

Approved: March 18, 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 March 12, 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: Bob Storey, Union America Insurance Company  
Jay Greer, Union America Insurance Company  
Tom Wilder, Kansas Insurance Department  
William Grant, General Counsel, State Bank Commissioner's  
A. W. Pickel, III, Leader Mortgage  
John Scott, United Services Mortgage Corporation

Others attending: See attached list

**Hearing on SB 645: Insurance, relating to reinsurance**

Bob Storey, representing Union America Insurance Company, introduced Jay Greer also of Union America to the Committee. Mr. Greer explained the bill as allowing Kansas domestic insurance companies to transfer part of their risk to foreign (non U.S.) insurers which maintain a trust fund in a U.S. financial institution of not less than \$20 million (Attachment 1). This is modeled after the NAIC Credit for Reinsurance bill. Currently Kansas domestic companies can only take credit for reinsurance ceded to other companies licensed in the state of Kansas and to Underwriters at Lloyd's of London unless the reinsurer provides the insurer with collateral in the form of cash, marketable securities, or a clean, irrevocable, evergreen letter of credit. This bill would allow Kansas domestic insurers a reduction in costs meaning lowering premiums by being allowed to purchase reinsurance from an international market. This bill would also give a marked advantage to Kansas domiciled companies as many of their major competitors are based in other states and are not subject to the same inhibitions as those currently suffered by Kansas domestic insurers.

Tom Wilder, Kansas Insurance Department, issued written testimony explaining and supporting the bill which would directly impact eight domestic insurance companies in Kansas (Attachment 2).

**Hearing on SB 665: Mortgage business regulation by bank commissioner**

William Grant, General Counsel for the State Bank Commissioner's Office, informed the Committee of the lack of regulation in Kansas of mortgage companies or brokers (Attachment 3). No state authorization is required to establish such a business, thus there is no protection for the Kansas consumers. This bill would provide the public a forum to voice their concerns while allowing the industry to operate free of unduly burdensome government interference. The intent is to create a low-level regulatory system which will create an information gathering mechanism through a nonintrusive registration requirement. He reviewed and explained each section of the bill which would give regulatory authority and oversight to the State Bank Commissioner.

A.W. Pickel, III, Leader Mortgage, reported that 34 states have legislation regarding mortgage brokers with Florida and New York being the most regulated (Attachment 4). Mortgage brokers are responsible for more than 50% of all loans originated nationwide. The Kansas Association of Mortgage Brokers (60 members or 175 brokers) supports the proposed legislation. Mr. Pickel expressed willingness to work with the Bank Commissioner's staff in developing regulatory legislation which would be consumer oriented and legitimize the industry.

## CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,  
Room 527S-Statehouse, at 3:30 a.m. on March 12, 1996.

John Scott, United Services Mortgage Corporation, spoke in support of the legislation which will give consumers a state agency to contact in cases of unfair mortgage dealings (Attachment 5). The mortgage industry is highly regulated by federal law and he voiced concern about over-regulating at the state level. There is a need for qualification guidelines for mortgage companies operating in Kansas.

### **Discussion and action on SB 434: Credit union investments in credit union service organizations**

Representative Welshimer moved for the favorable passage of the bill. Motion was seconded by Representative Graeber. Motion carried.

### **Discussion and action on SB 571: Reduction in capitol stock of a bank or trust company**

Committee members were reminded that the Board of Directors were the authorizing entity which would allow the bank to go below the recommended minimum capitol stock.

Representative Smith moved for the favorable passage of the bill. Motion was seconded by Representative Gilbert. Motion carried.

### **Discussion on SB 703: Delivery of certain contents of safe deposit boxes on death of the lessee**

The Committee discussed the appropriateness of changing to the law due to an isolated incident regarding claiming the contents of a lock deposit box upon the death of the renter. A representative of the Kansas Bankers Association indicated that the present law covered banks allowing properly identified individuals to take what is rightfully theirs from lock deposit boxes as long as it is not testamentary or personal.

### **Discussion and action on SB 666: Revising limitations on loans and borrowing in which banks are involved**

An amendment changing the appraised value of the real estate to equal at least twice the amount of the excess liability beginning on page 5 line 38 of the bill and making minor technical changes was presented (Attachment 6).

Representative Correll moved for the adoption of the amendment. The motion was seconded by Representative Smith. Motion carried.

Representative Smith moved that the bill be passed as amended. Motion was seconded by Representative Humerickhouse. Motion carried.

### **Discussion and action on SB 645: Insurance, relating to reinsurance**

Representative Cox moved for the favorable passage of the bill. Motion was seconded by Representative Samuelson. Motion carried.

### **Discussion and action on SB 665: Mortgage business regulation by bank commissioner**

The implementation of this regulation would not require additional staff at the Bank Commissioner's Office. Application and consumer complaint staff would be utilized for this oversight.

Representative Graeber moved for a conceptual amendment for technical changes. The motion was seconded by Representative Cox. Motion carried.

Representative Graeber moved that the bill be passed as amended. Motion was seconded by Representative Gilbert. Motion carried.

**SB 436: Closing hours for banks and trust companies** has been re-referred to the Committee. This bill now contains additional language regarding "opt out" banking legislation.

Representative Gilbert moved for the adoption of the minutes of March 5. Motion was seconded by Representative Smith. Motion carried.

