

Approved: March 22, 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 10, 1999 in Room 527-S of the Capitol.

All members were present except: Representative Helgerson - Excused

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

Conferees appearing before the committee: Senator Steffes  
Chuck Stones, Kansas Bankers Association  
Sue Anderson, Community Bankers Association  
Judi Stork, Acting Bank Commissioner  
David Brant, Securities Commissioner and Acting Consumer  
Credit Commissioner

Others attending: See attached list

Chairman Cox invited Senator Steffes to say a few words about **Sub 260** and **Sub 271**. Senator Steffes said both bills were a result of extensive collaborative efforts on the part of different regulatory bodies. It's an effort to bring Kansas closer in line with other states. **Sub 260** deals with the transfer of powers from the State Banking Board to the Bank Commissioner's Office. The Banking Board will retain the three most critical duties. Other bookkeeping type items are being moved to the Bank Commissioner for better efficiency. **(Attachment 1) SB 271** is of more substance. It is an effort to downsize state government. It moves the Office of the Commissioner of Consumer Credit into the Banking Department. The Consumer Credit people were concerned about being regulated by their competitor. This was resolved by providing for the Bank Commissioner to have two deputies: a Deputy Bank Commissioner to examine banks, and a Deputy Consumer Credit Commissioner to be in charge of that particular segment of lenders. The Bank Commissioner will still have the power to hire and fire the Deputy Consumer Credit Commissioner, as there has to be some kind of chain of command. He believes the bill provides the necessary balance to enable the groups to be moved together.

Chairman Cox said the committee would work **SB 241 - Banks and trust companies; mortgage business and mortgage loans.**

Bruce Kinzie handed out a balloon of the bill showing the proposed amendments. **(Attachment 2)** On page 2, line 40. The bill originally talks about a person engaging in the mortgage business without first having received authorization from the commissioner. The credit union people have a concern with the term "authorization." They would prefer the wording "without first being registered with" the commissioner. Pages 4 and 7 need to indicate "1998 Supp.," and page 10 has a new section, added as a mechanism to incorporate the 18 new sections being added into the provisions of the existing law.

Representative Larkin moved to adopt the balloon to the bill. Representative Grant seconded the motion. The motion carried.

Representative Humerickhouse made a motion to move the bill as amended out of the committee favorably. Representative Dreher seconded the motion. The motion carried.

Chairman Cox opened the hearing on **Sub 260 - State banking board; transfer of certain powers and duties to the state bank commissioner.**

**Chuck Stones**, Kansas Bankers Association testified on **Sub 260**. **(Attachment 3)** The KBA has a neutral position on the legislation. They were originally opposed to it when it would have stripped the State Banking Board of all decision making and left it as a purely advisory board. Now that the legislation provides for three

CONTINUATION SHEET

MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS, Room 527-S Statehouse, at 3:30 p.m. on March 10, 1999.

important areas of decision to be retained by the Banking Board, the KBA is neutral toward the issue. Members of the current banking board were contacted and they were comfortable with the provisions in the bill and did not request any more powers be retained. He did request an amendment which deletes the reference to savings and loans in the bill, since there are no state chartered state savings and loans in the state.

**Sue Anderson**, Community Bankers Association, testified in opposition to **Sub 260**. The current structure of the banking board may need some fine tuning for efficiencies, but the CBA cannot support a bill that dilutes the checks and balances in the system between the public regulatory system on one hand and the private industry and citizenry on the other. **Sub 260** goes too far. She offered suggestions of additional items for which the banking board should retain power. **(Attachment 4)**

**Judi Stork**, Acting Bank Commissioner, offered a technical amendment to **Sub 260**. **(Attachment 5)** The amendment is a cleanup item. On page 25, line 24, the words "or by the state banking board upon appeal" needs to be deleted.

Chairman Cox closed the hearing on **Sub 260** and opened the hearing on **Sub 271- State consumer credit commissioner; transfer of powers and duties to the state bank commissioner.**

**Judi Stork**, Acting Bank Commissioner, testified in support of **Sub 271**. Their agency supports the bill for several reasons. The Bank Commissioner's office receives at least 10 calls a day relating to the mortgage consumer lending industry. One central location for consumers to call would be beneficial. The consumer credit department and her agency each regulate a portion of the mortgage lending industry and one regulator to supervise it would be more efficient. Finally, the Office of the State Bank Commissioner has a bigger staff and could provide more services. She offered one amendment to the bill adding the words "The board shall be appointed by the governor." She encouraged favorable passage of the legislation. **(Attachment 6)**

David Brant, Acting Consumer Credit Commissioner, appeared in favor of **Sub 271**. Based on his experience as Acting Commissioner, he has advised this committee, the interim committee, and the Governor that staff should be expanded and regulatory power strengthened to provide effective consumer protection. The additional staff and funding needs to be added to the existing agency or it needs to be merged with a compatible partner agency. The Banking Commissioner's Office would appear to be the compatible agency. He thanked the committee for their consideration. **(Attachment 7)**

Chairman Cox closed the meeting on **Sub 271**.

Chairman Cox presented the committee minutes for the March 8, 1999 meeting for approval. Representative Grant made a motion to accept the minutes as presented. Representative Vickrey seconded the motion. The motion carried.

The meeting adjourned at 4:27 p.m.

The next meeting is scheduled for March 15, 1999.

