

Approved: February 3, 1998
Date

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS.

The meeting was called to order by Chairperson Ray Cox at 3:30 p.m. on January 29, 1998 in Room 527-S of the Capitol.

All members were present except:

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: Richard Livingston, Coalition of Kansas Appraisers
Cathy Taylor Olsen, Kansas
David Brant, Kansas Securities Commissioner
Daryl Craft, Guardian Trust Company
Matthew Goddard, Heartland Community Bankers Association

Others attending: See attached list

Chairman Cox presented a bill which would make a change to legislation passed last year dealing with releasing of mortgages after 32 years. The bill changes the 32 years to 40 years. Representative Geringer made a motion for the committee to introduce the bill. It was seconded by Representative Campbell. The motion carried.

The Chairman recognized **Richard Livingston**, Coalition of Kansas Appraisers, who requested that the committee introduce legislation which would require that all written appraisals, which form the basis of a loan that is sold in the secondary market, be made by a state licensed or certified appraiser. (Attachment 1) Representative Humerickhouse made a motion for the committee to introduce this legislation. Representative Gilbert seconded the motion. The motion carried.

The Chairman recognized **Cathy Taylor Olsen**, Kansas Bankers Association, who requested the committee introduce legislation which would allow Kansas State Employees to roll over their retirement funds to a private investment advisor without losing their tax exempt status on the rollover. The Federal tax is still exempt on this type of rollover and State tax has already been paid on the funds going in. This legislation would remedy the situation. (Attachment 2) Representative Cook made a motion for the committee to introduce the legislation. Representative Gregory seconded the motion. The motion carried.

The Chairman opened the hearing on:

HB 2718 - Regulation of Securities, definition

Proponent appearing in favor of **HB 2718**:

David Brant, Kansas Securities Commissioner, testifies in support of **HB 2718** which makes a few needed technical amendments to the Kansas Securities Act. It amends the definitions of investment advisor representative and of agents. It also amends the prefatory language in certain sections of the act. (Attachment 3)

There were no opponents to the bill.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS, Room 527-S
Statehouse, at 3:30 p.m. on January 29, 1998.

The Chairman closed the hearing on **HB 2718** and opened the hearing on:

HB 2702 - Providing notice to creditors of decedent by trustee

Proponent appearing in favor of **HB 2702**:

Daryl Craft, Guardian Trust Company, on behalf of the Kansas Bankers Association Trust Division, asked the committee to vote in favor of **HB 2702**. It would create a statute similar to KSA 59-709, which contains a creditors notice requirement for Kansas estates, to be used by trustees of a living trust. It would give the creditors the same opportunity now provided for probate and also give the trustees the same protection provided to executors. (**Attachment 4**)

There were no opponents to the bill.

The Chairman closed the hearing on **HB 2702** and opened the hearing on:

HB 2703 - Access devices, unauthorized transactions, notice

Proponents appearing in favor of **HB 2703**:

Kathy Taylor Olsen, Kansas Bankers Association, spoke in favor of **HB 2703**. Due to changing technology, the term "machine readable instrument" needs to be changed to "access device" to better describe the electronic transaction. The bill also provides a third tier of customer liability for unauthorized transactions. (**Attachment 5**)

Matthew Goddard, Heartland Community Bankers Association, spoke in favor of **HB 2703** and requested an amendment which would expand the language to include Savings and Loans. His amendment also includes several technical changes recommended by the Office of the Revisor to clean-up the existing savings and loan statute. (**Attachment 6**)

There were no opponents to the bill.

The Chairman closed the hearing on **HB 2703**.

Representative Geringer made a motion to approve the minutes of the January 22, 1998 meeting. Representative Dreher seconded the motion. The motion carried.

The meeting adjourned at 4:35 p.m.

The next meeting is scheduled for February 3, 1998

COALITION OF KANSAS APPRAISERS

JANUARY 29, 1998

TO; HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS

FROM; RICHARD E. LIVINGSTON

RE; BILL INTRODUCTION

THE COALITION OF KANSAS APPRAISERS APPRECIATES THE OPPORTUNITY TO APPEAR BEFORE THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS TO REQUEST THE INTRODUCTION OF A BILL THAT WOULD AMEND THE STATE CERTIFIED AND LICENSED REAL PROPERTY APPRAISERS ACT.

THE COALITION OF KANSAS APPRAISERS IS AN ORGANIZATION THAT IS COMPOSED OF REAL ESTATE APPRAISERS FROM ACCROSS THE STATE OF KANSAS. THESE APPRAISERS REPRESENT VARIOUS PROFESSIONAL APPRAISAL ORGANIZATIONS, AND HAVE FORMED TOGETHER TO PROVIDE SUPPORT TO LEGISLATION THAT PROMOTES A HIGHER DEGREE OF PROFESSIONALISM AND A MORE SECURE PRODUCT FOR THE COMMUNITY.

UNDER THE CURRENT LAW ANYONE CAN PERFORM REAL ESTATE APPRAISALS IN CONNECTION WITH A TRANSACTION UNDER \$250,000. THESE INDIVIDUALS NEED NOT BE LICENSED OR TRAINED IN APPRAISAL PRACTICES. THEY ARE NOT SUBJECT TO OVERSIGHT OR DISCIPLINARY PROCEEDINGS BY THE STATE APPRAISAL BOARD, THEY ARE, AS A PRACTICAL MATTER BEYOND THE REACH OF THE LAW.

THIS BILL WOULD REQUIRE THAT NO ONE OTHER THAN A STATE LICENSED OR CERTIFIED APPRAISER ENGAGE IN ANY WRITTEN APPRAISAL WHICH FORMS THE BASIS OF A LOAN WHICH IS SOLD IN THE SECONDARY MARKET.

