

Approved: March 10, 1999
Date

MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS.

The meeting was called to order by Chairperson Ray Cox at 3:30 p.m. on March 8, 1999 in Room 527-S of the Capitol.

All members were present except: Representative Cindy Empson - Excused

Committee staff present: Dr. Bill Wolff, Legislative Research
Bruce Kinzie, Office of Revisor
Maggie Breen, Committee Secretary

Conferees appearing before the committee: Chuck Stones, Kansas Bankers Association
Charles Thacker, Retired FDIC Executive
Sue Anderson, Community Bankers Association
Kevin Glendening, Assistant Deputy Bank Commissioner
Karen France, Kansas Association of Realtors
A. W. Pickel III, Leader Mortgage Company
Maurice Barkley, Kansas Association of Mortgage Brokers

Others attending: See Attached List

Chairman Cox opened the hearing on **SB 240 - Bank commissioner, duties and qualifications:**

The Chairman invited **Senator Steffes** to give a few remarks on **SB 240**. Senator Steffes commended everyone for working together on this issue. He said we're now down to only 2 issues of some difference. The issues involve the qualifications of the Bank Commissioner. Senator Steffes believes the Governor should 1) have the right and authority to appoint the bank commissioner from anywhere in the nation and 2) the right and authority to appoint a regulator to be the top regulator. The key issue is that Kansas is still the most restrictive state in the nation. The governor will, in all probability, pick someone very much like the person we have right now. The Senate Bill gives the governor the option to appoint and it broadens it out. If the two points the banking community object to prevail, the perception of controlling their own regulator will still exist.

Chuck Stones, Kansas Bankers Association, gave testimony on **SB 240**. (**Attachment 1**) The bill would dramatically change the qualifications of the Bank Commissioner. The KBA is not opposed to the majority of the bill. They do object to two and a half points. First they think the Legislature should put some parameters on this job to insure that the person appointed, by the current and any future governor, has the necessary qualifications to be the Bank Commissioner of the State of Kansas.. The first specific objection occurs in sub (b). "In this state" should be added to (1), line 27. Kansas is a unique state with unique types of industries. The second objection is sub (b)(2). They would favor the deletion of lines 28 & 29, allowing regulatory experience to qualify a person for the job as Bank Commissioner. They feel strongly that it is important for the Bank Commissioner to have been on the business side of the desk for at least some part of his or her career. Finally, the term "consultant" is much too broad. It could encompass any contract or activity with the bank he or she might have a significant holding in. They would recommend either removing the words "or consultant" or adding the word "paid" before the word consultant. He urged the committee to consider these issues.

Charles Thacker, Retired FDIC Executive, testified on **SB 240**. (**Attachment 2**) He commended the parts of the bill which strengthened the commissioner's office. The part requiring that it be a full-time position and not allowing the commissioner to serve as an officer or employee of any institution which is regulated by the department and the part which expands the pool of eligibles by including national bankers. He does have reservations about excluding the commissioner from service as a director of an institution regulated by the department. He believes the same objective could be achieved by requiring that the commissioner recuse himself or herself from any regulatory matter involving the institution for which he or she may be serving as a director and from any supervisory actions relating to direct competitors of that institution. The Deputy Commissioner could handle these matters. He also has concerns over expanding the qualifications to include

CONTINUATION SHEET

MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS, Room 527-S Statehouse, at 3:30 p.m. on March 8, 1999.

out-of-state bankers and former regulators. He thinks the commissioner needs to be very familiar with the state and thinks a commissioner with banking experience adds balance to the regulatory scheme.

Sue Anderson, Community Bankers Association, testified as an opponent to **SB 240**. (**Attachment 3**)

CBA cannot support the bill in its current form. It goes too far in separating the Bank Commissioner from the industry. She offered two amendments: 1) Change the experience requirement to include experience of a minimum of five years in the banking industry *in the state of Kansas*, whether it is achieved in a state *or national* bank. 2) Delete the part of the bill which would permit regulatory experience in lieu of actual banking experience. CBA members strongly believe that revising the Bank Commissioner's qualifications in such a way as to completely eliminate banking experience is not in the best interest of the public or the financial institution regulated. She asked the committee to give careful consideration to these concerns. The CBA opposes the bill unless the proposed amendments are adopted.

Chairman Cox closed the hearing on **SB 240** and opened the hearing on **SB 241 - Banks and trust companies; mortgage business and mortgage loans**.

Dr. Wolff advised the committee that currently the law that governs mortgages business in Kansas is a registration act. Those who want to do business register with the Bank Commissioner. This significant strengthens that act and put into place a little more structure.

Kevin Glendenning, Assistant Deputy Bank Commissioner, testified as a proponent to **SB 241**. (**Attachment 4**) Since the law to regulate the mortgage brokers and lenders of first mortgages on residential property took effect in Kansas, approximately 500 individuals and companies have registered with their office. Approximately 60% are from out of state with 37 states being represented. The proposed amendments are in three primary categories: 1) Technical amendments concerning the registration process itself; 2) Increased and consumer protection matters; and 3) Penalties for noncompliance with the law. He believes the amendments are prudent changes to existing law that will enhance both our ability to enforce the rules and the protection afforded Kansas consumers.

Karen France, Kansas Association of Realtors testified in support of the **SB 241**. (**Attachment 5**) The bill permits the Bank Commissioner to deny, suspend, revoke or, refuse to renew, the registration of a mortgage business if "the applicant or registrant has engaged in or is engaging in deceptive business practices." It is an important addition in light of several complaints their office has received from the Johnson County and Wichita markets. She respectfully asked for the committee's support of the legislation.

