

MINUTES OF THE Senate Committee on Financial Institutions and Insurance.

The meeting was called to order by Chairperson Dick Bond at 9:08 a.m. on January 29, 1996 in Room 529-S of the Capitol.

All members were present.

Committee staff present: Dr. William Wolff, Legislative Research Department
Fred Carman, Revisor of Statutes
June Kossover, Committee Secretary

Conferees appearing before the committee: Newton Male, State Bank Commissioner
Ron Smith, Kansas Bar Association
Mark Lair, Gubernatorial Appointee to Bank Board
George Barbee, Barbee and Associates
Jim McGuire, McGuire Mortgage Company
William Sneed, Amvestors
William Caton, Consumer Credit Commissioner

Others attending: See attached list

Senator Steffes moved to approve the minutes of the meeting of January 25 as submitted. Senator Clark seconded the motion; the motion carried.

Newton Male, State Bank Commissioner, appeared before the committee to request introduction of legislation to add a provision to Kansas law to give banks greater flexibility in the structure of their capital stock accounts. (Attachment #1) Senator Steffes made a motion to introduce this legislation; Senator Emert seconded the motion. The motion carried.

Ron Smith, Kansas Bar Association, requested introduction of a bill to bring Kansas into compliance with the Federal Risk Retention Act as it relates to the Attorneys Liability Protection Society. (Attachment #2) Senator Lee made a motion to introduce the legislation; Senator Praeger seconded the motion. The motion carried.

The chair opened the confirmation hearing on Mark Lair, Gubernatorial Appointee to the State Bank Board. Attachment #3) Mr. Lair was appointed to a three-year term to expire 3/15/98. In response to Senator Bond's question, Mr. Lair gave his impression of the Bank Board and the Bank Commissioner's office, stating that, in his opinion, the State Banking Department does a very good job of overseeing banking in Kansas and facilitating progress in the banking industry. Senator Steffes asked whether state banks are, in fact, overregulated, and Mr. Lair responded that many of our current banking laws were passed years ago and, although they may not be pertinent to current needs, banks must comply with laws, statutes and administrative regulations as they exist.

In response to Senator Bond's inquiry, Mr. Lair stated that small banks can and do compete favorably with the larger banks because each offers advantages to the consumer and that competition is good for both the banks and their customers. He also stated that he felt it important to do everything possible to maintain the dual banking system. Following further questions and answers, the confirmation hearing was closed. Senator Steffes made a motion to recommend Mr. Lair's confirmation to the full Senate. Senator Emert seconded the motion. The motion carried.

The hearing was reopened on **SB 437**, maximum finance charges for consumer loans. George Barbee explained again that the intent of the bill is to allow supervised lenders to receive an origination fee not to exceed 5% of the amount financed on consumer loans secured by an interest in land.

Jim McGuire, McGuire Mortgage Company, testified in support of **SB 437**, stating that an upward adjustment of the origination fee to 5% is reasonable and justified and that the marketplace should dictate acceptable fees and reward those companies that provide competitive products and a high level of customer service. (Attachment #4)

William Caton, Consumer Credit Commissioner, also testified as a proponent of this bill and requested that an amendment be added to prohibit a creditor, when refinancing a loan or consolidating several loans, from charging a prepaid finance charge on loan proceeds for which the creditor has already received this fee, this prohibition to be in effect for six months of the loan date. (Attachment #5)

CONTINUATION SHEET

MINUTES OF THE Senate Committee on Financial Institutions & Insurance, Room 529-S Statehouse, on January 29, 1996.

The Kansas Bankers Association also submitted written testimony in support of **SB 437**. (Attachment #6)

Senator Praeger made a motion to amend **SB 437** as requested. Senator Steffes seconded the motion. The motion carried. Senator Steffes then moved to pass the bill favorably as amended, Senator Praeger seconded the motion. The motion carried.

The hearing was reopened on **SB 416**, relating to credit against insurance company privilege tax for the establishment of a business facility. The bill was originally heard on January 18 and action was deferred pending receipt of a fiscal impact statement. (Attachment #7) Chairman Bond briefly recounted the particulars of the bill and informed the committee that the Budget Department could submit no statement of fiscal impact since there is no way to determine tax liability. An amendment was offered previously to extend the same credit to Kansas banks and the Budget Department's opinion is that the amendment could require another examiner position. There are, however, very few banks that would take advantage of this opportunity.

Following further discussion, Senator Steffes made a motion to adopt the amendment. Senator Corbin seconded the motion. The motion carried.

Senator Steffes made a motion to pass **SB 416** as amended; the motion was seconded by Senator Clark. The motion carried.

The hearing was opened on **SB 414**, concerning certain exemptions for annuity contracts. William Sneed, Amvestors Financial Corporation, appeared as a proponent of this legislation, stating that the bill would shield annuity contracts from lenders in bankruptcy court, as life insurance policies are now shielded. Mr. Sneed also proposed an amendment to insert the words "or annuity" on page 1, line 29 and page 2 line 3. (Attachment #8) Due to time constraints, the hearing on **SB 414** was suspended and will be reopened at a future date.

The committee adjourned at 9:58 a.m. The next meeting is scheduled for January 30, 1996.

SENATE FINANCIAL INSTITUTIONS & INSURANCE
COMMITTEE GUEST LIST

DATE: 1/29/96

NAME	REPRESENTING
Jim May	KBA
For Wilder	Kansas Insurance Department
Alma Simon	Am Investors
Bill Sneed	Am Investors
Mark Barcellina	KDOCAH
Steve Frazzle	FFC
Kelly Kuitala	KTZA
W. Newton Male	Kansas Banking Dept.
Bud Grant	KCKI
Melissa Wengemana	Hein Ebert & Weir
Kathy Gifford	KBA
John M. Lu	M ^o CUI 1171 = MONTB457
Jim Millie	MCGUIRE MORTGAGE CO
Mark Hair	Mark Hair
Chuck Stones	KBA
TAD KRANER	SECURITY BENEFIT
George Barbee	Barbee & Assoc.
Bill Caton	Consumer Credit
Ron Smith	Ks Bar Assoc

9-904. Reduction of capital stock.

(a) The capital stock of any bank or trust company may be reduced to the minimum provided by law for a new bank or trust company by resolution adopted by the stockholders representing 2/3 of the voting stock of such bank or trust company, except that no such reduction shall become effective until the board commissioner approves the same.

(b) With prior approval of the board, a bank or trust company may reduce its capital stock below the minimum amount allowed by subsection (a) by transferring capital stock to its surplus fund. No such reduction shall be approved unless the board finds:

(i) the proposed reduction is necessary to provide greater operational flexibility to an adequately capitalized, well-managed institution,

(ii) the proposed reduction does not result in or is not in furtherance of a reduction in the institution's capital to an amount below 8% of total deposits for a bank or below \$250,000 for a trust company,

(iii) the proposed reduction is not intended to delay, prevent, or be in lieu of capital stock impairment or a stockholder's assessment pursuant to K.S.A. 9-906, and

(iv) the proposed reduction poses no significant risk to the financial stability, safety, or soundness of the institution.