The meeting adjourned at 5:15 p.m. The next meeting is scheduled for March 13, 1996.



**TESTIMONY OF JAMES A. GREER II**  
**PARTNER, LEBOUF, LAMB, GREENE & MACRAE**  
**IN SUPPORT OF SENATE BILL NO. 645**

Mr. Chairman and Members of the Committee, I thank you for the opportunity to appear before you on behalf of Unionamerica Insurance Company Limited ("Unionamerica"). My firm, LeBoeuf, Lamb, Greene & MacRae, represents other insurance companies (see attached list) that will also be affected by this legislation.

**Background:**

This legislation relates to reinsurance provided by Unionamerica, one of several leading non-U.S. insurance companies, for which my law firm, LeBoeuf, Lamb, Greene & MacRae, is United States Insurance Regulatory Counsel. Unionamerica, and many of these other insurers are important as a market for hard-to-place reinsurance and commercial insurance. For example, they have long participated in the catastrophe reinsurance programs of insurers throughout the world. In Kansas and elsewhere, reinsurance protection against the perils of damage from tornados and hail has been sought from our clients over the years. These insurers have also provided substantial amounts of reinsurance for medical malpractice and other forms of professional indemnity coverage written by insurers in the United States and elsewhere. Both of these types of reinsurance have been and continue to be in demand. In addition, our clients have traditionally provided reinsurance of a wide variety of other hard-to-place coverages.

**The Legislation:**

The bill adopts without change the section of the National Association of Insurance Commissioners' ("NAIC") Model Credit-for-Reinsurance bill relating to assumption of reinsurance by an insurance company that maintains substantial trustee assets and surplus in the United States for the benefit of its U.S. cedents.<sup>1</sup> The relevant portion of the NAIC

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<sup>1</sup>Reinsurance is "insurance of insurance companies." It is a well-recognized contractual arrangement, whereby an insurer can transfer excess risks to other insurers, thereby strengthening its financial condition. When an insurer incurs a loss or other liability that is covered by reinsurance it has ceded to another insurer, it may take credit on its financial statement for the receivable from the reinsurer, provided the reinsurer is licensed or otherwise approved ("accredited") by the insurance regulator in the insurer's state of domicile. At present Kansas domestic companies can only take credit for reinsurance ceded to other companies licensed in the state of Kansas and to Underwriters at Lloyd's of London unless the reinsurer provides the insurer with collateral in the form of cash, marketable securities, or a clean, irrevocable, evergreen letter of credit. As a result, Kansas domestic insurers have less freedom to chose the markets to which they may cede reinsurance than

(continued...)

*James F. D. A.*  
*Attachment 1*  
*March 12, 1996*

Model bill appears in lines 6-10 on page 3 of Senate Bill No. 645 (copy attached). Obtaining adoption of the proposed amendment in Kansas is part of a nationwide effort. The NAIC has already approved this credit-for-reinsurance amendment, and substantially the same amendment has been adopted or enacted in 47 states and the District of Columbia. (Legislation containing substantially the same language of this amendment became effective in Ohio on March 4 this year.) A bill containing this language is pending in the State of Washington, and we have begun efforts to obtain enactment of this legislation in Florida this year. The bill also contains changes that conform the existing Kansas credit for reinsurance law to the NAIC Model law on this subject, but these do not involve any substantive alteration of the existing Kansas law.

### **Impact on Kansas:**

Adoption of this NAIC Model Credit-for-Reinsurance law provision will enable Kansas domestic insurers to claim financial statement credit for reinsurance cessions to leading reinsurance companies in the international market. This will enable Kansas domestic insurers to make more efficient and effective use of their existing capital without reducing their financial strength.<sup>2</sup> It should enable those reinsurers to improve their service to Kansas domestic insurers for such classes as medical malpractice and catastrophe reinsurance, as well as other hard-to-place risks.

If these reinsurers' status as accredited reinsurers is accepted, there could be a reduction in cost or increase in availability to the Kansas domestic insurance companies that now obtain reinsurance from highly-respected insurers in the world reinsurance market. Whether or not they currently cede reinsurance to our clients, Kansas domestic insurers may find there would also be an increase in the attractiveness of their reinsurance cessions with a consequent decrease in the cost or increase in availability of reinsurance, or both, at least some of which benefits would probably be passed on to Kansas direct policyholders in the form of lower premiums, increased coverage, or both. Kansas domestic companies might also benefit because most of their major competitors are licensed in Kansas but domiciled in other states, and therefore would not be subject to the same inhibitions as those currently suffered by Kansas domestic insurers.

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<sup>1</sup>(...continued)

non-domestic insurers licensed to do business in Kansas. In addition, they may have had to pay higher prices for the reinsurance they have purchased. Any attendant increase in costs or decrease in availability of coverage may have been passed to the Kansas policyholders of Kansas domestic insurers.

<sup>2</sup>Our experience has been that domestic insurers can also achieve significant savings in administrative and accounting expenses by dispensing with collateral in respect of reinsurance balances due from substantial reinsurers like our clients.