WE RESPECTFULLY REQUEST THAT THIS LEGISLATION BE INTRODUCED AND REFERRED BACK TO THE COMMITTEE FOR HEARINGS AND DELIBERATIONS. THANK YOU.

House Financial Institutions
1-29-98
Attachment 1

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 58-4102 is hereby amended to read as follows: 58-4102. As used in this act:

(a) "Appraisal" or "real estate appraisal" means an analysis, opinion or conclusion prepared by a real estate appraiser relating to the nature, quality, value or utility of specified interests in, or aspects of, identified real estate. An appraisal may be classified by subject matter into either a valuation or an analysis. A valuation is an estimate of the value of real estate or real property. An analysis is a study of real estate or real property other than estimating value.

(b) "Appraisal assignment" means an engagement for which an appraiser is employed or retained to act, or would be perceived by third parties or the public as acting, as a disinterested party in rendering an unbiased analysis, opinion or conclusion relating to the nature, quality, value or utility of specified interests in, or aspects of, identified real estate.

(c) "Board" means the real estate appraisal board established pursuant to the provisions of this act.

(d) "Federal law" means title XI of the financial institutions reform, recovery and enforcement act of 1989 (12 U.S.C. 3331 et seq.) and any other federal law, and any regulations adopted pursuant thereto.

~~(e) "Federally related transaction" means any real estate-related financial transaction which: (1) A federal financial institutions regulatory agency or the resolution trust corporation engages in, contracts for or regulates; and (2) requires the services of an appraiser.~~

(f) ~~(e)~~ "Real estate" means an identified parcel or tract of land, including improvements, if any.

~~(g)~~ ~~(f)~~ "Real estate appraisal organization" means any nationally recognized organization of professional appraisers.

~~(h) "Real estate-related financial transaction" means any transaction involving: (1) The sale, lease, purchase, investment in or exchange of real property, including interests in property or the financing thereof; (2) the refinancing of real property or interests in real property; and (3) the use of real property or interests in property as security for a loan or investment, including mortgage-backed securities.~~

~~(i)~~ ~~(g)~~ "Real property" means one or more defined interests, benefits and rights inherent in the ownership of real estate.

~~(j)~~ ~~(h)~~ "Specialized services" means those appraisal services which do not fall within the definition of appraisal assignment. Specified services may include valuation work and analysis work. Regardless of the intention of the client or employer, if the appraiser would be perceived by third parties or the public as acting as a disinterested party in rendering an unbiased analysis, opinion or conclusion, the work is classified as an appraisal assignment and not specialized services.

~~(k)~~ ~~(i)~~ A "state certified appraiser" means a person who develops and communicates real estate appraisals and who holds a current, valid certificate issued to such person under the provisions of this act.

(j) A "state licensed appraiser" means a person who develops and communicates real estate appraisals and holds a current, valid license issued to such person under the provisions of this act.

(k) "Written appraisal" means a written statement used in connection with a ~~federally related~~ *real estate-related* transaction that is independently and impartially prepared by a licensed or certified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by presentation and analysis of relevant market information.

(l) "Appraiser" means a person who develops and communicates real estate appraisals and holds a current valid certification or license issued to such person under the provisions of K.S.A. 58-4101 et seq., and amendments thereto.

Sec. 2. K.S.A. 58-4103 is hereby amended to read as follows: 58-4103. (a) Except as provided in subsection (b), no person, other than a state certified or licensed appraiser, shall:

(1) Engage in any written appraisal ~~in connection with a federally related transaction for which certification or licensure is required pursuant to federal law, or which forms the basis of a loan which is sold in the secondary market, or~~

(2) assume or use the title of state certified or licensed appraiser or any title, designation or abbreviation likely to create the impression of certification as a real estate appraiser by this state.

(b) The board shall recognize on a temporary basis the certification or license of an appraiser issued by another state in accordance with federal law if:

(1) The property to be appraised is part of a ~~federally related~~ *real estate-related* transaction pursuant to federal law;

(2) the appraiser's business in this state is of a temporary nature; and

(3) the appraiser registers with the board, as prescribed by the board.

(c) Violation of subsection (a) is a class B misdemeanor.

~~(d) The provisions of this act requiring certification or licensure or the issuance of a certificate or license authorizing the practice of real estate appraisal shall not be construed to prevent a person who is not a state certified or licensed real estate appraiser from appraising real estate for compensation if state certification or licensure is not required pursuant to federal law.~~

(d) An individual who is not a state certified or licensed appraiser may assist in the preparation of an appraisal if: (1) The assistant is under the direct supervision of an individual who is a state licensed or certified appraiser; and (2) the final appraisal document is approved and signed by an individual who is a state certified or licensed appraiser.

Sec. 3. K.S.A. 58-4102 and 58-4103 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.



The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

January 29, 1998

To: House Committee on Financial Institutions
From: Kathy Taylor Olsen, Kansas Bankers Association
Re: Introduction of bill

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before the committee today, to request introduction of a bill on behalf of the Kansas Bankers Association Trust Division.

The need for this bill arose as it was discovered that when Kansas state employees try to roll over their retirement funds to a private investment advisor, the tax exempt status of those funds is lost. So that when funds are paid out from a KPERs plan, a Police and Fire plan or other tax exempt plan, the tax exempt status would not carryover to the replacement asset (whether it be an IRA, an annuity, or some other investment).

We believe this puts Kansas banks at a disadvantage in securing the business of retiring state employees. It also means that state employees will have less flexibility and access to local service.

For these reasons, we ask that the attached bill be introduced for further discussion. Thank you.

