Approved: February 4, 1997
Date

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS.

The meeting was called to order by Chairperson Les Donovan at 3:30 p.m. on January 30, 1997 in Room 527-S of the Capitol.

All members were present except: Representative Bradley
Representative Ray

Committee staff present: Bill Wolff, Legislative Research Department
Dennis Hodgins, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Maggie Breen, Committee Secretary

Conferees appearing before the committee: Chuck Stones, Kansas Bankers Association
Newton Male, Bank Commissioner
David Brant, Securities Commissioner
Roger Walters, General Counsel, Ofc of Security Commissioner
Representative Doug Mays

Others attending: See attached list

Chairman Donovan opened the hearing on :

HB 2070 - Banks and trust companies; stock ownership

Proponents:
Chuck Stones, Kansas Bankers Association (Attachment 1)
Newton Male, Bank Commissioner (Attachment 2)

The chairman closed the hearing on **HB 2070** and opened the hearing on:

HB 2094 - Regulation of Securities

Proponents:
David Brant, Securities Commissioner (Attachment 3)
Roger Walter, General Counsel, Office of Securities Commissioner (Attachment 4)
Representative Doug Mays

Representative Mays appeared before the committee as a former Securities Commissioner to assure the committee that the bill was necessitated by federal changes and that there was nothing in it that would cause problems.

Representative Burroughs questioned the adequacy of the $5 filing fee mentioned in Sec. 11, lines 20 and 21, page 22. The $5 fee is one which "may be required" but has not been. It was decided that the entire subsection was obsolete and would be looked at again with the idea of eliminating it. The revised bill will be presented to the committee.

The chairman closed the hearing on **HB 2094**.

Representative Cox requested the introduction of a bill which would eliminate the requirement of "consent to transfer " paperwork when one spouse dies and wealth is being transferred to the remaining spouse. There is no inheritance tax due on the amount; the bill would just make it easier to transfer the assets. Representative Geringer moved the committee introduce this legislation, seconded by Representative Burroughs. The motion

carried.

Representative Humerickhouse requested the committee introduce a banking bill with the purpose of opting-out. Representative Campbell moved the committee introduce this legislation, seconded by Representative Samuelson. The motion carried, with Representatives Welshimer and Gilbert voting nay.

The minutes of the January 28, 1997 Financial Institutions Committee meeting were presented for approval. Representative Samuelson moved to approve the minutes as presented, seconded by Representative Geringer. The motion carried.

The chairman said he would entertain a motion to act on **HB 2070.** Representative Campbell moved that we not act on the bill today, seconded by Representative Welshimer. The motion carried.

The meeting was adjourned at 4:33 p.m.

The next meeting is scheduled for February 4, 1997.

HOUSE FINANCIAL INSTITUTIONS COMMITTEE GUEST LIST

DATE: January 30, 1997

NAME	REPRESENTING
Judi Stork	OSBC
W. NEWTON MALE	OSBC
HAROLD STONER	ICS BANKERS ASSN.
N R Robbins	Ka Parker Assn
Marilyn Wells	Catholic Family Fed Cr. Union
Cindy Deatea	Div of Budget
Roger Franzke	BK IV
Rogers Brazier	State Treasurer
Roger Walker	Securities Commissioner's Office
David Brant	Securities Commissioner
Steve Wasson	Office of " "

Kansas Bankers Association

800 SW Jackson, Suite 1500
Topeka, KS 66612
913-232-3444 Fax - 913-232-3484 E-Mail - kbacs@ink.org

1-30-97

TO: House Financial Institutions Committee
FROM: Chuck Stones, Director Of Research

RE: HB 2070

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you as a proponent to HB 2070. HB 2070 would eliminate the requirement for a member of a bank's board of directors to own common stock in the bank or trust company or in the parent corporation with a par value of at least $500.

This requirement dates back to 1947, is outdated in today's banking environment and, in some cases, a hindrance to sound business decisions. When this provision was adopted $500 was a significant investment for an individual. It was meant to assure that a director of a bank lived up to his or her responsibilities as a director and kept the best interests of the bank in mind when making decisions. Banking has changed significantly since that time and other laws and courts have made bank directors liable for their actions, making a mere $500 investment insignificant. In fact, the liability that a bank board member faces has often times made it difficult to find people willing to serve. There are also federal regulations that govern the actions of a banks board of directors.

