summary:** An amendment to K.S.A. 17-1267(a) designating the level of felony for violations of the Kansas Securities Act. Specifically, this amendment would make violations of the anti-fraud provisions of the Act, i.e., securities fraud, a class D felony and any other violations of the act class E felonies.

II. **Fiscal Impact:**None

III. **Policy Implications/Background:**
Presently, violations of the Kansas Securities Act are unclassified felonies, punishable by a fine of up to $5,000 or imprisonment of up to three years, or both, for each violation. The classification of these crimes is necessary for two reasons.

First, this office has experienced some difficulty with this issue during criminal trials. Defense attorneys have repeatedly entered motions that charges be dismissed because the statute does not specifically classify a violation of the Act as a felony. Fortunately, each judge has ruled that, based on case law and the severity of the punishment outlined in the statute, violations of the Act are, indeed, felonious.

While the state has prevailed to date, the process of arguing this point has taken nearly half a day of court time per case. In addition, while this office feels that we are on solid legal ground, one can never be certain that every court will rule in our favor.

Second, by classifying securities fraud as a D felony, it will differentiate it from all other violations of the Act, acknowledging the extreme seriousness of the crime. Securities fraud, as a type of theft, has devastating effects on the lives of innocent Kansans. Individuals who perpetrate these crimes generally prey upon middle-income retirees, in many cases wiping out the "nest-egg" that they have spent their lives accumulating. The effects of this crime are manifested in human terms through lost security and severely diminished lifestyle for the victims, and, economically, by the removal of significant funds from legitimate Kansas enterprises and an overall diminishing of confidence in our capital markets.

Other violations of the Securities Act are presently equivalent to Class E felonies. It is the recommendation of this office that they be statutorily classified as such.

IV. **Impact on Other State Agencies:** None anticipated. Since first time offenders are presumed to receive probation, the classification of Securities Fraud should not result in any additional incarcerations.

Atch #3

I. **HB 3019 Summary:** An amendment to K.S.A. 17-1261(j) of the Kansas Securities Act deleting the 30-day notice filing requirement now mandated as a condition of exemption from registration by employee stock option plans.

II. **Fiscal Impact:** None

III. **Policy Implications/Background:**
Approximately one year ago, a problem was brought to this office's attention by a Wichita law firm that represents a number of business clients. Under the Act, K.S.A. 17-1261(j), securities issued in connection with an employee stock option plan are exempt from registration. The conditions of the exemption require a notice filing 30 days prior to inception of the plan. The problem is that it is common for many small businesses to commence such plans on a small scale and seek legal advice concerning securities and tax consequences after the fact. In such circumstances, it appears there is no way such a business can comply with the literal conditions of the exemption. No curative procedures are provided for failure to file 30 days in advance of the plan's inception. This had been a recurring problem addressed by staff on numerous occasions. This office has taken a lenient view in interpreting the conditions of the exemption, but the literal wording of the exemption still causes all parties concern.

The filing requirements are simply notice filings and do not further any significant enforcement activity or policy under the Act. Many states have eliminated the filing requirement, and the new proposed Uniform State Act proposes to eliminate the requirement in much the same language as used in the proposed amendment. This amendment would eliminate some unnecessary bureaucratic "red tape" and would allow the exemption to function in a more rational manner.

IV. **Impact on Other State Agencies:** None anticipated.

Atch #4