# HOUSE FINANCIAL INSTITUTIONS COMMITTEE GUEST LIST

DATE: March 10, 1999

NAME	REPRESENTING
Nancy Ulrich	Atty General's Office
Sue Anderson	CBA
Max Fulle	CBA
Alan Steppat	CBA
Koell Franke	KCC
Greg Hill	Federico Consulting
Shelley H. King	McGill, Gaches, & Assoc.
George Barbee	Barbee & Associates
Matt Goddard	HCBA
Terrin Glendening	OSBC
Judi Stork	OSBC
Sonya Allen	OSBC
DAVID BRANT	ACTING UCCC COMMISSIONER
Chuck Stones	KBA

**DUTIES OF THE STATE BANKING BOARD**  
**DUTY**

	<b><u>CURRENTLY</u></b>	<b><u>AS PROPOSED</u></b> <b><u>UNDER SB260</u></b>	<b><u># of Appls.</u></b> <b><u>last 3 years</u></b>
Approval of new bank and trust company charters	Banking Board	Banking Board	7
+ Approval of branch banks	Banking Board	Banking Board	72
Approval of relocation of a bank or trust company	Banking Board	Banking Board	17
Approval of change of bank or trust company name	Banking Board	Commissioner	8
Approval of the reduction of the capital stock of a bank	Banking Board	Commissioner	2
Approval of the issuance of preferred stock by a bank	Banking Board	Commissioner	1
Approval of the reduction of a bank's surplus account	Banking Board	Commissioner	9
Approval for a bank to continue to hold a life insurance policy for deferred employee compensation plans when no liability exists under the plan	Banking Board	Commissioner	1
Approval of the issuance of capital notes/debentures by a bank	Banking Board	Commissioner	0
Relieving a special deputy commissioner from their duties	Banking Board	Commissioner	0
x Removal of bank officer	Banking Board	Commissioner	0
Issuance of Cease and Desist orders	Banking Board	Commissioner	1
Establishment of a bank service corporation	Banking Board and Commissioner	Commissioner	1
Determination of a bank's reserve ratio	Banking Board and Commissioner	Commissioner	0
Establishment of maximum rates of interest on deposits	Banking Board and Commissioner	Commissioner	0
Approval of rules and regulations	Banking Board and Commissioner	Commissioner	2
* Appointment of a special deputy	Commissioner	Commissioner	0
* Issuance of an order to cease the declaration or payment of dividends	Commissioner	Commissioner	0
* Approval of acquisitions of Kansas banks by HCs	Commissioner	Commissioner	40
* Approval of the change of control of a bank	Commissioner	Commissioner	14
* Approval of contracting trustees; trust service desk; trust service offices; trust branch banks	Commissioner	Commissioner	5

*House Financial Institutions*  
*3-10-99*  
*Attachment 1*

+ The Banking Board makes the decision. The appeal is under the Act for Judicial Review and Civil Enforcement of Agency Actions (KJRA).

\*Appeal of the decision was to the banking board, is now to the Commissioner.

xHearing is PRIOR to the decision. Was with the banking board, is now to the Commissioner.

SENATE BILL No. 241

By Committee on Financial Institutions and Insurance

2-4

10 AN ACT concerning banks and trusts companies; relating to mortgage  
11 business and mortgage loans; amending K.S.A. 1998 Supp. 9-2201, 9-  
12 2202, 9-2203, 9-2204, 9-2205, 9-2206, 9-2207, 9-2208, and 9-2209 and  
13 repealing the existing sections.

14  
15 *Be it enacted by the Legislature of the State of Kansas:*

16 Section 1. K.S.A. 1998 Supp. 9-2201 is hereby amended to read as  
17 follows: 9-2201. As used in this act:

18 (a) "Bona fide office" means a registrant's physical office which meets  
19 all of the following requirements:

- 20 (1) The office is located in this state;
- 21 (2) the office is not located in a personal residence;
- 22 (3) the office has regular hours of operation;
- 23 (4) the office is accessible to the public;
- 24 (5) the office serves as an office for the transaction of mortgage  
25 business;

26 (6) the office is staffed by the registrant or an employee of the  
27 registrant;

- 28 (7) the office is separate from any office of another registrant; and
- 29 (8) the office contains the books and records of the registrant or copies  
30 of the books and records.

31 (a) (b) "Commissioner" means the Kansas state bank commissioner.

32 (c) "Employee" means any individual:

- 33 (1) Who is employed solely by a registrant or applicant, and who is  
34 not acting as an independent contractor;
- 35 (2) who conducts mortgage business activities only in the name of the  
36 registrant or applicant; and
- 37 (3) whose conduct of mortgage business is the responsibility of the  
38 registrant or applicant.

39 (b) (d) "Mortgage business" means engaging in, or holding out to the  
40 public as willing to engage in, for compensation or gain, or in the expect-  
41 ation of compensation or gain, directly or indirectly, the business of mak-  
42 ing, originating, servicing, soliciting, placing, negotiating, acquiring, sell-  
43 ing, or arranging for others, or offering to solicit, place, negotiate, acquire,

House Financial Institutions  
3-10-99  
Attachment 2



1 sell or arrange for others, ~~five or more~~ mortgage loans in a calendar year  
2 *the primary market.*

3 ~~(e)~~ (e) "Mortgage loan" means a loan made to a natural person which  
4 is secured by a first or *second* mortgage or other similar instrument or  
5 document, and which creates a *first* lien on a one-to-four family dwelling,  
6 located in this state, occupied or intended to be occupied for residential  
7 purposes by the owner, including the renewal or refinancing of such a  
8 loan.