In addition there has recently been some action taken at the Federal level involving corporate structure that has impacted the makeup of a bank's shareholders. Banks are now allowed to form Sub-S corporations. This requirement may impact the ability of some banks to take advantage of this type of structure.

Finally, there is no such requirement of other corporations in the general corporation section of the Kansas Statutes. Stock ownership is governed by each corporation in their by-laws, as would banks if this change is adopted.

The KBA appreciates you attention in this matter, and urges your favorable action on HB 2070.

Chuck Stones

House Financial Institutions
1-30-97
Attachment 1

Repealing KSA 9-1117

9-1114. Board of directors of bank or trust company; number; qualifications; election; increase, when; vacancies; forfeiture of office; annual meeting. The business of any bank or trust company shall be managed and controlled by its board of directors and this shall include the authority to provide for bonus payments, in addition to ordinary compensation for any or all of its officers and employees. The board shall consist of not less than five nor more than 25 members, ~~all of whom shall be stockholders of the bank or trust company or of the parent corporation of the bank or trust company, and~~ who shall be elected by the stockholders at any regular annual meeting which shall be held during the first 120 days of each calendar year. If the number of directors elected is less than 25, the number of directors may be increased so long as the total number does not exceed 25 and when the number is increased the first additional directors may be elected at a special meeting of the stockholders. The directors shall be elected in the manner provided in the general corporation code. Vacancies in the board of directors may be filled in the manner provided in the general corporation code. A majority of the directors shall be residents of this state. Any director of any bank or trust company who shall become indebted to such bank or trust company on any judgment or charged off indebtedness shall forfeit such person's position as director and such vacancy shall be filled as provided by law.

History: L. 1947, ch. 102, § 43; L. 1957, ch. 73, § 1; L. 1959, ch. 59, § 1; L. 1975, ch. 44, § 19; L. 1976, ch. 57, § 1; L. 1983, ch. 46, § 3; L. 1989, ch. 48, § 27; July 1.

9-1117. Qualifications of president and directors. (a) No person shall be a member of the board of directors or a president within the meaning of K.S.A. 9-1114 and 9-1115, and amendments thereto, of any bank or trust company unless such person is the owner of record of common stock having a par value of not less than $500 in such bank or trust company or in the parent corporation that controls, directly or indirectly, such bank or trust company. Such stock may be transferred to and held in a trust if such trust is revocable by the member or president owning such stock, but the stock shall not be pledged, hypothecated or assigned in any other way.

(b) Any director who fails to maintain such director's qualifying status, as a result of such director's failure to meet an assessment required by K.S.A. 9-906, and amendments thereto, may continue to serve in such person's capacity as a director, with the prior approval of the state bank commissioner, but only until the capital impairment of such bank or trust company has been resolved or such bank or trust company has been declared insolvent.

History: L. 1947, ch. 102, § 46; L. 1972, ch. 33, § 1; L. 1979, ch. 44, § 1; L. 1982, ch. 50, § 2; L. 1989, ch. 48, § 30; L. 1993, ch. 189, § 1; July 1.

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
JANUARY 30, 1997

Mr. Chairman and Members of the Committee:

I am W. Newton Male, Bank Commissioner, and I am here to testify in favor of House Bill 2070. Our department supports this bill because the current law is deterring quality individuals from accepting positions on the boards of the banks we regulate.

The present law, which requires a director to own qualifying shares, was implemented in 1947 and was originally intended to impose a sense of financial responsibility upon an individual as they became a director of a bank. The theory was the director would do a better job if they had some of their own money at risk.

