

Approved: January 25, 1999
Date

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 20, 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: David Brant, Commissioner of Securities and Acting
Commissioner of Consumer Credit

Others attending: See Attached

Chairman Steffes reviewed the proposals of the interim Joint Committee on Financial Institutions and Insurance regarding revamping the financial regulatory agencies in Kansas. Copies of a letter to Senator Steffes from Cary Hiner, a retired FDIC executive now living in the Kansas City area, were given to Committee members (Attachment 1).

David Brant, Commissioner of Securities, reviewed the history, progress, growth, and structure of the agency (Attachment 2). One of their key functions is to review applications for businesses requesting permission to offer small stock offerings. A very real challenge for small businesses is the attempt to raise capital through stock offerings. Such businesses have no marketing departments and must rely upon their own creativity for publicizing and promoting such stock offerings. Broker activity is limited in this area, however, the Internet is being utilized. Kansas operates in an interrelationship arrangement with 10 other Midwestern states in reviewing and authorizing such stock offerings from their respective states.

In his capacity as Acting Commissioner of Consumer Credit, Commissioner Brant reported that the upside is that there is more money and financial assistance available to Kansans than ever before; the downside is that Kansas consumers are more heavily in debt than ever before (Attachment 3). First mortgage companies are regulated by the State Bank Department and second mortgages fall under the auspices of the Consumer Credit Department. Even with the great increase in the number of out-of-state secondary mortgage bankers now operating in Kansas, Commissioner Brant reported receiving very few complaints from dissatisfied customers. Such out-of-state mortgage companies are regulated by the Federal Trade Commission but are also subject to limited state regulation. There will be a forthcoming request for legislation which would give the Consumer Credit Department greater licensing authority and increased regulatory powers. Many of the loans made by these out-of-state companies are made without appraisals or even securing current appraisal information from the county appraiser. Some of the loans are for 150 to 180% value of the home involved. Federal legislation may be forthcoming to ensure greater protection for consumers.

Pay Day Loan companies are increasing in the state at a very high rate. Their high interest rates are capped but it was a concern of the Committee that the people who could least afford it were being impacted the most. There is a dramatic need for consumer education in the financial area in Kansas as well as nationwide. More authority for enforcing truth in advertising is a desperate need for the Consumer Credit Department as their mission is to protect the consumer. Money has been granted from both the Kansas Foundation for Consumer Education and from the Banking Department for consumer education. It was suggested that consumer education be added to public school curriculums.

Commissioner Brant requested the introduction of legislation which would conform the anti-fraud provision of the Kansas Securities Act to also pertain to investment advisers as already provided in the Model Uniform Securities Act (Attachment 4). He also presented a request for introduction of legislation which would amend K.S.A. 60-466 to correct an oversight by deleting the reference to provisions (3) and (4) of 60-465 which were addressed in legislation of 1998 (Attachment 5).

CONTINUATION SHEET

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

Senator Feleciano moved to introduce both bills into legislation. Motion was seconded by Senator Clark. Motion carried.

Senator Praeger moved for the approval of the minutes of January 19, 1999. 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 21, 1999.

SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE GUEST LIST

DATE: 1/20/99

NAME	REPRESENTING
David Grant	KCCI
Ken Gehler	McGill, Gehler & Asso.
Judi Stork	OSBC
LINDA MCGILL	MGA
Chuck Stones	KBA
Ray L. Cox	House FI
George Barber	Barber & assoc's
Matt Goddard	HCBA
Mike Sheehy	Federico Consulting
Roger Traxler	KGC
DAVID BRANT	SECURITIES COMMISSIONER
ROGER WALTER	" "
Sonya Allen	OSBC
Larrie Ann Brown	KAMP

Senator Don Steffes
1008 Turkey Creek Drive
Box 327
McPherson, KS 67460-9763

-----Original Message-----

From: chiner <chiner@gateway.net>
To: sen_don_steffes@mail.ksleg.state.ks.us
<sen_don_steffes@mail.ksleg.state.ks.us>
Date: Thursday, November 05, 1998 10:45 AM
Subject: Agreement with your proposal for financial regulation

Senator Steffes:

I have read with interest two articles - "Bruising political battle brewing over regulation of Kansas banks"- that appeared in recent issues of the Olathe Daily News. The articles focus on your plan to make changes to the existing state regulatory framework as it pertains to Kansas state chartered banks and other financial related entities that do business in Kansas.

