

Approved: 3/13/96  
Date

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 March 12, 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: Roger Walter, Office of Securities Commissioner  
Tom Wilder, Kansas Insurance Department  
John Peterson, Enterprise Leasing  
Lee Wright, Farmers Insurance Group

Others attending: See attached list

Senator Hensley made a motion to approve the minutes of the meeting of March 7 as submitted; Senator Praeger seconded the motion. The motion carried.

The chairman opened the hearing on **HB 2682**, which makes several amendments to the Kansas Securities Act. Roger Walter, Kansas Securities Commission, explained the changes which the bill makes. Some of provisions conform Kansas law to the Federal Securities Act; some conform Kansas law to the Uniform State Securities Act; some remove barriers to the use exemptions available in the law; and some remove unnecessary language. (Attachment #1) There were no other conferees; the hearing was closed.

Senator Steffes made a motion to recommend **HB 2682** favorably. Senator Corbin seconded the motion. The motion carried. Senator Corbin will carry this bill on the Senate floor.

The hearing was opened on **Substitute for HB 2652**, concerning liability requirements for self-insured owners of 25 or more vehicles. Tom Wilder, Kansas Insurance Department, explained that this legislation will provide protection for Kansas consumers who are injured or have damages caused to their automobiles because of an accident involving a self-insured vehicle such as a rental car. (Attachment #2)

John Peterson, Enterprise Leasing, stated that his client supports this bill. Mr. Peterson informed the committee that he has worked with the House Financial Institutions and Insurance Committee and the Kansas Insurance Department to develop appropriate language.

Lee Wright, Farmers Insurance Group, explained that his company now provides excess coverage to their insureds who may be involved in an accident with a leased vehicle. There were no other conferees; the hearing was closed.

Senator Lee made a motion to pass **Sub. for HB 2652**. Senator Petty seconded the motion. The motion carried.

The committee adjourned at 9:39 a.m. The next meeting is scheduled for Wednesday, March 13, 1996.





# KANSAS

Bill Graves  
Governor

OFFICE OF THE SECURITIES COMMISSIONER  
618 South Kansas Avenue, Second Floor  
Topeka, Kansas 66603-3804  
(913) 296-3307  
Fax (913) 296-6872

John R. Wine, Jr.  
Securities Commissioner

TESTIMONY  
ROGER N. WALTER, GENERAL COUNSEL  
OFFICE OF THE KANSAS SECURITIES COMMISSIONER  
BEFORE THE  
SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE  
IN SUPPORT OF HOUSE BILL 2682  
MARCH 12, 1996

Mr. Chairman and Members of the Committee:

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

HB 2682, in summary, proposes the following:

- 1) The amendment of the definition of investment adviser.
- 2) The amendment of requirements for investment adviser contracts with clients.
- 3) The elimination of the annual renewal fee of \$100 for the annual renewal of registrations of securities.
- 4) The amendment of the requirements for an exemption for securities issued by a nonprofit organization.
- 5) The amendment of the requirements for a transactional exemption for securities issued in connection with a merger, consolidation, or reorganization.
- 6) The repeal of certain provisions of the Act, which currently regulate persons offering study

Senate 7141  
3/12/96  
Attachment #1

programs for assisting people in studying for and passing the securities licensing exam.

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

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

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

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

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

Section 4 of the bill amends K.S.A. 17-1261(h), which states the conditions for an exemption from registration for securities issued by certain nonprofit organizations. The amendments are found on p. 7, lines 19-43, and p. 8, lines 1-9. The effect is to eliminate unnecessary, redundant, and archaic language and replace it with more flexible guidelines which may be imposed by regulation. The changes bring Kansas into conformity with the Uniform Act and other states. It will enable the Commissioner to impose by regulation the more relevant criteria for such issues by referencing the guidelines provided for in the North American Securities Administrators Association Statement of Policy on the subject. The amendments eliminate the \$50 filing fee for the notice filing for the exemption, and shortens the time for the Commissioner to disallow the exemption from 30 days to 10 days from filing of the notice.

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

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



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

**MEMORANDUM**

To: Senate Financial Institutions and  
Insurance Committee

From: Tom Wilder, Director of Government  
and Public Affairs

Re: Sub H.B. 2652 (Self-Insured Automobile Fleets)

Date: March 12, 1996

Substitute for House Bill 2652 was introduced at the request of the Kansas Department of Insurance in an attempt to deal with a source of numerous consumer complaints received by the Department each year. The statute which is amended by this bill, K.S.A. 40-3104, permits any owner of more than 25 motor vehicles registered in Kansas to obtain a Certificate of Self-Insurance from the Kansas Insurance Department provided they have the financial ability to pay judgments against them arising out of the operation of those vehicles. Currently, 14 companies in Kansas have a Self-Insurance Certificate pursuant to this law. Five of these businesses are rental car companies.