9 ~~(d)~~ (f) "Person" means any individual, sole proprietorship, corpora-  
10 tion, partnership, trust, association, joint venture, pool syndicate, unin-  
11 corporated organization or other form of entity, however organized.

12 (g) "*Primary market*" means *the market wherein mortgage loans are*  
13 *originated between a lender and a borrower, whether or not through a*  
14 *mortgage broker or other means.*

15 (h) "*Promotional items*" means *pens, pencils, hats and other such nov-*  
16 *elty items.*

17 (i) "*Registrant*" means *any individual or other entity who holds a*  
18 *valid certificate of registration to conduct mortgage business in this state.*

19 Sec. 2. K.S.A. 1998 Supp. 9-2202 is hereby amended to read as fol-  
20 lows: 9-2202. The following are exempt from the registration require-  
21 ments of this act:

22 (a) Any bank, bank holding company, savings bank, trust company,  
23 savings and loan association, *building and loan association, industrial loan*  
24 *company* or credit union ~~or any other financial institution~~ regulated by  
25 an agency of the United States or of any state;

26 (b) any entity directly or indirectly regulated by an agency of the  
27 United States or of ~~Kansas~~ *any state* which is a subsidiary or affiliate of  
28 any entity *listed* in subsection (a) *if 25% or more of such entity's common*  
29 *stock is owned by any entity listed in subsection (a);*

30 (c) any person who is registered with the Kansas securities commis-  
31 sioner as a loan broker pursuant to K.S.A. 50-1001 et seq. and amend-  
32 ments thereto or who is licensed by the Kansas consumer credit com-  
33 missioner as a supervised lender pursuant to K.S.A. 16a-2-301 et seq. and  
34 amendments thereto; ~~and~~

35 (d) the United States of America, the state of Kansas, any other state,  
36 or any agency or instrumentality of any governmental entity; *and*

37 (e) *a registrant's employee.*

38 Sec. 3. K.S.A. 1998 Supp. 9-2203 is hereby amended to read as fol-  
39 lows: 9-2203. ~~On and after November 1, 1996, no person shall conduct~~  
40 ~~mortgage business in Kansas unless registered with the office of the state~~  
41 ~~bank commissioner pursuant to this act. It shall be unlawful for any per-~~  
42 ~~son to engage in or to advertise, publish or otherwise hold out to the public~~  
43 ~~that such person is engaged in the mortgage business without first~~ ~~obtaining~~

2-2

being registered with

2-3

1 ~~obtained authorization from~~ the commissioner as required by this act.  
 2 Any such individual or member or officer of any such corporation or other  
 3 entity violating this section shall be guilty of a misdemeanor, and upon  
 4 conviction shall be punished by a definite term of confinement in the  
 5 county jail which shall be fixed by the court and shall not exceed one year,  
 6 or a fine not exceeding \$5,000 or both.

7 Sec. 4. K.S.A. 1998 Supp. 9-2204 is hereby amended to read as fol-  
 8 lows: 9-2204. (a) Any person required to register pursuant to this act shall  
 9 submit to the commissioner an application for registration on forms pre-  
 10 scribed and provided by the commissioner. The application shall contain  
 11 information the commissioner deems necessary to adequately identify:

- 12 (1) The location and nature of the business to be conducted;
- 13 (2) the identity, character and qualifications of an individual
- 14 applicant;
- 15 (3) the identity, character and qualifications of the officers and di-  
 16 rectors, *partners and employees* of the entity, if the applicant is a part-  
 17 nership, corporation or other business entity;
- 18 (4) the name under which the applicant intends to conduct business;
- 19 and
- 20 (5) other information the commissioner requires to evaluate the fi-  
 21 nancial responsibility *and condition*, character, qualifications and fitness  
 22 of the applicant *and compliance with the provisions of this act*.

23 (b) Each application for registration shall be accompanied by a non-  
 24 refundable fee of not less than \$100, which may be increased by rules  
 25 and regulations pursuant to K.S.A. 1998 Supp. 9-2209.

26 (c) An application for registration shall be approved, and a nonas-  
 27 signable certificate of registration shall be issued to the applicant by the  
 28 commissioner provided:

- 29 (1) The commissioner has received the complete application and fee  
 30 required by this section; and
- 31 (2) the commissioner determines the financial responsibility *and con-*  
 32 *dition*, character, qualifications and fitness of the applicant warrants a  
 33 belief that the business of the applicant will be conducted competently,  
 34 honestly, fairly and ~~within the purposes of this act~~ *in accordance with all*  
 35 *applicable state and federal laws*.

36 Sec. 5. K.S.A. 1998 Supp. 9-2205 is hereby amended to read as fol-  
 37 lows: 9-2205. (a) A certificate of registration shall become effective as of  
 38 the date specified on the face of the ~~original certificate and is effective~~  
 39 ~~for one year~~.

40 (b) The registration shall be renewed ~~annually~~ *in each odd-numbered*  
 41 *year* by filing with the commissioner, at least 30 days prior to the expi-  
 42 ration of the registration, a renewal application, containing information  
 43 the commissioner requires to determine the existence of material changes

1 from the information contained in the applicant's original registration  
2 application or prior renewal applications.