House Financial Institutions
1-29-98
Attachment 2

12-111a. Exemption of certain annuities, pensions and benefits of policemen and firemen from taxes and civil liability; exception, qualified domestic relations order. Except as provided further, all annuities, pensions and benefits paid, which arise from services of a policeman or fireman, by a pension and benefit plan of a city of the first or second class under a charter ordinance related to K.S.A. 13-14a01 *et seq.* or K.S.A. 14-10a01 *et seq.*, and amendments thereto, are hereby made and declared exempt from any tax of the state of Kansas or any political subdivision or taxing body thereof and shall not be subject to execution, garnishment or attachment. Any pension benefit or annuity accruing to services of a policeman or fireman by a charter ordinance under this section shall not be exempt from claims of an alternate payee under a qualified domestic relations order. As used in this section, the terms "alternate payee" and "qualified domestic relations order" shall have the meaning ascribed to them in section 414(p) of the United States internal revenue code of 1954, as amended. The provisions of this section shall apply to any qualified domestic relations order which is in effect on or after July 1, 1994.

History: L. 1974, ch. 345, § 3; L. 1994, ch. 231, § 1; July 1.

(and on identifiable proceeds therefrom in an individual retirement account or annuity qualified under section 408 of the federal internal revenue code of 1986, as amended)

active members of local plans made special member of the KP&F system; employee contributions; preservation of local plan entitlements for special members, exceptions; exemption from taxes and legal claims and process and nonassignable, exception for decrees for support and maintenance and qualified domestic relations orders and lump-sum death benefit assigned to a funeral establishment; employer pickup of member contributions. (a) Every retired member of a local police or fire pension plan and every active member of the plan who is entitled to make an election to become a member of the Kansas police and firemen's retirement system pursuant to K.S.A. 12-5003 or 74-4955 and amendments thereto and who does not so elect shall become a special member of the Kansas police and firemen's retirement system on the entry date of the city which is affiliating with the Kansas police and firemen's retirement system with regard to all active members and retired members of the local police or fire pension plan under K.S.A. 74-4954 and amendments thereto.

(b) Beginning with the first payroll for services as a policeman or fireman after an active member of a local police or fire pension plan becomes a special member of the Kansas police and firemen's retirement system under this section, the city shall deduct from the compensation of each special member the greater of 7% or the percentage rate of contribution which the active member was required to contribute to the local police or fire pension plan preceding the entry date of the city, as employee contributions. The deductions shall be remitted quarterly, or as the board of trustees otherwise provides, to the executive secretary of the Kansas public employees retirement system for credit to the Kansas public employees retirement fund. All deductions shall be credited to the special members' individual accounts beginning on July 1 of the year following the entry date of the city for purposes of all active and retired members of the local police and fire pension plan.

(c) Except as otherwise provided in this act, each active member of a local police or fire pension plan who becomes a special member of the Kansas police and firemen's retirement system under this section shall be subject to the provisions of and entitled to pensions and other benefits, rights and privileges to the extent provided under the local police and fire pension plan on the day immediately preceding the entry date of the city which is affiliating with the Kansas police and firemen's retirement system with regard to all active members and retired members of the plan.

(d) Each retired member of a local police or fire pension plan who becomes a special member of the Kansas police and firemen's retirement system under this section shall be entitled to receive from the Kansas police and firemen's retirement system a pension or any other benefit to the same extent and subject to the same conditions as existed under the local police or fire pension plan on the day immediately preceding the entry date of the city which is affiliating with the system with

regard to active members and retired members of the plan under K.S.A. 74-4954 and amendments thereto, except no retired special member shall be appointed in or to a position or office for which compensation is paid for service to the same state agency, or the same police or fire department of a city, township, special district or county or the same sheriff's office of a county. This subsection shall not apply to service rendered by a retiree as a juror, as a witness in any legal proceeding or action, as an election board judge or clerk or in any other office or position of a similar nature. Any retiree employed by a participating employer in the Kansas police and firemen's retirement system shall not make contributions or receive additional credit under the system for that service. This subsection, except as it relates to contributions and additional credit, shall not apply to the employment of any retiree by the state of Kansas, or any county, city, township, special district, political subdivision or instrumentality of any one or several of the aforementioned for a period of not exceeding 30 days in any one calendar year.

(e) (1) Every pension or other benefit received by any special member pursuant to subsection (c) or (d) is hereby made and declared exempt from any tax of the state of Kansas or any political subdivision or taxing body of this state; shall not be subject to execution, garnishment, attachment or any other process or claim whatsoever, except such pension or benefit or any accumulated contributions due and owing from the system to such special member are subject to decrees for child support or maintenance, or both, as provided in K.S.A. 60-1610 and amendments thereto; and shall be unassignable, except that within 30 days after the death of a retirant the lump-sum death benefit payable to a retirant pursuant to the provisions of K.S.A. 74-4989 and amendments thereto may be assignable to a funeral establishment providing funeral services to such retirant by the beneficiary of such retirant. The Kansas public employees retirement system shall not be a party to any action under article 16 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto, and is subject to orders from such actions issued by the district court of the county where such action was filed. Such orders from such actions shall specify either a specific amount or specific percentage of the amount of the pension or benefit or any accumulated contributions due and owing from the system to be distributed by the system pursuant to this act.

(and on identifiable proceeds therefrom in an individual retirement account or annuity qualified under section 408 of the federal internal revenue code of 1986, as amended)

(2) Any pension or other benefit received by any special member pursuant to subsection (c) or (d) is hereby made and declared exempt from any tax of the state of Kansas or any political subdivision or taxing body of this state; shall not be subject to execution, garnishment, attachment or any other process or claim whatsoever, except such pension or benefit or any accumulated contributions due and owing from the system to such special members are subject to claims of an alternate payee under a qualified domestic relations order. As used in this subsection, the terms "alternate payee" and "qualified domestic relations order" shall have the meaning ascribed to them in section 414(p) of the United States internal revenue code of 1954, as amended. The provisions of this subsection shall apply to any qualified domestic relations order which is in effect on or after July 1, 1994.

