

MINUTES OF THE Senate Committee on Financial Institutions and Insurance.

The meeting was called to order by Chairperson Don Steffes at 9:00 a.m. on March 12, 1997 in Room 529-S of the Capitol.

All members were present except:

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

Conferees appearing before the committee: Chuck Engel, Washburn Endowment Association
Rudy Wrenick, Vice-Chair, Washburn Endowment Assoc.
Tom Wilder, Kansas Insurance Department
Sue Anderson, Community Bankers Association
Bill Grant, Office of State Bank Commissioner
Sue Ann Schultz, Nations Bank
Jim Maag, Kansas Bankers Association

Others attending: See attached list

Hearing on SB 302 - Appropriation of appreciation realized in fair value of assets of institutional funds

Chuck Engel, Washburn Endowment Association, introduced Rudy Wrenick, Vice-Chair of the Washburn Endowment Association, who explained the need for investing unrealized gains which would allow endowment organizations to distribute more money to institutions for much needed use (Attachment 1). Cash allocations are currently limited to the amount of the net realized appreciation. This bill would add the words "and unrealized" to the statute. Thirty-nine other states have adopted this Uniform Act.

Senator Praeger moved to pass the bill out favorably and place it on the Consent Calendar. The motion was seconded by Senator Biggs. Motion carried.

Hearing on HB 2075 - Consolidation of insurance fines and penalties

Tom Wilder, Kansas Insurance Department, presented testimony regarding the consolidation of twelve penalty provisions into one general statute (Attachment 2). An outline of the statutes being replaced was included. Mr. Wilder walked the Committee through the various sections of the bill which allows for the increase of fines and penalties for infractions of the insurance laws in proportion to the offense. Other states penalties and fines for certain violations were provided as a comparison to the existing and proposed penalties and fines in Kansas (which have been much lower). Mr. Wilder cited examples for recent violations of overcharging insureds for medical procedures by insurance companies (not passing on discounts). The Insurance Department was only able to issue a nominal fine due to existing statutes. The vote in the House was 124-0.

Senator Praeger moved to report the bill favorable. The motion was seconded by Senator Barone. Motion carried.

Continued Hearing on HB 2070 - Banks and trust companies; stock ownership

The original bill as presented had no opponents as the requirement for bank directors to own stock in the bank is outdated. The amendment presented by the Community Bankers Association requiring a 15% cap for bank deposits was discussed. Sue Anderson, representing the Community Bankers Association, reported they had met with the Office of the State Bank Commissioner regarding the proposal and additional language to the proposed amendment had been prepared.

Bill Grant, General Counsel for the Office of the State Bank Commissioner, presented an amendment which removes the geographical reference restrictions to "location of deposits" rather than "main location of banks."

CONTINUATION SHEET

MINUTES OF THE Senate Committee on Financial Institutions & Insurance, Room 529-S Statehouse, on March 12, 1997.

(Attachment 3). Acquisition of a troubled bank would be allowed even if it would throw the acquiring bank over the 15% limit. On the date of acquisition, the 15% cap would be determined by deposits only. All banks are required to offer breakdowns of deposits per branch as of June 30 of each year. Banks can determine their Kansas deposits by the primary location where the customer does their business, therefore, the exact number of Kansas deposits from Kansas depositors can only be estimated. Residence of the customer may or may not be considered. Credit Union deposits are not included in the total deposit base for purposes of this statute.

Sue Anderson of Community Bankers Association, Sue Ann Schultz, General Counsel for Nations Bank, and Jim Maag, representing the Kansas Bankers Association, expressed their agreement with the proposed language.

Senator Biggs moved to accept the amendment as proposed by the State Bank Commissioner's Office and any other clarifying and technical amendments as prepared by the Revisor. The motion was seconded by Senator Praeger. Motion carried.

Senator Praeger moved to pass the bill out favorably as amended. The motion was seconded by Senator Biggs. Motion carried.

Senator Becker moved to approve the Minutes of March 5 and 6. The motion was seconded by Senator Biggs. Motion carried.

The meeting was adjourned at 10:00 a.m. The next meeting is scheduled for March 13, 1997.

