

Approved: January 30, 1996  
Date

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Chairperson Bill Bryant at 3:30 p.m. on January 25, 1996 in Room 527S-of the Capitol.

All members were present except: Representative Tom Sawyer  
Representative Phill Kline  
Representative Delbert Crabb

Committee staff present: Bill Wolff, Legislative Research Department  
Bruce Kinzie, Revisor of Statutes  
Nikki Feuerborn, Committee Secretary

Conferees appearing before the committee: Roger Walter, General Counsel  
to the Kansas Securities Commissioner

Others attending: See attached list

**Hearing and Action on HB 2682 - Securities, filing fees, exemptions**

Roger Walter, General Counsel to the Kansas Securities Commissioner, reviewed the reasoning behind the proposed amendments to the Kansas Securities Act (Attachment 1). Among the amendments are the simplification of current language, make Kansas consistent with federal law, clean up of some technicalities, and elimination of an annual renewal fee of \$100.00.

Representative Graeber moved to pass the bill out favorably. Motion was seconded by Representative Cox. Motion carried.

**Action on HCR 5022 - Constitutional amendment (Kansas) to allow the Kansas public employees retirement system to be a stockholder in any banking institution**

There would be no geographical restrictions on the banking institutions.

Representative Graeber moved to pass the bill out favorably. Motion was seconded by Representative Landwehr. Motion carried.

Representative Samuelson moved to approve the January 23, 1996 minutes. Motion was seconded by Representative Findley. Motion carried.

The meeting was adjourned at 4:02 p.m. The next meeting will be held on January 29, 1996.





# KANSAS

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Bill Graves  
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John R. Wine, Jr.  
Securities Commissioner

## TESTIMONY

ROGER N. WALTER, GENERAL COUNSEL

OFFICE OF THE KANSAS SECURITIES COMMISSIONER

BEFORE THE HOUSE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

IN SUPPORT OF HOUSE BILL 2682

JANUARY 25, 1996

Mr. Chairman and Members of the Committee:

I am Roger Walter, General Counsel to the Kansas Securities Commissioner. On behalf of the Commissioner, John R. Wine, Jr., I am testifying in support of HB 2682, a series of proposed amendments to the Kansas Securities Act ("Act").

HB 2682, in summary, proposes the following:

1) The amendment of the definition of investment adviser.

2) The amendment of requirements for investment adviser contracts with clients.

3) The elimination of the annual renewal fee of \$100 for the annual renewal of registrations of securities.

4) The amendment of the requirements for an exemption for securities issued by a nonprofit organization.

5) The amendment of the requirements for a transactional exemption for securities issued in connection with a merger, consolidation, or reorganization.

6) The repeal of certain provisions of the Act, which currently regulate persons offering study programs for assisting people in studying for and passing the securities licensing exam.

*House F&I*  
*Attachment 1*  
*1-25-96*

Section 1 of the Act amends the definition of investment adviser found in K.S.A. 17-1252(1). The amendment is found on p. 3, line 10 of the bill. The definition of investment adviser states a general definition then expressly excludes certain persons listed in subsections 17-1252(1)(1)-(6). Subsection (2) excludes the following:

a lawyer, accountant, engineer, management consultant or teacher whose performance of these services is solely incidental to the practice of the individual's profession;

The amendment eliminates the term management consultant. This term is not found in the Uniform State Securities Act ("Uniform Act"). This term is an open-ended, ambiguous term which potentially creates a gap or loop-hole in the regulation of investment advisers.

Section 2 of the bill amends the requirements pertaining to contracts between an investment adviser and its clients stated in K.S.A. 17-1253(c). The amendments are found in Sect. 2, p. 4, lines 7-15 of the bill. The amendment simply corrects a glitch between federal and Kansas regulation. Federal law pertaining to these contracts (Sect. 205, Investment Advisers Act of 1940) prohibits compensation based on a share of capital gains or appreciation of the funds under management. The Act, as currently drafted, requires that the contract provide in writing that the adviser is prohibited from doing this. This imposes an anomalous and unnecessary burden on national-based registrants to modify contracts. This requirement is not found in other state securities acts. The effect of the amendment is to simply state the prohibition and eliminate the requirement of written disclosure in the contract.

Section 3 of the bill amends K.S.A. 17-1259 to eliminate the annual renewal fee paid by issuers to renew their annual securities registration. The amendments are found on p. 5, lines 30-33. Under current law, an issuer first registering securities must pay a registration fee. The registration is effective for one year. On the anniversary date the registrant is required to again pay the same registration fee plus \$100 renewal fee. The effect is to make renewal \$100 more expensive than initial registration. The issuer receives no additional value or state services for this payment. In fact, renewals consume less staff time. This practice has a disproportionate impact on small issuers who pay the minimum registration fee of \$100. It doubles the cost of renewal over initial registration. The practice makes no sense.

Section 4 of the bill amends K.S.A. 17-1261(h), which states the conditions for an exemption from registration for securities issued by certain nonprofit organizations. The amendments are found on p. 7, lines 19-43, and p. 8, lines

1-9. The effect is to eliminate unnecessary, redundant, and archaic language and replace it with more flexible guidelines which may be imposed by regulation. The changes bring Kansas into conformity with the Uniform Act and other states. It will enable the Commissioner to impose by regulation the more relevant criteria for such issues by referencing the guidelines provided for in the North American Securities Administrators Association Statement of Policy on the subject. The amendments eliminate the \$50 filing fee for the notice filing for the exemption, and shortens the time for the Commissioner to disallow the exemption from 30 days to 10 days from filing of the notice.

Section 5 of the bill amends K.S.A. 17-1262(k), which states the conditions for a transactional exemption for securities issued in connection with a corporate merger, consolidation, reorganization, or acquisition. The current language restricts the availability of this exemption to corporations. There is no sound policy reason why this exemption should not be available to other business entities undergoing restructuring or reorganization. The amendments effect this change and bring us into conformity with the Uniform Act. The amendments also modify the notice filing requirements for the exemption to apply only to such securities which are not registered under the Federal Securities Act of 1933. This eliminates duplicate federal and state filings currently required by K.S.A. 17-1262(k).

Finally, Section 6 of the bill repeals K.S.A. 17-1254a, 17-1254b, and 17-1254c. These sections currently require that all persons who conduct educational or training programs to assist persons in passing the securities licensing exam to apply for and obtain a certificate from the Commissioner. We currently have only one or two persons certified under these provisions. Experience has demonstrated that this regulation is unnecessary and serves no regulatory purpose. It is simply bureaucratic red tape.