(and on identifiable proceeds therefrom in an individual retirement account or annuity qualified under section 408 of the federal internal revenue code of 1986, as amended)

(f) (1) Each participating employer, pursuant to the provisions of section 414(h)(2) of the United States internal revenue code, shall pick up and pay the contributions which would otherwise be payable by members as prescribed in subsection (a) commencing with the third quarter of 1984. The contributions so picked up shall be treated as employer contributions for purposes of determining the amounts of federal income taxes to withhold from the member's compensation.

(2) Member contributions picked up by the employer shall be paid from the same source of funds used for the payment of compensation to a member. A deduction shall be made from each member's compensation equal to the amount of the member's contributions picked up by the employer, provided that such deduction shall not reduce the member's compensation for purposes of computing benefits under K.S.A. 12-5001 to 12-5007, inclusive, and amendments thereto.

(3) Member contributions picked up by the employer shall be remitted quarterly, or as the board may otherwise provide, to the executive secretary for credit to the Kansas public employees retirement fund. Such contributions shall be credited to a separate account within the member's individual account so that amounts contributed by the member commencing with the third quarter of 1984 may be distinguished from the member contributions picked up by the employer. Interest shall be added annually to members' individual accounts.

History: L. 1976, ch. 348, § 5; L. 1981, ch. 77, § 1; L. 1982, ch. 152, § 19; L. 1984, ch. 289, § 1; L. 1990, ch. 282, § 1; L. 1991, ch. 238, § 1; L. 1992, ch. 321, § 25; L. 1994, ch. 231, § 2; July 1.

13-14a10. Exemption of certain pension and benefit funds from taxes and civil liability; exceptions, qualified domestic relations orders. Except as provided further, any annuity, benefits, funds, property, or rights created by or accruing to any person under the provisions of K.S.A. 13-14a01 *et seq.* or K.S.A. 14-10a01 *et seq.*, and amendments thereto, are hereby made and declared exempt from any tax of the state of Kansas or any political subdivision or taxing body thereof, and shall not be subject to execution, garnishment, or attachment, or any other process or claim whatsoever, and shall be unassignable, except as specifically provided by law.

Any pension benefits or annuities accruing under the provisions of K.S.A. 13-14a01 *et seq.* or K.S.A. 14-10a01 *et seq.*, and amendments thereto, shall not be exempt from claims of an alternate payee under a qualified domestic relations order. As used in this section, the terms "alternate payee" and "qualified domestic relations order" shall have the meaning ascribed to them in section 414(p) of the United States internal revenue code of 1954, as amended. The provisions of this section shall apply to any qualified domestic relations order which is in effect on or after July 1, 1994.

History: L. 1945, ch. 111, § 10; L. 1974, ch. 345, § 1; L. 1994, ch. 231, § 4; July 1.

(and on identifiable proceeds therefrom in an individual retirement account or annuity qualified under section 408 of the federal internal revenue code of 1986, as amended)

14-10a10. Certain pension benefits and rights nonassignable and exempt from taxes and legal process. Any annuity, benefits, funds, property, or rights created by or accruing to any person under the provisions of K.S.A. 13-14a01 *et seq.* or K.S.A. 14-10a01 *et seq.* and any acts amendatory thereof or supplemental thereto, are hereby made and declared exempt from any tax of the state of Kansas or any political subdivision or taxing body thereof, and shall not be subject to execution, garnishment, or attachment, or any other process or claim whatsoever, and shall be unassignable, except as specifically provided by law.

History: L. 1945, ch. 144, § 10; L. 1974, ch. 345, § 2; L. 1977, ch. 68, § 1; July 1.

(and on identifiable proceeds therefrom in an individual retirement account or annuity qualified under section 408 of the federal internal revenue code of 1986, as amended)

74-4923. Rights of members and beneficiaries not affected by change or repeal of act, except as provided; benefits and rights exempt from tax and legal process and nonassignable, exceptions for decrees for support and maintenance and qualified domestic relations orders and lump-sum death benefit assigned to a funeral establishment; recovery of arrearage obligations and debts owed state agencies. (a) No alteration, amendment or repeal of this act shall affect the then existing rights of members and beneficiaries but shall be effective only as to rights which would otherwise accrue under this act as a result of services rendered by an employee after the alteration, amendment or repeal. This subsection shall not apply to any alteration or amendment of this act which provides greater benefits to members or beneficiaries, but any increase of benefits shall only be applicable to benefits payable on the first day of the month coinciding with or following the effective date of the alteration or amendment.

(b) Any annuity, benefits, funds, property or rights created by, or accruing to any person under the provisions of K.S.A. 74-4901 *et seq.* or 74-4951 *et seq.*, and amendments thereto, shall be exempt from any tax of the state of Kansas or any political subdivision or taxing body of the state; shall not be subject to execution, garnishment or attachment, or, except as otherwise provided, any other process or claim whatsoever; and shall be unassignable, except that within 30 days after the death of a retirant the lump-sum death benefit payable to a retirant's beneficiary pursuant to the provisions of K.S.A. 74-4989 and amendments thereto may be assignable to a funeral establishment providing funeral services to the retirant by the beneficiary of such retirant. Any annuity or benefit or accumulated contributions due and owing to any person under the provisions of K.S.A. 74-4901 *et seq.* or 74-4951 *et seq.* and amendments thereto are subject to claims of an alternate payee under a qualified domestic relations order. As used in this subsection, the terms "alternate payee" and "qualified domestic relations order" shall have the meaning ascribed to them in section 414(p) of the United States internal revenue code of 1954, as amended. The provisions of this act shall apply to any qualified domestic relations order which is in effect on or after July 1, 1994. The Kansas public employees retirement system shall not be a party to any action under article 16 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto, but is subject to orders from such actions issued by the district court of the county where such action was filed and may also accept orders which it deems to be qualified under this subsection from courts having jurisdiction of such actions outside the state of Kansas. Such orders from such actions shall specify either a specific amount or specific percentage of the amount of the pension or benefit or any accumulated contributions due

