

Approved: \_\_\_\_\_  
Date Jan. 20, 1999

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE .

The meeting was called to order by Chairperson Senator Don Steffes at 9:00 a.m. on January 19, 1999, in Room 529 S of the Capitol.

All members were present except:

Committee staff present: Dr. Bill Wolff, Research  
Ken Wilke, Office of Revisor  
Nikki Feuerborn, Committee Secretary

Conferees appearing before the committee: Judi Stork, Acting Bank Commissioner, Office of State Bank Commissioner  
Sandra Allen, General Counsel, OSBC  
Jerel Wright, Administrator of Credit Union Department

Others attending: (See Attached)

Chairman Steffes welcomed Chairman Ray Cox of the House Financial Institutions Committee and informed him of the banking agenda for the rest of the week.

Chairman Steffes reviewed the work of the Joint Committee on Financial Institutions and Insurance which met during the interim. The five members of the standing committee which served on this committee were: Senator Steffes as Chair, Senator Barone, Senator Becker, Senator Biggs, and Senator Praeger. Four days were spent on regulatory oversight. There was no effort made to further explore the feasibility of the umbrella coverage concept but the following items were recommended for further discussion and possible statutory update:

- Change in job description for Bank Commissioner
- Require Bank Commissioner position be considered full time
- Address issue of perceived or actual conflict of interests of Bank Commissioner (Kansas is the last state to require the position to be filled by either an active or retired banker).
- Broaden pool of applicants which could include those with national bank experience or examination experience, or other financial background
- Fold Consumer Credit Department into Banking Department. This could require a change in the configuration of the Bank Board..

Judi Stork, Acting Bank Commissioner, Office of the State Bank Commissioner, requested the introduction of legislation relating to the Mortgage Business Act (Attachment 1). The proposed legislation would change the law in the following areas:

1. Change the application procedures which address renewal terms and fees; clarify who falls under the Act and who is exempt.
2. Increase accountability through bonding requirements, penalties for noncompliance, and additional monitoring by our agency.
3. Strengthen disclosure, record keeping, and consumer protection requirements related to escrow accounts and subprime lending activities.
4. Provide for the confidentiality of information obtained through our investigation of these applicants.

CONTINUATION SHEET

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

Senator Corbin moved that the request be introduced into legislation. Motion was seconded by Senator Becker. Motion carried.

Mrs. Stork reviewed the responsibilities of the Office of the State Bank Commissioner and how it operates in an oversight capacity (Attachment 2). She discussed the minor differences between national and state chartered banks. State chartered banks have a higher lending rate, fees are lower, and have easier access to their regulator—the State Bank Commissioner. A bank must be Kansas state chartered to receive public funds deposits. Mrs. Stork was requested to return to the Committee at a later date to discuss Special Order authorization. No special orders were issued in 1998.

During the discussion on mortgage brokers, Sandra Allen, General Counsel for the Office of State Bank Commissioner, said they receive 20-30 written complaints per year regarding mortgage brokers. There have been no financial losses reported. Mortgage brokers are not currently subjected to many examinations although one examiner is fully assigned to them.

Jerel Wright, Administrator of the Credit Union Department, announced that credit unions are very fast growing financial entities in Kansas (Attachment 3). There is currently a ratio of five to one of state-chartered unions to federal chartered credit unions. Deposits are growing much faster than loans in nearly all of the credit unions. Those that appear to have a problem (less than 10) can have such problems traced to being a very small financial institution and being guilty of returning too much to its members rather than concentrating on earnings. He estimates that Central Credit in Overland Park will be more than \$24 billion by the end of the year. One examiner is assigned full time to that credit union. Although the Credit Union Department has the authority to issue special orders to keep things in balance with the federal government, they have not issued any special orders for possibly 10 years. In the beginning of the Department, the administrator was 1/4 time but it has gradually required the supervision of a full-time on-site administrator. Membership has not grown extensively in Kansas but deposits have soared. Mr. Wright said they have no legislative agenda for this year.

Senator Becker moved that the minutes of the January 13 and 14, 1999, meetings be approved. The motion was seconded by Senator Brownlee. Motion carried.

The meeting was adjourned at 10:00 a.m. The next meeting will be held on January 20, 1999.

# SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE GUEST LIST

DATE: Jan 19, '99

NAME	REPRESENTING
John Federico	KCUA
Harrie Ann Brown	KATP
Erik Sartorius	Jolo Board of Realtors
R. Truendo	KGC
Judi Stork	OSBC
Terrel Wright	Ks Dept of Credit Unions
Marc Hamann	DIV. OF THE BUDGET
Debby Fleming	Federico Consulting
George Barbee	Barbee Associates
Kathy Olsen	KBA
Matthew Goddard	HCBA
Karen France	Ke Assn of REALTORS
Linda McGill	MGA
Alan Steppat	CBA.

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

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

January 19, 1999

Mr. Chairman and Members of the Committee

My name is Judi Stork. I am the Acting Bank Commissioner for the State of Kansas. I am here today to request introduction of a bill relating to the Mortgage Business Act. As you will remember, the Act was originally adopted by the legislature in 1996. Currently, approximately 490 mortgage businesses are registered with our office. During the last two years our agency has seen the need for changes to the law in the following areas:

- 1) Change the application procedures which address renewal terms and fees; clarify who falls under the Act (and who is exempt); and other procedural issues.
- 2) Increase accountability through bonding requirements, penalties for noncompliance, and additional monitoring by our agency.
- 3) Strengthen disclosure, recordkeeping, and consumer protection requirements related to escrow accounts and subprime lending activities.
- 4) Provide for the confidentiality of information obtained through our investigation of these applicants.

The industry is supportive of these proposals and our agency considers the additional accountability and consumer protection aspects beneficial to the citizens of this state. I respectfully request the introduction of this bill.

Senate Financial Institutions & Insurance

Date *1/19/99*

Attachment # *1*



K.S.A. 9-2201. Mortgage business; definitions. As used in this act:

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

- (1) is located in this state;
- (2) is not located in a personal residence;
- (3) has regular hours of operation;
- (4) is accessible to the public;
- (5) serves as an office for the transaction of mortgage business;
- (6) is staffed by the registrant or an employee of the registrant;
- (7) is separate from the offices of other registrants; and
- (8) contains the books and records of the registrant, or copies of the books and records.

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

(c) "Employee" means any individual:

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

(d) "Mortgage business" means engaging in, or holding out to the public as willing to engage in, for compensation or gain, or in the expectation of compensation or gain, directly or indirectly, the business of making, originating, servicing, soliciting, placing, negotiating, acquiring, selling, or arranging for others, or offering to solicit, place, negotiate, acquire, sell or arrange for others, five or more mortgage loans in a calendar year the primary market.

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

(f) (e) "Person" means any individual, sole proprietorship, corporation, partnership, trust, association, joint venture, pool syndicate, unincorporated organization or other form of entity, however organized.

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

(h) "Promotional items" means pens, pencils, hats and other such novelty items.

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

**K.S.A. 9-2202. Exempt from registration.** The following are exempt from the registration requirements of this act:

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

(b) any entity directly or indirectly regulated by an agency of the United States or of any state Kansas which is a subsidiary or affiliate by virtue of ownership of 25% or more of its common stock by of any entity in subsection (a);

(c) any person who is registered with the Kansas securities commissioner as a loan broker pursuant to K.S.A. 50-1001 et seq. and amendments thereto or who is licensed by the Kansas consumer credit commissioner as a supervised lender pursuant to K.S.A. 16a-2-301 et seq. and amendments thereto; and

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

(e) a registrant's employee.

**K.S.A. 9-2203. Registration required to conduct mortgage business.** On and after November 1, 1996, no person shall conduct mortgage business in Kansas unless registered with the office of the state bank commissioner pursuant to this act. It shall be unlawful for any person to engage in or to advertise, publish or otherwise hold out to the public that they are engaged in mortgage business without first having obtained authority from the commissioner as herein provided. Any such individual, or member or officer of any such corporation or other entity violating this section shall be guilty of a misdemeanor, and upon conviction shall be punished by imprisonment and /or a fine not exceeding \$5,000.

**K.S.A. 9-2204. Application for registration.** (a) Any person required to register pursuant to this act shall submit to the commissioner an application for registration on forms prescribed and provided by the commissioner. The application shall contain information the commissioner deems necessary to adequately identify:

- (1) The location and nature of the business to be conducted;
- (2) the identity, character, and qualifications of an individual applicant;
- (3) the identity, character, and qualifications of the officers, and directors, partners, and employees of the entity, if the applicant is a partnership, corporation or other business entity;
- (4) the name under which the applicant intends to conduct business; and

(5) other information the commissioner requires to evaluate the financial responsibility and condition, character, qualifications, and fitness of the applicant, and compliance with other provisions of this act.

