

Approved: March 24, 1997  
Date

## MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 10:14 a.m. on March 21, 1997 in Room 526-S of the Capitol.

All members were present except: Senator Bond (excused)  
Senator Feleciano (excused)  
Senator Harrington (excused)  
Senator Petty (excused)

Committee staff present: Mike Heim, Legislative Research Department  
Jerry Donaldson, Legislative Research Department  
Gordon Self, Revisor of Statutes  
Mary Blair, Committee Secretary

Conferees appearing before the committee: David Brant, Ks. Securities Commission  
Kyle Smith, Ks. Bureau of Investigation (KBI)  
John Kohl, Johnson Co. Dist. Atty  
Elena Nuss, Asst. State Fire Marshal  
Roger Palmer, Blue Cross/Blue Shield  
Kelly Kultala, City of Overland Park

Others attending: See attached list

The minutes of the March 19, 1997 meeting were approved on a motion by Senator Donovan, seconded by Senator Oleen. Motion carried.

### **HB 2230 - Prohibiting pyramid promotional schemes**

Conferee Brant testified before committee in support of **HB 2230**. He defined a pyramid scheme according to Section 1 of the bill and likened it to a "high-stakes version of a chain letter". He explained the rules of the programs and the pyramid diagram, stated they are illegal noting that the bill clarifies the illegality of these schemes and declared them to be a "public nuisance". He provided articles from the following newspapers pertaining to pyramid schemes: The Topeka Capital Journal 11/23/96; Coffey County Today; The Kansas City Star; The Anderson County Review 12/2/96; and provided a letter of support for the bill from the Office of the District Attorney in Sedgwick County. (attachment 1) A written letter of support for **HB 2230** was received from the Office of the Attorney General. (attachment 2) Following discussion Senator Goodwin made a motion to recommend the bill favorably for passage, Senator Oleen seconded. Motion carried.

### **HB 2250 - Forensic examination prepared by Missouri State College police academy regional crime lab admissible into evidence.**

Conferee Kultala testified in support of **HB 2250** stating that the bill "would allow The City of Overland Park to introduce written forensic expert reports at preliminary examinations" which would "eliminate the need for lab technicians to appear in person at these hearings". She cited the qualifications of The Overland Park Police Department Crime Lab and the credentials of its personnel. Following discussion Senator Donovan moved to pass the bill out favorably and place it on the consent calendar, Senator Schraad seconded. Motion carried. (attachment 3)

### **HB 2025 - Crime of inflicting harm, disability or death to a police or arson dog**

Conferee Nuss appeared on behalf of State Fire Marshal Haag in support of **HB 2025** which she stated "addressed the issues of arson dogs and the statute of limitations on arson cases." According to Ms Nuss, the first issue in the bill would give arson dogs the same protection under Kansas law as other "police dogs" citing the invaluable role arson dogs play. She explained that the second issue in the bill, which addresses the statute of limitation in arson cases, seeks to extend the statute of limitations on arson to bring it in line with the federal statute of five years and she presented a needs justification for the bill. (attachment 4) Written testimony from Helen Stephens, representing the Kansas Peace Officers Association and the Kansas Sheriffs Association in support of **HB 2025**, was passed out. (attachment 5) There was extensive discussion followed by a motion by Senator Oleen to amend the bill by deleting Section 2 and report it out favorably for passage as amended, Senator Pugh seconded. Motion carried.

**HB 2058 - Revision of statutes relating to computer crime and making false information**

Conferee Smith testified in support of **HB 2058** stating that the bill “will both simplify and improve the computer crime statute”. He stated that the bill “grew out of concerns that our computer crime statute was not keeping up with the evolving technology and problems we are encountering with computer crime” and cited examples of this. He also showed how the House amendments address particular areas of concern. (attachment 6) After lengthy discussion, Senator Pugh moved to pass HB 2058 out favorably, Senator Donovan seconded. Motion carried.

The Chair adjourned the meeting at 10:58 a.m.

The next scheduled meeting is Monday March 24, 1997.

# SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3/21/97

NAME	REPRESENTING
<i>Elena Nuss</i>	<i>KSJM</i>
<i>Jim Keating</i>	<i>STATE FIRE CHIEFS ASSOC.</i>
<i>ROGER WALTER</i>	<i>KS SEC. COM.</i>
<i>DAVID BRANDT</i>	"
<i>RANDALL MCBEE</i>	<i>NEWTOWN FIRE DEPT</i>
<i>George M. Hurley Fire Chief</i>	<i>Winfield Fire Dept.</i>
<i>DONALD L. KIMREY INSPECTOR</i>	<i>WINFIELD FIRE DEPT.</i>
<i>BILL WALKER FIRE CHIEF</i>	<i>BUCKER COUNTY FIRE DISTRICT #1</i>
<i>Eddie Moore Fire Chief</i>	<i>ARKANSAS CITY FIRE DEPT.</i>
<i>Ken Cox Div. Chief</i>	<i>Sedgwick Co. Fire Dept.</i>
<i>HA. HARTLEY FIRE CHIEF</i>	<i>KS STATE FIRE CHIEFS ASSOC.</i>
<i>Valerie Peterson</i>	<i>KS Ins. ASS.</i>
<i>Kyle Smith</i>	<i>KBI</i>
<i>Nancy Lindberg</i>	<i>Atty Gen.</i>
<i>Kelly Kuitala</i>	<i>City of Overland Park</i>



# KANSAS

Bill Graves  
Governor

OFFICE OF THE SECURITIES COMMISSIONER

David R. Brant  
Securities Commissioner

## TESTIMONY IN SUPPORT OF HOUSE BILL No. 2230

### Prohibiting Pyramid Promotional Schemes

Judiciary Committee Kansas Senate

#### DAVID BRANT

Kansas Securities Commissioner

March 21, 1997

Mr. Chairman and members of the committee, thank you for this opportunity to testify in support of House Bill No. 2230 which proposes to make a crime of the promotion of pyramid investment schemes.

**What is a Pyramid Scheme?** Section 1 of the bill provides the proposed statutory definition. The pyramid in its purest form is much like a high-stakes version of a chain letter. For the past four months, a \$2,000 cash pyramid scheme has been promoted, under the names of "People Helping People," "Friends Helping Friends," "The Support Network," and "The Board Game," in a total of 27 counties with the most activity in the Wichita area and Anderson, Barton, Crawford, Coffey, Pawnee, and Reno counties. (See the back of **Exhibit A** for a list of the counties currently known.)

A copy of the "rules" of the programs and the pyramid diagram (referred to as a "board") are attached as **Exhibit B**. Potential investors are told to bring \$2,000 in the form of \$100 bills to a secret meeting (referred to as a "social" or a "party"). Participants are kept on a first name basis and are told that the program is legal, not subject to taxation, and that the cash is a "gift" to the pyramid leader (referred to as the "CEO"). The pyramid typically consists of four levels with the CEO, two presidents, four vice-presidents, and eight investors at the base. At a successful meeting, the eight new investors pay a total of \$16,000 to the CEO who then "retires." The pyramid then divides into two groups and each participant advances to the next higher level. New investors are then recruited to fill the bottom levels of the two new pyramids and the process is repeated.

The District Attorney in Sedgwick County, Nola Foulston, notified our office in late October of a number of calls in the Wichita area concerning this pyramid scheme. Our agency cooperated with the District Attorney in alerting the news media to warn citizens not to participate. Nonetheless, the pyramid activity continued to spread to other communities and counties. Also copied on **Exhibit A** is a sample newspaper clipping of the statewide alert issued by our agency in November.

Many pyramids attempt to establish their legitimacy by purporting to sell a product and are not as blatant as the cash pyramid just described. There are legitimate multi-level marketing programs which promote the sale of goods or services. The distinguishing test is whether the program

concentrates on the quick profits to be earned primarily from the recruitment of other people to sell the program as opposed to the sale of legitimate products at an attractive price. Our concern today is with the promotion of pyramid schemes.