Erik Sartorius, Johnson County Board of Realtors, Inc., submitted written test on **SB 241**. (**Attachment 6**)

A. W. Pickel III, President, Leader Mortgage Company, appeared as a proponent of **SB 241**. They support the bill because the number of persons that have entered this field in the last few years. Many do not know what they are doing. (**Attachment 7**)

Maurice Barkley, President, Kansas Association of Mortgage Brokers stated his organization is in support of **SB 241**. (No testimony submitted.)

Representative Cox submitted the Committee Minutes for February 17 and February 22 for approval. Representative Helgerson pointed out that the February 17 minutes showed him absent and he was ill. Representative Cox said they would be corrected to add the word "excused." Representative Grant made a motion to approve the minutes as corrected. Representative Helgerson seconded the motion. The motion carried.

The meeting adjourned at 4:45 p.m.

The next meeting is scheduled for March 10, 1999.

Kansas Bankers Association

800 SW Jackson, Suite 1500

Topeka, KS 66612

785-232-3444 Fax - 785-232-3484 kbacs@ink.org

2-14-99

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

RE: SB 240

Mr. Chair and Members of the Committee,

Thank you for the opportunity to appear before you regarding SB 240. As you are aware, SB 240 will dramatically change the qualifications for the office of Bank Commissioner. This issue has been a significant journey over the past few years for the bankers in Kansas. They have read about it in the newspapers for quite some time. Many have had, and some still have, strong feelings about the issue. However, they have come a long way from earlier positions to the position we now have of this proposed legislation.

The KBA is not opposed to the majority of the bill. We are not opposed to most of the major changes proposed by this bill. In fact, we object to only two points of the bill. These objections fall into two categories: 1) Qualifications - We feel that qualifications or parameters should be set in place by the legislature to insure the type of person required for the job is selected. These parameters are to insure that current and future Governors are guided by these parameters to select a qualified person for the job. The new Governor of another state is currently making headlines for some of his appointments. I suspect the legislators in that state wish they had defined the qualifications for those appointments a little more narrowly. We feel it is paramount for the legislature to set the parameters they want for the job, rather than open the process for potential results like we have seen in the newspapers lately from this other state.

Our first specific objection occurs in sub (b). We feel strongly that "in this state" should be added to (1), line 27. Kansas is a unique state with unique types of industries. Lending to these industries, such as cattle, petroleum, production agriculture, etc. requires specialized knowledge. We had severe difficulty in the 1980's when federal examiners were brought in from other states to help with the examination workload. These examiners were not familiar with the types of lending in Kansas and the special knowledge needed to determine the quality of those loans. Many had never seen a pen of cattle a field of wheat or an oil well. They were not qualified to examine those types of banks. There is a difference between production agricultural lending in wheat country and lending in tobacco cotton, or orange country. There is a difference between a state with five banks and a state with almost 400, mostly small independent community, banks. The Office of the Comptroller of the Currency has issued a glossary book for new examiners in which they define several terms. Among them is the term "piglet". Hopefully, Kansas would not be forced to issue a similar handbook to a new Bank Commissioner.

The office of Bank Commissioner is also different from other State administrative or cabinet positions. The evaluation of loans to a particular industry by a specific bank in a specific trade territory seems far different than the skills needed to administer a foster care program, for example, which would use specialized types of skills, yet generic from state to state.

This issue also goes to the very unique nature of the dual banking system. The dual system is unique to banking and was, in part, established to allow states to adjust to the uniqueness of their own situations and circumstances. Other industries and agencies, not subject to a dual federal and state system, are not as dependent on the need for a Commissioner who evaluates the needs of the State and local communities. Other agency heads are not asked to preserve the state portion of a dual regulatory system.

Our second objection is sub (b)(2). We would favor the deletion of lines 28 & 29, allowing regulatory experience to solely qualify a person for the job as Bank Commissioner. We believe it is entirely different sitting on the business side of a desk and being responsible for complying with all the laws and regulations of the banking industry than it is on the other side of the desk determining whether or not a bank has complied with those laws and regulations. We feel strongly that it is important for the Bank Commissioner to have been on the business side of that desk for at least some part of his or her career. We feel it is important for the Bank Commissioner to have made a loan, turned down a loan, watched a loan go bad or possibly watched as a customer/neighbor struggles to make the payments on a loan. This gives a person an entirely different perspective on the banking business as well as life. A perspective we feel is important in a Bank Commissioner, especially during hard economic times when it is the Commissioners duty alone to determine when a bank becomes insolvent.

It would seem prudent in this area to be careful not to change statute based on the supposition that a particular person, such as Alan Greenspan, might not be eligible for the position. It would be dangerous to allow a whole class of people to be eligible to try to allow one or two specific people to be eligible for the position. We could probably agree that a specific person would make a good Commissioner, but would not agree that everybody encompassed by that persons qualifications would make a good Commissioner.

We would make a final suggestion. The term, "consultant" (line 33) is much too broad. It could encompass any contact or activity with the bank he/she might have a significant holding in. We would recommend either removing the words "or consultant" all together or adding the word "paid" before the word consultant. This would keep with the spirit of the bill.

We believe the public is best served by a Bank Commissioner with knowledge of and experience in banking in the State of Kansas. If a commissioner is not familiar with Kansas, and its unique types of industries, or only has regulatory experience is appointed, he/she may make decisions or rulings that could be detrimental to the lending practices to that industry. A commissioner from another state would not have a vested interest in Kansas or its communities and would not be interested in helping those communities by seeking ways to help banks serve their communities better. Or a person without actual banking experience may not understand the industry and the subtleties involved in lending to that industry. We fear that, in trying to avoid these perceived (not actual or even alleged) conflicts of interest, which in over 100 years have not occurred, we will be actually hurting the communities and the citizens of Kansas.