List of LeBoeuf, Lamb, Greene & MacRae Clients:

Axa Reinsurance  
Eisen Und Stahl Rückversicherungs-Aktiengesellschaft  
Hannover Rückversicherungs-Aktiengesellschaft  
St. Paul Reinsurance Company Limited  
Sphere Drake (Bermuda) Limited  
Sphere Drake Insurance plc  
Terra Nova Insurance Company Limited  
Unionamerica Insurance Company Limited  
Zurich Re (U.K.) Limited

As Amended by Senate Committee

Session of 1996

SENATE BILL No. 645

By Committee on Financial Institutions and Insurance

2-9

AN ACT concerning insurance; reinsurance of risks; amending K.S.A. 1995 Supp. 40-221a and repealing the existing section.

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

Section 1. K.S.A. 1995 Supp. 40-221a is hereby amended to read as follows: 40-221a. (a) Any insurance company organized under the laws of this state may (1) with the consent of the commissioner of insurance, cede all of its risks to any other solvent insurance company authorized to transact business in this state or accept all of the risks of any other company, (2) accept all or any part of an individual risk or all or any part of a particular class of risks which it is authorized to insure, and (3) cede all or any part of an individual risk or all or any part of a particular class of risks to another solvent insurer or insurers having the power to accept such reinsurance.

(b) Any insurance company organized under the laws of this state may take credit as an asset or as a deduction from loss and unearned premium reserves on such ceded risks to the extent reinsured by an insurer or insurers authorized to transact business in this state, but such credit on ceded risks reinsured by any insurer which is not authorized to transact business in this state may be taken in an amount not exceeding:

(1) The amount of deposits by, and funds withheld from, the assuming insurer pursuant to express provision therefor in the reinsurance contract, as security for the payment of the obligations thereunder, if such deposits or funds are held subject to withdrawal by, and under the control of, the ceding insurer or are placed in trust for such purposes in a bank which is insured by the federal deposit insurance corporation or its successor, if withdrawals from such trust cannot be made without the consent of the ceding company;

(2) the amount of a clean and irrevocable letter of credit issued by a bank which is insured by the federal deposit insurance corporation or its successor if such letter of credit is initially issued for a term of at least one year and by its terms is automatically renewed at each expiration date for an additional one-year term unless at least 30 days prior written notice of intention not to renew is given to the ceding company by the

1 issuing bank or the assuming company and provided that such letter of  
2 credit is issued under arrangements satisfactory to the commissioner of  
3 insurance as constituting security to the ceding insurer substantially equal  
4 to that of a deposit under paragraph (1) of this subsection; or

5 (3) the amount of loss and unearned premium reserves on such ceded  
6 risks to a group of underwriters including incorporated and individual  
7 unincorporated underwriters, if the assuming underwriters group main-  
8 tains a trust fund in a qualified United States financial institution, as  
9 defined in subsection (b)(3)(E), for the payment of the valid claims, as  
10 determined by the commissioner for the purpose of determining the suf-  
11 ficiency of the trust fund; of its United States policyholders and ceding  
12 insurers; their assigns and successors in interest. The assuming under-  
13 writers group shall report annually to the commissioner information sub-  
14 stantially the same as that required to be reported on the national asso-  
15 ciation of insurance commissioners annual statement form by licensed  
16 insurers to enable the commissioner to determine the sufficiency of the  
17 trust fund.

18 (A) Credit shall be allowed when the reinsurance is ceded to an as-  
19 suming insurer which maintains a trust fund in a qualified United States  
20 financial institution, as defined in subsection (b)(3)(E), for the payment  
21 of the valid claims of its United States policyholders and ceding insurers,  
22 their assigns and successors in interest. The assuming insurer shall report  
23 annually to the commissioner information substantially the same as that  
24 required to be reported on the NAIC annual statement form by licensed  
25 insurers to enable the commissioner to determine the sufficiency of the  
26 trust fund. In the case of a single assuming insurer, the trust shall consist  
27 of a trusteed account representing the assuming insurer's liabilities at-  
28 tributable to business written in the United States and, in addition, the  
29 assuming insurer shall maintain a trusteed surplus of not less than  
30 \$90,000,000. The trust shall consist of a trusteed account representing  
31 the group's liabilities attributable to business written in the United States.  
32 The group shall maintain a trusteed surplus of which \$100,000,000 shall  
33 be held jointly for the benefit of United States ceding insurers of any  
34 member of the group. The incorporated members of the group shall not  
35 be engaged in any business other than underwriting as a member of the  
36 group and must be subject to the same level of solvency regulation and  
37 control by the group's domiciliary regulator as are the unincorporated  
38 members. The group shall make available to the commissioner an annual  
39 certification by the group's domiciliary regulator and its independent pub-  
40 lic accountants as to the solvency of each underwriter, an assuming in-  
41 surer which maintains a trust fund in a qualified United States fi-  
42 nancial institution, as defined in (b)(3)(D), for the payment of the  
43 valid claims of its United States policyholders and ceding insurers,