**Pyramid Schemes are Illegal.** A pyramid scheme constitutes an "investment contract" which is defined as a security under the Kansas Securities Act (K.S.A. 17-1252j). Securities must be registered with our agency or be exempt to be offered to Kansas investors. The current pyramid schemes are not registered securities, are offered by unregistered persons, and are being promoted in a fraudulent manner.

After an extensive investigation, our agency is empowered to bring criminal charges against the promoters in addition to a civil suit to disgorge the profits. The Kansas Supreme Court affirmed in a 1991 opinion that the "airplane pyramid" scheme was a security and that its promotion constituted an illegal conspiracy to sell an unregistered security. State ex rel. Mays v. Ridenhour, 248 Kan. 919, 811 P.2d 1220 (1991). However, the prosecution of pyramid schemes under the securities approach is cumbersome and time-consuming... and the biggest problem is that its illegality as an investment contract is not widely known or understood.

The word "pyramid" does not appear in the context of a crime, if at all, in the Kansas statutes. Some players have even consulted attorneys who were unsuccessful in their attempts to determine its legality. Participants are told by the promoters (usually a co-worker, friend, or family member) that the programs are legal. Some promoters are influential and community leaders to be trusted. Thus, even though the program "seems too good to be true..." many Kansans proceed to play based on these ill-informed, naive assurances that the program is legal.

There are at least 35 other states that have specific statutes similar to House Bill No. 2230 including the states of Missouri, Oklahoma, and Colorado. The time is long overdue for Kansas to adopt such a law.

**Pyramid Schemes are a Public Nuisance.** A pyramid scheme is doomed to fail and constitutes a zero sum gain... for every winner there are multiple losers. The schemes involve no gainful employment of labor, capital, or other legitimate economic enterprise. Pyramids are simply a method of transferring money from an increasing number of new participants to a smaller number of earlier participants. As the number of new investors required to support the program grows exponentially, the market for such investors ultimately collapses. There is no better example of the ultimate consequences of a pyramid than the tiny country of Albania. **Exhibit C** contains a sample of the daily news stories that have reported riots and widespread social unrest due to the devastating economic impact of the fraudulent pyramid investment schemes which have now finally collapsed.

Here in Kansas, we estimate that the various pyramid schemes have redistributed over \$3.5 million due to the participation of at least 1,000 people who then enabled some 200 pyramid CEOs to retire or cash out. We estimate that \$2.5 million has been repaid due to our warnings and the actions of our agency, the District Attorney, county attorneys, and local law enforcement. In Coffey County alone, we know that \$480,000 was generated by 112 participants with 30 individuals cashing out. Because of our efforts, we have received proof that \$448,000 has been returned to the participants to date.

House Bill No. 2230

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The impact of a pyramid on a Kansas community is best told by those who have witnessed the results. **Exhibit C** also contains copies of a Letter to the Editor signed by two Burlington ministers and an editorial from *The Anderson County Review* in Garnett. At the House hearing in February, we heard testimony from Bill Freeman, the Mayor of LeRoy and a local banker, who described how the pyramid devastated his small community by causing widespread distrust and ruining family and friendly relationships.

The President of Albania recently conceded that "maybe a lack of legislation" allowed the pyramid schemes to proliferate in his country. We ask that you support House Bill No. 2230. The proposed specific statute should act as a deterrent since it would clarify the illegality of pyramid schemes in Kansas. The statute should be effective in putting promoters on notice and will hopefully prevent Kansans from being enticed to invest in future pyramid schemes. **Exhibit D** is a letter of support for the bill from the Office of the District Attorney in Sedgwick County.

In the meantime, we will be diligent and continue our success in shutting down these schemes and in seeking the return of participants' money. The Office of the Securities Commissioner strives to fulfill our mission **to protect and inform Kansas investors.**

Thank you for your consideration.