In conclusion, while this issue has been very emotional, the bankers of Kansas have seen the need to come together and support the parts of this bill that they consider reasonable. We would urge the Committee to consider whether or not, in the name of openness, they may be allowing someone totally unfit to be appointed to the position of Bank Commissioner. We would urge to consider the issues we have discussed.

As Amended by Senate Committee

Session of 1999

SENATE BILL No. 240
By Committee on Financial Institutions and Insurance
2-5

10 AN ACT concerning the bank commissioner; relating to duties and qual-
11 ifications; amending K.S.A. 75-1304 and repealing the existing section.

12

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

14 Section 1. K.S.A. 75-1304 is hereby amended to read as follows: 75-

15 1304. (a) The governor shall appoint, subject to confirmation by the sen-

16 ate as provided in K.S.A. 75-4315b, a state bank commissioner whose

17 term of office shall be four years and who shall serve until a successor is

18 appointed and qualified. ~~No person shall be eligible for appointment as~~

19 ~~commissioner unless the person has had five years actual banking expe-~~

20 ~~rience as an executive officer in a state bank in this state.~~ If a vacancy

21 occurs in the office of the commissioner prior to the expiration of a term,

22 the vacancy shall be filled for the unexpired term by appointment by the

23 governor.

24 (b) *No person shall be eligible for appointment as commissioner un-*

25 *less such person has:*

26 (1) *At least five years actual experience as an executive officer in a*

27 *state or national bank; ~~or~~*

in this state

28 (2) *at least five years actual experience in a management position in*

29 *a federal or state agency which regulates banks.*

Delete lines 28 & 29

30 (c) *The commissioner shall devote the commissioner's time and atten-*

31 *tion to the business and duties of the office on a full-time basis.*

32 (d) *While serving as bank commissioner, the commissioner shall not*

33 *be an officer, voting director, employee or consultant of any bank, bank*

either:

34 *holding company, affiliate or any other entity regulated by the*

1) delete "or consultant" or

35 *commissioner.*

2) add "paid" before consultant.

36 *(1) Any state or national bank or bank holding company;*
37 *(2) any affiliate of a state or national bank or bank holding*
38 *company; or*
39 *(3) any other entity regulated by the commissioner.*
40 Sec. 2. K.S.A. 75-1304 is hereby repealed.
41 Sec. 3. This act shall take effect and be in force from and after its
42 publication in the Kansas register.

CHARLES E. THACKER

8214 PARK STREET * LENEXA, KS 66215

(913) 541-9659

COMMENTS FOR KANSAS LEGISLATURE ON BANK COMMISSIONER QUALIFICATIONS

I HAVE FOLLOWED, WITH INTEREST, THE EFFORTS OF THE LEGISLATURE TO REDEFINE THE QUALIFICATIONS FOR THE POSITION OF KANSAS BANK COMMISSIONER. I APPRECIATE THE OPPORTUNITY TODAY TO CONTRIBUTE SOME ADDITIONAL THOUGHTS INTO YOUR DELIBERATIONS, THOUGHTS THAT ARE BASED ON MY EXPERIENCES. BUT FIRST, LET ME OUTLINE MY BACKGROUND AND EXPERIENCES. I RETIRED FROM THE FDIC SEVEN YEARS AGO AFTER A 32-YEAR CAREER. MY 32 YEARS OF BANK REGULATORY EXPERIENCE CONSISTS OF NINE YEARS AS A FIELD BANK EXAMINER; 7 1/2 YEARS AS A STAFF PERSON IN WASHINGTON; 6 1/2 YEARS AS ASSISTANT REGIONAL DIRECTOR AND REGIONAL DIRECTOR IN OMAHA; TWO YEARS AS AN ASSOCIATE DIRECTOR IN WASHINGTON WHERE I SERVED AS THE FDIC'S POINT MAN ON THE AGRICULTURE CRISIS OF THE 1980'S, DEALING WITH INDUSTRY GROUPS AND PROVIDING TESTIMONY BEFORE CONGRESSIONAL COMMITTEES; AND ABOUT SEVEN YEARS AS REGIONAL DIRECTOR IN KANSAS CITY, OVERSEEING FDIC REGULATORY RESPONSIBILITIES IN SEVEN STATES. I ALSO SERVED FOR AWHILE AS DEPUTY TO FDIC VICE CHAIRMAN SKIP HOVE. MY TENURE AS REGIONAL DIRECTOR INCLUDED DEALING WITH THE FAILURE OF ABOUT 225 BANKS, A SIGNIFICANT PORTION OF WHICH WERE KANSAS BANKS. THESE BANK FAILURES LEFT AN INDELIBLE IMPRESSION ON ME. CURRENTLY, I AM A DIRECTOR OF A STATE BANK WITH OFFICES IN WYANDOTTE AND JOHNSON COUNTIES, DO SOME CONSULTING AND EXPERT WITNESS WORK, AND SERVE ON THE CADRE OF THE CONFERENCE OF STATE BANK SUPERVISORS, WHICH EVALUATES STATE BANKING DEPARTMENTS FOR ACCREDITATION PURPOSES.