The consumer complaints filed with the Department usually involve a third party driver who suffers personal injuries or vehicle damage because of an accident involving a "self-insured" rental car where the driver of the leased or rented vehicle is at fault. A summary of some of the complaints which have been received by the Insurance Department is attached to my testimony. The existing statute only requires the self-insured company to pay a "judgment" against them. There are several rental car companies which take the position that their responsibility in an accident to pay for the

*Senate 714  
3/12/96  
Attachment #2*

damages of the third party, only arises when a law suit is filed against them and judgment awarded to the third party driver by a court. The third party is forced to hire an attorney and engage in litigation with the self-insured rental car company in order to recover their claim for damages.

The purpose of this legislation is to make the self-insured company responsible for the injuries and vehicle damages suffered by a third party in those cases where the driver of the self-insured vehicle is at fault. The limits of liability are those set out in K.S.A. 40-3107 under the Kansas "no-fault" law. The bill also requires self-insured companies to promptly investigate claims and pay those claims where liability is clear.

The Substitute Bill was prepared after meetings between the Insurance Department and representatives of several rental car companies which are self insured pursuant to our law. The changes clarify the language which was contained in the original bill.

This legislation will provide protection for Kansas consumers who are injured or have damages caused to their automobiles because of an accident involving a self-insured vehicle. I would ask the Senate Committee to favorably approve Substitute for H.B. 2652.

7141  
3/12/96  
2-2

National Rental Car Companies  
Self-Insurer Problems in Kansas

1. Complainant - Michael Lee Kobe  
11124 Georgia  
Kansas City, KS 66109

innocent third party damaged by vehicle owned by Budget Rent-A-Car. Budget denied because they said self-insurers do not have to provide financial security.

2. Complainant - Phillip Geist  
309 S. Oak  
Ottawa, KS 66067

innocent third party damaged by vehicle owned by Enterprise Leasing. Enterprise denied because driver of their vehicle not authorized person in whose name agreement written.

3. Complainant - Attorney John Bryan  
Bryan, Lykins & Hejtmanek, P.A.  
222 W 7th  
Topeka, KS 66601-0797

representing clients Daughter injured in auto accident where Enterprise Leasing would not pay PIP benefits. Enterprise relying upon court decision Overbaugh v. Strange, which states rental car agreements are not insurance; thus, financial responsibility, including PIP not necessary.

4. Complainant - Penny Staufenberger  
625 Lincoln Street  
Osage City, KS 66523

innocent third party damaged by vehicle owned by Enterprise Leasing. Enterprise initially denied, then after our involvement of threats of legislative action, Enterprise paid 100% of damage.

5. Complainant - Attorney John J. Bryan  
Bryan, Lykins & Hejtmanek, P.A.  
P.O. Box 797  
Topeka, KS 66601-0797

representing client's 9 year old child who was injured riding in Enterprise Leasing's vehicle. Enterprise denied PIP and physical damage, claiming, client did not purchase collision damage waiver, and current court cases stated they did not have to provide liability, including PIP.

7141  
3/12/86  
2-3



6. Complainant - Carrie Snodgrass  
617 Muncie Road  
Leavenworth, KS 66048

innocent third party damaged by vehicle owned by Enterprise Leasing. Initially, Enterprise denied claim 100%; however, after our involvement and us contacting the driver's insurance company of the person driving the Enterprise vehicle, we were able to get Enterprise to pay 50% and the driver's insurance was to pay the other 50%; therefore, Ms. Snodgrass recovered 100%.

7. Complainant - Irvan E. Moore  
1636 Kentucky  
Lawrence, KS 66044

innocent third party damaged by vehicle owned by Avis Rent-A-Car. After our involvement, Avis paid 100%.

SPECIAL NOTE: Prior to 1995, complaints from public, mostly innocent third-parties damaged by vehicles owned by several Kansas certificate-holder self-insurers, otherwise known as National Car Rental type firms, our records were never properly identified as to whom complaints were about, i.e. the drivers insurance company or the national rental car company. We did not have a system to properly code and disseminate as to whom the complaint was against. Therefore, we believe there are many more of these type of complaints; but we did not properly record such. In addition, with court rulings across the country incorrectly siding with these rental car companies and because Kansas law permits any private insurance company to exclude liability when their insureds make a contract or agreement not known by such insurance company, then most of our complaints have been handled by phone and not recorded. Without having these so-called self-insurers comply with the Kansas Unfair Claims Settlement Practices Act, then our regulatory authority has been seriously compromised, even though we grant them a Certificate of Self-insurance, we have no teeth in the law currently to make them properly comply with claim handling priorities. Hopefully, proposed legislation will alter that course.