EXHIBIT D

OFFICE OF THE DISTRICT ATTORNEY  
Eighteenth Judicial District  
Sedgwick County Courthouse  
535 N. Main  
Wichita, Kansas 67203

NOLA FOULSTON  
District Attorney

Consumer Fraud &  
Economic Crime Division  
(316) 383-7921

February 19, 1997

\* VIA FAX #913-296-6872 \*  
David R. Brant  
Kansas Securities Commissioner  
618 S. Kansas Ave  
Topeka, KS 66603-3804

RE: HB 2230 - Prohibiting pyramid promotional schemes

Dear Commissioner Brant:

It is our understanding that the House Sub-Committee on Business, Commerce and Labor will be holding a hearing on Thursday, concerning HB 2230. While I will be unable to appear at the hearing in support of the bill, please feel free to inform the committee of our support for this legislation.

As you know, the statutes need to be clear that such schemes are contrary to the laws of our state and that, when appropriate, those promoting such activities should be subject to prosecution. The District Attorney appreciates and supports your efforts to secure passage of HB 2230.

Very truly yours,

  
Joe Kisner  
Chief Attorney

v-4



State of Kansas

Office of the Attorney General

301 S.W. 10TH AVENUE, TOPEKA 66612-1597

CARLA J. STOVALL  
ATTORNEY GENERAL

March 20, 1997

MAIN PHONE: (913) 296-2215  
FAX: 296-6296  
TTY: 291-3767

Senator Tim Emert, Chair  
Senate Judiciary Committee  
State Capitol  
Topeka, Kansas 66612

Dear Chairman Emert and Members of the Senate Judiciary:

I am writing to you to encourage your support for House Bill 2230, on behalf of Attorney General Stovall. This bill makes it clear that the operation or promotion of a pyramid scheme is not a legitimate business activity and provides a specific criminal statute for the prosecution of such illegal activity.

Pyramid promotional schemes are currently being treated as violations of the Kansas Securities Act, the consumer protection act or the general criminal theft statute. However, these types of criminal endeavors do not fit precisely within any of these existing statutes. This bill would create a specific crime for pyramid schemes and cure any existing ambiguity about whether such schemes are securities violations or consumer violations and allow for prosecution by county and district attorneys, as well as the Attorney General.

Although this bill would make such crimes a felony, by the very nature of being classified as a severity level 9 nonperson felony, it should have an insignificant impact on any additional prison space.

On behalf on Attorney General Stovall, I would urge your favorable consideration of House Bill 2230.

Very truly yours,

OFFICE OF THE ATTORNEY GENERAL  
CARLA J. STOVALL

David B. Debenham  
Deputy Attorney General  
Criminal Litigation Division

*Senate Judiciary  
attachment 2*

3-21-97





City Hall • 8500 Santa Fe Drive  
Overland Park, Kansas 66212

**TESTIMONY**  
**SENATE JUDICIARY COMMITTEE**  
**MARCH 21, 1997**  
**SEN. TIM EMERT - CHAIRMAN**  
**RE: HB 2250**

The City of Overland Park would like to be added to the list of agencies authorized to introduce written forensic expert reports at preliminary examinations. This would eliminate the need for lab technicians to appear in person at these hearings.

The Overland Park Police Department (OPPD) has had an established, full-time, crime lab for over twenty years.

OPPD maintains on-site hard copy fingerprint data bases with excess of ten print cards. They handle all their own latent print and known ten print fingerprint identifications with two established full-time city employees qualified as fingerprint experts, Officer Gary Page and Detective Robert Leever. OPPD is an AFIS user, operating a satellite system in association with Kansas City, Missouri and Kansas City, Kansas.

Officer Page and Detective Leever are, both, court certified experts with the District Court of Johnson County, Kansas.

They have both received the "Fingerprint Classification" training with the FBI, the "Advanced Latent Fingerprint Techniques" training with the FBI and the "Advanced Palm Print Identification" training with the Mississippi State Crime Lab.

They are also in good standing with the International Association for Identification and the Kansas Division of the International Association for Identification.

Thank you for your consideration.