(c) After the commissioner or board has approved such reduction a certificate signed by the president and cashier of the bank or trust company setting forth the result of such reduction of its capital stock, the names of its stockholders and the amount of stock held by each, shall be filed with the secretary of state and a duplicate shall be filed with the commissioner.

(d) Whenever the capital stock of any bank or trust company shall be reduced as herein provided, every stockholder, owner or holder of any stock certificate shall surrender the same for cancellation and shall be entitled to receive a new certificate for such person's proportion of the new stock. No dividends shall be paid to any such stockholder until the old certificate is surrendered.

Senate 7/41
1/29/96
Attachment #1



**KANSAS BAR
ASSOCIATION**

Memorandum

1200 SW Harrison Street
PO Box 1037
Topeka Kansas 66601-1037
Telephone 913-234-5696
FAX 913-234-3813

E-Mail -- kansbar@ink.org

Officers

John L. Vratil, President

Dale L. Somers, President-Elect

John C. Tillotson, Vice President

Wayne R. Tate, Sec.-Treasurer

Linda Trigg, Immediate
Past President

Board of Governors

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Hon. Steve Leben, Dist. 1
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Warren Andreas, Dist. 4
Hon. Richard Holmes, Dist. 5
Hon. Marla Luckert, Dist. 5
Susan Jacobson, Dist. 6
Marilyn Harp, Dist. 7
Richard Honeyman, Dist. 7
Daniel Severt, Dist. 7
Hon. Patricia Macke Dick,
Dist. 8
Kerry McQueen, Dist. 9
James L. Bush, Dist. 10
David Boal, Dist. 11

Hon. John White, KDJA Rep.
J. Brett Milbourn, YLS Pres.

Thomas A. Hamill, ABA Del.
William B. Swearer, ABA Del.
Christel E. Marquardt, ABA Del.

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Karla Beam, CLE Director

Ginger Brinker,
Administrative Director

Debra Prideaux,
Communications Director

Ron Smith
General Counsel

Art Thompson,
IOLTA Director

TO: Senator Dick Bond
Members, Senate Financial Institutions and Insurance Com.

FROM: Ron Smith
KBA

SUBJ: committee bill introduction

DATE: January 25, 1996

The KBA would like the Financial Institutions committee to introduce the attached bill amending KSA 40-4103(c)(1) as per the attached draft incorporates.

Briefly, KBA has helped organize a captive malpractice insurance company, the Attorneys Liability Protection Society (ALPS). It is a risk retention group domiciled in Montana. It currently sells policies to Kansas lawyers. Right now it is taxed higher than other out of state casualty companies. We believe that to be contrary to federal law which anticipates that federal risk retention groups will be taxed the same as other companies similarly situated.

The change in this statute insures Kansas complies with the Federal Risk Retention Act. This means it will pay a 2% sales tax on premiums. There will be a slight loss of revenue. The insurance commissioner is aware of this proposed change. We would prefer to let her office speak to it at the committee hearing time. We shall also have persons here from Montana if necessary to explain the bill and answer questions.

Thank you.

enc/

*Senate 7/41
1/29/96
Attachment #2*

K.S. A. Sec. 40-4103
KANSAS STATUTES
CHAPTER 40.
INSURANCE ARTICLE 41.
RISK RETENTION AND PURCHASING GROUPS

40-4103. Requirements of risk retention groups chartered in foreign states; examination by commissioner, when; compliance with order in voluntary dissolution or delinquency proceeding; domestic or foreign chartered groups; taxation; other insurance laws applicable; disclaimer required on policies; prohibited acts.

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group.

(a) Notice of operations and designation of commissioner as agent. Before offering insurance in this state, a risk retention group shall submit to the commissioner:

(1) A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, date of chartering, its principal place of business and such other information including information on its membership, as the commissioner of this state may require to verify that the risk retention group is qualified under subsection

(k) of K.S. 40-4101 and amendments thereto;

(2) a copy of its plan of operations or a feasibility study and revisions of such plan or study submitted to its state of domicile; but the provision relating to the submission of a plan of operation or a feasibility study shall not apply with respect to any line or classification of liability insurance which:

(A) Was defined in the product liability risk retention act of 1981 before October 27, 1986; and

(B) was offered before such date by any risk retention group which had been chartered and operating for not less than three years before such date;

(3) a statement of registration which designates the commissioner as its agent for the purpose of receiving service of legal documents or process; and

(4) a notification fee in the amount of \$250.

(b) Financial condition. Any risk retention group doing business in this state shall submit to the commissioner:

(1) A copy of the group's financial statement submitted to its state of domicile, which shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American academy of actuaries or a qualified loss reserve specialist

(under criteria established by the national association of insurance commissioners);

(2) a copy of each examination of the risk retention group as certified by the commissioner or public official conducting the examination;

(3) upon request by the commissioner, a copy of any audit performed with

respect to the risk retention group; and

(4) such information as may be required to verify its continuing qualification as a risk retention group under subsection

(k) of K.S. 40-4101 and amendments thereto.

(c) Taxation.

(1) All premiums paid for coverages within this state to risk retention groups chartered *within or* outside this state shall be subject to taxation at the same rate and subject to the same interest, fines and penalties for nonpayment as that provided by K.S.A. 40-246e 40-252 and amendments thereto. ~~Risk retention groups chartered or licensed in this state shall be taxed in accordance with K.S. 40-252, and amendments thereto.~~

Senate 7/01
1/29/96 2-2

(2) To the extent agents or brokers are utilized, they shall report and pay the taxes for the premiums for risks which they have placed with or on behalf of a risk retention group not chartered in this state.

(3) To the extent agents or brokers are not utilized or fail to pay the tax, each risk retention group shall pay the tax for risks insured within the state. Further, each risk retention group shall report all premiums paid to it for risks insured within the state.

(d) Compliance with unfair claims settlement practices law. Any risk retention group, its agents and representatives, shall comply with subsection

(9) of K.S. 40-2404 and amendments thereto.

(e) Deceptive, false or fraudulent practices. Any risk retention group shall comply with the laws of this state regarding deceptive, false or fraudulent acts or practices. However, if the commissioner seeks an injunction regarding such conduct, the injunction shall be obtained from a court of competent jurisdiction.

(f) Examination regarding financial condition. Any risk retention group shall submit to an examination in accordance with K.S. 40-222 and 40-223, and amendments thereto, by the commissioner to determine its financial condition if the commissioner of the jurisdiction in which the group is chartered has not initiated an examination or does not initiate an examination within 60 days after a request by the commissioner of this state.

(g) Notice to purchasers. Any policy issued by a risk retention group shall contain in 10 point type on the front page and the declaration page, the following notice:

NOTICE This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group.

(h) Prohibited acts regarding solicitation or sale. The following acts by a risk retention group are hereby prohibited:

(1) The solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in such group; and

(2) the solicitation or sale of insurance by, or operation of, a risk retention group that is in a hazardous financial condition or is financially impaired.