FIRST, LET ME COMMEND YOU FOR STRENGTHENING THE COMMISSIONER'S OFFICE BY REQUIRING THAT THE INCUMBENT SERVE FULL-TIME AND NOT CONCOMITANTLY SERVE AS AN OFFICER OR EMPLOYEE OF ANY INSTITUTION WHICH IS REGULATED BY THE DEPARTMENT. HOWEVER, I HAVE SOME RESERVATIONS OVER EXCLUDING THE COMMISSIONER FROM SERVICE AS A DIRECTOR OF AN INSTITUTION REGULATED BY THE DEPARTMENT. WHILE I UNDERSTAND CLEARLY THE LOGIC OF YOUR PROPOSAL, I BELIEVE THE SAME OBJECTIVE COULD BE ACHIEVED BY ERECTING APPROPRIATE FIREWALLS. SPECIFICALLY, TO AVOID CONFLICTS OR THE APPEARANCE OF CONFLICTS, THE COMMISSIONER COULD BE REQUIRED TO RECUSE HIMSELF OR HERSELF FROM ANY REGULATORY MATTERS INVOLVING THE INSTITUTION FOR WHICH HE OR SHE MAY BE SERVING AS A DIRECTOR AND FROM ANY SUPERVISORY ACTIONS RELATING TO DIRECT COMPETITORS OF THAT INSTITUTION. THE DEPUTY COMMISSIONER COULD HANDLE ALL REGULATORY MATTERS INVOLVING THOSE FEW INSTITUTIONS. SUCH AN APPROACH WOULD SEEM TO BROADEN SIGNIFICANTLY THE POOL OF PROSPECTS FOR THE POSITION OF COMMISSIONER, DEAL WITH THE CONFLICTS PROBLEM, AND NOT PRESENT ANY REAL ADMINISTRATIVE HEADACHES. SUCH AN APPROACH IS FREQUENTLY USED IN THE VARIOUS FEDERAL AGENCIES. SO, I WOULD ASK THAT YOU CONSIDER SUCH AN APPROACH.

LET ME ALSO COMMEND YOU FOR EXPANDING THE POOL OF ELIGIBLES FOR COMMISSIONER BY INCLUDING NATIONAL BANKERS. ALTHOUGH THEY MAY NOT HAVE EXPERIENCE WORKING IN A STATE REGULATORY ENVIRONMENT, THEY ARE NONETHELESS EXPERIENCED BANKERS WHO ARE KNOWLEDGEABLE OF THE COMMUNITIES THEY SERVE. HOWEVER, I DO HAVE CONSIDERABLE CONCERNS OVER EXPANDING THE QUALIFICATIONS TO INCLUDE OUT-OF-STATE BANKERS AND FORMER REGULATORS. LET ME DEAL WITH THE ISSUE OF OUT-OF-STATE BANKERS FIRST, BECAUSE IT'S THE SIMPLER ISSUE. FIRST, THERE ARE

PLENTY OF QUALIFIED PEOPLE IN KANSAS BANKS, AND THERE WOULD APPEAR NO NEED TO GO OUT OF STATE. FURTHER, GOING OUT OF STATE MAY IMPLY THAT YOU DON'T HAVE QUALIFIED PEOPLE IN KANSAS. BUT, SECOND AND MORE IMPORTANT, IS THE ISSUE OF COMMUNITY. REGULATING BANKS IS NOT MERELY A PROCESS OF ADOPTING LAWS AND REGULATIONS AND ASSESSING BANK COMPLIANCE WITH THOSE LAWS AND REGULATIONS. BANK REGULATION MUST ALSO INCLUDE A COMPREHENSIVE KNOWLEDGE AND UNDERSTANDING OF THE COMMUNITIES THAT ARE SERVED BY BANKS AND HOW BANK REGULATORY ACTIONS AND EFFORTS MAY IMPACT THOSE COMMUNITIES. AFTER ALL, WHILE BANKS SHOULD BE PROFIT PRODUCING, PRIVATELY OWNED VENTURES, THEIR SOLE PURPOSE IS TO SERVE THE COMMUNITIES IN WHICH THEY OPERATE. I THINK IT WOULD BE DIFFICULT FOR AN OUT-OF- STATER, AND FOR THAT MATTER, A REGULATOR TO SUCCEED IN THAT ASPECT OF BANK REGULATION, ESPECIALLY CONSIDERING THAT HE OR SHE MAY HAVE ONLY FOUR YEARS IN OFFICE.

NOW LET ME ATTEMPT TO DEAL WITH THE ISSUE OF ALLOWING A PERSON WITH "... 5 YEARS ACTUAL EXPERIENCE IN A MANAGEMENT POSITION IN A FEDERAL OR STATE AGENCY WHICH REGULATES BANKS." - TO SERVE AS BANK COMMISSIONER. FIRST, THERE MAY WELL BE A PROBLEM WITH THE DEFINITION OF "MANAGEMENT POSITION". THE PRIMARY BUSINESS OF BANKING IS LENDING. PRESUMABLY, YOU WOULD WANT A COMMISSIONER WHO UNDERSTANDS LENDING AND HAS A THOROUGH KNOWLEDGE OF BANK STRUCTURE AND OPERATIONS. HOWEVER, IT MUST BE POINTED OUT THAT MOST OF THE VARIOUS REGULATORY AGENCIES ARE VERY COMPARTMENTALIZED AND THE OCCUPANT OF A MANAGEMENT POSITION COULD BE AN ADMINISTRATIVE OR PERSONNEL PERSON, A BUDGET ANALYST, A CONSUMER AFFAIRS SPECIALIST, A POLICY ANALYST, AN ACCOUNTANT, A LAWYER, A LIBRARIAN, A LOBBYIST, A RESEARCH PERSON OR EVEN A LIQUIDATOR. SUCH PERSONS MAY INDEED HAVE VIRTUALLY NO