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PAGE 2 (PRINTED PAGE 2)  
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1 *their assigns and successors in interest. The assuming insurer shall*  
 2 *report annually to the commissioner information substantially the*  
 3 *same as that required to be reported on the national association of*  
 4 *insurance commissioners annual statement form by licensed insur-*  
 5 *ers to enable the commissioner to determine the sufficiency of the*  
 6 *trust fund. In the case of a single assuming insurer, the trust shall*  
 7 *consist of a trusteed account representing the assuming insurer's*  
 8 *liability attributable to business written in the United States and,*  
 9 *in addition, the assuming insurer shall maintain a trusteed surplus*  
 10 *of not less than \$20,000,000. In the case of a group including in-*  
 11 *corporated and individual unincorporated underwriters, the trust*  
 12 *shall consist of a trusteed account representing the group's liabili-*  
 13 *ties attributable to business written in the United States and, in*  
 14 *addition, the group shall maintain a trusteed surplus of which*  
 15 *\$100,000,000 shall be held jointly for the benefit of United States*  
 16 *ceding insurers of any member of the group; the incorporated mem-*  
 17 *bers of the group shall not be engaged in any business other than*  
 18 *underwriting as a member of the group and shall be subject to the*  
 19 *same level of solvency regulation and control by the group's domici-*  
 20 *liary regulator as are the unincorporated members; and the*  
 21 *group shall make available to the commissioner an annual certifi-*  
 22 *cation of the solvency of each underwriter by the group's domicil-*  
 23 *iary regulator and its independent public accountants.*

24 ~~(B)~~ (A) Such trust must be in a form approved by the commissioner  
 25 of insurance. The trust instrument shall provide that contested claims  
 26 shall be valid and enforceable upon the final order of any court of com-  
 27 petent jurisdiction in the United States. The trust shall vest legal title to  
 28 its assets in the trustees of the trust for its United States policyholders  
 29 and ceding insurers, their assigns and successors in interest. The trust  
 30 and the assuming group or insurer shall be subject to examination as  
 31 determined by the commissioner. The trust, described herein, must re-  
 32 main in effect for as long as the assuming group or insurer shall have  
 33 outstanding obligations due under the reinsurance agreements subject to  
 34 the trust.

35 ~~(G)~~ (B) No later than February 28 of each year the trustees of the  
 36 trust shall report to the commissioner in writing setting forth the balance  
 37 of the trust and listing the trust's investments at the preceding year end  
 38 and shall certify the date of termination of the trust, if so planned, or  
 39 certify that the trust shall not expire prior to the next following December  
 40 31.

41 ~~(D)~~ (C) The credit authorized under subsection ~~(b)(3)(A)~~ through  
 42 ~~(G)~~ shall not be allowed unless the assuming group or insurer agrees in  
 43 the reinsurance agreements:

1 (i) That in the event of the failure of the assuming group or insurer  
 2 to perform its obligations under the terms of the reinsurance agreement,  
 3 the assuming group or insurer, at the request of the ceding insurer, shall  
 4 submit to the jurisdiction of any court of competent jurisdiction in any  
 5 state of the United States, will comply with all requirements necessary to  
 6 give such court jurisdiction, and will abide by the final decision of such  
 7 court or of any appellate court in the event of an appeal; and

8 (ii) to designate the commissioner or a designated attorney as its true  
 9 and lawful attorney upon whom may be served any lawful process in any  
 0 action, suit or proceeding instituted by or on behalf of the ceding com-  
 1 pany.

2 (iii) This provision is not intended to conflict with or override the  
 3 obligation of the parties to a reinsurance agreement to arbitrate their  
 4 disputes, if such an obligation to do so is created in the agreement.

5 ~~(E)~~ (D) A "qualified United States financial institution" means, for  
 6 purposes of those provisions of this law specifying those institutions that  
 7 are eligible to act as a fiduciary of a trust, an institution that:

8 (i) Is organized, or (in the case of a U.S. branch or agency office of  
 9 a foreign banking organization) licensed, under the laws of the United  
 0 States or any state thereof and has been granted authority to operate with  
 1 fiduciary powers; and

2 (ii) is regulated, supervised and examined by federal or state author-  
 3 ities having regulatory authority over banks and trust companies.

4 The foregoing provisions of paragraphs (1), (2) and (3) of subsection  
 5 (b) shall not apply to a domestic title insurance company subject to the  
 6 provisions of K.S.A. 40-1107a and amendments thereto.

7 (c) Any reinsurance ceded by a company organized under the laws of  
 8 this state or ceded by any company not organized under the laws of this  
 9 state and transacting business in this state must, pursuant to express pro-  
 0 visions contained in the reinsurance agreement, be payable by the assum-  
 1 ing insurer on the basis of the liability of the ceding company under the  
 2 contract or contracts reinsured without diminution because of the insol-  
 3 vency of the ceding company and any such reinsurance agreement which  
 4 may be canceled on less than 90 days' notice must provide in the rein-  
 5 surance agreement for a run-off of the reinsurance in force at the date  
 6 of cancellation.

7 Sec. 2. K.S.A. 1995 Supp. 40-221a is hereby repealed.

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





Kathleen Sebelius  
Commissioner of Insurance  
**Kansas Insurance Department**

**MEMORANDUM**

To: House Financial Institutions  
and Insurance Committee

From: Tom Wilder, Director of  
Government and Public Affairs

Re: S.B. 645 (Reinsurance of Risks)

Date: March 12, 1996

The Kansas Department of Insurance appears today in support of Senate Bill 645. This legislation allows domestic insurance companies to cede a portion of their risk to a trust established by an assuming insurer in a financial institution located in the United States. The trust fund must include a surplus above the anticipated claims against the trust of at least \$20 million. A number of insurers who provide reinsurance coverage prefer to do business through a trust arrangement. The requirement for a surplus in the reinsurance trust of at least \$20 million provides protection to those Kansas policyholders whose insurance is ceded by a domestic company to the trust.