(i) Prohibition on ownership by an insurance company. No risk retention group shall be allowed to do business in this state if an insurance company is directly or indirectly a retention group all of whose members are insurance companies.

(j) Prohibited coverage. No risk retention group may offer insurance policy coverage prohibited by the laws of this state or declared unlawful by the supreme court of the state of Kansas.

(k) Delinquency proceedings. A risk retention group not chartered in this state and doing business in this state must comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by a state insurance commissioner if there has been a finding of financial impairment after an examination under subsection

(f) of this section.

History: L. 1986, ch. 166,
Sec. 3; L. 1987, ch. 172,
Sec. 3; L. 1992, ch. 154,
Sec. 5; July 1.

4/19/1
1/29/96 2-3

SENATE CONFIRMATION QUESTIONNAIRE

Office of Governor Bill Graves

AUG 14 1995

Please complete and return this form to the Governor's Appointments Office. Attach additional sheets if necessary.

OFFICE OF THE GOVERNOR

Name: Mark T. Lair

Home Address: Route 4, Box 181

City, State, Zip: Chanute, Kansas 66720

Business Address: Bank of Commerce, 101 W. Main

City, State, Zip: Chanute, Kansas 66720

Home Phone: 316/431-3002 Business Phone: 316/431-1400

Date of Birth: 07-10-58 Place of Birth: Iola, Kansas

Party Affiliation: Republican KBI Check: NA In Process Complete

Appointed as: Kansas Banking Board Member

Appointment Date: June 22, 1995 Expiration Date: March 15, 1998

Term Length: 3 years Statutory Authority: K.S.A. 74-3004

Salary: \$35 per meeting Predecessor: Clarence J. Gidycz

Statutory Requirements: Banker with not less than five years actual banking experience in a state bank in Kansas residing in the congressional district.

BACKGROUND

1. List high school, college, or other education institution attended along with the date attended and degree conferred.

Education Institution	Dates	Degree
<u>Yates Center, KS</u>	<u>1972 - 1976</u>	<u>High School</u>
<u>Kansas State University</u>	<u>1976 - 1980</u>	<u>B.S.</u>
<u>Washburn University of Topeka, School of Law</u>	<u>1980 - 1982</u>	<u>J.D.</u>

2. List memberships in business, trade and professional organizations for the past 10 years.

Organization	Dates
<u>Kansas Bankers Association</u>	<u>1983 - Present</u>
<u>Kansas Bankers Assn. Governing Council</u>	<u>1993 - 1994</u>
<u>American Bar Association</u>	<u>1983 - Present</u>
<u>Kansas Bar Association</u>	<u>1983 - Present</u>
<u>U.S. Court of Federal Claims Bar Association</u>	<u>1992 - Present</u>

3. List any public offices you have been elected or appointed to, along with the dates of service.

Office Held	Dates
<u>Kansas State Banking Board</u>	<u>1990 - 1992</u>

Senate 7/41
1/29/96
Attachment # 3

4. List any positions held with a foreign, federal or local government entity along with the dates of service.

Position	Government Entity	Dates
<u>N/A</u>		

5. List any lobbying activities you have been involved in during the past five years. This includes activities as a registered lobbyist or lobbying activities for which you were compensated.

Group	Compensation (yes/no)	Dates
<u>N/A</u>		

6. List experience or interests which qualify you for the position to which you have been appointed. I have worked with the State Banking Department on many regulatory matters over the last twelve years. I am interested in the future of the State banking system and the role of the State Banking Board in managing and preserving this sytem.

7. Summarize business and professional experience. I have been a banker for twelve years and presently hold the position of President of Bank of Commerce in Chanute, Kansas. I have been general counsel for a group of banks located in Southeast Kansas for twelve years.

8. List any service in the United States military. Include dates of service, branch, date and type of discharge.

Branch	Discharge	Dates
<u>N/A</u>		

9. Provide details of any arrest, charge or questioning by a federal, state or other law enforcement authority for violation of any federal, state, county or municipal law, regulation or ordinance (excluding traffic violations for which a fine of \$100 or less was imposed). Violation of K.S.A. 8-1567 (DWI) September 14, 1991. Diversion agreement entered April 28, 1992.

10. List and provide details of any interests that may present a conflict of interest for this position. Because part of the membership of the State Banking Board is made up of bankers, there is always some potential for a conflict of interest. This is avoided by the member not participating in the discussion of or voting upon matters where a conflict of interest could exist.

I, Mark T. Lair, declare that this questionnaire is true, correct and complete to the best of my knowledge.

[Signature]
Signature

8-11-95 4/29/96
Date Date
3-2

C. OWNERSHIP INTERESTS: List any corporation, partnership, proprietorship, trust, joint venture and every other business interest, including land used for income in, which either you or your spouse has owned within the preceding 12 months a legal or equitable interest exceeding \$5,000 or 5%, whichever is less. If you or your spouse own more than 5% of a business, you must disclose the percentage held. Please insert additional page if necessary to complete this section.

If you have nothing to report in Section "C", check here ____.

BUSINESS NAME AND ADDRESS	TYPE OF BUSINESS	DESCRIPTION OF INTERESTS HELD	HELD BY WHOM	PERCENT OF OWNERSHIP INTERESTS
1. Southeast Bancshares, Inc. 101 W. Main, Chanute, KS 66720	Bank Holding Co.	6.38%	<input checked="" type="checkbox"/> You <input type="checkbox"/> Spouse <input type="checkbox"/> Jointly	
2. Locke-Neosho Abstracts, Inc. P.O. Box 178, Erie, KS 66733	Abstract and Title Company	25%	<input checked="" type="checkbox"/> You <input type="checkbox"/> Spouse <input type="checkbox"/> Jointly	
3. Farm 162 Acre Farm		100%	<input checked="" type="checkbox"/> You <input type="checkbox"/> Spouse <input type="checkbox"/> Jointly	
4. Farm 170 Acre Farm		100%	<input type="checkbox"/> You <input type="checkbox"/> Spouse <input checked="" type="checkbox"/> Jointly	
5.			<input type="checkbox"/> You <input type="checkbox"/> Spouse <input type="checkbox"/> Jointly	
6.			<input type="checkbox"/> You <input type="checkbox"/> Spouse <input type="checkbox"/> Jointly	
7.			<input type="checkbox"/> You <input type="checkbox"/> Spouse <input type="checkbox"/> Jointly	

D. GIFTS OR HONORARIA: List any person or business from whom you or your spouse either individually or collectively, have received gifts or honoraria having an aggregate value of \$500 or more in the preceding 12 months.

If you have nothing to report in Section "D", check here X.

NAME OF PERSON OR BUSINESS FROM WHOM GIFT RECEIVED	ADDRESS	RECEIVED BY:
1.		
2.		
3.		

4/4/96
1/29/96 3-4

RECEIPT OF COMPENSATION: List all places of employment in the last calendar year, and any other businesses from which you or your spouse received \$2,000 or more in compensation (salary, thing of value, or economic benefit conferred on in return for services rendered, or to be rendered), which was reportable as taxable income on your federal income tax returns.