KNOWLEDGE OR EXPERIENCE IN THE REAL WORLD OF BANK OPERATIONS OF REGULATION, AND MAY NOT BE WHO YOU WANT AS A COMMISSIONER. NOW LET ME TALK A LITTLE ABOUT THE VALUE OF HAVING AN EXPERIENCED BANKER WHO ALSO KNOWS THE ECONOMY AND THE COMMUNITIES OF KANSAS AS COMMISSIONER. DURING THE MID-1980'S, WHEN I SERVED AS FDIC REGIONAL DIRECTOR IN KANSAS CITY, I'M SURE YOU'LL RECALL THAT KANSAS SUFFERED THROUGH A VERY BAD ECONOMY AND A NUMBER OF BANKS FAILED. PROFESSIONAL REGULATORS ARE TRAINED TO BE DISPASSIONATE, EVEN DISTANT, AND TO DEAL WITH PROBLEMS IN A MANNER THAT PROTECTS THE DEPOSIT INSURANCE FUND AND THE REGULATORY REPUTATION OF THEIR AGENCIES. IMPACT ON PEOPLE AND COMMUNITIES MAY RECEIVE SOME CONSIDERATION, BUT USUALLY NOT MUCH AND ONLY AS A LAST RESORT. WHILE I WAS THE REGIONAL DIRECTOR I WAS FORTUNATE TO WORK WITH EXPERIENCED BANKER/COMMISSIONERS SUCH AS GENE HEGARTY, GENE BARRETT, NEWTON MALE AND FRANK DUNNICK. MOST OF THE FAILURES OCCURRED WHILE GENE BARRETT WAS COMMISSIONER. THERE WERE A NUMBER OF SITUATIONS INVOLVING THE IMMINENT FAILURE OF A SMALL COMMUNITY BANK WHEN TENSIONS RAN VERY HIGH, AND IN SOME, VIOLENCE MAY HAVE OCCURRED. WE DID HAVE SOME VIOLENT SITUATIONS IN OTHER STATES. BUT GENE BARRETT, AS A FORMER BANKER AND HAVING AN ASTUTE KNOWLEDGE OF MOST OF THOSE COMMUNITIES AND SOME OF THE PEOPLE IN THEM, WAS ABLE AS COMMISSIONER TO INJECT HIS INSIGHT, SOOTHE OVER SOME VERY ROUGH SITUATIONS, AND STILL GET THE JOB DONE IN A FAIR AND EFFICIENT MANNER. FIVE KANSAS BANKS WERE ABLE TO CONTINUE OPERATIONS BECAUSE OF DIRECT FINANCIAL ASSISTANCE FROM THE FDIC. ONLY ABOUT TWO DOZEN BANKS NATIONWIDE RECEIVED SUCH ASSISTANCE. HAD IT NOT BEEN FOR THE INSIGHT AND INPUT OF A BANKER/COMMISSIONER, I BELIEVE THAT THE CRISIS OF THE '80'S WOULD HAVE BEEN FAR WORSE AND COMMUNITIES WOULD HAVE SUFFERED MORE. AND I DOUBT SERIOUSLY THAT THE AMELIORATION WHICH DID OCCUR, WOULD HAVE HAPPENED IF BOTH THE STATE AND FEDERAL REGULATORS WERE PURE PROFESSIONAL

REGULATORS. TODAY, THE FEDERAL REGULATORY AGENCIES HAVE
BECOME MORE DOMINANT THAN EVER. I THINK HAVING A
COMMISSIONER WITH BANKING EXPERIENCE ADS BALANCE TO THE
REGULATORY SCHEME.

I APPRECIATE YOUR TIME AND ATTENTION AND ASK THAT YOU GIVE MY
OBSERVATIONS APPROPRIATE CONSIDERATION IN YOUR DELIBERATIONS
ON THIS IMPORTANT ISSUE.

THANK YOU.



To: House Financial Institutions Committee

Re: Senate Bill 240

Date: March 8, 1999

Thank you for the opportunity to comment on Senate Bill 240, relating to the duties and qualifications of the State Bank Commissioner.

In its current form, CBA cannot support SB 240. The Association does support requiring the State Bank Commissioner to serve on a full time basis; however, the bill goes too far in separating the Commissioner from the industry.

With that thought in mind, we offer the following amendments. Suggested language for these amendments is attached. The concept of the amendments is as follows:

Amendment #1 - We recommend changing the Commissioner's experience requirement to include experience of a minimum of five years in the banking industry *in the state of Kansas*, whether it is achieved in a state *or national* bank. Having some banking experience in the state is a necessary ingredient to assure that the candidate has a knowledge and understanding of the Kansas economy and its ebb and flow. Just as Kansas legislators are required to meet Kansas residency standards before serving in the legislature, so candidates for the office of state bank commissioner should meet Kansas experience standards. This would not preclude drawing on a pool of candidates which may have executive experience in another state as long as they held at least five years of experience in a Kansas bank.

Amendment #2 - Under the eligibility requirements of SB 240, the bill would permit regulatory experience in a state or federal bank regulatory agency in lieu of actual banking experience. Our members strongly believe that revising the bank commissioner's qualifications in such a way as to completely eliminate banking experience is not in the best interest of the public or the financial institutions regulated. State chartered banks are regulated by the state bank commissioner and by either the FDIC or the Federal Reserve. One of those regulators should be a regulator with actual bank experience. This just brings reasonable balance to the regulatory standard.