3 ~~(b)~~ (c) Each renewal application shall be accompanied by a nonre-  
4 fundable fee which shall be established by rules and regulations pursuant  
5 to K.S.A. 1998 Supp. 9-2209 *and amendments thereto*.

6 (d) *Any renewal application received by the commissioner after the*  
7 *expiration date of the registrant's current certificate shall be treated as an*  
8 *original application and be subject to all reporting and fee requirements*  
9 *contained in K.S.A. 9-2204 and amendments thereto.*

10 Sec. 6. K.S.A. 1998 Supp. 9-2206 is hereby amended to read as fol-  
11 lows: 9-2206. ~~If the commissioner notifies the applicant, in writing, that~~  
12 ~~any application has been denied, or the commissioner fails to issue a~~  
13 ~~certificate of registration within 60 days or grant a renewal within 30 days~~  
14 ~~after a filed application is deemed complete by the commissioner, the~~  
15 ~~applicant may make written request for an appeal on the issue of the~~  
16 ~~applicant's registration or renewal qualifications. The commissioner shall~~  
17 ~~conduct a hearing in accordance with the Kansas administrative proce-~~  
18 ~~dure act.~~

1998 Supp.

19 Sec. 7. K.S.A. 1998 Supp. 9-2207 is hereby amended to read as fol-  
20 lows: 9-2207. ~~(a)~~ The commissioner may deny, suspend or, revoke, or  
21 *refuse to renew* the registration of a mortgage business *issued pursuant*  
22 *to this act*, if the commissioner finds, *after notice and opportunity for a*  
23 *hearing conducted in accordance with the provisions of the administrative*  
24 *procedures act, that:*

25 ~~(1)~~ (a) The applicant or registrant has repeatedly or willfully violated  
26 any section of this act or any rule and regulation or order lawfully made  
27 pursuant to this act;

28 ~~(2)~~ (b) facts or conditions exist which would have justified the denial  
29 of the registration or renewal had these facts or conditions existed or been  
30 known to exist at the time the application for registration or renewal was  
31 made;

32 ~~(3)~~ (c) the applicant or registrant has filed with the commissioner any  
33 document or statement containing any false representation of a material  
34 fact or fails to state a material fact; or

35 ~~(4)~~ (d) the applicant or registrant has been convicted, ~~within 10 years~~  
36 ~~before the date of an application, renewal or review of any crime involving~~  
37 ~~fraud, dishonesty or deceit;~~

38 (b) ~~The commissioner shall not revoke a registration until the regis-~~  
39 ~~trant is provided written notice of the facts or conduct the commissioner~~  
40 ~~believes to form the basis for the proposed revocation and of the regis-~~  
41 ~~trant's right to request a hearing in accordance with the Kansas admin-~~  
42 ~~istrative procedure act.~~

43 (e) *the applicant or registrant has engaged in or is engaging in de-*



1 (B) submit evidence that establishes, to the commissioner's satisfac-  
2 tion, that the applicant or registrant shall at all times maintain not less  
3 than \$10,000 in liquid assets acceptable to the commissioner.

4 (3) Submit evidence that establishes, to the commissioner's satisfac-  
5 tion, that the applicant or registrant shall at all times maintain a minimum  
6 net worth of \$100,000. Evidence of net worth shall include the submission  
7 of a balance sheet accompanied by a written statement by an independent  
8 certified public accountant attesting that the balance sheet has been re-  
9 viewed in accordance with generally accepted accounting principles.

10 (b) Each applicant or registrant who does not maintain a bona fide  
11 office shall comply with both of the following:

12 (1) File with the commissioner a surety bond or irrevocable letter of  
13 credit in the amount of \$100,000, in a form acceptable to the commis-  
14 sioner, issued by an insurance company or financial institution authorized  
15 to conduct business in this state, securing the applicant's or registrant's  
16 faithful performance of all duties and obligations of a registrant.

17 (A) The bond or letter of credit shall be payable to the office of the  
18 state bank commissioner.

19 (B) The terms of the bond or irrevocable letter of credit shall provide  
20 that it may not be terminated without 30 days prior written notice to the  
21 commissioner.

22 (C) The bond or irrevocable letter of credit shall be available for the  
23 recovery of expenses, fines and fees levied by the commissioner under  
24 this act, and for losses or damages which are incurred by any borrower  
25 or consumer as a result of the applicant's or registrant's failure to comply  
26 with the requirements of this act.

27 (2) Submit evidence that establishes, to the commissioner's satisfac-  
28 tion, that the applicant or registrant shall at all times maintain a minimum  
29 net worth of \$50,000. Evidence of net worth shall include the submission  
30 of a balance sheet accompanied by a written statement by an independent  
31 certified public accountant attesting that the balance sheet has been re-  
32 viewed in accordance with generally accepted accounting principles.

33 New Sec. 11. Except for those persons meeting the requirements of  
34 K.S.A. 9-2202 and amendments thereto, a registrant shall not pay com-  
35 ensation to, contract with or employ as an independent contractor any  
36 person engaged in mortgage business who does not hold a valid certificate  
37 of registration.

38 New Sec. 12. (a) Within three business days of receipt a registrant  
39 shall deposit all fees and money received from a borrower prior to the  
40 time a loan is consummated in an escrow account in a bank, savings bank,  
41 savings and loan association or credit union incorporated under the laws  
42 of this state, or organized under the laws of the United States or another  
3 state and which has a main or branch office in this state.