(b) Each application for registration shall be accompanied by a nonrefundable fee of not less than \$100, which may be increased by rules and regulations pursuant to K.S.A. 1997 Supp. 9-2209.

(c) An application for registration shall be approved, and a nonassignable certificate of registration shall be issued to the applicant by the commissioner provided:

(1) The commissioner has received the complete application and fee required by this section; and

(2) the commissioner determines the financial responsibility and condition, character, qualifications and fitness of the applicant warrants a belief that the business of the applicant will be conducted competently, honestly, fairly and in accordance with all state and federal laws within the purposes of this act.

**K.S.A. 9-2205. Registration; annual renewal.**

(a) A certificate of registration shall become effective as of the date specified on the face of the original certificate and is effective for one year.

(b) The registration shall be renewed annually each odd numbered year by filing with the commissioner, at least 30 days prior to the expiration of the registration, a renewal application, containing information the commissioner requires to determine the existence of material changes from the information contained in the applicant's original registration application or prior renewal applications.

(c) Each renewal application shall be accompanied by a nonrefundable fee which shall be established by rules and regulations pursuant to K.S.A. 1997 Supp. 9-2209.

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

~~K.S.A. 9-2206. Application denied; appeal. If the commissioner notifies the applicant in writing, that any application has been denied, or the commissioner fails to issue a certificate of registration within 60 days or grant a renewal within 30 days after a filed application is deemed complete by the commissioner, the applicant may make a written request for an appeal on the issue of the applicant's registration or renewal qualifications. The commissioner shall conduct a hearing in accordance with the Kansas administrative procedure act.~~

REPEAL. DENIAL AND REASONS FOR DENIAL COVERED IN 9-2207.

**K.S.A. 9-2207. Denial, suspension or revocation of registration; notice.** (a) The commissioner may deny, suspend or revoke the registration of a mortgage business if the commissioner finds:

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

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

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

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

**(5) the applicant or registrant has engaged in or is engaging in deceptive business practices;**

**(6) the applicant or registrant has been the subject of any disciplinary action by this or any other state or federal regulatory agency;**

**(7) a final judgment has been entered against the applicant or registrant in a civil action and the commissioner finds the conduct on which the judgment is based indicates that it would be contrary to the public interest to permit such person to be registered.**

(b) The commissioner shall not revoke, **deny or suspend** a registration until the registrant is provided written notice of the facts or conduct the commissioner believes to form the basis for the proposed revocation, **denial or suspension** and of the registrant's right to request a hearing in accordance with the Kansas administrative procedure act.

**K.S.A. 9-2208. Certificate of registration; signed acknowledgment; contents.** (a) Every certificate of registration shall be properly displayed in a prominent place within the registrant's place of business in a way that reasonably assures recognition by customers and members of the general public who enter the registrant's place of business.

(b) Prior to entering into any contract for the provision of services or prior to the registrant receiving any compensation or promise of compensation the registrant shall acquire from the customer a signed acknowledgment that contains only the following items:

(1) The name and address of the mortgage business;

(2) the name and position of the individual presenting the acknowledgment to the customer for signature;

(3) a statement in at least 10 point boldface letters which reads "[name of the registrant] is a mortgage business registered with the Kansas Office of the State Bank Commissioner in accordance with the

laws of the state of Kansas. This registration does not represent an endorsement or recommendation of the registrant's products or services by the Office of the State Bank Commissioner. As a consumer, you may submit a complaint or inquiry about this mortgage business by delivering a written statement to the Office of the State Bank Commissioner, 700 Jackson, Suite 300, Topeka, Kansas 66603"; and

(4) an original signature of the customer(s) and the date such signature(s) was attached.

(c) The registrant shall identify they are registered under this act in all advertising or solicitations directed to Kansas residents. For the purpose of this subsection, "advertising" does not include business cards or promotional items.

(d) No registrant shall conduct mortgage business in this state using any name other than the name or names stated on the certificate of registration.