and owing from the system to be distributed by the system pursuant to this act.
(c) In any case where a state agency is owed a debt or where a participating employer under the Kansas public employees retirement system or under the Kansas police and firemen's retirement system has been required to pay and has paid an arrearage obligation of the amount of contributions of a member which were not paid at the time required and where the employment of the member by the state agency or participating employer has been terminated and the member is eligible to withdraw accumulated contributions in accordance with K.S.A. 74-4917 and 74-4963, and amendments thereto, the state agency or participating employer shall be paid from the member's account in the fund an amount equal to the debt or the amount of contributions of the member paid by the participating employer pursuant to an arrearage obligation, upon application to the board therefor accompanied by certification of the amount to be paid to the state agency or participating employer. If any application and certification under this subsection are not received by the board prior to the withdrawal of accumulated contributions by the member, the board shall not be liable to pay and shall not pay any amount from the fund pursuant to any such application and certification.

History: L. 1961, ch. 427, § 23; L. 1963, ch. 412, § 15; L. 1970, ch. 325, § 1; L. 1974, ch. 338, § 1; L. 1977, ch. 274, § 1; L. 1981, ch. 342, § 15; L. 1982, ch. 152, § 24; L. 1990, ch. 282, § 11; L. 1991, ch. 238, § 3; L. 1992, ch. 321, § 10; L. 1994, ch. 231, § 5; L. 1995, ch. 267, § 19; July 1.

(and on identifiable proceeds therefrom in an individual retirement account or annuity qualified under section 408 of the federal internal revenue code of 1986, as amended)

74-400g. Preservation of entitlement to receive pension or other benefit from highway patrol pension fund; benefits for minor children of certain deceased members; conditions for payments; termination of payments; exemption of pension and benefits from taxes and civil liability. Any person receiving or entitled to receive a pension or any other benefit, or who will become entitled to receive a pension or any other benefit, from the state highway patrol pension fund as it existed prior to April 1, 1972, shall be entitled to receive from the Kansas police and firemen's retirement system such pension or any other benefit to the same extent and subject to the same conditions as existed on April 1, 1972. Any minor child of a member of the state highway patrol pension system or special member of the Kansas police and firemen's retirement system who died by reason of injuries received or disease contracted by such member while in the performance of such member's duties as a member of the highway patrol and whose spouse's pension was terminated because of such spouse's remarriage shall receive a monthly amount equal to the pension which was terminated due to such remarriage. Such benefits shall accrue from April 1, 1973, or the date of the spouse's remarriage, whichever is later and shall be terminated on the first day of the month in which the child dies, marries or attains the age of 18 years or in which the child attains the age of 23 years, if such child is a full-time student as provided in K.S.A. 74-49,117. All pensions and benefits received by any person under this act are hereby made and declared exempt from any tax of the state of Kansas or any political subdivision or taxing body thereof, and shall not be subject to execution, garnishment, or attachment, or any other process or claim whatsoever.

History: L. 1972, ch. 292, § 7; L. 1973, ch. 328, § 1; L. 1974, ch. 345, § 4; L. 1989, ch. 232, § 23; July 1.

(and on identifiable proceeds therefrom in an individual retirement account or annuity qualified under section 408 of the federal internal revenue code of 1986, as amended)

74-49.106. Benefit entitlement of special member under 74-4999; recalculation or increase in benefit; exemption from taxes and legal process. (a) Each person who is a special member of the Kansas public employees retirement system under subsection (c) of K.S.A. 74-4999 shall be entitled to receive from the Kansas public employees retirement system a retirement benefit, annuity, pension or other benefit to the same extent and subject to the same conditions as existed under the laws in effect on the day immediately preceding the effective date of this act, except that each person who is a special member of the Kansas public employees retirement system pursuant to subsection (c) of K.S.A. 74-4999 shall have such person's retirement benefit, annuity, pension or other benefit recalculated under subsection (c) of K.S.A. 74-49,104 and amendments thereto. If such recalculation results in an increase in such special member's retirement benefit, annuity, pension or other benefit, such increase shall accrue and be payable to such special member on and after July 1, 1982.

(b) Every retirement benefit, annuity, pension or other benefit received by any person pursuant to subsection (a) shall be exempt from any tax of the state of Kansas or any political subdivision or taxing body of the state; shall not be subject to execution, garnishment, attachment or any other process or claim whatsoever, including decrees for support or maintenance; and shall be unassignable.

History: L. 1975, ch. 191, § 8; L. 1982, ch. 319, § 45; L. 1982, ch. 152, § 26; Jan. 1, 1983.

(and on identifiable proceeds therefrom in an individual retirement account or annuity qualified under section 408 of the federal internal revenue code of 1986, as amended)



KANSAS

Bill Graves
Governor

OFFICE OF THE SECURITIES COMMISSIONER

David R. Brant
Securities Commissioner

TESTIMONY IN SUPPORT OF HOUSE BILL No. 2718
Amendments To The Kansas Securities Act
Financial Institutions Committee Kansas House of Representatives

DAVID BRANT
Kansas Securities Commissioner
January 29, 1998

Mr. Chairman and members of the committee, thank you for this opportunity to testify in support of House Bill No. 2718 which makes a few needed technical amendments to the Kansas Securities Act.