Kelly Kultala  
Lobbyist  
City of Overland Park

*Senate Judiciary  
attachment 3*

3-21-97

Kansas State Fire Marshal  
Suite 600; 700 S.W. Jackson  
Topeka, KS 66603-3714



S.J. 3/21 att 4  
Telephone: 913-296-1111  
FAX: (913)-296-0151

State Fire Marshal Gale Haag

Governor Bill Graves

*"Where Fire Safety is a way of life"*

BEFORE THE KANSAS SENATE JUDICIARY COMMITTEE  
TESTIMONY OF ELENA NUSS, ASSISTANT STATE FIRE MARSHAL  
MARCH 21, 1997

TESTIMONY IN SUPPORT OF HB 2025

Mr. Chairman and members of the Committee, thank you very much for allowing me to appear this morning on behalf of State Fire Marshal Haag in support of HB 2025 which addressed the issues of arson dogs and the statute of limitations on arson cases.

HB 2025 addresses two issues, each of which is important to law enforcement and to combating arson in Kansas. First is whether accelerant-detecting canines, or "arson dogs", deserve the same protection under Kansas law as other "police dogs." The Fire Marshal hopes you agree with him that the answer to this questions is a resounding "yes".

Accelerant-detecting dogs perform a function as critically important in the investigation of arson cases as do drug-detecting dogs in the investigation of drug cases and bomb-detecting dogs in the investigation of explosives cases. There are now four arson dogs in front-line service in Kansas: one with the Newton Fire Department, one with the Topeka Fire Department, one with the Wichita Fire Department and one with the State Fire Marshal's Office. These animals and their handlers assist in the investigation and prosecution of arson cases across our state daily.

Because these dogs are involved in investigative work, they require the same level of training and continuing education as any other law enforcement canine. Considering the time, education and maintenance of these animals, each is worth literally thousands of dollars by the time the animal is placed in service. In addition, they are subject to the same dangers as all other law enforcement canines. A Seward County Deputy Sheriff can relate a disturbing incident in which his drug-dog was poisoned and then brutally killed while the deputy was away getting married. This dog was killed by drug dealers in retaliation for the dogs involvement in a drug investigation. Our own investigator, Nancy Thomas can relate an incident with her dog, Avon, who was attacked and kicked by an angry arson suspect being led into a line-up.

*Senate Judiciary  
attachment 4  
3-21-97*

Arson dogs are valuable tools to law enforcement agencies and investigators, they are subject to the same perils as other law enforcement canines and we hope you agree merit the same protection.

The other issue addressed by HB 2025 is the statute of limitations in arson cases. This bill seeks to extend the statute of limitations on arsons to bring it in line with the federal statute of five years (although there is currently discussion of the federal statute being extended to ten years). The Fire Marshal supports this part HB 2025 as well.

Arson is a very difficult crime to successfully investigate and prosecute. While investigators and prosecutors from our office and from local jurisdictions across the state work diligently to solve and charge these crimes, the sad fact of the matter is the many fires, while believed to be arson, must be classified as "undetermined" due to a lack of physical evidence. Even though a person might be suspected of arson, prosecutors are frequently unable to file charges due again to a lack of physical evidence. Often the crucial piece of evidence in solving and successfully prosecuting an arson charge is a statement from a co-conspirator or witness who comes forward only after many months of silence. Our prosecutor and chief investigator can cite numerous examples of crucial information in arson cases which became available only after the statute of limitations had run out.

Arson causes millions of dollars in damage, dozens of injuries and many fatalities in Kansas each year. A longer statute of limitations for arson charges is a simple and inexpensive tool for investigators and prosecutors which would allow them greater advantage in combating this crime without compromising the rights of defendants. Please assist our investigators in fighting arson by extending the statute of limitations on this offense to five years.

Thank you for your time and attention.

3/21/97 written 027 # 8

**KANSAS PEACE OFFICERS ASSOCIATION**  
and  
**KANSAS SHERIFFS ASSOCIATION**

March 21, 1997  
Senate Committee on Judiciary  
House Bill No. 2025

Mr. Chairman and Members of the Committee:

I am Helen Stephens, representing the associations mentioned above.

The Kansas Peace Officers Association and the Kansas Sheriffs Association support the passage of HB 2025.