1. YOUR PLACE(S) OF EMPLOYMENT OR OTHER BUSINESS IN THE PRECEDING CALENDAR YEAR. IF SAME AS SECTION "B", CHECK HERE ____.
 If you have nothing to report in Section "E"1, check here ____.

	NAME OF BUSINESS	ADDRESS	TYPE OF BUSINESS
1.	Bank of Commerce	101 W. Main, Chanute, KS	Bank
2.	Southeast Bancshares, Inc.	101 W. Main, Chanute, KS	Banking Holding Company

2. SPOUSE'S PLACE(S) OF EMPLOYMENT OR OTHER BUSINESS IN THE PRECEDING CALENDAR YEAR.
 If you have nothing to report in Section "E"2, check here ____.

	NAME OF BUSINESS	ADDRESS	TYPE OF BUSINESS
1.	Unified School District 413	410 S. Evergreen, Chanute, KS	School
2.			

OFFICER OR DIRECTOR OF AN ORGANIZATION OR BUSINESS: List any organization or business in which you or your spouse hold a position of officer, director, associate, partner or proprietor at the time of filing, irrespective of the amount of compensation received for holding such position. Please insert additional page if necessary to complete this section. If you have nothing to report in Section "F", check here ____.

	BUSINESS NAME AND ADDRESS	POSITION HELD	HELD BY WHOM
1.	See attached		
2.			
3.			
4.			
5.			

4/4
 4/29/96
 3-5

RECEIPT OF FEES AND COMMISSIONS: List each client or customer who pays fees or commissions to a business or combination of businesses from which fees or commissions you or your spouse received an aggregate of \$2,000 or more in the preceding calendar year. The phrase "client or customer" relates only to businesses or combination of businesses. In the case of a partnership, it is the partner's proportionate share of the business, and hence of the fee, which is significant, without regard to expenses of the partnership. An individual who receives a salary as opposed to portions of fees or commissions is generally not required to report under this provision. Please insert additional page if necessary to complete this section.

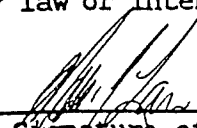
If you have nothing to report in Section "G", check here X .

	NAME OF CLIENT / CUSTOMER	ADDRESS	RECEIVED BY
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			

H. DECLARATION:

I, Mark T. Lair, declare that this statement of substantial interests (including any accompanying pages and statements) has been examined by me and to the best of my knowledge and belief is a true, correct and complete statement of all of my substantial interests and other matters required by law. I understand that the intentional failure to file this statement as required by law or intentionally filing a false statement is a class B misdemeanor.

8-11-95
Date


Signature of Person Making Statement

NUMBER OF ADDITIONAL PAGES 1 .

Return your completed statement to the Secretary of State, State House, Topeka, Kansas 66612.

7/27
1/29/96
3-6

FILE 1

AUG 14 1995

RON THORNBURGH

F. OFFICER OR DIRECTOR OF AN ORGANIZATION OR BUSINESS:

1. Bank of Commerce
101 W. Main
Chanute, KS 66720 Director/President Mark T. Lair
2. First Neodesha Bank
524 Main
Neodesha, KS 66757 Director Mark T. Lair
3. Chetopa State Bank & Trust Co.
409 Maple
Chetopa, KS 67336 Director Mark T. Lair
4. Home State Bank
318 S. Main
Erie, KS 66733 Director Mark T. Lair
5. Stark State Bank
P. O. Box 38
Stark, KS 66775 Director Mark T. Lair
6. First State Bank of Thayer
P. O. Box 8
Thayer, KS 66776 Director Mark T. Lair
7. Fall River State Bank
P. O. Box 5
Fall River, KS 67047 Director/Vice Pres. Mark T. Lair
8. Locke-Neosho Abstracts, Inc.
Neosho County Courthouse
Erie, KS 66733 Secretary Mark T. Lair
9. Southeast Bancshares, Inc.
101 W. Main
Chanute, KS 66720 Director/President Mark T. Lair

7141
1/29/96
3-7

75-1302 STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

2. Former commissioner or deputy not eligible if interested in bank. The State, ex rel., v. Wilson, 108 K. 641, 647, 196 P. 758.

3. Qualifications for office of bank commissioner considered. The State, ex rel., v. Wilson, 108 K. 641, 647, 196 P. 758.

4. Commissioner or deputy may examine bank when not personally interested. The State, ex rel., v. Wilson, 108 K. 641, 647, 196 P. 758.

75-1302.

History: L. 1897, ch. 47, § 22; R.S. 1923, 75-1302; Repealed, L. 1947, ch. 102, § 143; June 30.

Source or prior law:
L. 1891, ch. 43, § 22.

75-1303.

History: L. 1897, ch. 47, § 56; L. 1919, ch. 92, § 1; R.S. 1923, 75-1303; L. 1943, ch. 269, § 22; Repealed, L. 1947, ch. 102, § 143; June 30.

Source or prior law:
L. 1891, ch. 43, § 28.

75-1304. State bank commissioner; appointment; term; qualifications. The governor shall appoint, subject to confirmation by the senate as provided in K.S.A. 75-4315b, a state bank commissioner whose term of office shall be four years and who shall serve until a successor is appointed and qualified. No person shall be eligible for appointment as commissioner unless the person has had five years actual banking experience as an executive officer in a state bank in this state. If a vacancy occurs in the office of the commissioner prior to the expiration of a term, the vacancy shall be filled for the unexpired term by appointment by the governor.

History: L. 1947, ch. 102, § 83; L. 1978, ch. 308, § 71; L. 1981, ch. 299, § 62; L. 1982, ch. 347, § 50; July 1.

Source or prior law:
75-1301.

Law Review and Bar Journal References:
"The Consumer Class Action," Arthur H. Travers, Jr., and Jonathan M. Landers, 18 K.L.R. 811, 813 (1970).

Attorney General's Opinions:

Appointment of special deputy to take over insolvent bank; liability of directors and officers. 86-32.

75-1305. Oaths. The commissioner, his or her assistant and examiners, before entering upon the discharge of their duties shall take and subscribe the usual oath of office.

History: L. 1947, ch. 102, § 84; L. 1967, ch. 434, § 52; July 1.

Source or prior law:
75-1302.

75-1306. Office of state bank commissioner. It shall be the duty of the secretary of administration to provide the commissioner with suitable office space at Topeka.

History: L. 1947, ch. 102, § 85; L. 1953, ch. 375, § 69; L. 1978, ch. 330, § 11; July 1.

Source or prior law:
79-160.

75-1307.

History: L. 1947, ch. 102, § 86; Repealed, L. 1961, ch. 408, § 1; June 30.

Source or prior law:
75-1303.

75-1308. Record of fees and expenses; disposition of moneys received; bank commissioner fee fund. The commissioner shall keep a record of all fees collected by him or her, together with a record of all expenses incurred in making the examinations of all banks and trust companies. The bank commissioner shall remit all moneys received by or for him or her from such fees to the state treasurer at least monthly. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury. Twenty percent (20%) of each such deposit shall be credited to the state general fund and the balance shall be credited to the bank commissioner fee fund. All expenditures from the bank commissioner fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the bank commissioner or by a person or persons designated by him or her.