Last year, the Act was amended by HB 2094 to conform the Act to the requirements of recent federal legislation, the National Securities Markets Improvement Act ("NSMIA"), which was signed into law on October 11, 1996. Pursuant to NSMIA, the Securities and Exchange Commission ("S.E.C.") adopted rules implementing the Investment Advisers Supervision and Coordination Act of NSMIA. Among other things, the rules provided a definition of "investment adviser representative." The new S.E.C. rules went effective on July 8, 1997.

Since July, the North American Securities Administrators Association ("NASAA") has been drafting model language to revise the definition of investment adviser representative to harmonize the definition under state securities laws with the federal definition adopted by S.E.C. Rule 203A-3(a). NASAA finalized its model language as of December 16, 1997, after it was published for public comment.

The bill (beginning on page 3, line 28) amends the definition of investment adviser representative under K.S.A. 17-1252(m) to adopt the NASAA proposed model wording in order that the Kansas definition will be consistent with the revised federal rule.

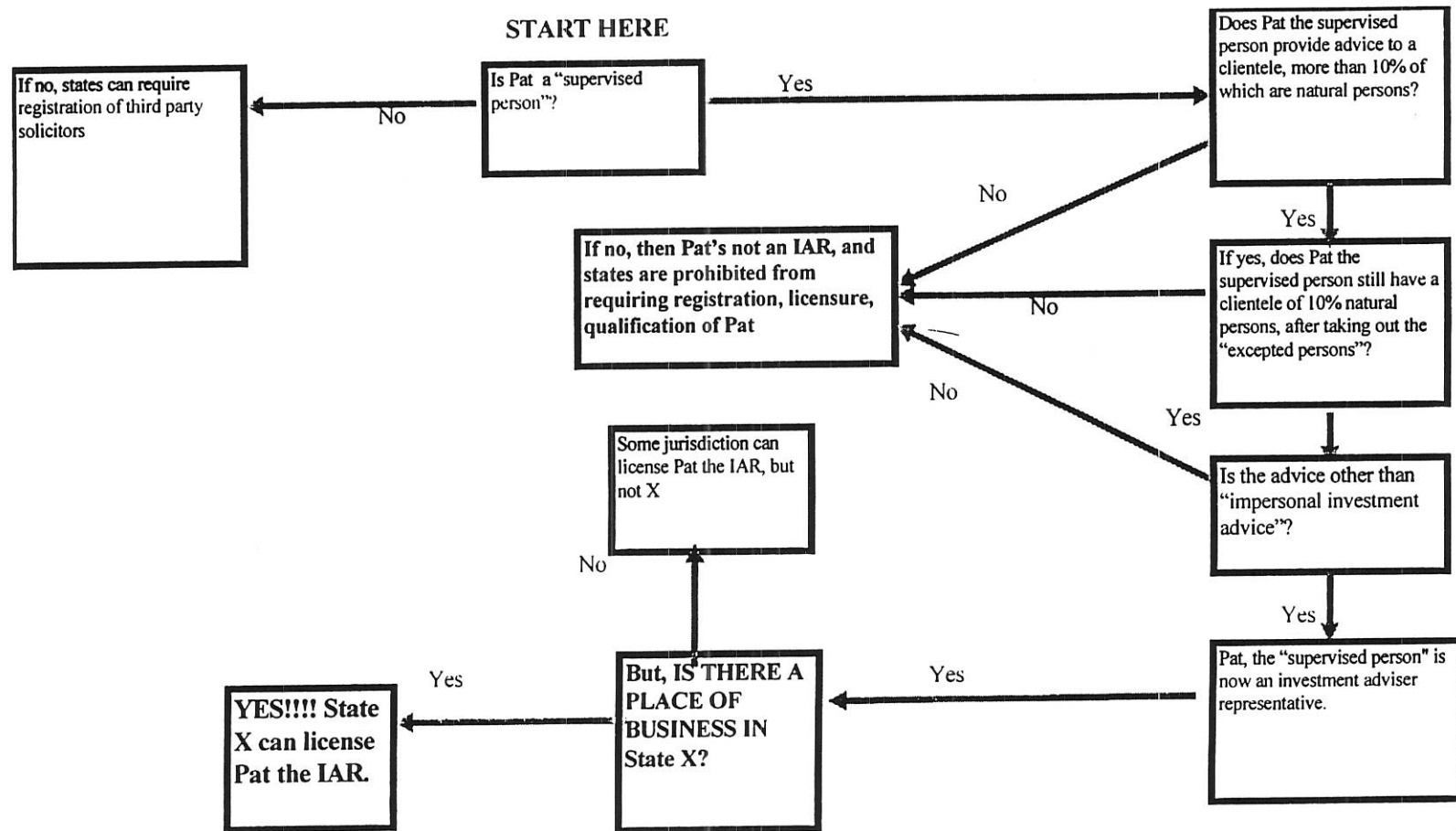
Section 1 of the bill also amends the definition of agent under K.S.A. 17-1252(b) to encompass an additional exclusion. Currently, individuals representing issuers in transactions in securities exempted under various subsections of K.S.A. 17-1261 are excluded from the definition of agent. The list of exclusions in K.S.A. 17-1252(b) now encompasses most of the subsections of 17-1261. There is no rational basis for excluding

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subsection (d) from this list (securities of federally chartered or Kansas Savings and Loan Associations). The effect of the amendment is to include this subsection (d) in the list of exclusions and to simplify the description to include all of 17-1261 except one category.