1998 Supp.

2-6

1 New Sec. 18. Whenever it appears to the commissioner that any per-  
 2 son has engaged or is about to engage in any act or practice constituting  
 3 a violation of any provision of this act or any rule and regulation or order  
 4 hereunder, the commissioner may bring an action in any court of com-  
 5 petent jurisdiction to enjoin the acts or practices and to enforce compli-  
 6 ance with this act or any rule and regulation or order hereunder. Upon a  
 7 proper showing, a permanent or temporary injunction, restraining order,  
 8 restitution, writ of mandamus or other equitable relief shall be granted  
 9 and a receiver or conservator may be appointed for the defendant or the  
 10 defendant's assets. The commissioner shall not be required to post a  
 11 bond.

20 12 ~~Sec. 19.~~ K.S.A. 1998 Supp. 9-2201, 9-2202, 9-2203, 9-2204, 9-2205,  
 13 9-2206, 9-2207, 9-2208, and 9-2209 are hereby repealed.

21 14 ~~Sec. 20.~~ This act shall take effect and be in force from and after its  
 15 publication in the Kansas register.

New Sec. 19. The provisions of K.S.A. 1998  
 Supp. 9-2201 through 9-2210, and amendments  
 thereto, and sections 10 through 19, shall be  
 known and may be cited as the Kansas mortgage  
 business act.

# Kansas Bankers Association

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

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3-10-99

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

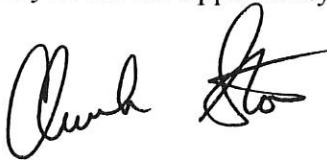
RE: SB 260

Mr. Chair and Members of the Committee:

Thank you for the opportunity to appear before you regarding SB 260. The KBA does not oppose SB 260. Our committee met to discuss the issues involved with this bill. At that time we worked with members of the current Banking Board, and our committee was most concerned about three issues or decisions they felt it was important for the Banking Board to retain. Those issues are contained in the bill. The members of the Banking Board we conferred with were comfortable with those issues, and the practical implications involved, also.

However, we do request an amendment. During the hearings process, the Heartland Community Bankers Association (Savings and Loans) expressed the concern that, since the regulation of state chartered savings and loans was now under the Bank Department, savings and loan experience should make a person eligible for service on the Banking Board, even though there is currently zero state chartered savings and loans in Kansas. The reasoning being that if someday there might be a new state chartered savings and loan chartered, it could be represented on the Banking Board. However, the actual effect is that the potential exists for a competitor to sit on the Banking Board even though there are no state chartered savings and loans in the State. This would seem to be a simple matter to address in the future, should there ever be a new state chartered savings and loan formed in Kansas.

Thank you for the opportunity to appear.



*House Financial Institutions*  
3-10-99  
*Attachment 3*

1 violation of the laws governing the operation of such trust company, the  
 2 commissioner shall give written notice to the trust company of such de-  
 3 termination. Within 15 days after receipt of such notification, the trust  
 4 company may ~~appeal in writing to the state banking board the commis-~~  
 5 ~~sioner's determination~~ *file a written request for a hearing*. The board  
 6 ~~commissioner shall fix a date for hearing, which hearing shall be held~~  
 7 ~~within 45 days from the date of such appeal and shall be conducted con-~~  
 8 ~~duct the hearing~~ in accordance with the provisions of the Kansas admin-  
 9 istrative procedure act *within 45 days after such request is filed*. ~~At such~~  
 10 ~~hearing the board shall hear all matters relevant to the commissioner's~~  
 11 ~~determination and shall approve or disapprove the commissioner's deter-~~  
 12 ~~mination, and the decision of the board shall be final and conclusive.~~ If  
 13 the trust company does not appeal to the state banking board from the  
 14 commissioner's determination or if an appeal is made and the commis-  
 15 sioner's determination is upheld by the board *request a hearing*, the com-  
 16 missioner may proceed as provided in K.S.A. 9-1714 and amendments  
 17 thereto, until such time as the commissioner determines the trust com-  
 18 pany is in full compliance with the laws governing the operation of a trust  
 19 service office.

20 Sec. 36. K.S.A. 1998 Supp. 74-3004 is hereby amended to read as  
 21 follows: 74-3004. (a) There is hereby created a state banking board which  
 22 shall be composed of nine members. Six members of the board shall be  
 23 bankers with not less than five years' actual banking experience in a state  
 24 bank in this state ~~or persons with not less than five years' actual experience~~  
 25 ~~in a state chartered savings and loan association in this state, or any~~  
 26 ~~combination thereof~~ and three shall represent the public interest in the  
 27 regulation, operation and control of state banks and trust companies. All  
 28 ~~members shall be selected from the state at large.~~ No ~~nonbanker~~ member  
 29 ~~representing the public interest~~ shall concurrently serve as an officer, *em-*  
 30 *ployee* or director in any state or national bank or trust company wherever  
 31 located. ~~One of the nine members shall be elected annually~~ *The com-*  
 32 *missioner shall serve* as chairperson of the board. *The commissioner shall*  
 33 *not be a voting member of the board.* The board shall be appointed by  
 34 the governor. Persons appointed to the board shall be subject to confir-  
 35 mation by the senate as provided in K.S.A. 75-4315b, and amendments  
 36 thereto. Except as provided by K.S.A. 1998 Supp. 46-2601, no person  
 37 appointed to the board shall exercise any power, duty or function as a  
 38 member of the board until confirmed by the senate. No more than five  
 39 members of the board shall be from the same political party. Subject to  
 40 the provisions of K.S.A. 75-4315c, and amendments thereto, of the six  
 41 banker ~~or savings and loan association~~ members, the governor shall ap-  
 42 point one from each Kansas congressional district as presently constituted  
 43 and the remainder from the state at large. Appointment of ~~nonbanker~~

delete new  
language

delete



To: The House Committee on Financial Institutions

Re: Senate Bill 260 - transferring powers of the state banking board to the state banking commissioner