History: L. 1947, ch. 102, § 94; L. 1973, ch. 50, § 1; July 1.

Source or prior law:
9-127.

Article 13a.—STATE BUILDING AND LOAN DEPARTMENT

Cross References to Related Sections:

Savings and loan code, see ch. 17, arts. 51 to 58.
Savings and loan commissioner, department and board, see ch. 74, art 31.

75-13a01.

History: L. 1927, ch. 295, § 1; L. 1943, ch. 277, § 11; Repealed, L. 1943, ch. 133, § 216; July 1.

CASE ANNOTATIONS

1. Cited in discussing history of building and loan association statutes. Harkrader v. Whitman, 142 K. 186, 192, 46 P.2d 1.

January 29, 1996

Testimony to the Kansas Senate Committee on Financial Institutions and Insurance in support of Senate Bill number 437, by Jim McGuire, President, McGuire Mortgage Company, 3826 W. 75th St., Prairie Village, Kansas 66208.

McGuire Mortgage Company is a Kansas based mortgage banker specializing in home equity and nonconforming real estate loans. My company and our employees are in favor of the provision in S.B. 437 allowing supervised lenders to receive an origination fee not to exceed 5% of the amount financed on consumer loans secured by an interest in land. We believe this change will benefit both borrowers and lenders because when origination fees are restricted to an unprofitable level, the availability of credit for Kansas consumers is reduced and credit options are less plentiful.

The U.S. Department of Housing and Urban Development recently arrived at this conclusion in an attempt to stimulate interest in FHA Title One Home Improvement lending. For years, HUD had restricted lenders to charging no more than a 1% origination fee. Because this artificially low fee made these loans unprofitable to originate, very few lenders were willing to participate in the program. In 1995, HUD made a number of changes in the Title 1 program to encourage more lender participation, and these changes included raising the allowable origination fee from 1% to 5%. This consensus figure was reached by HUD after months of public comment from consumer and industry trade groups. We believe it makes sense for the Kansas statute to be in conformity with federal rules in this regard.

We believe the consumer will be well served by increased competition and a greater availability of credit options. McGuire Mortgage Company is a Kansas based lender with branch offices in Chicago, Phoenix, and aggressive expansion plans. These plans include a significant increase in the number of Kansas home office employees. Kansas is the most restrictive state to do business in terms of allowable origination fees. We are concerned that out of state lenders will have an unfair advantage by being able to charge much higher fees in their "home markets". In addition we feel we are at a competitive disadvantage with mortgage brokers who have no restrictions at all or the amount of their fees. For example, if a customer comes to us directly and wants to borrow \$10,000, we can charge just under \$300.00. That same borrower working through a broker may pay a \$1,000 broker fee or more because broker fees are unregulated.

In summary, we feel an upward adjustment in the maximum origination fee to 5% is reasonable and justified. While we recognize the need for prudent regulation of fees we feel the marketplace should primarily dictate acceptable fees and the marketplace will inevitably reward those companies that provide competitive products and a high level of customer service.

Senate 7141
1/29/96
Attachment # 4

TESTIMONY
SENATE BILL No. 437
BILL CATON, CONSUMER CREDIT COMMISSIONER
JANUARY 22, 1996

Thank you for the opportunity to appear before you and testify on Senate Bill 437. I respectfully submit an amendment to this proposed legislation that will formalize a written but non-binding agreement this office has had with the consumer loan industry since 1995. I have attached the pertinent correspondence on this matter and refer you to it for review.

I am not adverse to the changes in nonrefundable origination fees, hereinafter referred to as prepaid finance charges, made by SB 437. I believe that competition is the best regulator, and this change will give the free market more flexibility to competitively set fees on consumer loans. The prepaid finance charge is required to be disclosed both in a dollar amount and in the annual percentage rate (APR), so it is very clear to the consumer the amount and the effect this fee has on the contract interest rate. I also feel that this additional fee will promote more competition in the area of small, short term loans. Availability of this type of financial product could encourage consumers to use this product instead of credit card debt, a financial product that is widely misused and is endangering many consumers' financial stability.

The amendment I propose will statutorily prohibit a creditor, when refinancing a loan or consolidating several loans, from charging a prepaid finance charge on loan proceeds for which the creditor has already received this fee. This will only be prohibited within six months of the loan date. Although the informal agreement has been effective in curtailing this practice, I believe it is appropriate at this time to address this situation statutorily. The additional allowable charge could tempt lenders to resort to this practice to unfairly profit at the expense of the consumer.

I have discussed this proposed amendment with the financial services industry and the banking industry and have received supportive responses. This amendment is viewed as a reasonable restriction and it satisfies my concern for fair lending practices.

When considering SB 437, please consider the amendment I have proposed as I feel it represents good public policy and an equitable safeguard for the consumer. Thank you for your time and attention.

PROPOSED AMENDMENT TO SB 437

add to end of both (9) (a) and (9) (b): except as limited by paragraph (c) of subsection 9.

New section (9) (c) With respect to a refinancing or consolidation of a previous consumer credit transaction for which a nonrefundable origination fee was imposed, if said refinancing or consolidation is consummated within six months of the previous transaction, a new nonrefundable origination fee may be imposed only on that portion of the aggregate principal resulting from the refinancing or consolidation which exceeds the unpaid balance of the previous transaction.

*Senate 4141
1/29/96
Attachment # 5*



KANSAS

Office of CONSUMER CREDIT COMMISSIONER

Joan Finney
Governor

Wm. F. Caton
Commissioner

July 22, 1994

Mr. Keith Jones, President
Kansas Association of Financial Services
P. O. Box 660237
Dallas, Texas 75266-0237

Dear Keith:

I am writing this letter as a follow up to our discussion at the June meeting at the Lake of the Ozarks. Please accept this as a formal request from this office for the Association to address the issue of charging prepaid finance charges on consumer loans refinanced in a short time span.

It is the opinion of this office that charging prepaid finance charges on the entire principal of a refinanced loan within a short time period of the original loan is unconscionable. Although the Kansas Uniform Consumer Credit Code does not specifically address this, many other states are prohibiting this practice by statute. I do not wish to address this issue statutorily but would rather have the industry discontinue this practice and police itself in the future.

I would appreciate a written response by your Association indicating a commitment of the financial services industry to follow a policy which would fairly treat the consumer in regard to prepaid finance charges. I would suggest a policy which would charge a prepaid finance charge only on the new money portion of the refinanced loan within a specific time period.

After a thorough review by our examiners, I believe this practice is very isolated and can be corrected in the manner prescribed above. However, I do feel strongly enough about this matter to request a legislative review if this situation continues.

I hope to have your written response soon and definitely would like to discuss this with you during my visit to Dallas the week of August 8th. I am looking forward to our meeting in August.