We appreciate your willingness to consider our comments and observations today and ask that you give careful consideration to the concerns expressed here.

There is one thing upon which I hope we can all agree. It is in the best interest of the state and its citizens to have effective oversight over Kansas financial institutions. The Office of the State Bank Commissioner in Kansas is among the most qualified state supervision in the nation. The present system has earned national accreditation and continued re-certification from the Conference of State Bank Supervisors to assure that the highest standards of regulatory oversight are being applied. We applaud the OSBC in Kansas for taking this step in assuring excellence in performing the oversight of safe and sound operation of Kansas banks.

In conclusion, we believe the current system is working extremely well. During the challenging time for agriculture in the last decade, it is our firm belief that if the Bank Commissioner had not had experience as a banker in Kansas and had not been a banker himself, there would have been far more bank closings than were experienced at the time. As a result, a large number of troubled banks successfully worked through their problems and are once again strong and a viable part of the banking system. So, as we look ahead to the next century, let us keep those things that have worked well for this state intact. Seeking change for the sake of change in unproductive. We remain opposed to SB 240 unless proposed amendments are adopted.

House Financial Institutions
3-08-99
Attachment 3

J. Sue Anderson
Executive Director

Directed By The Members We Serve

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As Amended by Senate Committee

Session of 1999

SENATE BILL No. 240

By Committee on Financial Institutions and Insurance

2-5

10 AN ACT concerning the bank commissioner; relating to duties and qual-
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16 ate as provided in K.S.A. 75-4315b, a state bank commissioner whose
17 term of office shall be four years and who shall serve until a successor is
18 appointed and qualified. ~~No person shall be eligible for appointment as~~
19 ~~commissioner unless the person has had five years actual banking expe-~~
20 ~~rience as an executive officer in a state bank in this state.~~ If a vacancy
21 occurs in the office of the commissioner prior to the expiration of a term,
22 the vacancy shall be filled for the unexpired term by appointment by the
23 governor.

24 (b) *No person shall be eligible for appointment as commissioner un-*
25 *less such person has:*

in Kansas

26 (1) *At least five years actual experience* ~~as an executive officer in a~~
27 *state or national bank; or*

28 ~~(2) at least five years actual experience in a management position in~~
29 ~~a federal or state agency which regulates banks.~~

30 (c) *The commissioner shall devote the commissioner's time and atten-*
31 *tion to the business and duties of the office on a full-time basis.*

32 (d) *While serving as bank commissioner, the commissioner shall not*
33 *be an officer, voting director, employee or consultant of any bank, bank*
34 *holding company, affiliate or any other entity regulated by the*
35 *commissioner.:*

36 (1) *Any state or national bank or bank holding company;*

37 (2) *any affiliate of a state or national bank or bank holding*
38 *company; or*

39 (3) *any other entity regulated by the commissioner.*

40 Sec. 2. K.S.A. 75-1304 is hereby repealed.

41 Sec. 3. This act shall take effect and be in force from and after its
42 publication in the Kansas register.

²Link to Ink Utilities Page

STATE OF KANSAS
BILL GRAVES
GOVERNOR

Judi M. Stork
Acting Bank Commissioner

Kevin C. Glendening
Assistant Deputy Commissioner



Sonya L. Allen
General Counsel

Louise A. Monell
Administrative Officer

OFFICE OF THE
STATE BANK COMMISSIONER

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS

Mr. Chairman and Members of the Committee:

I am Kevin Glendening, Assistant Deputy Bank Commissioner. I am here today to offer comments and answer questions on **Senate Bill 241**.

During the 1996 legislative session, the Bank Commissioner's office introduced legislation concerning the regulation of mortgage brokers and lenders of first mortgages on residential property in Kansas. With the help of this committee that legislation passed, and in November of that year the mortgage business act took effect. The law established a very basic framework for identifying those individuals and companies who were engaged in residential mortgage brokering and lending in Kansas by requiring them to register with our department. The current registration process permits limited evaluation of the applicant, but most importantly, affords us the ability to offer some assistance to consumers who experience problems in their dealings with brokers and lenders.

Since the law went into effect, approximately 500 individuals and companies have registered with our office to conduct mortgage business in this state. That number continues to expand each month, as have requests from consumers for assistance and other related inquiries. We have been able to provide meaningful assistance to consumers, and despite the limited scope of the existing law, have had success in identifying and curtailing the activities of several companies and individuals engaged in questionable business practices.

As I mentioned, the law enacted in 1996, more specifically K.S.A. 9-2201 through 9-2210, provides only very basic regulatory oversight of the industry. It was intentionally designed in that manner so as we gained more understanding of the residential mortgage broker/lender industry operating in the state, the law could be amended to address areas where stronger accountability and consumer protection is warranted.

The proposed amendments to the mortgage business act contained in SB 241 have been derived from our efforts in assisting consumers to resolve problems related to their home mortgages, and in working with mortgage regulators in other states to learn from their

experiences. In addition, shortly after the law was passed in 1996, we formed an advisory group comprised of mortgage brokers to provide input and industry perspective on regulation matters. The proposed amendments developed through this process can be divided into three primary categories:

- 1) Technical amendments concerning the registration process itself;
- 2) Increased accountability and consumer protection matters; and,
- 3) Penalties for noncompliance with the law.

The first group of these amendments contained in K.S.A. 9-2201, 9-2202, 9-2204, and 9-2205 provide further clarification on who must register under the law and who is exempt. The amendments related to this area also address additional information to be contained in the registration application, and the time and process for registration renewals.