Date: March 10, 1999

Chairman Cox and members of the Committee:

On behalf of our members, thank you for the opportunity to offer comments on Senate Bill 260 on behalf of our membership. While the current structure of the banking board may need some fine tuning for efficiencies, we cannot support a bill which dilutes the check and balance system between the public regulatory agency on the one hand and the private industry and citizenry on the other. We believe SB 260 goes too far in its approach.

Today, reinventing government is a politically popular theme. We all recognize the need to eliminate waste and duplication in order to make government more responsive to its client, the taxpayer. But reinventing government cannot and should not mean eliminating the checks and balances which have so wisely been a practice for how America does business.

The Banking Board in its current capacity as a board with authority provides an important balance to the state bank regulatory system. This use of checks and balances is prevalent throughout our society from Congress to the States. It is this check and balance that brings about fairness and effectiveness. It offers safeguards against decisions made to benefit one size or segment of the industry.

The temptation of believing that one regulator might provide needed regulatory simplification and uniform application of rules is apparent. Upon deeper reflection, however, initiating a system in which a large majority of control is held by one regulator could be harmful to both the public and the industry. We need the balance in the system provided by a banking board with statutory authority.

Some contend that the American banking system is terminally unique with its check and balance system between the state and federal bank charters and with each state setting its own criteria for regulations of banks within its jurisdiction. They contend we must change to become more like other countries or in the case of SB 260 - other states. Federal Reserve Board Chairman Alan Greenspan, in a 1994 speech regarding this American way of banking said, "I am often bemused when both foreign and American observers . . . note the uniqueness of the American [banking] system, and conclude that since it is so different it should be changed . . . these very differences are an important reason for the dynamism of the U.S. economy."

I present to you that the very reason for the healthy economy of Kansas and its ability to rebound from ebbs and grow with the flow is in part because of the large number of community banks (approximately two thirds of which are state charters) which remain in this state and the system already in place for regulation of state chartered banks.

We recognize that some changes in the bank board functions may be desirable and useful however, several important powers intrusted with the board were put in place for good reasons - to assure that competition on behalf of the citizens of Kansas remained alive and well. The Board must serve not only as industry advisors to the Commissioner but must also retain the authority necessary to effect a solid balance in the system.

*House Financial Institutions*  
*3-10-99*  
*Attachment 4*

*Directed By The Member*



Our suggestions are these:

1. In addition to authority for approval of charters and branching applications and changes of location, the Banking Board should **also retain** the following powers for the:
  - Approval of minimum capital requirements (*K.S.A. 9-9016*)
  - Bank service corporation applications (*K.S.A. 9-1127d*)
  - Approval of bank rules and regulations (*K.S.A. 9-1713*)
  - Cease and desist orders (*K.S.A. 9-1807*)
  - Appeal of bank acquisitions (*K.S.A. 9-535b*)
  - Approval for formation of securities subsidiaries (*K.S.A. 9-1001(21)*)
  - Capital reductions (*K.S.A. 9-901b*)
  - Setting of reserves (*K.S.A. 9-1001*)
  - Power of savings and loan board (*K.S.A. 74-3007*)
  
2. Transfer the current Banking Board authority for the following actions to the Commissioner:
  - Approval of name changes (*K.S.A. 9-812; K.S.A. 9-2106*)
  - Approval of reduction in capital stock (*K.S.A. 9-904*)
  - Issuance of preferred stock (*K.S.A. 9-908*)
  - Reduction of surplus account (*K.S.A. 9-912*)
  - Bank owned life insurance (*K.S.A. 9-1001(24)(b)(iv)*)
  - Issuance of capital notes or debentures (*K.S.A. 9-1101a*)
  - Unlawful or unsound operation (*K.S.A. 9-1702*)
  - Issuance of emergency charters (*K.S.A. 9-1801*)
  - Removal of a bank or trust company officer or director (*K.S.A. 9-1805*)
  - Setting maximum interest rates (*K.S.A. 9-1806*)
  - Capital reorganization (*K.S.A. 9-1904*)
  - Conversions from national to state charter (*K.S.A. 9-808*)

In short, some efficiencies may be gained by ceding minor powers from the board to the Commissioner. However, SB 260 goes too far in reducing the Board's responsibilities from active to advisory. Again, thank you for hearing our members' concerns today.