Sincerely,

Wm. F. Caton
Commissioner

WFC:dr

7/21
1/29/96
5-2

The Kansas Association of Financial Services

George Barbee, Executive Director

Jayhawk Tower, 700 SW Jackson, Suite 702

Topeka, KS 66603-3740

913/233-0555

Fax: 913/357-6629

November 14, 1994

Mr. Bill Caton, Commissioner
Office of Consumer Credit Commissioner
Jayhawk Tower
700 SW Jackson Street, Suite 1001
Topeka, KS 66603-3758

Mr. Caton:

As you know, Section 16a-2-401(9)(a) of the Kansas Consumer Credit Code permits lenders to charge a 3% nonrefundable origination fee on consumer loans secured by land. Section 16a-2-401(9)(b) permits a lender to charge the lesser of 2% of amount financed or \$100 nonrefundable origination fee on a consumer loan that is neither open ended nor secured by real estate. (Herein referred to as the fees.)

In your letter dated July 22, you asked the Kansas Association of Financial Services (KAFS) to address the issue of charging origination fees on consumer loans refinanced by the same lender a short time after the loans are originated. KAFS met on August 4, 1994 and discussed this issue. KAFS concluded that the Kansas Consumer Credit Code and its regulations and Kansas law in general are silent on the question of how soon into the term of the loan the fees may be charged on loans which are refinanced by the originating lender. KAFS carefully considered the observations made in the July 22 letter.

A vote was taken and KAFS unanimously agreed that effective January 2, 1995, KAFS members would charge the loan origination fees provided for under KCC 16a-2-401(9)(a) and (b) on new money only on consumer loans that are refinanced by the same lender within the first six months of the term of the loan. "New money" would be defined as the difference between the amount financed on the new loan and the payoff balance on the prior loan. There would be no origination fee restriction on loans refinanced after expiration of six months of the term of the loan.

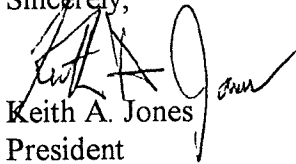
It is the intent of every KAFS member to comply with this new policy as if it were legally required. This agreement is an informal understanding among KAFS members on the

Page 2 - November 14, 1994
Bill Caton

procedure of charging origination fees on refinanced consumer loans. It is not legally binding on KAFS members. A violation of this agreement carries no liability and is not subject to the penalties provided for under the Kansas Consumer Credit Code or Kansas law in general. It is agreed that any violations of this agreement by KAFS members should be noted during the course of ordinary compliance exams by the Office of Consumer Credit.

KAFS appreciates the Office of Consumer Credit's interest in this matter. If you have any questions or wish to discuss this matter further, please do not hesitate to contact me or George Barbee.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith A. Jones", written over a printed name.

Keith A. Jones
President

Kansas Association of Financial Services

7141 1/29/96
5-4

9/6/02/1
4/1/1
5-5

1 (5) Subject to classifications and differentiations the lender may rea-
2 sonably establish, the lender may make the same finance charge on all
3 amounts financed within a specified range. A finance charge so made
4 does not violate subsections (1) and (2) if:

5 (a) When applied to the median amount within each range, it does
6 not exceed the maximum amount permitted in subsections (1) and (2);
7 and

8 (b) when applied to the lowest amount within each range, it does not
9 produce a rate of finance charge exceeding the rate calculated according
10 to paragraph (a) by more than 8% of the rate calculated according to
11 paragraph (a).

12 (6) Notwithstanding subsections (1) and (2), a lender may contract
13 for and receive a minimum finance charge of not more than \$5 when the
14 amount financed does not exceed \$75, or not more than \$7.50 when the
15 amount financed exceeds \$75.

16 (7) This section shall not apply to a loan secured by an interest in
17 land the interest rate of which is governed by subsection (b) of K.S.A. 16-
18 207, and amendments thereto, unless made subject hereto by agreement.

19 (8) Except for paragraph (a) of subsection 9, this section shall not
20 apply to a loan secured by an interest in land subordinate to a prior
21 mortgage and held by a lender other than the lender of the first mortgage,
22 the interest rate of which is governed by subsection (b) or (h) of K.S.A.
23 16-207, and amendments thereto, unless made subject hereto by agree-
24 ment.

25 (9) (a) In addition to the applicable finance charge or rate of interest
26 prescribed by law, a supervised lender may contract for and receive a
27 nonrefundable origination fee not to exceed ~~3%~~ 5% of the amount fi-
28 nanced on any consumer loan secured by an interest in land, which fee
29 shall be a nonrefundable, prepaid finance charge.

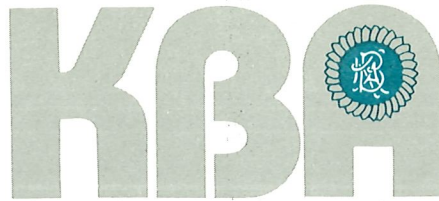
30 (b) In addition to the applicable finance charge permitted for con-
31 sumer credit sales other than sales by way of open end credit or for
32 consumer loans not secured by an interest in land, a creditor may contract
33 for and receive, in connection with any such sale or loan, a nonrefundable
34 origination fee in an amount not to exceed the lesser of ~~2%~~ 5% of the
35 amount financed or ~~\$100~~ \$150, which fee shall be a nonrefundable, pre-
36 paid finance charge.

except as limited by paragraph (c) of subsection 9

except as limited by paragraph (c) of subsection 9

(c) with respect to a refinancing or consolidation of a previous consumer credit transaction, for which a non-refundable origination fee was imposed, if said refinancing or consolidation is consummated within six months of the previous transaction, a new non-refundable origination fee may be imposed only on that portion of the aggregate principal resulting from the refinancing or consolidation which exceeds the unpaid balance of the previous transaction.

37 Sec. 2. K.S.A. 16a-2-401 is hereby repealed.
38 Sec. 3. This act shall take effect and be in force from and after its
39 publication in the statute book.



The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

January 22, 1996


TO: Senate Committee on Financial Institutions and Insurance
RE: SB 437 - Origination fees on consumer loans

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before the committee in support of **SB 437**. The bill would amend subsections (a) and (b) of subsection (9) of K.S.A. 16a-2-401. That statute is part of the Uniform Consumer Credit Code (UCCC) and is the statute which defines what finance charges and origination fees are allowable under the Code on consumer loans.

The bill increases the nonrefundable origination fee which may be allowed on consumer loans secured by land from 3% to 5% of the amount financed and also increases the allowable nonrefundable origination fee on closed-end credit sales and consumer loans not secured by land from 2% to 5% of the amount financed. The maximum dollar amount for such origination fees on the latter type of loan is moved from \$100 to \$150. These amendments are designed to reflect the inflationary changes which have occurred since the statute was last amended in 1986 and to also reflect the increased amount of regulatory review required of all financial institutions as the result of federal laws and regulations.