Amendments addressing broker accountability and consumer protection issues are contained in the following statutes:

K.S.A. 9-2203 (page 2, line 37) would establish a criminal penalty with the possibility of imprisonment and/or a fine for engaging in mortgage broker activities without first being properly registered.

K.S.A. 9-2207 (page 4, line 18) would expand the reasons to deny, suspend, or revoke a broker's authority to conduct business to more clearly encompass deceptive business practices, civil judgements, and disciplinary actions taken by other regulatory bodies.

K.S.A. 9-2208 (page 5, line 7) would require all registered brokers to identify themselves as being regulated by the state in any advertising or solicitations directed to Kansas residents, and would also place restrictions on conducting business under assumed names.

New Section 10 (page 6, line 19) would establish financial and bonding requirements. The amount of bond, if required, would vary depending upon whether or not the registrant maintains a physical office location in this state. If the registrant maintains a "bona fide" office (as defined in the statute) in Kansas, the registrant must meet one of three criteria:

- 1) be an approved lender by HUD, Fannie Mae, or Freddie Mac (qualifications include net worth between \$250M and \$1MM, and \$300M bonds);
- 2) provide a \$25,000 bond or letter of credit and maintain at least \$10,000 in liquid assets;
or
- 3) maintain a minimum net worth of \$100,000

If a "bona fide" office is not maintained, the registrant must meet both of the following criteria:

- 1) provide a \$100,000 bond or letter of credit; and
- 2) maintain a minimum net worth of \$50,000

This bonding arrangement is similar to several other states, and is patterned after Wisconsin law. These requirements will help insure the broker/lender has a real financial interest in their business operations. I believe having some financial risk at stake will be additional

encouragement to comply with the law. The variation in bonding requirements for maintaining an in state office versus not doing so, is, I believe, appropriate as our ability to regulate and enforce Kansas law with out-of-state brokers, who do not have a physical presence in the state, could be somewhat restricted and therefore is deserving of higher bonding/financial requirements.

New Section 12 (page 7, line 37) would require brokers to utilize an escrow account for all funds received from a consumer, maintain records related to the escrow account, and provide the consumer a copy of the record of receipts and disbursements upon request. Disputes involving payments for services, and payments to third party providers are one of the most frequent complaints we receive. I believe adding these provisions to the law will be of great benefit to the Kansas consumer.

New Sections 13, 14, and 15 (page 8, line 12) pertain to various record keeping requirements related to the broker's operation and our examination of those records. These amendments would clarify the broker's responsibility with regard to documents obtained from consumers, establish a record retention requirement, and facilitate our examination of broker records. The retention period coincides with requirements contained in Reg. B of the Equal Credit Opportunity Act.

The third group of amendments consist of proposals designed to foster compliance with the law and strengthen penalties for failure to do so.

As I previously mentioned, the proposed amendment in K.S.A. 9-2203 (page 2, line 37) makes it a crime to engage in mortgage brokering without being registered. It would make it a misdemeanor with the possibility of imprisonment and a fine of up to \$5,000.

New Section 17 (page 9, line 9) would clarify our ability to issue Cease and Desist orders, and would also provide the option of levying a fine against a registrant who has violated the law.

Finally, New Section 18 (page 9, line 43) would allow us to seek a court ordered injunction or restraining order against a company or individual who violates the law.

I believe these amendments are prudent changes to existing law that will enhance both our ability to enforce the rules and the related protection afforded Kansas consumers.

Mr. Chairman, I'll be happy to answer any questions. Thank you



Kansas Association of REALTORS®

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TO: HOUSE FINANCIAL INSTITUTIONS COMMITTEE

FROM: KAREN FRANCE, DIRECTOR OF GOVERNMENTAL AFFAIRS

DATE: MARCH 8, 1999

SUBJECT: SB 241, REGULATION OF MORTGAGE BUSINESS ACTIVITY

The Kansas Association of REALTORS® supports this legislation. Our members see first hand what kind of damage can be done if a bad actor in the mortgage business causes harm to a consumer. This is a fairly unmonitored area of the real estate transaction. We think this will take us a long way in the area of bringing sufficient oversight to this business. We do want to point out a few items for your consideration.

The Senate Committee clarified that the requirement for disclosing in all advertising whether you are a registered Kansas mortgage broker, includes advertising on the Internet. We had requested that clarification because of the high level of mortgage activity that is being solicited on the Internet. Many do not disclose in what states they are either licensed or registered to operate. We think this will provide additional protection for the unwary consumers.

The provision on page 4, at line 42 permits the Banking Commissioner to deny, suspend, revoke or refuse to renew the registration of a mortgage business if "the applicant or registrant has engaged in or is engaging in deceptive business practices". This is an important addition to the law in light of several complaints we have received from the Johnson County and Wichita markets.

The complaints center around mortgage brokers who ask real estate agents to write a sales contract for more than the actual price agreed upon by the seller and buyer. The contract would reflect that the seller will take back a second mortgage to cover all or part of the cost of the down payment money for the buyer, thus making the buyer appear to have the 10-20% down payment for the "first" mortgage. Agents are instructed that the second mortgage is never actually filed, but the buyer gets the mortgage and everyone is happy.

We have encouraged the public and our members who call to inquire about the legality of these measures to contact the Banking Commissioner, as well as the Attorney General's office. Under existing law, the Banking Commissioner does not have the ability to revoke the registration of a mortgage broker for this kind of activity. This legislation would empower them to do so.