SENATE FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE GUEST LIST

DATE: 3/12

NAME	REPRESENTING
Callie Hill Benton	Bottenberg's Assoc.
Tom Wilder	Kansas Insurance Dept
Chelsey Weckly	Kansas Insurance Dept.
Rudy Wenick	Washburn Endowment Area.
Chuck Engel	" " "
Pat Morris	K.A.I.A.
Ron Callahan	KammCO
Chuck Stone	KBA
Matt Goddard	KCBA
Lee Wright	Farmers Ins. Group
Dick Wilborn	Forum Alliance. U.S
Ben GRANT	STATE BANK COMMISSIONER'S OFFICE
John P. Smith	KS Dept of credit unions
Brenda Kramer	SBG
Aue Schryber	Kansas Credit Union Ass.
David J. Monical	Washburn University
Alan Steppat	Pete McGill & Associates
Sue Anderson	Community Bankers Assn.
Kathy Taylor	KCBANK ASSN.

Testimony
in Support of 1997 S.B. 302
before the Kansas State Senate
Financial Institutions and Insurance Committee

by Rudy Wrenick

Wednesday, March 12, 1997

Mr. Chairman and members of the Committee, I am Rudy Wrenick, Vice Chairman of the Washburn Endowment Association. I appear in support of 1997 Senate Bill 302, which amends the Uniform Management of Institutional Funds Act. This bill accomplishes two purposes. First, it adds only two words, "and unrealized", to the statute and places Kansas in conformity with the Uniform Act, along with the 39 other states which have adopted it. Second, it creates the opportunity for endowment organizations to distribute more money to institutions for much needed use.

Our current statute focuses solely on endowed funds and not the total market value of endowed assets of the Association. It limits our cash allocations to the amount of the net realized appreciation in the value of the endowment fund, regardless

*Senate File
Attachment 1*

3/12/97

of the fact that there may be unrealized gains also available to be distributed to the University. The statute now allows for the investment of funds on a total return basis but limits the distributions to only realized gains. An endowment with securities which have not been sold may find the time when market value may not be available for the institution's needs.

With only net appreciation realized to be taken into account, trustees would have to convert through sale some of the assets with unrealized net appreciation into net realized appreciation in order to provide distributions to the University. However, a forced sale which may limit the potential to generate more earnings in the future should not be required in order to comply with the statute.

I urge your favorable consideration of Senate Bill 302. I will answer any of your questions.



Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

MEMORANDUM

To: Senate Financial Institutions
and Insurance Committee

From: Tom Wilder

Re: House Bill 2075 (Insurance Company Fines)

Date: March 12, 1997

House Bill 2075 changes the laws that allow the Insurance Department to assess fines against companies which violate various provisions of the Insurance Code. The bill is designed to consolidate twelve penalty provisions into one general fine statute. The penalty provisions of the Unfair Trade Practices Act are also revised. In addition, the legislation raises some of the dollar limits for insurance penalties. The bill was approved by the House on a vote of 124-0.

Section 1 of H.B. 2075 institutes a series of fines and penalties for insurance companies which violate the Kansas Insurance Code or any lawful rules, regulations or orders of the Commissioner. This provision is intended to replace the statutes which are being repealed (K.S.A. 40-226, 40-939, 40-1120, 40-1705, 40-2214, 40-2236, 40-3205, 40-3206, 40-3811, 40-4113, 40-4210 and 40-4511). I have attached to my testimony an outline of those statutes which are being replaced. Companies or their employees may be subject to one of the following penalties:

- Monetary penalty up to \$1,000 for each violation. If the person knew or reasonably should have known they were violating the statute or rule, the fine is up to \$2,000 for each act.

*Senate F.I.D.
Attachment 2*

3/13/97

- Suspension of the license or certificate of authority for the company to do business in Kansas, if they knew or reasonably should have known they were in violation of the law.
- In addition, the Commissioner could impose an order on the company requiring them to cease and desist from an unlawful action or the Department could seek other types of injunctive relief.
- The Section also allows the Commissioner to fine companies which fail to file any required reports with the Department or fail to respond to any proper inquiry. The fine is up to \$500 per violation and the Commissioner is allowed to impose an additional penalty of up to \$100 for each week that the company fails to respond to the Department.

The Insurance Department must provide notice and an opportunity for a hearing before any of the fines or other penalties of this Section can be imposed on a company or their employees.

The penalty section also adds to the persons who are subject to fines under the Insurance Code. This list of businesses are already covered in other sections of the Insurance Code which are being deleted.

Section 2 of HB 2075 amends K.S.A. 40-755 to remove the reference in that statute to the Commissioner assessing a fine against a company for the failure to file an annual report with the Department. This provision is part of the new language in the first section of the bill which amends K.S.A. 40-2,125. **Section 6** of the bill makes the same change to K.S.A. 40-3311 that requires companies to file registration statements as necessary with the Insurance Department.