We believe the caps placed on finance charges and fees runs contrary to what is happening in the marketplace. In today's highly competitive consumer lending environment institutions would be hard-pressed to sustain their market share if they were imposing maximum rates and fees. What is happening in home equity lending and in credit card lending are classic examples of how the marketplace - not statutory restrictions - determine rates and fees. If the committee does not believe it is appropriate to remove the rate and fee restrictions now in place in the UCCC then we do request that the adjustments requested in **SB 437** be adopted.


James S. Maag
Senior Vice President

Office of Executive Vice President • 1500 Merchants National Building
Eighth and Jackson • Topeka, Kansas 66612 • (913) 232-3444
FAX (913) 232-3484

Senate 7/41

1/29/96 attachment #6

To: Senator Dick Bond
From: Gloria M. Timmer
Subject: SB 416 - Proposed Amendment
Date: January 26, 1996

D.O.B.
MEMORANDUM

This memorandum is in response to your request for fiscal impact information on a proposed amendment to SB 416. This office contacted the Department of Revenue for a fiscal impact statement. Besides providing information pertinent to the proposed amendment's fiscal impact, the Department of Revenue addresses some legal concerns as well. A copy of their response is attached.

SB 416 - As Introduced The bill as introduced, provides a privilege tax credit for insurance companies that invest in a qualified business facility. Bank holding companies are currently eligible for the credit. There was no way to determine how many insurance companies would avail themselves of this option and at what dollar amount. Therefore, there is no projection as to the potential decrease in the privilege tax income estimated at \$660,000 in FY 1996 and the \$775,000 in FY 1997.

Amendment to Extend Credit to Financial Institutions The proposed amendment to SB 416 would extend the opportunity for a privilege tax credit for investments in a qualified business facility to financial institutions. The Consensus Revenue Estimating Group has estimated collections from income taxes paid by financial institutions at \$33.0 million in FY 1996 and \$35.0 million in FY 1997.

Fiscal Impact of Proposed Amendment We contacted the Department of Revenue for a fiscal estimate on the proposed amendment. The Department prefaced their response by noting that if qualified institutions are defined as "nonmanufacturers," the loss to the State General Fund would be greater than if the institutions were defined as "retail/service." Further, the Department of Revenue submits that the amount allowed as credit depends on the tax liability, number of required new employees, and the amount of the qualified investment. It is not known how many financial institutions would qualify as nonmanufacturing or as retail/service. As there is no way to determine the amount of financial institutions that would qualify under this proposal, there is no way to determine the amount of credits that would be allowed

While the impact to tax revenues cannot be determined, the Department of Revenue does report that the proposed amendment would require additional staff. The agency estimates that it would have to check the financial institution's returns, check for liability, and determine the amount of credit, and maintain records. A Tax Examiner III position (\$30,083, fringes included) is requested for FY 1997.

Senate 7/41
1/29/96
Attachment #7

RECEIVED

MEMORANDUM

JAN 26 1996

Division of the Budget
State of Kansas

TO: Ms. Gloria M. Timmer, Director
Division of Budget

DATE: January 24, 1996

FROM: Kansas Department of Revenue

RE: Senate Bill 416
Proposed Amendment

BRIEF OF BILL:

A proposed amendment to Senate Bill 416 as Introduced allows a credit, for investment in a qualified business facility, against tax imposed, to insurance companies filing the privilege tax on net income under K.S.A. 40-2801 et seq. and to financial institutions filing the privilege tax under K.S.A. 79-1101 et. seq.. These companies must meet the definition of "business" as defined by K.S.A. 74-550,114.

This bill amends K.S.A. 1995 Supp. 79-32,160a. It is effective from and after publication in the statute book.

FISCAL IMPACT:

Only a rough estimate of the loss to the State General Fund for Fiscal Year 1997 from the financial privilege credits can be made. Bank holding companies are currently eligible for the credit if there is a tax liability, under K.S.A. 79-32,160a. The amendment would allow financial institutions to take the credit.

For Process Year 1995 only, through mid-October, 1995, for facilities that commenced operations on or after January 1, 1993, as the proposed would, there were 60 manufacturing and nonmanufacturing businesses with \$1.167 million credit allowed, an average of \$19,450, and 46 retail businesses with \$0.362 million credit allowed, with an average amount of \$7,870. If qualified institutions are defined as nonmanufacturers, the loss to the General Fund would be greater than if such institutions were defined as retail/service. The amount allowed is dependent upon the liability; and the amount of credit varies with variable number of required new employees, with variable amounts for each; and variable amounts for each \$100,000 of qualified investment. It is not known how many would choose to qualify for the credits; and if financial institutions would qualify as nonmanufacturing or as retail/service. Assuming that the average can be applied, if 100 institutions qualified as nonmanufacturing businesses, the impact would be \$1.945 million. If 100 institutions qualified as retail/service, the impact would be \$.787 million. No estimate is made for credits under K. S. A.. 79032,160a(e).

The Department of Revenue does not collect the insurance tax, and is not in a position to make a fiscal impact estimate on the amount of credit that would be allowed to insurance companies. It is estimated that passage of this bill would reduce receipts to the State General Fund in Fiscal Year 1997.

FISCAL COMMENT:

The bill should state for what tax year it is effective.

ADMINISTRATIVE IMPACT:

The Department would have to check the financial institutions returns, check for liability and determine the amount of credit, and maintain records. A Tax Examiner III position, range 21, \$30,083, will be needed for Fiscal Year 1997.

ADMINISTRATIVE PROBLEMS AND COMMENTS:

The insurance company part of this bill would have no impact on the Department of Revenue.

444 1/29/96
7-2

The financial institution part would have an effect on the Department of Revenue. However, there is a problem as to where the legislature placed the new language to allow a privilege tax credit. K.S.A. 79-32,160a refers to manufacturing and nonmanufacturing businesses. Since banks and savings and loans are listed as "retail and services", the credit should be included in the language in K.S.A. 79-32,153 wherein they would receive a \$100 credit instead of the enhanced credits for manufacturing and nonmanufacturing.

K.S.A. 74-50,114(c) which currently provides that the Department of Revenue submit an annual report to the governor and legislature refers only income tax credits.

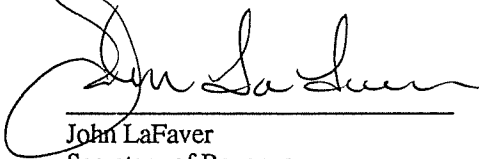
LEGAL IMPACT:

The balloon offered by the Kansas Bankers Association would appear to extend the above credit to financial institutions which pay the privilege tax measured by income at K.S.A. 79-1106 *et seq.*

It should be noted that neither 1) an insurance company or its holding company nor 2) a financial institution or its holding company can be eligible for the K.S.A. 79-32,160a(a) credit unless the facility in question is the corporate headquarters under K.S.A. 74-50,114(f). (If not the corporate headquarters, the facility would not be a "manufacturing business" or "non-manufacturing business" under K.S.A. 74-50,114(a), as required by K.S.A. 79-32,160a(a).) The credit under K.S.A. 79-32,160a(e) does not require the taxpayer to be the corporate headquarters, but there are several other additional requirements under that subsection.