This legislation, in conjunction with the regulation of title escrow agents in SB 60 and/or HB 2096 will provide some quality controls on these industries which deal with the home buying and selling public.

We respectfully ask for your support of the legislation.

House Financial Institutions
3-08-99
Attachment 5



Johnson County Board of REALTORS®, Inc.

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The Voice for Real Estate®

Testimony of Erik Sartorius
Governmental Affairs Director
Before the
House Financial Institutions Committee
Regarding
SB 241 Minimum Standards for Mortgage Brokers

March 10, 1999

The Johnson County Board of REALTORS® supports Senate Bill 241. As you know, this legislation would set minimum standards for mortgage brokers.

We believe SB 241, which is supported by the Kansas Association of Mortgage Brokers, will be a useful tool in consumer protection. As the strong economy has fueled equally strong house sales, we have received increased complaints from consumers who have had bad experiences in securing mortgages. In many cases, these complaints have involved out-of-state companies contacting people by mail with misleading offers.

Senate Bill 241 takes steps we feel will help strengthen the mortgage brokerage industry, reducing the presence of "fly by night" individuals looking to make easy money, not build a reputable business. While doing so, the legislation does not place requirements on mortgage brokers that are more onerous than most brokers meet when participating in federal loan programs. No individual with a working knowledge of this

We respectfully seek your support for this legislation.

*House Financial Institutions
3-08-99
Attachment 6*

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To the House Banking Committee:

Representatives, Guests, and Colleagues in the mortgage industry:

Thank you for allowing me to testify regarding Senate Bill #241. For the record, my name is A.W. Pickel, III, President of Leader Mortgage Company, headquartered in Lenexa, Kansas. Our company of 30 employees originates loans primarily in Kansas and Missouri, though we do have physical offices in 4 other states. I was the first president of the Kansas Association of Mortgage Brokers and currently am on the finance committee for the National Association of Mortgage Brokers. As part of both KAMB and NAMB, I am very concerned for our industry and for our continuing growth and service to the consumer.

As you probably know, according to any conservative source, mortgage brokers originate over 50% of all mortgage loans in this country. More likely, that statistic is over 60%. If you include mortgage bankers in that number, the figure goes even higher. More and more, the consumer sees the mortgage broker as the vendor of choice. Only the mortgage broker can give a borrower multiple options, multiple investors, and multiple ways to finance their home. Mortgage brokers, in cooperation with FNMA and FHLMC, have been at the forefront with new loan programs such as the FNMA 97 which allows a borrower to put just 3% down and the funds can all be a gift. This expands the role of FHA in home loans thus, increasing immensely, the number of first-time and minority borrowers according to HUD secretary Andrew Cuomo. Most importantly, it is driving the price of loan costs down for the individual consumer. I can remember when it was a given that you paid two points regardless of the loan you wanted. I am sure some of you remember when you had to have 20% down. Anything else was unacceptable to a financial institution. These are just a few of the reasons for a mortgage broker and a few of the reasons for this bill.

This legislation builds on what has been done before by 1) allowing the state banking commissioner to have power to remove or fine those few bad apples that could damage our industry. Like any industry that is growing and serving the public, this industry has attracted many new faces. The majority of those are honest, ethical individuals. A few are not. Currently, the law does not allow for the commissioner to do anything. That would change with this bill. In addition, 2) this bill would allow for a minimum standard of entrance into the mortgage industry. Right now, if you wanted to open up your mortgage business tomorrow, all you would have to do is register with the state and you are in business. No educational requirements, no net worth requirements, no anything. When I started my company, and because I wanted to do government loans, I had to put over \$50,000 into a corporate account and it had to stay there. I had to have audited financial statements. Not everyone could do that. Albeit a tough hurdle, someone does not do that lightly. When I started, most investors would not buy loans from a broker who did not have a net worth of at least \$25,000. In addition, the investors would not even talk to you without experience as a mortgage loan officer for at least two years. The industry policed itself. Today you can obtain a mortgage from a hundred or more sources; most of these choose NOT to do government loans, hence no net worth requirements. Investors will take loans from anyone. There needs to be a minimum floor that will not prevent serious folks from starting a company yet causes anyone entering this business to plan, save, and commit to it financially. You would not expect any less from a bank or savings and loan. Third, 3) this legislation allows a higher standard for out-of-state companies who do not maintain a bona fide office in this state. As you know, some states near us (fortunately, not all), like Colorado, allow you to become a mortgage broker if you can fog a mirror. Without some restriction on these folks, we will allow a tougher standard on our own people. We need to regulate those who attempt to do everything by phone at the dinner hour or by junk mail in our mailboxes.

These three reasons 1) Fine/Removal for those who do not abide by the rules of the law, 2) Net worth requirements, and 3) Out of State office requirements to insure financial capability, are the justifications for Senate Bill #241. In addition, I would add that the bill does not go far enough. It should add educational requirements for all who originate mortgage loans in the state of Kansas. It is good that someone has the financial wherewithal to operate, it is a whole lot better if they have knowledge as well. It is well said, "A

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little knowledge is a dangerous thing". In this business, a minimum level of education is paramount. David Johnson, currently in the Kansas Association board of directors and Maurice Barkley, our current president, have made education this year's goal for our association. They already have a plan for education. They have ideas and the get-it-done spirit that is necessary. I would urge you to work with them as well.

In conclusion, I would like to thank you again for allowing me the time to speak. I can be reached at Leader Mortgage Company at 1-800-270-3416, extension 111. Or, if you have email access, leave me a message at awpickel@leader1.com.

Thank you,

A.W. Pickel, III
President, Leader Mortgage Company