**K.S.A. 9-2209. Commissioner, powers and duties.** The commissioner may exercise the following powers:

(a) Adopt rules and regulations as necessary to carry out the intent and purpose of this act;

(b) make investigations and examinations of the registrant's operations, books and records as the commissioner deems necessary for: ;

~~(1) Determining the adequacy or acceptability of any application for registration;~~

~~(2) pursuing a complaint or information which forms reasonable grounds for belief that an investigation or examination is necessary or advisable for more complete protection of the interests of the public;~~

(c) charge reasonable costs of investigation or examination to be paid by the registrant under investigation or examination;

(d) order any registrant to cease any activity or practice which the commissioner deems to be deceptive, dishonest, violative of state or federal law or unduly harmful to the interests of the public; and

(e) exchange any information regarding the administration of this act with any agency of the United States or any state which regulates the registrant or administers statutes, rules and regulations or programs related to mortgage loans;

(f) disclose to any person or entity that an applicant has been denied a certificate of registration, or that a registrant's license has been suspended or revoked.

**K.S.A. 9-2210. Fees; disposition.** All fees collected by the commissioner pursuant to this act shall be subject to the provisions of K.S.A. 75-1308 and amendments thereto.



(Proposed 9-2211) New Section 1. (a) Each applicant or registrant who maintains a bona fide office shall comply with at least one of the following:

(1) Submit written evidence which shows, to the commissioner's satisfaction, the applicant or registrant has been approved as a mortgagee by:

(A) The federal department of housing and urban development;

(B) The federal national mortgage association; or

(C) The federal home loan mortgage corporation.

(2) (A) File with the commissioner a surety bond or irrevocable letter of credit in the amount of \$25,000 , in a form acceptable to the commissioner, issued by an insurance company or financial institution authorized to conduct business in this state, securing the applicant's or registrant's faithful performance of all duties and obligations of a registrant.

(i) Such bond or letter of credit shall be payable to the Office of the State Bank Commissioner.

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

(iii) The bond or irrevocable letter of credit shall be available for the recovery of expenses, fines, and fees levied by the commissioner under this act, and for losses or damages as determined by the commissioner which are incurred by any person as a result of the applicant's or registrant's failure to comply with the requirements of this act; and

(B) Submit evidence that establishes, to the commissioner's satisfaction, that the applicant or registrant shall at all times maintain not less than \$10,000 in liquid assets acceptable to the commissioner.

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

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

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

(A) Such bond or letter of credit shall be payable to the Office of the State Bank Commissioner.

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

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

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

(Proposed 9-2212) New Section 2. Except for those persons meeting the requirements of K.S.A. 9-2202, a registrant shall not pay compensation to, contract with or employ as an independent contractor any person engaged in mortgage business who does not hold a valid certificate of registration issued by the commissioner.

(Proposed 9-2213) New Section 3. (a) A registrant shall deposit, within three business days of receipt, in an escrow account in a bank, savings bank, savings and loan association or credit union incorporated under the laws of this state, or organized under the laws of the United States or another state and which has a main or branch office in this state, all fees and moneys received from a borrower prior to the time a loan is consummated.

(b) The registrant shall maintain a separate record for each borrower of all moneys received for services performed or to be performed, including any payments to third parties, setting forth:

(1) the date moneys were received;

(2) the amount of moneys received; and

(3) the date moneys were deposited in the escrow account, and the date, description, and justification for each disbursement.

(c) Upon the request of a borrower, a copy of the record required by subsection (b) shall be provided to the borrower:

(1) within five business days of consummation of the loan; or

(2) within five business days of receipt of written notice of the borrower's intention to withdraw from the loan transaction.

(Proposed 9-2214) New Section 4. All original documents provided by the borrower or at the expense of the borrower to the registrant, including any appraisals, are the property of the borrower and shall, at the borrower's request, be returned to the borrower without further expense if the loan is not consummated.

(Proposed 9-2215) New Section 5. (a) A registrant shall provide written notice to the commissioner within 10 business days of the occurrence of any of the following events:

(1) a change in the registrant main office address;

(2) the opening, closing, or relocation of any branch office of the registrant located in this state;

(3) a change in the registrant's name or legal entity status; or

(4) the addition of an officer, partner, or director to the registrant's business.

(b) The commissioner may request additional information concerning any written notice received pursuant to subsection (a).