Note that an insurance company holding company, as a corporate income taxpayer, is currently eligible for the corporate income credit under K.S.A. 79-32,160a if the facility is the corporate headquarters.

APPROVED BY:



John LaFaver
Secretary of Revenue

Carithers

7/29/96
7-3

MEMORANDUM

TO: The Honorable Dick Bond, Chairman
Senate Financial Institutions and Insurance Committee

FROM: William W. Sneed, Legislative Counsel
AmVestors Financial Corporation
American Investors Life Insurance Company

DATE: January 29, 1996

RE: S.B. 414

Mr. Chairman, Members of the Committee: My name is Bill Sneed and I represent AmVestors Financial Corporation and its wholly-owned subsidiary, American Investors Life Insurance Company. S.B. 414 amends K.S.A. 40-414, which sets out exemptions of interest in life insurance policies. Our amendment would provide the same exemptions for contracts of annuity as well.

K.S.A. 40-414 in its present form provides that a policy of insurance issued by a life insurance company and the policy's reserves or its present value shall be free from the claims of the insured's creditors, the policyholder's creditors, or the beneficiary's creditors. The amendment we offer would extend similar treatment to a similar product: the contract of annuity.

K.S.A. 40-414 is designed to protect the most basic mechanism of personal financial security -- the life insurance policy. Individuals purchase such insurance to ensure that somewhere down the road, the policy will provide contractual benefits in time of need. The simple investment in such a policy is protected by law from creditors' claims. The Kansas Legislature at some point decided that keeping this basic protection intact outweighed the need for creditors to reach the asset in satisfaction of a judgment. Annuities, in fact, share many characteristics of a life insurance policy. Like life insurance, annuities provide an individual the opportunity to pay money today in

*Senate 414
1/29/96
Attachment #8*

consideration for a benefit return at some point in the future. Annuities allow an individual to provide some measure of financial security for themselves or others.

More specifically, annuities are taxed like life insurance. Some annuities offer a death benefit, much like a life insurance policy, whereby in the event an annuitant dies before the annuitization date, the annuity pays a sum equal to the total accumulated value to a designated beneficiary. Conversely, the value of a life insurance policy is not available solely upon the death of the insured. The insured may, for instance, borrow against the value of the life insurance policy during his or her lifetime. This potential to access the value of the life insurance policy during the lifetime of the insured is similar to the characteristics of many annuities, which pay the value of the annuity to the annuitant during his or her lifetime.

Though annuities share many characteristics of a life insurance policy, the United States Bankruptcy Court, District of Kansas, has held that the language of K.S.A. 40-414 exempting “any policy of insurance” issued by a life insurance company does not include contracts of annuity. See *In re Stutterheim*, 109 B.R. 1006 (Bkrcty.D.Kan. 1988). In *Stutterheim*, the debtors attempted to claim an annuity as an exemption in bankruptcy proceedings. The court held that the plain language of K.S.A. 40-414(a) did not encompass annuities. The court also noted that the nature of the annuity contract at issue did not mesh with the traditional notion of a policy of life insurance.

Since this 1988 decision, sweeping changes have taken place in the annuities market. The structure and nature of annuities themselves have changed, moving them closer to the fold of the traditional concept of life insurance. Since the late 1980s, the similarities between annuities and life insurance have been recognized in the taxation and securities arenas. As I mentioned earlier, the similarities between the two led to similar tax treatment for both products. The Securities and Exchange Commission has recognized the resemblance between the two products as well.

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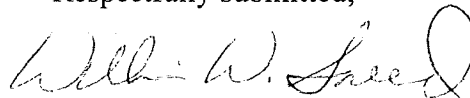
K.S.A. 40-414 was designed to protect individuals' long-term investments in personal financial security, much like the Kansas statutes containing the Homestead and personal property exemptions. The life insurance policy, very similar in form and function to an annuity, has long been protected from the claims of creditors. There is no reason not to clarify the language of the statute to protect a nearly identical product.

Our research indicates that more than 40 states have statutes similar to K.S.A. 40-414. Additionally, many states, including Nebraska and Oklahoma, have language similar to that which my client proposes in S.B. 414.

In sum, we submit that clarifying the language of K.S.A. 40-414 to include contracts of annuity is consistent with the spirit of the original act and is proper and necessary to help protect the basic possessions of an individual facing the claims of creditors. Thus, we respectfully request your favorable action on S.B. 414.

We appreciate the opportunity to present our testimony. Please feel free to contact me if you have any questions.

Respectfully submitted,

A handwritten signature in cursive script that reads "William W. Sneed". The signature is written in dark ink and is positioned below the typed name.

William W. Sneed

414 4/29/96
83

SENATE BILL No. 414

By Committee on Financial Institutions and Insurance

1-9

9 AN ACT concerning annuity contracts issued by life insurance companies;
10 certain exemptions; amending K.S.A. 40-414 and repealing the existing
11 section.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 40-414 is hereby amended to read as follows: 40-
15 414. (a) If a life insurance company or fraternal benefit society issues any
16 policy of insurance, *including a contract of annuity*, or beneficiary certifi-
17 cates upon the life of an individual and payable at the death of the in-
18 sured, or in any given number of years, to any person or persons having
19 an insurable interest in the life of the insured, the policy and its reserves,
20 or their present value, shall inure to the sole and separate use and benefit
21 of the beneficiaries named in the policy and shall be free from:

22 (1) The claims of the insured or the insured's creditors and repre-
23 sentatives;

24 (2) the claims of any policyholder or the policyholder's creditors and
25 representatives, subject to the provisions of subsection (b);

26 (3) all taxes, subject to the provisions of subsection (d); and

27 (4) the claims and judgments of the creditors and representatives of
28 any person named as beneficiary in the policy of insurance.

29 (b) The nonforfeiture value of a life insurance policy shall not be
30 exempt from:

or annuity

31 (1) Claims of the creditors of a policyholder who files a bankruptcy
32 petition under 11 U.S.C. § 101 et seq. on or within one year after the
33 date the policy is issued; or

34 (2) the claim of any creditor of a policyholder if execution on judg-
35 ment for the claim is issued on or within one year after the date that the
36 policy is issued.

37 (c) Nothing in this section shall be construed as restricting the right
38 of the insured to change the beneficiary if the policy reserves that right
39 to the insured.

40 (d) Nothing in this section shall be construed as exempting from tax-
41 ation any real estate which may at any time be carried by any life insurance
42 company as a part of its legal reserve.

43 (e) The provisions of subsection (b) shall apply only to life insurance

7/14/1/29/96
8-4

1 policies purchased on or after July 1, 1988.

2 (f) The provisions of subsection (b) shall not apply to that portion of
3 the nonforfeiture value of a life insurance policy, issued on or within one
4 year of the filing of a bankruptcy petition under 11 U.S.C. § 101 et seq.
5 or an execution on judgment for the claim of the creditor, which is derived
6 from the surrender of a life insurance policy issued more than one year
7 prior to such bankruptcy petition or such execution.

or annuity

8 Sec. 2. K.S.A. 40-414 is hereby repealed.

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

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8-5