Section 3 (K.S.A. 40-938) and **Section 4** (K.S.A. 40-1119) amend statutes which impose a fine on anyone who reports false information to the Insurance Department or to any rating organization with the intention to falsely affect rates. The bill deletes the two fine statutes (K.S.A. 40-939 and K.S.A. 40-1120) and “folds” that language into Sections 3 and 4 of House Bill 2075.

Section 5 of the bill increases the penalties for companies and others who violate the Kansas Unfair Trade Practices Act (K.S.A. 40-2401 et seq.). This law prohibits

insurers and agents from engaging in unfair practices in selling insurance, handling claims or in otherwise dealing with consumers. The new penalties are in line with what is found in other states. I have included with my testimony a list of what other jurisdictions assess against insurers for violations of their unfair trade practices laws. Unfair trade or claim practices violations can result in serious harm to consumers so the fines for these statutes should be comparable to the violation.

I would ask the House Insurance Committee to approve House Bill 2075.

Statutes Repealed By House Bill 2075

K.S.A. 40-226 - Failure of a company to file an annual statement or to reply to an inquiry of the Commissioner. Fine up to \$500 with an additional fine of \$500 per month.

K.S.A. 40-939 - Fine for any person or organization who withholds information from the Commissioner, insurance company or a rating organization which impacts rates in violation of K.S.A. 40-938. Penalty of up to \$250 unless the violation is willful in which case the fine is \$1,000 for each violation.

K.S.A. 40-1120 - Fine for anyone who withholds information from the Commissioner, any rating organization or any insurer that affects rates in violation of K.S.A. 40-1119. The fine is up to \$250 except that the penalty is raised to \$1,000 for an intentional violation of the statute.

K.S.A. 40-1705 - Penalty for any company that fails to keep books or account for funds due under the Firefighters Relief Act. Penalty of a fine up to \$300 for each offense.

K.S.A. 40-2214 - Fine for companies that violate any of the provisions of the Uniform Policy Provision statutes. The penalty is a fine up to \$500 or the suspension or revocation of the license of an insurer or agent.

K.S.A. 40-2236 - Imposes a fine for any continuing care provider which fails to hold a valid certificate of registration. Fine is up to \$500 unless the violation is willful in which case the fine can be up to \$5,000.

K.S.A. 40-3205 - Allows the Commissioner to suspend the license of any health maintenance organization that violates the Insurance Code.

K.S.A. 40-3206 - The Insurance Department may impose a fine against any HMO in lieu of suspending their license under K.S.A. 40-3205. Penalty is a fine of up to \$500.

K.S.A. 40-3811 - Allows fines for a third party administrator who violates the Insurance Code. Fine is up to \$500 unless the administrator knew they were violating the law in which case the fine is up to \$5,000 or the Commissioner may revoke their certificate to do business.

K.S.A. 40-4113 - Subjects risk retention groups and risk purchasing groups to the same fines and penalties as those assessed on insurance companies.

K.S.A. 40-4210 - If a prepaid legal or dental service plan fails to lawfully hold a certificate of registration or violate any provision of the Insurance Code they can be subject to a fine up to \$500 and a penalty of up to \$5,000 if the violation was knowingly done.

K.S.A. 40-4511 - Fine for a reinsurance intermediary or insurer who violates the Insurance Code of up to \$5,000 or revocation or suspension of their license to do business.

MEMORANDUM

To: Tom Wilder
From: Heather Randall
Date: September 9, 1996
Re: Fines for violation of unfair trade practices
cc: Kathy Greenlee

<u>State</u>	<u>Nonwillful</u>	<u>Willful/Reasonably should have known/flagrant</u>
Kansas KSA 40-2407 (see attached)	\$100 each Not to exceed \$2500	\$1000 each Not to exceed \$10,000 (6 month period)
Alabama	No fines in statutes.	
Alaska 21.36.320	\$2500 each Not to exceed \$25000	\$25000 each Not to exceed \$250,000 (no time limit)
Arizona 20-456	\$1000 each Not to exceed \$10000	\$5000 each Not to exceed \$50,000 (6 month period)
Arkansas 23-66-210	\$1000 each Not to exceed \$10,000	\$5000 each Not to exceed \$50,000 (6 month period)
California	Not to exceed \$5000 each (no overall monetary ceiling)	Not to exceed \$10,000 each (no time limit)
Colorado 10-3-1108	\$1000 each Not to exceed \$10,000	\$10000 each Not to exceed \$150,000 (6 month period)
Connecticut 38a-817	\$1000 each Not to exceed \$10,000	\$5000 each Not to exceed \$50,000 (6 month period)
Delaware 18 Sec. 2308	\$1000 each Not to exceed \$10,000	\$5000 each Not to exceed \$50,000 (6 month period)