The language in S.B. 645 is taken from the NAIC Model Law on Credit for Reinsurance. The Senate Committee made a technical amendment to the bill to move the provision to a different part of K.S.A. 40-221a. This amendment was requested by the Insurance Department.

The Kansas Department of Insurance asks the Committee to report S.B. 645 favorably as amended.

*Stacey F. A.*  
*Attachment 2*  
*March 12, 1996*

STATE OF KANSAS  
BILL GRAVES  
GOVERNOR



W. Newton Male  
Bank Commissioner

Judi M. Stork  
Deputy Commissioner

Kevin C. Glendening  
Assistant Deputy Commissioner

William D. Grant, Jr.  
General Counsel

Ruth E. Glover  
Administrative Officer

OFFICE OF THE  
STATE BANK COMMISSIONER

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

March 12, 1996

S.B. 665

Mr. Chairman and Members of the Committee:

I am William Grant, General Counsel, Office of the State Bank Commissioner, and I urge you to recommend S.B. 665 for passage by the Kansas House of Representatives.

Over the last few years it has become increasingly common for our department to receive calls from Kansas consumers seeking the state agency responsible for regulating mortgage companies or brokers. Because of these inquiries, we discovered that under present law, no Kansas agency monitors these types of businesses.

According to our information, the number of unregulated businesses offering mortgage related services continues to rapidly expand. No state authorization is required to establish such a business and the Kansas consumer has no place to turn with questions or complaints. This led to the conclusion it would be in the best interests of Kansas consumers for our agency to request legislative authorization to respond to these consumer calls.

The language and policies contained in the proposed bill are the result of our department's consultation with a diverse group of interested parties. Members of the mortgage industry, including a representative from the Kansas Mortgage Brokers Association, provided input. A member of the land title industry and Representative Jill Grant also participated in developing the suggested legislation. This process has resulted in a fair, balanced bill. It provides the public a forum to voice their concerns while allowing the industry to operate free of unduly burdensome government interference.

House File  
Attachment 3  
March 12, 1996

The regulatory system imposed by the bill is very basic. It requires registration, which consists of notification and a general demonstration of the applicant's honesty and business integrity. The bill requires registrants to inform customers of the commissioner's supervisory authority. It also allows the commissioner to accept, investigate, and follow up on consumer calls and complaints. The commissioner would also be authorized to pass regulations to better implement the law. The mortgage businesses would be required to pay for the oversight through the imposition of fees, which will be based directly on the cost of administration of the act.

The intent of S.B. 665 is to create a low-level regulatory system designed to achieve two initial goals. The first goal is to create an information gathering mechanism which will allow a continuing and more detailed analysis of the level and types of mortgage loan activity being conducted. The bill accomplishes this goal by constructing a simple, unintrusive registration requirement. This will allow our agency to determine who is performing mortgage services in Kansas and how they are conducting those services. It will also provide our department and future legislatures with information and statistics that will be helpful in developing future policies regarding this industry in Kansas. The second, and most important goal, is to provide Kansas home buyers a place to turn when they have questions or complaints about mortgage businesses in Kansas. Because our department currently possesses no authority to respond to consumer inquiries or complaints, we do not document the nature or seriousness of the calls. This legislation will provide the authority we need to accept those calls, document the activities and practices used in the industry, investigate complaints, and attempt to remedy unacceptable practices or conditions.

Additionally, we believe the mortgage industry will recognize operational and public image advantages from participation in this type of minimal oversight. Legitimate mortgage businesses should experience increased credibility with the Kansas public once our agency begins taking note of improper activities and consumer concerns.

It is the position of the Office of the State Bank Commissioner that S.B. 665 is a reasonable measure designed to serve the interests of the Kansas consumer.

With regard to the specific language of the bill a brief comment about the effect and intent of each section has been included for your reference.

**Section 1**, (page 1, line 12) provides definitions for use throughout the bill. Most important are the definitions of "mortgage business" and "mortgage loans." The definition of a mortgage business, in subsection (b), encompasses nearly all activities surrounding the provision of five or more mortgage loans in a year. Subsection (c) defines a "mortgage loan" as a loan secured by a first lien on a one to four family residence in Kansas.

**Section 2**, (page 1, line 28) provides exemptions for other lenders who are already subject to regulatory oversight. This section also exempts any governmental entity which may

engage in mortgage activities.

**Section 3**, (page 1, line 43) provides that on or after November 1, 1996, any person who falls within the provisions of this act is required to register with our department before engaging in the mortgage business. Delaying the registration deadline until November will allow our agency to develop the applications and system necessary to implement the provisions of the legislation.

**Section 4**, (page 2, line 3) provides the application procedure for an entity seeking registration. The section sets out the information an applicant must submit and the fee that they must pay. It also requires the commissioner to issue a certificate of registration if the application is complete and the commissioner believes the applicant will conduct the mortgage business in a competent, honest and fair manner.

**Section 5**, (page 2, line 5) provides that the registration is required to be renewed annually.

**Section 6**, (page 2, line 41) provides an administrative appeal to any applicant whose registration or renewal is denied.

**Section 7**, (page 3, line 5) provides grounds upon which the commissioner may deny, suspend or revoke a registration. The grounds consist primarily of repeated or willful violations of the act, filing false statements, or conviction of a crime involving dishonesty. This section also provides for an administrative appeal of such a denial, suspension or revocation.