J. Sue Anderson  
Executive Director  
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*House Financial Institutions  
3-10-99  
Attachment 5*

1 which shall be determined by the commissioner, and expenses shall be  
2 borne by the bank or trust company under supervision. After such ap-  
3 pointment, any such bank *or trust company* shall have the right within  
4 15 days from the date of the notice of such appointment to ~~appeal in~~  
5 ~~writing to request a hearing by filing a written request with the state~~  
6 ~~banking board, bank commissioner. and upon such appeal, the state bank-~~  
7 ~~ing board shall fix a date for a hearing, which hearing shall be within 30~~  
8 ~~days from the date of such appeal and Such hearing shall be conducted~~  
9 in accordance with the provisions of the Kansas administrative procedure  
10 act. ~~The board shall render an order as to the correctness or incorrectness~~  
11 ~~of the commissioner's decision to take over the conduct of such bank or~~  
12 ~~trust company, and the order of such board shall be final and conclusive~~  
13 ~~within 30 days from the date such request is filed.~~

14 Sec. 25. K.S.A. 9-1716 is hereby amended to read as follows: 9-1716.  
15 If the state bank commissioner shall determine that the condition of any  
16 bank is such that dividends should not be declared and paid upon its  
17 capital stock or that such dividends should be declared and paid only  
18 subject to certain conditions, the commissioner shall render an order in  
19 accordance with the provisions of K.S.A. 77-536 and amendments thereto  
20 that no such dividends be declared and paid or that such dividends be  
21 declared and paid only subject to certain conditions. The board of direc-  
22 tors of the bank shall comply with such order until such time as it is  
23 rescinded or modified by the commissioner by subsequent order served  
24 upon the bank ~~(or by the state banking board upon appeal)~~ Within 15 days  
25 after receiving notice of the order, the bank shall have the right to ~~appeal~~  
26 ~~in writing to the board from the commissioner's determination and order~~  
27 ~~by filing a notice of appeal request a hearing by filing a written request~~  
28 ~~with the commissioner, and thereupon the board shall fix a date for a~~  
29 ~~hearing, which hearing shall be held within 30 days from the date such~~  
30 ~~notice of appeal is filed. The board commissioner shall conduct the hear-~~  
31 ~~ing in accordance with the provisions of the Kansas administrative pro-~~  
32 ~~cedure act and render its order affirming, modifying or reseinding the~~  
33 ~~order of the commissioner, and the order of the board shall be final and~~  
34 ~~conclusive and shall be complied with by the board of directors of the~~  
35 ~~bank within 30 days after such request is filed.~~

delete

36 Sec. 26. K.S.A. 9-1719 is hereby amended to read as follows: 9-1719.  
37 As used in K.S.A. 9-1719 to 9-1723, inclusive:

38 (a) "Control" means the power directly or indirectly to direct the  
39 management or policies of a financial institution or to vote 25% or more  
40 of any class of voting shares of a bank.

41 (b) "Bank" means a state bank or trust company incorporated under  
42 the laws of Kansas.

43 (c) "Commissioner" means the Kansas state bank commissioner.

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

March 10, 1999

Mr. Chairman and members of the committee:

Thank you for letting me appear today in support of Senate Bill 271. The principal purpose of this bill is to combine the Office of the Consumer Credit Commissioner into the Office of the State Bank Commissioner. Our agency supports this proposal for several reasons.

- We think that it will enhance consumer service. Numerous individuals contact our agency daily because they are unsure of the appropriate place to call. A more centralized location for consumers to call regarding lending questions or concerns would be beneficial to all citizens.
- The Consumer Credit department and our agency each regulate a portion of the mortgage lending industry. Consumer Credit regulates non-bank second mortgage lenders. We regulate first mortgage lenders and mortgage brokers. Combining the regulation of the mortgage industry just makes sense. One regulator to supervise this industry would be more efficient.
- We regulate a portion of consumer lending via our supervision of banks. The Consumer Credit agency regulates consumer loans from non-bank lenders. Again, one supervisor would be more efficient.
- Finally, there is the issue of staffing. The Office of the State Bank Commissioner could provide services to a Consumer Credit division that are currently not available to them in-house. We have a legal department consisting of two attorneys and a paralegal. Our department also staffs information technology people as well as an individual who handles staff training, marketing and public relations. In addition, we intend to devote one of our staff member's time, at least on a part time basis, to assist in formulating a consumer education plan for our agency. By adding the Consumer Credit department to our office, these functions can be shared and we can maximize the utilization of our Kansas government staff.

I have one amendment to offer to this bill today. I would be happy to review the amendment with you now or answer any questions. Thank you again for this opportunity to appear. The Office of the State Bank Commissioner supports this bill and urges your favorable consideration for passage.

*House Financial Institutions*  
*3-10-99*  
*Attachment 6*

6-2

1 New Sec. 10. (a) There is hereby created a state consumer and mort-  
 2 gage lending advisory board which shall be composed of nine members.  
 3 Six members of the board shall be persons with at least five years' expe-  
 4 rience in consumer or mortgage lending, legal or other related experi-  
 5 ence, and three shall represent the public interest in the regulation, op-  
 6 eration and control of consumer or mortgage lending and related  
 7 companies. No member representing the public interest shall concu-  
 8 rrently serve as an officer, employee or director in any consumer or mort-  
 9 gage lending or related company wherever located. The commissioner  
 10 shall serve as chairperson of the board. The chairperson shall be a non-  
 11 voting member of the board. ~~Appointment of members representing the~~  
 12 ~~consumer and mortgage lending industry shall be made with due consid-~~  
 13 ~~eration for achieving representation of the various entities of the con-~~  
 14 ~~sumer and mortgage lending industry regulated by the commissioner.~~

The board shall be appointed  
 by the governor.