Finally, Sections 2 and 3 of the bill propose to amend the prefatory language contained in K.S.A. 17-1261 and 17-1262. These amendments clarify a minor, technical conflict. Exemptions in these statutes are meant only to exempt the securities and transactions from the requirement to register securities or in the case of 17-1262 to also exempt those selling the securities from the requirement to register as broker-dealers or agents. Other provisions within K.S.A. 17-1254 through 17-1260, such as the authority to revoke or suspend licenses for dishonest or unethical practices or the authority to require filing fees for exemption filings, are clearly intended to apply in the case of these exemptions.

SEC Definition of "Investment Adviser Representative"



Testimony on House Bill No. 2702

Daryl Craft
Kansas Bankers Association
Trust Division

I am here today on behalf of the Kansas Bankers Association Trust Division to testify for House Bill No. 2702. This bill creates a creditors claim statute for decedents dying with some or all of their assets held in a living trust.

Currently, KSA 59-709 creates a creditors notice requirement for Kansas estates. The executor or administrator of the estate must publish notice of death in the county of the decedent's death to give creditors notice of the death and time to prepare and file any claims against the estate. Proper utilization of the claims notice will limit the time that qualified claims can be filed, and protect the executor or administrator from claims that were not filed in a timely manner. House Bill No. 2702 would create a similar statute to be used by trustees of a living trust. The introduction of this bill is a result of requests from numerous trust officers.

More and more Kansas residents are utilizing living trusts as part of their estate plans. Using a properly executed and funded living trust, there normally will not be a probate proceeding. Under current Kansas law, there is no means to limit when a creditor may file a claim against a trustee. It is possible that a claim could be made upon a trustee years after all assets had been distributed. If the trustee was unable to collect from the beneficiaries it might be held personally liable to pay the claim. This bill would create a protection for trustees similar to that which has existed, under the Probate Code, for executors and administrators for years. The bill would not make it mandatory that a trustee utilize the claims notice, but it would give those trustees who so desire the means to do so.

The KBA Trust Division asks that you vote in favor of this bill.

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Attachment 4



The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

January 29, 1998

TO: House Committee on Financial Institutions

FROM: Kathy Taylor Olsen, Kansas Bankers Association

RE: **HB 2703: Unauthorized transactions involving access devices**

Dear Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you in support of **HB 2703**, which amends a provision of the banking code dealing with a bank customer's liability for the unauthorized use of a "machine readable instrument".

The amendments that have been proposed are designed to first, update our state statute to keep up with changing technology, and second, to provide a third tier of liability for these unauthorized transactions.

We have had this provision in our state banking code since 1975. There is a companion provision in federal law under Regulation E. In 1975, the term "machine readable instrument" was the current term used to describe transactions made available through the use of a card – such as a debit card. As technology changed, the federal law found in Regulation E was changed to embrace the new technology. Instead of "machine readable instrument", the term "access device" is now used to encompass these electronic transactions that are accessed by a card, a code or another means of access.

While this new term still includes the traditional debit card transaction, it may also include point-of-sale transactions and transfers initiated by telephone. This bill would bring our state law up-to-date with the technology now available to bank customers to initiate an electronic fund transfer. These amendments appear on Page 1, Lines 16-17, 19, 29-31; and Page 2, Lines 8-10.

While our state statute is similar to the federal law found in Regulation E, there has been one major difference. Both laws provide a "tiered system" of liability to bank customers for unauthorized transactions using an access device. At the state level, if a customer notifies the bank within 4 business days after learning of the loss of the "access device", the customer's liability cannot exceed \$50.00. Under Regulation E, a customer only has 2 business days to notify the bank to limit his or her liability to \$50.00.

At the state level, if the customer does not notify the bank within 4 business days, the customer will be liable for any unauthorized transactions up to a maximum of \$300.00, regardless of when the customer finally notifies the bank of the lost access device.

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Under Regulation E, if the customer does not notify the bank within 2 business days, the customer's liability for unauthorized transactions occurring from that moment until 60 days after a periodic statement is sent, is limited to \$500.00. Then, if the customer fails to notify the bank 60 days after he or she has received a periodic statement, the customer will be fully liable for all unauthorized transactions made after the 60 days until the date of notice, as long as the bank proves those transactions would not have occurred had the customer notified the bank within the 60-day period.

In other words, the federal regulation has a third tier of customer liability that states, if a customer does not notify the bank within 60 days after having the opportunity to discover the unauthorized transactions on a bank statement, the customer will bear the liability from that day (day 61) until he or she notifies the bank.

We are suggesting that Kansas implement this third tier of liability. This would provide a point in time by which the customer should have noticed and reported the unauthorized transactions on his or her statement, and by which to not do so would be considered negligent and therefore warrant full liability on the part of the customer.

In the bill before you, we have suggested mirroring the federal law and have stated that the bank customer must notify the bank of any unauthorized transactions by an access device within 60 days after having received a periodic statement, in order to limit his or her liability. These amendments appear on Page 1, Lines 20-27 of the bill.

In summary, the KBA is asking for amendments that 1) bring our statute current with technology terms; and 2) provide for a third tier of customer liability for these types of unauthorized transactions. Thank you very much for your consideration of **HB 2703**.

Bank Customer's Liability for
Unauthorized Transactions Using an
Access Device

5-3

	Tier 1	Tier 2	Tier 3
State Law K.S.A. 9-1111d	Notice within 4 business days = \$50 maximum	After 4 business days to infinity = \$300 maximum	
Federal Law Regulation E	Notice within 2 business days = \$50 maximum	After 2 business days until 60 days after statement is received = \$500 maximum	61 days after statement is received until notice is given = unlimited liability

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Matthew S. Goddard, Vice President

700 S. Kansas Ave., Suite 512
Topeka, Kansas 66603
(913) 232-8215

To: House Financial Institutions Committee

From: Matthew Goddard
Heartland Community Bankers Association

Date: January 29, 1998

Re: House Bill No. 2703

The Heartland Community Bankers Association appreciates the opportunity to appear before the House Committee on Financial Institutions in support of HB 2703 and to ask for your adoption of the attached amendment.