Developments over the last 50 years have rendered this requirement irrelevant and inconsistent. Today, a primary motivator to "do a good job" is the issue of liability on the director's part for failing to appropriately discharge their duty, not the amount of money invested. Additionally, the current requirement is based on the **par value** of the stock, not the **book value**. The **book value**, however, is generally the price the director pays for the stock. Because of this, the actual investment by a director varies greatly from institution to institution. In one bank the stock could cost $1,000 versus $30,000 in another institution. As banks grow and the size of the bank's capital grows, the book value per share also grows. So, although the **par value** of the stock for example is $100 per share and the director must buy five shares to equal $500 par value, the **book value** per share is in fact $6,000 per share and requires an investment of $30,000 by the director.

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Attachment 2

Numerous individuals would be unable to afford such an investment. In other instances, the purchase sum is only $500, which by today's standards hardly appears to place a large financial responsibility on the director to "do a good job". This is especially true because the courts have upheld the use of "buy back" agreements between a prospective director and the seller of the qualifying shares. This agreement allows the director to purchase the shares at a nominal fee and return their shares to the seller for the same amount at the end of their service.

These requirements are outdated and should be repealed.

KANSAS

Bill Graves
Governor

OFFICE OF THE SECURITIES COMMISSIONER

David R. Brant
Securities Commissioner

TESTIMONY IN SUPPORT OF HOUSE BILL No. 2094
Amendments To The Kansas Securities Act
Financial Institutions Committee Kansas House of Representatives

DAVID BRANT
Kansas Securities Commissioner
January 30, 1997

Mr. Chairman and members of the committee, thank you for this opportunity to testify in support of House Bill No. 2094 which makes needed amendments to the Kansas Securities Act.

Since this is my first opportunity to testify before your committee, I would like to provide you with some brief information on my background. I was sworn in as the Securities Commissioner in April 1996 after being appointed by the Governor and confirmed by the Senate. While I now have only nine months of experience in state securities regulation, I previously worked for over 12 years in the securities industry after graduating from law school. My previous position was as the Vice President of Public Finance for BANK IV which involved working as an underwriter of municipal bonds and as a financial advisor to local governments and community colleges across Kansas. I have securities licenses, both as a Series 7 Registered Representative and as a Series 53 Municipal Bond Principal, in addition to being a licensed attorney.

On October 11, 1996, the President signed the National Securities Markets Improvement Act ("NSMIA" or "the Act") which ended a 14-month long debate in the U.S. Congress over proposed reforms to federal and state securities regulation. The new federal securities act is a sweeping attempt to modernize and rationalize the nation's securities regulatory system to correct and improve areas of duplicative and unnecessary regulation.

As a note of history, the shared system of state and federal regulation of securities began in 1933 when the federal Securities and Exchange Commission ("S.E.C.") was created by Congress. Before 1933, securities regulation had only been done by the states. In fact, you may know that Kansas was the first state in the nation to adopt a "blue sky" law in 1911 to regulate securities. The state was a hunting ground of promoters of fraudulent investment schemes. It was said that some of the frauds "became so barefaced that promoters would sell building lots in the blue sky in fee simple." Thus, the term "blue sky" was coined to refer to state securities laws.

Now back to 1997, the new federal Act creates a national unified system of regulation whereby securities offerings that are national in character will now be defined as "covered securities" and regulated only by the S.E.C. Covered securities include mutual funds, stocks traded on the national exchanges, and securities sold to sophisticated investors.

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Attachment 3

Investor Hotline 1-800-232-9580
http://www.cjnetworks.com/~ksecom

618 S. KANSAS AVENUE
TOPEKA, KANSAS 66603-3804

Office (913) 296-3307
Facsimile (913) 296-6872

The second most significant change will be to divide the regulation of investment advisers between the states and the S.E.C. The states will supervise investment advisers managing less than $25 million in client assets, while giving the S.E.C. the primary responsibility for investment advisers managing mutual funds or large portfolios. For your information, the definition of investment adviser includes "financial planners" who are paid either a fee or commission and who recommend the purchase of specific investment products.

These federal changes and the needed proposed amendments to the Kansas Securities Act will not require significant changes in the purpose or functions of the Securities Commissioner's office which are as follows:

Registration: We review the disclosure and fairness of smaller offerings of stocks, bonds, and limited partnerships and we accept filings for exempt offerings such as mutual funds and non-profit organizations. In the last fiscal year, we had over 557 new registrations, 439 exempt filings, and 3,018 mutual fund filings.