**Section 8**, (page 3, line 26) provides for the prominent display of the certificate of registration. This section also requires the registrant to acquire customers' signatures on an acknowledgment form. This section is designed to ensure that the public is informed of the implementation of state oversight of the activity.

**Section 9**, (page 4, line 6) gives the commissioner specific statutory powers including the power to implement rules and regulations. It also allows the commissioner to conduct investigations of applications, consumer complaints, or other information which leads to the reasonable belief that such an investigation is needed to protect the public interest. This section also allows for the recoupment of investigation fees, the issuance of orders requiring discontinuance of inappropriate activities, and the exchange of information with other state or federal agencies.

**Section 10**, (page 4, line 25) provides that all fees collected in the administration of the act will be handled according to our agency's general fee fund statute and procedure.



# KANSAS LAND TITLE ASSOCIATION



**Gary E. Schmitz**  
*President*  
P.O. Box 90  
Mound City, KS 66056

**Charles Stewart**  
*Vice President*  
P.O. Box 725  
Oakley, KS 67748

**John M. Bell**  
*Secretary-Treasurer*  
434 N. Main  
Wichita, KS 67202

William D. Grant, Jr.  
Office of  
State Bank Commissioner  
W. Newton Male, Commissioner

February 16, 1996

Sir,

The Executive and Legislative Committees of the Kansas Land Title Association have received a copy of Senate Bill #665.

After review of SB 665 the Kansas Land Title Association would like to extend our full support.

We would like to thank you for opportunity to view this Bill.

Sincerely,

Kansas Land Title Association  
Gary E. Schmitz, President

### EXECUTIVE COMMITTEE

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March 12, 1996

To the House Financial Institutions and Insurance Committee:

Thank you for allowing me to testify regarding the Senate Banking Bill #665. For the record, my name is A.W. Pickel, III, owner and CEO of Leader Mortgage Company based in Lenexa, Kansas. I am the immediate past president of the Kansas Association of Mortgage Brokers, a nonprofit association. Currently, I am on the board of the Kansas Association of Mortgage Brokers and chair the legislative committee. In addition, I am on the States Council for the National Association of Mortgage Brokers and co-chair the technology committee.

My concerns with this bill have been greatly alleviated after having met with Bill Grant, legal counsel for the State Banking Commissioner, and Judi Stork, Deputy commissioner for the State Banking Commissioner. Initially, like many perhaps in the community, I feared that a bill like this would only serve to restrict and hinder the mortgage brokering process and the community it serves, thereby decreasing the availability of home mortgages to the consumer, especially the government-insured loans such as FHA and VA. As I am sure you are well aware, mortgage brokers are responsible for more than 50% of all loans originated nationwide (source-Tom LaMalfa & Associates). Mortgage brokers have been at the forefront in responding to the public's needs and desires with new products, services, and loans. To introduce legislation that would take the mortgage broker out of the business would be detrimental to the consumer since competition would be reduced, availability of government loans would be severely restricted, and many loan products would simply vanish. As I said earlier, both Bill and Judi have communicated to me and others that the intent of this legislation is not to restrict or hinder, but rather to register mortgage brokers. The full intent is to register anyone who is making mortgage loans or mortgage loan activity, whether this is an individual, company, or bank. With this in mind, I would welcome the opportunity to work with Bill, Judi, and the House Committee in achieving a bill that at its heart is protecting the consumer while making sure the playing field is level for all who are involved in mortgage loan origination.

I can be reached at Leader Mortgage Company at 1-800-270-3416, extension 301.

Thank you for allowing me to be of service to you!

*House F.I.S.I.*

*Attachment 4*

*March 12, 1996*

**UNITED SERVICES MORTGAGE CORPORATION**

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8901 State Avenue  
Kansas City, KS 66112

**To: Financial Institutions & Insurance Committee  
Representative William Bryant  
Representative Les Donovan  
Representative Ray Cox  
Representative Delbert Crabb  
Representative Carol Dawson  
Representative Joe Humerickhouse  
Representative Brenda Landwehr  
Representative Phill Kline  
Representative Ellen Samuelson  
Representative Jene Vickrey  
Representative Clyde Graeber  
Representative Vernon Correll  
Representative Troy Findley  
Representative Ruby Gilbert  
Representative Tom Sawyer  
Representative Don Smith  
Representative Gwen Welshimer**

**From: John Scott, President  
United Services Mortgage Corporation**

**RE: Senate Bill 665 Commentary**

*House F.D.D.  
Attachment 5  
March 12, 1996*

# UNITED SERVICES MORTGAGE CORPORATION

8901 State Avenue  
Kansas City, KS 66112

## **Senate Bill 665:**

It is projected that 800 billion dollars in home mortgage transactions will be originated in the United States in 1996. Presently, Kansas consumers have no state agency to contact to report unfair mortgage dealings. It is reported that the Kansas Bank Commissioner receives a large number of complaints from Kansas consumers regarding unethical conduct in mortgage business relations. SB 665 will give Kansas consumers a state agency to contact in order to file complaints.

SB 665 will provide a registration requirement for mortgage companies and individuals originating loans. This registration with the Kansas Bank Commissioner will identify who is providing mortgage services to Kansas consumers.

### ***I agree with the purpose of SB 665.***

SB 665 also provides a clear definition of "mortgage business," and a concise list of exemptions to registration.