According to the articles, you believe that the existing system is flawed in that the "commissioner's office is too cozy with the industry it regulates, and you "think there should be tension between the regulator and the regulated." The articles also discuss a proposal "to create a single department to regulate banks, savings and loans, credit unions, securities dealers and consumer loan companies."

Although I am not familiar with the details of your proposals, nor with the specific deficiencies you believe exist in the current Kansas regulatory structure, I am in complete agreement with the basic concepts of your proposals as outlined in the above-mentioned articles. I would suggest, however, that you might want to consider adding supervision of sales and underwriting of insurance and other insurance related financial products to the duties of your proposed "umbrella regulator." I believe that creation of an "umbrella regulator" may be the most critical aspect of your proposal. The expansion of powers that will result from financial modernization legislation currently with the U.S. Senate (HR 10), as well

Senate Financial Institutions & Insurance

Date 1/20/99

Attachment # /

as the FDIC's proposed modification to Part 362 of the FDIC's Rules and Regulations, when coupled with the expansion of activities already being experienced, certainly support the merits of your "umbrella regulator" proposal.

I am interested in this issue because of my background. I recently retired after 30 years with the FDIC. The last six of those 30 years was spent in Washington, D. C. From 1995 to 1998, I was the Associate Director for supervisory policy and worked on formulating FDIC reaction to various financial modernization proposals, drafting FDIC's proposed Part 362, briefing staff of the House and Senate Banking Committees, overseeing preparation of some of the congressional testimony given by then Chairmans Helfer and Hove, and overseeing development of supervisory policy. I coordinated the FDIC's supervisory issues with staff of the Federal Reserve Board, Office of the Comptroller of the Currency, Office of Thrift Supervision, and Conference of State Bank Supervisors. From 1992 to 1995, I supervised a unit that had responsibility for implementing FDIC's risk-based insurance premium system, as well as responsibility for off-site analysis of the nation's 35 largest commercial banks and thrifts. From 1985 to 1992, I served as an Assistant Regional Director in the FDIC's Kansas City Regional Office with responsibility for off-site analysis of commercial banks and examination of savings and loan associations. Prior to that time, I was a field examiner at various locations in Nebraska.

I agree with your premise that appropriate distance between the regulator and regulated is a healthy thing, and I believe that such healthy "tension," when coupled with policies that preclude the formation of cozy relationships, does not discourage or preclude open and productive working relationships. In my opinion, based on my workings with staff of the Conference of State Bank Supervisors (CSBS), there are, at times, pressures on state bank regulators to become too involved in "championing" state bank wishes/issues, rather than focusing on safety and soundness and consumer protection matters. While I will admit that there are sometimes gray areas, I think it is imperative that the state regulatory agencies focus on those matters that affect safety and soundness and consumer protection, and leave it to the state legislators, appropriate offices of the state executive, and industry trade groups to advance or "champion" other related issues.

The financial landscape is changing and it is just a matter of time before many Kansas banks will offer a wider variety of products, and before other providers offer today's banking products. Your "umbrella regulator" concept goes a long way toward accommodating those changes. Implementation of your "healthy tension" philosophy would do much to ensure a regulatory framework that would provide for successful supervision of Kansas financial institutions. I wish you well.

Thank you for your time.

Mr. Cary H. Hiner
21301 West 123rd Court
Olathe, Kansas 66061
913-393-3802
chiner@gateway.net



KANSAS

Bill Graves
Governor

OFFICE OF THE SECURITIES COMMISSIONER
Senate Committee on Financial Institutions and Insurance
January 20, 1999

David Brant
Commissioner

OFFICE OF THE SECURITIES COMMISSIONER

History

Kansas was the first state in the nation to adopt a "blue sky" law in 1911 to regulate securities. The Banking Commissioner at the time, J.N. Dolley, promoted the legislation because the state was a hunting ground of promoters of fraudulent investment schemes. It was said that some of the frauds "became so barefaced that promoters would sell building lots in the blue sky in fee simple." Thus, the term "blue sky" was coined to refer to state securities laws.

Statutory Authority

Securities Act	K.S.A. 17-1252 et seq.
Uniform Land Sales Practices Act	K.S.A. 58-3301 et seq.
Loan Brokers Act	K.S.A. 50-1001 et seq.