Compliance and Licensing: Our agency conducts on-site examinations of home and branch offices and we license investment professionals. In addition, we handle investor complaints regarding sales practices, churning, or misleading information. Currently, we have granted licenses to 1,418 broker dealer firms (38 of which are based in Kansas); 43,252 broker dealer agents; 490 investment advisers (174 of which are based in Kansas); and 2,105 investment adviser representatives (363 of which are based in Kansas).

Enforcement: We have investigators and attorneys on staff that investigate fraud, "white collar crime," and unregistered activity. In the last fiscal year, we conducted approximately 275 investigations which resulted in 92 administrative orders, 13 criminal convictions, $70,000 in fines, and over $4.9 million in restitution orders and recision offers to be repaid to investors.

Investor Information: We are preparing to increase our education efforts to make Kansas investors more aware of the services of our office. With a proposed slogan of ***"Investigate Before You Invest,"*** we encourage investors to use our 800 number hotline to inquire about the disciplinary background and registration of brokers, investment advisers, and the investment products being promoted. We could help prevent investment fraud if investors would first check with our agency. I have samples of several information pamphlets which provide warnings and helpful questions for investors to consider.

In summary, the new federal Act more clearly defines the partnership between federal and state regulation in order to eliminate duplication and enhance cooperation. Most important, the Act endorses the role and primary mission of state regulation... **to protect and inform investors**. And we can be proud that the state of Kansas has been protecting investors for a very long time...in fact, since the beginning.

Now, I would like to introduce our General Counsel, Roger Walter, who will explain in more detail the specific amendments to the Kansas Securities Act. I am proud that Roger is one of six members of the national task force responsible for drafting the model state amendments to implement the new federal Act.

KANSAS

Bill Graves
Governor

OFFICE OF THE SECURITIES COMMISSIONER

David R. Brant
Securities Commissioner

TESTIMONY
ROGER N. WALTER, GENERAL COUNSEL
OFFICE OF THE KANSAS SECURITIES COMMISSIONER
BEFORE THE HOUSE FINANCIAL INSTITUTIONS COMMITTEE
IN SUPPORT OF HOUSE BILL 2094
JANUARY 30, 1997

Mr. Chairman and Members of the Committee:

I am Roger Walter, General Counsel to the Kansas Securities Commissioner. In addition to the Commissioner, I am testifying in support of HB 2094 to explain the proposed amendments to the Kansas Securities Act ("Act").

In summary, HB 2094 conforms the Act to the requirements of recent federal legislation, The National Securities Markets Improvement Act ("NSMIA"), which was signed by the President on October 11, 1996. That law amended various federal acts regulating securities, broker-dealers, investment companies, and investment advisers.

NSMIA preempts federal "covered securities" from state registration review. "Covered securities" are defined by NSMIA to include certain exchange listed securities, mutual funds, and certain securities exempt from registration under the Securities Act of 1933. States are still allowed to require notice filings and collect fees for such securities.

NSMIA also precludes a state from imposing requirements on broker-dealers regarding net capital, margin, financial responsibility, books and records, or bonding or financial or operational reporting which differs from the requirements imposed by the Securities Exchange Act of 1934. It also exempts

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http://www.cjnetworks.com/~ksecom

618 S. KANSAS AVENUE
TOPEKA, KANSAS 66603-3804

Office (913) 296-3307
Facsimile (913) 296-6872

agents of broker-dealers from the requirement of state registration if they confine themselves to parameters of a de minimis transaction defined in NSMIA.

NSMIA also preempts the states from regulating investment adviser firms who have $25 million or more in assets under management. Those adviser firms with less than $25 million in assets under management will be exclusively registered by the states. Under the NSMIA, the states will maintain licensing authority over all individual representatives of investment advisory firms regardless of size.