SB 665 gives the Kansas Bank Commissioner powers to set experience qualifications, character and financial responsibility as registration requirements. It also gives the Commissioner powers to establish rules and regulations setting standards for the mortgage industry in the best interest of the Kansas consumer.

These provisions for the Commissioner to set guidelines will result in better loan origination practices.

### ***I agree with the definitions and provisions, as well as the requirements for registration contained in SB 665.***

I am not in favor of restrictive mortgage legislation from the state government. We have enough regulations and compliance restrictions from the federal government (HUD, RESPA, HMDA, Truth-In-Lending, fair credit reporting, equal credit opportunity, mandatory disclosures, procedures, Good-Faith Estimates, 72-Hour compliance restraints, High Cost Mortgage Act, and others). Additional restrictive legislation would increase the size of government or increase government expense.



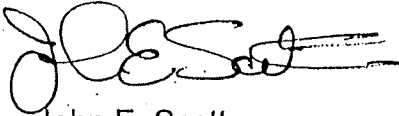
I do feel there is a need for the members of the mortgage industry to be registered in the state where they operate. There is also a need for qualification guidelines to conduct mortgage business, and the designation of a state agency for the consumer to file complaints.

SB 665 accomplishes all these.

This legislation is an excellent vehicle to discover who is conducting mortgage business in Kansas. It defines the playing field and keeps it level for all in the mortgage industry. Through required disclosure it now gives the Kansas consumer a state agency to contact for complaints.

***SB 665 deserves your support.***

Thank you,

A handwritten signature in black ink, appearing to read "J. E. Scott", with a horizontal line extending from the end of the signature.

John E. Scott  
President

**UNITED SERVICES MORTGAGE CORPORATION**  
8901 State Avenue  
Kansas City, KS 66112  
913-299-6678

"EXAMPLE"  
← ONLY

**KANSAS REGISTRATION NOTICE**

United Services Mortgage Corporation is a mortgage business registered with the Kansas Office of the State Bank Commissioner in accordance with laws of the State of Kansas. This registration does not represent an endorsement or recommendation of the registrant's products or services by the Office of The State Bank Commissioner.

As a consumer, you may submit a complaint or inquiry regarding United Services Mortgage Corporation by delivering a written statement to:

Office of State Bank Commissioner, 700 Jackson, Suite 300, Topeka, KS 66603

**EQUAL CREDIT OPPORTUNITY ACT NOTICE**

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income services from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning mortgage companies is:

For Missouri: Chicago Regional Office, Suite 1437, 55 East Monroe Street,  
Chicago, IL 60603

For Kansas: Denver Regional Office, 1405 Curtis Street, Suite 2900,  
Denver, CO 80202

We are required to disclose to you that you need not disclose income from alimony, child support, or separate maintenance payments if you choose not to do so.

Having made this disclosure to you, we are permitted to inquire if any of the income shown on your application is derived from such a source and to consider the likelihood of consistent payment as we do with any income on which you are relying to qualify for the loan for which you are applying.

**FAIR CREDIT REPORTING ACT NOTICE**

We advise that an investigation may be made regarding information as to character, general reputation, personal characteristics and mode of living. Information on the nature and scope of the report is available upon written request.

RECEIPT IS HEREBY ACKNOWLEDGED OF THE KANSAS REGISTRATION NOTICE, FAIR CREDIT OPPORTUNITY ACT NOTICE AND THE FAIR CREDIT REPORTING ACT NOTICE.

\_\_\_\_\_  
Applicant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Applicant

\_\_\_\_\_  
Date

# UNITED SERVICES MORTGAGE CORPORATION

8901 State Avenue  
Kansas City, KS 66112

## United Services Mortgage Corporation Business Overview

United Services Mortgage Corporation (USM) was formed in November, 1995 with the primary objective of providing real estate financial services, and mortgage/homebuying education to residents of communities in Northeastern Kansas.

Kansas City, Kansas based USM's major effort is to provide a variety of viable loan origination programs for this area. KCK has a socio-economic diversity that presents many challenges in increasing the number of homebuyers in the community. Our goal is to overcome those challenges and to help increase the percent of homeowners, thus contributing to economic growth.

USM is an outgrowth of U.S. Bank Mortgage, Inc. U.S. Bank Mortgage was begun in June, 1994 to provide education courses on mortgage related subjects:

- Certified Mortgage Loan Officer - CMLO
- Home Buyers Rights
- Loan Guidelines
- Non-Conforming Mortgage Financing Techniques

In June, 1995 a ruling by the Kansas Department of Banking declared the name U.S. Bank Mortgage could not be used to conduct mortgage financial transactions. The ruling was brought on by the use of "Bank" when the company was not a bank. Therefore, U.S. Bank Mortgage, Inc. is the education entity, and United Services Mortgage Corporation is the mortgage entity.

The "CMLO" course is rapidly being recognized as the course most beneficial to individuals entering the mortgage industry, as well as realtors, attorneys and consumers wanting an in-depth understanding of the mortgage process. The CMLO course is the only course of its caliber that is readily available to these groups of professionals. The "CMLO" designation is recognized as a symbol of competence, fair dealing and high integrity in the mortgage industry.

USM is steadily growing and becoming a respected resource for mortgage information and programs for communities it serves. This has been accomplished by striving to have the best trained and most knowledgeable mortgage origination staff in Kansas.