Florida 626.9521	\$2500 each Not to exceed \$10,000	\$20000 each Not to exceed \$100,000 (no time limit)
Georgia 33-6-8	Not to exceed \$1000 each (no overall monetary ceiling)	Not to exceed \$5000 each (no time limit)
Hawaii 431:13-201	\$1000 each Not to exceed \$10,000	\$5000 each Not to exceed \$50,000 (6 month period)
Idaho 41-117	Not to exceed \$1000 each (no overall monetary ceiling)	(no time limit)
Illinois	No fines in statutes.	
Indiana 27-4-1-6	\$25,000 each Not to exceed \$100,000	\$50,000 each Not to exceed \$200,000 (12 month period)
Iowa 507B.7	\$1000 each Not to exceed \$10,000	\$5000 each Not to exceed \$50,000 (6 month period)
Kentucky	No fines in statutes.	
Louisiana 22:1217	\$1000 each Not to exceed \$100,000	\$25000 each Not to exceed \$250,000 (6 month period)
Maine 24-A Sec. 12-A	Not to exceed \$2000 each (no overall monetary ceiling) (no time limit)	
Maryland Art. 48A Sec. 230A Art. 48A Sec. 12 Art. 48A Sec. 55A	Not to exceed \$500 each or depending on violation \$100 each Not to exceed \$50,000	Not to exceed \$100,000 (overall)
Massachusetts	No fines in statutes.	
Michigan 24.12038	\$500 each Not to exceed \$5,000	\$2500 each Not to exceed \$25,000 (6 month period)

Minnesota 72A.28	\$500 each Not to exceed \$5000	(no willful provision) (no time limit)
Mississippi	No fines in statutes.	
Missouri 375.946	\$1000 each Not to exceed \$10,000	\$5000 each Not to exceed \$50,000 (6 month period)
Montana 33-18-233	Not to exceed \$1000 each violation	
Nebraska 44-1529	\$1000 each Not to exceed \$30,000	\$1500 each Not to exceed \$150,000 (no time limit)
Nevada 686A.183	(no nonwillful listing)	\$1000 each Not to exceed \$10,000
New Hampshire 417:10	Not more than \$2500 each violation (no time limit) (no monetary ceiling)	
New Jersey 17:29B-7	Not to exceed \$1000 each (no monetary ceiling)	Not to exceed \$5000 each (no time limit)
New Mexico 59A-1-18	Not to exceed \$5000 each (no monetary ceiling)	Not to exceed \$5000 each (no time limit)
New York 27 Sec. 109	\$500 each violation	
North Carolina 58-2-70	Not less than \$100 or more than \$1000 per violation (no monetary ceiling)	(no time limit)
North Dakota	No fines in statutes.	
Ohio 3901.22	\$3500 each Not to exceed \$35000 (6 month period)	
Oklahoma	No fines in statutes.	
Oregon 7.31.988	Not to exceed \$10,000 each violation (no monetary ceiling)	(no time limit)

Pennsylvania 1171.11	\$1000 each Not to exceed \$10,000	\$5000 each Not to exceed \$50,000 (6 month period)
Rhode Island 27-296	\$5000 each Not to exceed \$100,000	\$25000 each Not to exceed \$250,000 (no time limit)
South Carolina 38-2-10 (1995 Supplement)	Not to exceed \$30,000 each	
South Dakota	No fines in statutes.	
Tennessee 56-8-109	\$1000 each Not to exceed \$10,000	\$5000 each Not to exceed \$50,000 (6 month period)
Texas Art. 21.21 Sec. 15(a)	\$2,000 each Not to exceed \$10,000 (no time limit)	
Utah 31A-2-308(1)(b)(ii)	Not to exceed \$5,000 each (no time limit) (no monetary ceiling)	
Vermont T.8 Sec. 4726	Monetary ceiling of \$500 for all violations (no time limit)	
Virginia 38.2-218	\$1000 each Not to exceed \$10,000	\$5000 each (no ceiling if willful) (no time limit)
Washington	No fines in statutes.	
West Virginia 33-11-6	\$1000 each Not to exceed \$10,000	\$5000 each Not to exceed \$50,000 (6 month period)
Wisconsin	No fines in statutes.	
Wyoming 26-2-112	Not to exceed \$1000 each (no monetary ceiling)	Not to exceed \$2000 each (no time limit)