The proposed amendments, which are highly technical in nature, conform the Kansas Securities Act to this new federal preemption scheme and provide for specific authority to require notice filings and collect fees from this new category of "federal covered securities." They also address the dual regulatory scheme for investment advisers and investment adviser representatives, which delineates the role of the state versus the role of the federal Securities and Exchange Commission. Further, there is an amendment to provide the de minimis transaction exemption for agents mandated by NSMIA.

The proposed bill also provides some additional technical amendments to the Kansas Securities Act which are not related to the recent federal legislation. These additional amendments eliminate obsolete provisions of the Act, correct certain perceived inadequacies in the application of the Act, and make the Act more uniform in comparison to other state securities acts and the model Uniform Securities Act ("USA").

New Section 1 of the bill sets forth the notice filing and fee requirements for federal covered securities, securities which were formerly registered under the Act, the registration of which is now preempted under the terms of NSMIA.

New Section 2 does nothing more than move an existing statute, K.S.A. 75-6308 from its location in Chapter 75 to a new location within the Act in Chapter 17.

Section 3 amends various definitions under the Act. The definition of agent under K.S.A. 17-1252(b) excludes certain individuals who represent

issuers in selling certain securities exempted from registration under K.S.A. 17-1261. This definition is amended to add to that list of exclusions individuals representing issuers in selling three additional securities exempt under K.S.A. 17-1261(e), (g), and (k). These securities are exempt securities issued by insurance companies, by exchange listed issuers, and by agricultural cooperatives. Staff felt that the protection of public investors and sound regulatory policy did not require such individuals be registered as agents. This section is also amended to incorporate the de minimis transaction exclusion from state registration of agents required by NSMIA.

The definition of investment adviser in K.S.A. 17-1252(e) is amended to make the definition more uniform with other states' acts and USA. New definitions are added for the terms "investment adviser representative," "federal covered security," and "federal covered adviser" to implement the requirements of NSMIA.

Section 4 amends K.S.A. 17-1254, the section of the Act which sets forth the registration and post registration requirements for broker-dealers, agents, investment advisers, and their representatives. The amendments simplify and consolidate the statutory language and make other provisions more consistent with USA. They also conform these requirements to the new bifurcated system of state and federal licensing of certain investment advisers and investment adviser representatives. The amendments also clarify the state authority under the new system with respect to net capital, financial responsibility, bonding, and books and records requirements for broker-dealers and investment advisers.

Section 5 amends K.S.A. 17-1255. That section currently makes it unlawful to sell securities unless they are registered or specifically exempt by statute. The amendment would allow for the sale of a federal covered security without registration. This conforms the Act to the requirements of NSMIA.

The bill also proposes to repeal K.S.A. 17-1256 which provides for "registration by notification" (an abbreviated form of registration) for certain seasoned, high-quality issues. This form of registration has not been used since

1979 and has been rendered obsolete by the exchange listing exemption, blue chip exemption for general issuers and mutual funds, and now by the preemption of federal covered securities.

Sections 6, 7, and 8 simply conform the text of K.S.A. 17-1259, 17-1262, and 17-1262a to delete any reference to K.S.A. 17-1256.

Section 9 amends the requirements for filing a consent to service of process, to exempt from this requirement certain additional issuers of securities exempt under K.S.A. 17-1261(g), primarily exchange listed securities. Again, staff felt that investor protection and sound regulatory policy did not justify such a filing for those issuers.

Section 10 amends K.S.A. 17-1268(d) which now provides, in part, that any agreement to waive compliance with the Act is void. The current language is limited to ". . . any person acquiring any security . . ." The amendment would extend this protection to persons ". . . receiving any investment advice . . ." The Act was amended in 1979 to regulate investment advisers, but this section was never amended to reflect this change.

Section 11 amends K.S.A. 17-1270(c) to consolidate and simplify the statutory language and make it consistent with USA, and to make it clear that the requirements of K.S.A. 17-1270(c), which do not currently apply to exempt securities and transactions, also do not apply to federal covered securities.

Section 12 amends K.S.A. 17-1272. That section states the current requirement that the burden of proof of any exemption is on the party claiming the benefit of the exemption. This section's amendment states a similar requirement for a person claiming the benefit of an exclusion from registration requirements of the Act based on status as a federal covered security.