(Proposed 9-2216) New Section 6. (a) A registrant shall keep for at least 25 months copies of all deposit receipts, canceled checks, trust account records, required federal and state disclosures, and other relevant documents or correspondence received or prepared by the registrant in connection with a loan or loan application. The retention period commences on the date the loan is closed or, if the loan is not closed, the date of the loan application. If the loan is serviced by a registrant, the retention period commences on the date the loan is paid in full or the date the registrant ceases to service the loan.

(b) All books, records and any other documents held by the registrant shall be made available for examination and inspection by the commissioner or the commissioner's designee. Certified copies of all records not kept within this state shall be delivered to the commissioner within three business days of the date requested.

(Proposed 9-2217) New Section 7. Examination reports and correspondence regarding the reports made by the commissioner or the commissioner's examiners are confidential, except that the commissioner may release examination reports and correspondence regarding the reports in connection with a disciplinary proceeding conducted by the commissioner, a liquidation proceeding or a criminal investigation or proceeding. Additionally, the commissioner may furnish to federal or other state regulatory agencies or any officer or examiner thereof, a copy of any or all examination reports and correspondence regarding the reports made by the commissioner, or the commissioner's examiners.

(Proposed 9-2218) New Section 8. (a) If the commissioner determines after notice and opportunity for a hearing pursuant to the Kansas administrative procedure act that any registrant has engaged, is engaging or is about to engage in any act or practice constituting a violation of any provision of this act or any rule and regulation or order hereunder, the commissioner by order may require any or all of the following:

- (1) that the registrant cease and desist from the unlawful act or practice;
- (2) that the registrant pay a fine not to exceed \$5,000 per incident for the unlawful act or practice;
- (3) that the registrant take such affirmative action as in the judgment of the commissioner will carry out the purposes of this act.

(b) If the commissioner makes written findings of fact that the public interest will be irreparably harmed by delay in issuing an order under subsection (a), the commissioner may issue an emergency temporary cease and desist order.

(1) Such temporary order, even when not an order within the meaning of K.S.A. 77-502, and amendments thereto, shall be subject to the same procedures as an emergency order issued under K.S.A. 77-536, and amendments thereto.

(2) Upon the entry of such a temporary order, the commissioner shall promptly notify the registrant subject to the order that it has been entered, of the reasons, and that a hearing will be held upon written request by the registrant.

(3) If the registrant requests a hearing, or in the absence of any request, if the commissioner determines that a hearing should be held, the matter will be set for a hearing which shall be conducted in accordance with the provisions of the Kansas administrative procedure act. Upon completion of the hearing the commissioner shall by written findings of fact and conclusions of law vacate, modify or make permanent the temporary order.

(4) If no hearing is requested and none is ordered by the commissioner, the temporary order will remain in effect until it is modified or vacated by the commissioner.

(Proposed 9-2219) New Section 9. Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this act or any rule and regulation or order hereunder, the commissioner may bring an action in any court of competent jurisdiction to enjoin the acts or practices and to enforce compliance with this act or any rule and regulation or order hereunder. Upon a proper showing, a permanent or temporary injunction, restraining order, restitution, writ of mandamus or other equitable relief shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner shall not be required to post a bond.

STATE OF KANSAS  
BILL GRAVES  
GOVERNOR



Judi M. Stork  
*Deputy Commissioner*

Kevin C. Glendening  
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OFFICE OF THE  
STATE BANK COMMISSIONER

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

January 19, 1999

Mr. Chairman and Members of the Committee:

My name is Judi Stork. I am the Acting Bank Commissioner for the State of Kansas and have served in that role since the resignation of Newton Male on November 30<sup>th</sup>. I have been with the Office of the State Bank Commissioner (OSBC) for 19½ years and have held the position of Deputy Commissioner since 1991.

I was pleased to be asked to speak before this committee concerning the banking department and the condition of Kansas banking. Over the years, our agency has enjoyed a good working relationship with this committee. I am committed to ensure this relationship continues to be one of open communication. The job of the Office of the State Bank Commissioner is to regulate the state banks of Kansas to ensure they are safe and sound institutions where Kansas consumers can deposit their funds. We have a staff of 70 people who share this belief and work hard every day to carry out this goal.