BILL GRAVES
GOVERNOR



OFFICE OF THE
STATE BANK COMMISSIONER

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

March 12, 1997

To: Senate Financial Institutions and Insurance Committee

From: William Grant, General Counsel

Re: **Kansas Deposit Cap; K.S.A. 9-520
Proposed Amendment to H.B. 2070**

Last Thursday, the Community Bankers of Kansas requested the committee to add an amendment to H.B. 2070 which would clarify some ambiguities in the Kansas deposit cap, found at K.S.A. 9-520. The deposit cap is a concentration limitation which prevents bank holding companies from making additional bank acquisitions if they hold more than a determined amount of Kansas deposits. Upon review of CBAK's proposal, our department requested time to provide input on suggested language. Working with other interested parties we have developed language that modernizes the statute. This proposed amendment would not effectuate a change in our department's application of the deposit cap. However, we believe this proposal better articulates the legislative intent of the current statute by clarifying three primary points.

1. It clarifies that bank holding companies that have deposit taking facilities in Kansas, but do not have main offices in Kansas, are subject to the deposit cap.
2. It clarifies that only the Kansas deposits of a bank holding company's interstate banks are included when measuring the bank holding company's deposit allowance, which the statute currently sets at 15%.
3. It clarifies that only the Kansas deposits of the interstate banks and thrifts operating in Kansas are included when calculating the base figure of total Kansas deposits.

Senate FID
Attachment 3
3/12/97

9-520. (a) Excluding shares held under the circumstances set out in paragraph (2) of subsection (a) of K.S.A. 9-519, and amendments thereto, no bank holding company or any subsidiary thereof shall directly or indirectly acquire ownership or control of, or power to vote, any of the voting shares of any bank domiciled in this state if, after such acquisition, all banks domiciled in this state, in which the bank holding company or any subsidiary thereof has ownership or control of, or power to vote, any voting shares, would have, in the aggregate, more than 15% of the total deposits of all banks in this state plus the total deposits, savings deposits, shares and other accounts in savings and loan associations, federal savings banks and building and loan associations in this state as determined by the state bank commissioner on the basis of the most recent reports to supervisory authorities which are available at the time of the acquisition:

which holds Kansas deposits

and all subsidiaries

hold or control

Kansas

(b) This section shall not prohibit a bank holding company or any subsidiary thereof from acquiring ownership or control of, or power to vote, any of the voting shares of any bank domiciled in this state if the state bank commissioner, in the case of a bank organized under the laws of this state, or the comptroller of the currency, in the case of a national banking association, determines that an emergency exists and that the acquisition is appropriate in order to protect the public interest against the failure or probable failure of the bank.

(c) As used in the section, "Kansas deposits" shall mean deposits, savings deposits, shares, or similar accounts held by banks, savings and loan associations, savings banks, and building and loan associations attributable to any office in Kansas where deposits are accepted as determined by the commissioner on the basis of the most recent reports to supervisory authorities which are available at the time of the acquisition.

9-520. (a) Excluding shares held under the circumstances set out in paragraph (2) of subsection (a) of K.S.A. 9-519, and amendments thereto, no bank holding company or any subsidiary thereof shall directly or indirectly acquire ownership or control of, or power to vote, any of the voting shares of any bank which holds Kansas deposits if, after such acquisition, the bank holding company and all subsidiaries thereof would hold or control, in the aggregate, more than 15% of total Kansas deposits.

(b) This section shall not prohibit a bank holding company or any subsidiary thereof from acquiring ownership or control of, or power to vote, any of the voting shares of any bank if the commissioner, in the case of a bank organized under the laws of this state, or the comptroller of the currency, in the case of a national banking association, determines that an emergency exists and that the acquisition is appropriate in order to protect the public interest against the failure or probable failure of the bank.

(c) As used in the section, "Kansas deposits" shall mean deposits, savings deposits, shares, or similar accounts held by banks, savings and loan associations, savings banks, and building and loan associations attributable to any office in Kansas where deposits are accepted as determined by the commissioner on the basis of the most recent reports to supervisory authorities which are available at the time of the acquisition.