The dogs trained in areas concerning drugs, arson, bombs, missing persons, etc., are a growing and important part of law enforcement and fire investigations. The price of training and care are repaid to the citizens of Kansas in many, many ways.

We especially support raising the penalty to level 5 from an A misdemeanor, as these animals are an intricate part of our law enforcement community.

We request your support in favorably recommending HB 2025 for passage.

Thank you again for this opportunity.

*Senate Judiciary*  
*Attachment 5*  
*3-21-97*



# Kansas Bureau of Investigation

Larry Welch  
Director

Carla J. Stovall  
Attorney General

TESTIMONY  
KYLE G. SMITH  
SPECIAL AGENT AND ASSISTANT ATTORNEY GENERAL  
KANSAS BUREAU OF INVESTIGATION  
BEFORE THE SENATE JUDICIARY COMMITTEE  
IN SUPPORT OF HOUSE BILL 2058  
MARCH 25, 1997

Mr. Chairman and Members of the Committee:

I appear today on behalf of the Kansas Bureau of Investigation (KBI) in support of House Bill 2058, which will both simplify and improve the computer crime statute.

This legislation grew out of concerns that our computer crime statute was not keeping up with the evolving technology and problems we are encountering with computer crime. A particular concern was with persons accessing governmental data which may be important and confidential, but has no commercial value. Examples would include: the database in the KBI which includes the identify of confidential informants; the Department of Revenue would have income tax records and SRS would have various records concerning investigations of neglected and abused children. Accessing and copying this kind of information would have little or no economic value, but could have devastating results nonetheless.

The current statute makes accessing, copying and damaging such information a crime based on its loss of value. It simply doesn't fit the type of computer crime that occurs outside the commercial realm. The current computer crime statute is drafted along traditional theft lines of thinking, where the value of property can be readily calculated. Computer crime is much broader than that as the examples above illustrate.

*Senate Judiciary  
attachment 6  
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In *State v. Allen*, 260 Kan. 17 (1996) the Supreme Court wrestled with another problem in that approach. Attempted access was spotted and extra security added which thwarted actual damage or theft. Since no theft occurred and the thousands of dollars were spent to prevent the theft, not the value of what was taken, the Supreme Court held no crime had occurred.

The House amendments adopted a different, simpler approach of dropping the sentencing structure based on dollar amount and treat computer crime much like K.S.A. 21-3711, making false information. That statute makes both frauds and efforts to induce official action a level 8 non-person felony. Like making false information, the activities prohibited by the computer crime statute cover actions besides mere thefts. Since commercial value can't be calculated in either case, the approach which has worked well in forgery and false information seems to make good sense.

✓ Another problem was the situation where illegal access is gained but you can't prove anything was taken. A comparison to existing law is the difference between trespass and burglary. If you enter someone else's home without permission it is misdemeanor trespass. If it can be shown you entered with the intent to commit a felony or steal something then the crime is bumped up to a felony.

This is why on page 2, line 25, the phrase "or attempting to access" is struck. An attempt without damage or theft occurring, is more properly covered under the new computer trespass crime found in subsection (d) on page 3, line 9; or simply as an attempted crime using K.S.A. 21-3301 if the needed intent can be proved. Since the phrase "or attempting to access" is followed by the conjunctive "and", a mere attempt would not be prohibited by this section because by definition the attempt was unsuccessful and so there would not be the required proof of damage, modification, altering, etc. If it could be proven a person attempted to access with the intent to do one of the required acts under subsection (b)(1), then the person could be charged

under the current attempt statute, K.S.A. 21-3301.

In section 1, the House addressed a problem created in *State v. Rios*, 246 Kan. 517 (1990). In that case the Kansas Supreme Court held that the provisions of K.S.A. 21-3711 did not apply to a person who made a false writing to cover up a prior theft. Given the pervasive use of computerized records, the need was seen to prohibit actions where persons have altered computer records with the intent to obstruct the detection of either a theft or some other version of computer crime.

With the caveat that I am an investigator and prosecutor, not a computer expert, I would be happy to try to answer any questions. Thank you for your consideration.