The agency was first formed in 1891 to oversee the numerous private banks then in existence in Kansas. Today, the OSBC regulates 282 state chartered banks, 11 trust companies, 68 trust departments in state banks, 19 money transmitter companies, and 490 mortgage businesses. We have seven field offices located throughout the state with our largest offices in Overland Park, Wichita, and Topeka, and our smallest in Dodge City. We have made a few personnel changes in the Topeka office since the last legislative session by shifting the work duties our staff performs. We now have two individuals who work full time handling the Information Management area for the department, and one individual who directs our training and handles public relations. We also have one staff member who is now devoted full time to the Mortgage Business area. In addition, we maintain a review examination staff, a legal department with two attorneys, a budget/personnel officer, and a support staff of four individuals.

Senate Financial Institutions & Insurance

Date 1/19/99

Attachment # 2



It is our statutory duty to examine banks and trust companies once every 18 month period. We accomplish compliance with this statute by doing alternating and/or joint examinations with the Federal Reserve Bank and the Federal Deposit Insurance Corporation. Examiners review all aspects of our institutions and provide a written report to our office. The report is reviewed by staff and forwarded to me for final review and signature. The report is then transmitted back to the bank or trust company. A rating is assigned to each of our banks and trust companies known as a CAMELS rating. We assess the condition of the **Capital, Assets, Management, Earnings, Liquidity, and Sensitivity to Market Risk** of each bank. We then rate each component on a scale of one to five, with a one rating being the best and a five being the worst. The CAMELS rating is disclosed to each bank in their examination report. Our office also reviews and approves various applications. We have a nine member banking board - six bankers, three public interest members - which meets monthly in our office. They review and approve new charters, branches, name changes, relocations, etc. The commissioner approves mergers, acquisitions, trust powers, etc.

The condition of banking in Kansas and in the United States continues to remain strong. The FDIC reported in their third quarter 1998 *PROFILE* that earnings for commercial banks in the third quarter totalled \$15 billion. This earnings figure is down by \$1.1 billion from the June 30, 1998 data. The return on assets for commercial banks also fell from 1.25% to 1.15% between June 30 and September 30, 1998. The earnings decline was caused by weaknesses in overseas operations, and the greatest drag on industry earnings came from banks' trading activities. Nationally, asset quality remained largely healthy. Equity capital increased during the quarter by \$11.4 billion up to \$457.4 billion. This represents a capital to assets ratio for banks of 8.68%. The number of institutions nationwide declined by 73 institutions in the third quarter of 1998. The number of "problem" banks rose from 64 to 70 with total assets of \$5.4 billion.

In Kansas, September 30, 1998 data shows 398 commercial banks with total assets of \$32.6 billion. Total capital in Kansas banks equaled \$3.3 billion with an equity capital to assets ratio of 10.04%. The banks' return on assets ratio equaled 1.31%, which is down from the Kansas ratio noted for June 30, 1998 of 1.36%. The categories of *provisions to the banks' loan loss accounts* and *net charge-offs in loans* show little change from the figures represented for year end 1997 and 1996. Currently there are 282 state chartered banks with 277 falling in the 1 and 2 CAMELS rated category. These Kansas banks have showed some minor deterioration in their loan portfolios due to low grain and cattle prices, but an exceptional harvest in portions of the state helped to offset that deterioration for some banks. While the asset quality of some banks has worsened, the overall condition of most banks remains extremely healthy.

Something you might find of interest, which was included in the FDIC *PROFILE*, relates to the percent of Kansas branch deposits held by out of state organizations. Based on branch ownership as of 9-30-98 and deposits figures of June 30, 1998, 29.4% of Kansas deposits are held by out of state organizations. Arizona and Rhode Island have the highest percentages of out of state holding of their deposits with 95.6% and 86.9%, respectively. North Carolina, Alabama, and Maine are the only states with single digit percentages of 1.7%, 6.8%, and 9.6%, respectively.

Another fact I thought to be of interest --- for the first time in a long time, the number of state chartered banks nationwide has shown a net increase. As of September 30, 1998, states regulated 6,951 banks versus the end total for 1997 of 6,876. This shows the value banks and bankers are finding with a state charter.