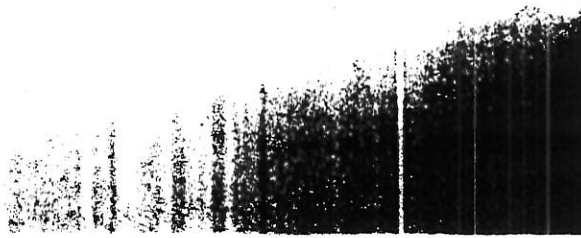
15 (b) Terms of members of the board shall be for three years. Each  
 16 member shall serve until a successor is appointed and confirmed. No  
 17 person shall serve more than two terms as a member of the board. In the  
 18 event of a vacancy on the board, the governor shall appoint a new member  
 19 of the same qualification to fill the unexpired term.

20 (c) The consumer and mortgage lending advisory board shall meet at  
 21 least annually and may meet quarterly or when called by the  
 22 commissioner.

23 Sec. 11. K.S.A. 74-3005 is hereby amended to read as follows: 74-  
 24 3005. Members of the state banking board attending meetings of such  
 25 board, or attending a subcommittee meeting thereof authorized by such  
 26 board, shall be paid compensation, subsistence allowances, mileage and  
 27 other expenses as provided in K.S.A. 75-3223 and amendments thereto.  
 28 The commissioner ~~shall act as secretary for said board and~~ shall keep a  
 29 permanent record of all meetings and proceedings of ~~said such~~ board in  
 30 ~~his the commissioner's~~ office.

31 New Sec. 12. Members of the consumer and mortgage lending ad-  
 32 visory board attending meetings of such board, or attending a subcom-  
 33 mittee meeting thereof authorized by such board, shall be paid compen-  
 34 sation, subsistence allowances, mileage and other expenses as provided  
 35 in K.S.A. 75-3223 and amendments thereto. The commissioner shall keep  
 36 a permanent record of all meetings and proceedings of such board in the  
 37 commissioner's office.

38 Sec. 13. K.S.A. 1998 Supp. 74-3006 is hereby amended to read as  
 39 follows: 74-3006. (a) The *state banking* board shall meet once each month,  
 40 on dates it agrees upon, ~~and shall meet at other times as the board deems~~  
 41 ~~necessary unless no applications which require the board's consideration~~  
 42 ~~are pending or when called by the chairperson or any three members of~~  
 43 ~~the board state bank commissioner.~~ Six members of the board shall con-





# KANSAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

Bill Graves  
Governor

David R. Brant  
Acting  
Commissioner

**TESTIMONY REGARDING SENATE BILL No. 271**  
**Proposed Merger of Consumer Credit with the Bank Commissioner**  
House Financial Institutions Committee

***"CONSUMER PROTECTION THROUGH REASONABLE REGULATION"***

Mr. Chairman and members of the committee, thank you for this opportunity to testify regarding Senate Bill No. 271.

Based on my experience as the Acting Commissioner, I have advised this committee, the interim committee, and the Governor that the staff should be expanded and that the regulatory powers should be strengthened to ensure that the state is doing its best in achieving effective consumer protection in these challenging times.

I have requested and am in the process of proposing a number of substantive amendments to the Consumer Credit Code, the addition of examiners and a staff attorney, and that the Commissioner's job be full-time and better compensated. In addition, the agency's efforts in consumer education are critical and must be enhanced and expanded.

It appears there are two alternatives: 1) add staff and funding to the existing agency; or 2) merge the agency with a compatible partner agency. Attached for your consideration is an outline of four reasons to consider merging Consumer Credit with the Bank Commissioner. The proposed merger is not expected to save any money in the short term but will hopefully enhance consumer protection, achieve coordination in regulation, and efficiently utilize the staff and resources of both agencies.

Thank you for your consideration.

*House Financial Institutions*  
*3-10-99*  
*Attachment 7*



# PROPOSED MERGER

## CONSUMER CREDIT

- *Kansas is one of only five states with Consumer Credit as a separate agency.*
- *Focus is on unfair and abusive non-bank lending practices.*

## BANK COMMISSIONER

### Reasons to consider merger:

- 1) Equalize consumer protection between state regulators

Consumers who borrow from non-bank lenders

Consumers who borrow from banks and S&Ls

- 2) Coordination in regulating the mortgage industry

Consumer Credit licenses non-bank mortgage lenders

Banking registers mortgage brokers

Consumer Credit regulates 2<sup>nd</sup> mortgage non-bank loans

Banking regulates 1<sup>st</sup> mortgages

- 3) Achieve uniformity in the interpretation and enforcement of the Uniform Consumer Credit Code ("UCCC")

Consumer Credit enforces UCCC for non-bank lenders

Banking enforces UCCC for bank lenders

- 4) Share and maximize staff utilization

#### Consumer Credit

Needs full-time Administrator  
 0 Staff Attorneys  
 0 Computer Techs  
 0 Consumer Education  
 4 Examiners  
 1 Administrative Staff (personnel, purchasing, budget)

#### Banking

2 Staff Attorneys  
 2 Computer Techs  
 1 Marketing/Public Information  
 50 Examiners  
 2 Administrative Staff (personnel, purchasing, budget)