Three significant differences exist between Kansas law and the Federal Reserve Board's Regulation E, which covers electronic fund transfers (EFT's). The first two differences are relatively minor, and both to the benefit of the consumer. The third difference, however, is a more glaring omission.

Reg E

Kansas Law

Depositor liability doesn't exceed \$50 if financial institution is notified within **two** business days.

Depositor liability doesn't exceed \$50 if financial institution is notified within **four** business days.

If financial institution is not notified within **two** business days, depositor liability does not exceed **\$500**.

If financial institution is not notified within **four** business days, depositor liability does not exceed **\$300**.

Consumer must notify financial institution within **60 days** of the financial institution's transmittal of the statement to avoid liability for subsequent unauthorized transfers.

The 60 day notification period, which does not begin until **after** an account statement is mailed, is not contained in Kansas law. This means that a depositor could, in theory, wait more than a year before reporting an unauthorized transaction taking place on their account, without incurring any liability in excess of \$300. The financial institution would be liable for any amount in excess of \$300.

House Bill 2703 adds the 60 day notification period to Kansas law. Few consumers would be impacted. Over the past year, Capitol Federal Savings, the largest Kansas-based financial institution, has had eight customers wait in excess of **90 days** before reporting an unauthorized transaction.

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Although most of the amounts involved were nominal, three cases involved thousands of dollars. Four of the eight depositors reported unauthorized transactions under \$300 and thus would have had zero liability.

Nothing in this bill precludes the financial institution from voluntarily extending the 60-day reporting period. Many HCBA members have policies of extending similar deadlines due to extenuating circumstances.

As drafted, HB 2703 only applies to commercial banks. The attached amendment provides language that extends the bill to cover savings and loan associations. It also includes several technical changes recommended by the Office of the Revisor to simply "clean-up" the existing savings and loan statute.

We respectfully request that the House Committee on Financial Institutions adopt the attached amendment and recommend HB 2703 favorable for passage.

Thank you.

attachment

House Committee on Financial Institutions

HB 2703

New Section 2. K.S.A. 17-5569 is hereby amended to read as follows: 17-5569. (a) The amount of a depositor's liability for an unauthorized transaction or a series of unauthorized transactions by a machine readable instrument *an access device* shall not exceed \$50, unless the depositor fails to notify the savings and loan association within four business days after learning of the loss or theft of the machine readable instrument *access device*, then the depositor's liability shall not exceed \$300, *except that if the depositor fails to notify the savings and loan association of the unauthorized transaction or series of unauthorized transactions by an access device that appears on a periodic statement within 60 days of the savings and loan association's transmittal of the statement, the depositor's liability shall not exceed the amount of the unauthorized transactions that occur after the close of the 60 days and before notice to the savings and loan association and that the savings and loan association establishes would not have occurred had the depositor notified the savings and loan association within the 60-day period.*

New Section 3. K.S.A. 17-5570 is hereby amended to read as follows: 17-5570. For the purposes of this act: (a) ~~The term "Financial transactions" shall include~~ *means* receiving deposits of every kind and nature, receiving payments payable to the savings and loan association and making withdrawals from the customer's account, but ~~such term shall not include~~ *does not mean* opening an account or initiating a loan.

(b) ~~The term "Remote service unit" shall mean~~ *means* an electronic information processing device, including associated equipment, structures and systems, through or by means of which information relating to financial services rendered to the public is stored and transmitted, whether instantaneously or otherwise, to a savings and loan association and which, for activation and account access, is dependent upon the use of a machine-readable instrument *an access device*, other than a passbook, in the possession and control of the holder of an account with a savings and loan association. ~~The term "Remote service unit" shall include~~ *means* "on-line" computer terminals and "on-line" or "off-line" automated cash dispensing machines or automated teller machines, but ~~shall not include~~ *does not mean* computer terminals, automated cash dispensing machines or automated teller machines using systems in which account numbers are not machine-read and verified.

(c) ~~The term "Savings and loan association" means~~ any state chartered savings and loan association in which deposits are insured or any federally chartered savings and loan association or savings bank domiciled in this state.

(d) *"Unauthorized transaction by an access device" means an electronic fund transfer initiated by an access device from a depositor's account initiated by a person other than the depositor without actual authority to initiate the transfer and from which the depositor receives no benefit. The term does not include any electronic fund transfer: (1) Initiated by a person who was furnished with the access device to the depositor's account by the depositor, unless the depositor has notified the savings and loan association involved that the transfers by that person are no longer authorized; (2) initiated with fraudulent intent by the depositor or any person acting in concert with the depositor; or (3) that is initiated by the savings and loan association or its employees.*

(e) *"To notify the savings and loan association" means a depositor takes such steps as are reasonably necessary to provide the savings and loan association with the pertinent information, whether or not any particular officer, employee or agent of the financial institution does in fact*

receive the information. Notice may be given to the savings and loan association, at the depositor's option, in person, by telephone or in writing. Notice in writing is considered given at the time the depositor deposits the notice in the mail or delivers the notice for transmission by any other usual means to the savings and loan association. Notice is also considered given when the savings and loan association becomes aware of circumstances that lead to the reasonable belief that an unauthorized electronic fund transfer involving the depositor's account has been or may be made.

(f) "Access device" means a card, code or other means of access to a depositor's account, or any combination thereof, that may be used by the depositor to initiate electronic fund transfers.

Sec. 2 4. K.S.A. 1997 Supp. 9-1111d, K.S.A. 17-5569 and K.S.A. 17-5570 are hereby repealed.

Sec. 3 5. This act shall take effect and be in force from and after its publication in the statute book.