Finally, I want to share with you some of the current issues the staff of the OSBC is working on. We are spending a considerable amount of time and devotion of resources to improving the information systems within our office. First, we use a system called ALERT which allows our examiners to download directly to their computers, the information contained within a bank's computer system regarding all pertinent loan data. The download of this information saves a considerable amount of our time. It automatically prepares our line sheets which are used to review loans. We are also using a system called ED (Examination Documentation). ED is divided into modules associated with various areas of the bank ... loans, securities, management, internal controls, earnings, liquidity, etc. It provides for uniformity throughout our field offices and with the Federal Reserve Bank and the FDIC. The final piece of our technology puzzle is the implementation of GENESYS (General Examination System). We will start to utilize GENESYS during the second quarter of this year. It will assist examiners in the completion of safety and soundness examinations. The FDIC, Federal Reserve Bank, and 33 other states have or will implement this system. It first rolled out in October of 1998. All three products are utilized together to decrease repetitive steps and to fully computerize the examination process. Our agency is also in the process of converting our storage method for examination reports, correspondence, etc., by scanning the information and burning it onto CDs. This will allow for easier access of our records. We also continue to work on updating, changing, and improving our home page on the Internet. It is approximately 50% complete.

Thank you for the opportunity to share with you information about the Office of the State Bank Commissioner, and about the condition of Kansas banking. I look forward to working with all of you during this legislative session.

KANSAS SENATE  
FINANCIAL INSTITUTIONS AND INSURANCE  
COMMITTEE

January 19, 1999

Testimony of the  
Kansas Department of Credit Unions

Jerel Wright  
Administrator

Senate Financial Institutions & Insurance

Date 1/19/99

Attachment # 3

# **Kansas Department of Credit Unions**

## **History**

The Kansas Department of Credit Unions (KDCU) is the state credit union financial regulatory agency authorized by the 1968 Kansas Legislature to provide for management, control, regulation and general supervision of state-chartered, Kansas's credit unions. In 1968, the Kansas Legislature recognized the need to separate the regulation of credit unions from the regulation of banks. Regulation of credit unions was performed under the supervision of the Kansas Bank Commissioner beginning in 1929 when Kansas's law authorized the organization of credit unions and continued until 1968, when the authority to regulate credit unions was transferred to the Kansas Credit Union Administrator.

KDCU is fully funded as a fee fund agency operating solely on the revenue produced through fees collected from state-chartered credit unions examined and regulated by the agency. All fees received by the agency are remitted to the state treasurer with twenty percent credited to the state general fund and the balance credited to the credit union fee fund. Total fees collected for the 1999 Fiscal Year equal \$913,579.00 with \$182,715.00 credited to the state general fund and \$730,864.00 to the credit union fee fund.

## **Kansas Department of Credit Unions**

The agency was funded in its first year of existence with fees amounting to \$58,855.00 and a \$25,000.00 loan from the general fund, repaid the following year. The department was at full staff with 7 employees consisting of a part-time Administrator, a Bank Examiner IV/Assistant Administrator, a Bank Examiner III, two Bank Examiner IIs, a Secretary I and a Clerk Typist II. The agency was responsible for the examination of 255 credit unions with assets totaling \$107,160,219.00.

Today the department has 12 employees consisting of a full-time Administrator, a Chief Financial Examiner, three Financial Examiner Vs, two Financial Examiner IVs, three Financial Examiner IIIs, a Secretary III and an Office Specialist. KDCU supervises and examines 115 natural person credit unions with assets totaling \$1.9 billion and two corporate credit unions with assets in excess of \$24 billion. Kansas also has 30 federal-chartered credit unions with assets totaling \$319 million.

State-chartered credit unions have share deposits federally insured through the National Credit Union Share Insurance Fund, an arm of the National Credit Union Administration.



# Kansas Department of Credit Unions

## Agency Function

KDCU is charged by law to examine every Kansas state-chartered credit union at least once every 18 months to ensure financial stability and compliance with state and federal laws and regulations. The agency is accredited by the National Association of State Credit Union Supervisors, thereby, recognizing the department's examination standards as being equal to the standards established by the NCUA, the regulator for federal-chartered credit unions. The department grants new charters and mergers, provides for liquidation procedures when necessary and handles consumer complaints.

Currently, the department is intensely involved in assuring Kansas credit unions are compliant with Year 2000 testing to require that credit union members are able to receive services into the year 2000. KDCU's assessments include separate Year 2000 Compliance Audits in addition to on-site regulatory examinations measuring financial condition. Year 2000 compliance responsibilities have shifted our average examination from a traditional 12-month cycle to a 14-month cycle.

# Kansas Department of Credit Unions

## Administrator Responsibilities

The administrator is bound with the responsibilities of management, control, regulation and general supervision of credit unions. This includes requiring every credit union to submit to an examination by the department, consistent with the authority of the NCUA.