United Services Mortgage provides a Pre-Qualification Service for consumers. This is a no-cost service to determine the individuals home-buying power and program qualification.

USM is a member of the National Mortgage Brokers Association, Kansas Mortgage Brokers Association and the Kansas Mortgage Bankers Association.

1 limit calculation date unless new funds are advanced.

2 (2) If the bank's lending limit increases subsequent to the origination  
3 date, a bank may use the current lending limit to determine compliance  
4 when advancing funds. An advance of funds includes the lending of money  
5 or the repurchase of any portion of a participation.

6 (3) If the bank's lending limit decreases subsequent to the origination  
7 date, a bank is not prohibited from advancing on a prior commitment  
8 that was legal on the date the commitment was made.

9 (d) Exemptions. That portion of a loan which is continuously secured  
10 on a dollar for dollar basis by any of the following will be exempt from  
11 any lending limit:

12 (1) A guaranty, commitment or agreement to take over or to purchase,  
13 made by any federal reserve bank or by any department, bureau, board,  
14 commission, agency or establishment of the United States of America,  
15 including any corporation wholly owned, directly or indirectly by the  
16 United States;

17 (2) a perfected interest in a time deposit account in the lending bank  
18 in the case of a time deposit which may be withdrawn in whole or in part  
19 prior to maturity, the bank shall establish written internal procedures to  
20 prevent the release of the deposit;

21 (3) a bonded warehouse receipt issued to the borrower by some other  
22 person;

23 (4) treasury bills, certificates of indebtedness, or bonds or notes of the  
24 United States of America or instrumentalities or agencies thereof, or those  
25 fully guaranteed by them;

26 (5) general obligation bonds or notes of the state of Kansas or any  
27 other state in the United States of America;

28 (6) general obligation bonds or notes of any Kansas municipality or  
29 quasi-municipality; or

30 (7) a perfected interest in a repurchase agreement of United States  
31 government securities with the lending bank.

32 (e) Special Rules. (1) The total liability of any borrower may exceed  
33 the general 25% limit by up to an additional 10% of the bank's capital  
34 To qualify for this expanded limit:

35 (A) The bank shall have as collateral a first lien or liens on real estate  
36 securing a portion of the liability equal to at least the amount by which  
37 the total liability exceeds the 25% limit;

38 (B) the amount of the recorded lien or liens ~~and the appraised value~~  
39 ~~of the real estate shall each equal at least to~~ the amount of the excess  
40 liability; ~~and~~

41 (C) a portion of the loan equal to at least the excess liability shall have  
42 installment payments sufficient to amortize that portion within 20 years

43 (9) That portion of any loan endorsed or guaranteed by a borrower

(C) the appraised value of the real estate shall equal at least twice the amount of the excess liability; and

(D)

Review P.D.F.  
Attachment 6  
March 12, 1996

1 rower. Gross receipts and expenditures include gross revenues, expenses,  
2 intercompany loans, dividends, capital contributions and similar receipts  
3 or payments; or

4 (C) when separate persons borrow from a bank to acquire a business  
5 enterprise of which those borrowers will own more than 50% of the voting  
6 securities or voting interests, in which case a common enterprise is deemed  
7 to exist between the borrowers for purposes of combining the acquisition  
8 loan.

(D)

9 An employer will not be treated as a source of repayment for purposes  
10 of determining a common enterprise because of wages and salaries paid  
11 to an employee.

12 (4) Special Rules for Loans to a Corporate Group. (A) Loans by a  
13 bank to a borrower and the borrower's subsidiaries shall not, in the ag-  
14 gregate, exceed 50% of the bank's capital. At no time shall loans to any  
15 one borrower or to any one subsidiary exceed the general lending limit of  
16 25%, except as allowed by other provisions of this section. For purposes  
17 of this paragraph, a corporation or a limited liability company is a sub-  
18 sidiary of a borrower if the borrower owns or beneficially owns directly  
19 or indirectly more than 50 percent of the voting securities or voting in-  
20 terests of the corporation or company.

21 (B) Loans to a borrower and a borrower's subsidiaries that do not  
22 meet the test contained in subsection (f)(4)(A) will not be combined unless  
23 either the direct benefit or the common enterprise test is met.

24 (5) Special Rules for Loans to Partnerships, Joint Ventures and Asso-  
25 ciations. (A) As used in this subpart (5), the term "partnership" shall  
26 include a partnership, joint venture or association. The term partner shall  
27 include a partner in a partnership or a member in a joint venture or  
28 association.

29 (B) General Partner. Loans to a partnership are considered to be  
30 loans to a partner, if by the terms of the partnership agreement that  
31 partner is held generally liable for debts or actions of the partnership.

32 (C) Limited Partner. If the liability of a partner is limited by the terms  
33 of the partnership agreement, the amount of the partnership debt attrib-  
34 utable to the partner is in direct proportion to that partner's limited part-  
35 nership interest.

36 (D) Notwithstanding the provisions of subsections (f)(5)(B) and  
37 (f)(5)(C), if by the terms of the loan agreement the liability of any partner  
38 is different than delineated in the partnership agreement, for the purposes  
39 of attributing debt to the partner the loan agreement shall control.

40 (E) Loans to a partner are not attributed to the partnership unless  
41 either the direct benefit or the common enterprise test is met.

42 (F) Loans to one partner are not attributed to other partners unless  
43 either the direct benefit or common enterprise test is met

6-2