The Administrator:

- May require an independent audit to be performed under standards established by the agency.
- May approve the merger, the sale or purchase of assets or the voluntary and involuntary dissolution of a credit union.
- May issue orders for corrective action for violations of law.
- Shall become the conservator for any credit union deemed insolvent and may appoint a liquidation agent.
- May suspend from office and prohibit from further participation in any manner in the conduct of the affairs of a credit union any director, officer, committee member or employee who has committed any violation of a law, rules and regulations or of a cease and desist order or who has engaged in or participated in any unsafe or unsound practice in connection with a credit union or who has committed or engaged in any act, omission or practice in connection with the credit union which constitutes

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## **Kansas Department of Credit Unions**

a breach of that person's fiduciary duty as such director, officer, committee member or employee, when the administrator has determined that such action or actions have resulted or will result in substantial financial loss or other damage that seriously prejudices the interest of the members.

- May recommend the removal of directors, supervisory or credit committees or submit findings of dishonest, reckless or incompetent performance of duties to the board of directors, supervisory or credit committee or to the credit union members at a general meeting of the shareholders.
- May suspend the charter, merge, liquidate, or take possession of any credit union which fails to federally insure share deposits, which loses coverage or allows such coverage to lapse.
- Has the power to authorize any credit union to engage in any activity in which such credit union could engage were they operating as a federal-chartered credit union.
- May require a credit union to establish special reserve accounts or may decrease the reserve requirements set by law.
- May establish rules and regulations governing the powers of corporate credit unions.
- May establish rules and regulations governing loans to credit union members, directors and members of the supervisory or credit committees.

## **Kansas Department of Credit Unions**

- May approve the purchase, lease or rental of real estate and improvements by credit unions.
- May disclose or approve the disclosure of any confidential information secured or produced by the administrator in making an investigation or examination of a credit union.
- May approve a credit union's place of business or change in place of business.
- May approve a conversion of a state-chartered credit union to a federal charter.
- May authorize a credit union organized in another state or under the federal credit union act to do business in Kansas.
- Has general charge of the work of the Credit Union Council and shall keep a permanent record of all meetings and proceedings of the council at the office of the administrator.
- Has administrative supervision of all agency employees.

# **Kansas Department of Credit Unions**

## **Examination Process**

Each Kansas credit union is examined at least once every 18 months. The needs and condition of a particular credit union determine the length of time between examinations.

An on-site examination format is based on a system called AIRES, which is used by both the state and federal regulators. AIRES is the Automated Integrated Regulatory Examination System. The system provides for continuity between the state and federal examinations. KDCU financial examiners are recognized as having requisite examination skills qualifying the department for accreditation regarding the use of examination system.

NCUA defers the examination of Kansas's state-chartered credit unions entirely to KDCU because the department staff demonstrates the ability to conduct examinations equal in scope to any examination by the federal insurer. Federal insurance examiners participate together in examinations when KDCU and federal insurance fund representatives determine that a joint examination is necessary.



## **Kansas Department of Credit Unions**

The examination format consists of a review of the credit union's core financial condition along with a regulatory compliance audit. KDCU issues a CAMEL rating for every credit union. A CAMEL rating encompasses the review of Capital Adequacy, Asset Quality, Management, Earnings, and Asset Liability Management. Each review includes a comparison of the credit union's financial ratios to standards desired by regulators, in addition to peer group statistics.

The examination incorporates an examiner's findings into a Document of Resolution, which identifies the areas to be addressed by the credit union's board of directors. All resolution items are tracked by KDCU for completion with follow-up contacts scheduled to review the credit union's progress.

As part of the regulatory process, KDCU requires every credit union to remit semi-annual or quarterly financial reports to update the department and the federal insurer.

# **Kansas Department of Credit Unions**

## **Credit Union Council**

The Council serves as an advisor to the administrator on issues and needs of credit unions. The Council reviews proposed legislation and regulations under consideration by the agency.

Each of the seven members of the Council is appointed by the Governor for a term of three years and may serve for two consecutive three-year terms. Five of the seven members shall be officers of state-chartered credit unions and four of these five Council members must be from different congressional districts. No more than four of the Council members may be from the same political party. The Council holds one regular council meeting during each quarter of the year and may hold other meetings, as the Council considers necessary.