Agency Mission

To protect and inform Kansas investors, to promote integrity and full disclosure in financial services, and to foster capital formation.

Agency Staff, Budget, and Revenues

27 Total FTEs: 1 Commissioner, 4 Attorneys, 9 Investigators (certified law enforcement) 2 Certified Public Accountants, 6 Examiners / Auditors, 1 Office Administrator and 4 Support Staff. Seven of the staff work out of the agency's branch office in Wichita.

FY 1998	Beginning Fund Balance	50,102
	Revenues	+7,080,110
	Budget Expenditures	- 1,756,460
	Transfer to General Fund	- <u>5,323,752</u>
	Ending Fund Balance	50,000

Advisory Council

Since 1983, the Commissioner has appointed an Advisory Council. Currently, the 20 member council meets once or twice a year to discuss agency operations, industry and regulatory developments, and proposed legislation.

Agency Functions

Registration: We review the disclosure and fairness of smaller offerings of stocks, bonds, and limited partnerships and we accept filings for exempt offerings such as mutual funds and non-profit organizations. In FY 1998, we reviewed 112 registration filings and 364 exemption filings, and we processed 1,449 new mutual fund filings and 4,858 mutual fund renewals.

Compliance and Licensing: Our agency conducts on-site examinations of main and branch offices and we license investment professionals. In addition, we handle investor complaints regarding sales practices, churning, or misleading information. Currently, we have granted licenses to 1,559 broker dealer firms (39 of which are based in Kansas); 58,081 broker dealer agents (2,123 of which are based in Kansas); 615 investment adviser firms (178 of which are based in Kansas); and 1,525 investment adviser representatives (1,110 of which are based in Kansas).

Enforcement: We have investigators and attorneys that investigate and prosecute fraud, "white collar crime," and unregistered activity. In the last fiscal year, we conducted approximately 206 investigations which resulted in 152 administrative orders, and 31 criminal convictions, and over \$2.4 million in restitution orders and rescission offers to be repaid to investors.

Investor Education: Our agency now has a Yellow Pages ad in over 2 million telephone directories which encourages investors to "*Investigate Before You Invest*" by calling our 800 number hotline to inquire about the disciplinary background and registration of brokers, investment advisers, and the investment products being promoted. This past April, we joined in a nationwide campaign to promote Saving and Investing Education. Copies of the book *How to Be An Informed Investor* have been provided by our agency to state legislators, county and district attorneys, and to every public library in Kansas. We also sponsored two investor education seminars and our staff has made numerous presentations at senior fairs, service clubs meetings, and schools.

The agency currently provides \$20,000 annually to the Kansas Council on Economic Education ("KCEE") to sponsor *The Stock Market Game*. In the coming year, we will be also be working with KCEE to launch the Financial Literacy 2001 Project. This program will provide a curriculum guide and training for high school teachers to introduce a new edition of *A Consumer Approach to Investing*.

Federal and Industry Regulation

The shared system of state and federal regulation of securities began in 1933 when the federal Securities and Exchange Commission (the "SEC") was created by Congress. In addition, the S.E.C. has authorized certain self-regulatory organizations ("SRO's") such as the National Association of Securities Dealers (the "NASD").

Recent Developments

In 1996, Congress enacted the National Securities Markets Improvement Act (“NSMIA” or “the Act”) which ended a 14-month long debate in the U.S. Congress over proposed reforms to federal and state securities regulation. The new federal securities act is a sweeping attempt to modernize and rationalize the nation’s securities regulatory system to correct and improve areas of duplicative and unnecessary regulation.

The new federal Act created a national unified system of regulation whereby securities offerings that are national in character will now be defined as “covered securities” and regulated only by the SEC. Covered securities include mutual funds, stocks traded on the national exchanges, and securities sold to sophisticated investors. The legislation confirms the important role of state securities regulators as “the local cop on the beat” and preserves state licensing and enforcement powers.

The second most significant NSMIA change was to divide the regulation of investment advisers between the states and the SEC. The states are now the sole regulator of investment advisers managing less than \$25 million in client assets, while the SEC retains the primary responsibility for investment advisers managing mutual funds or large portfolios.

Summary

Overall, the federal, state, and industry regulatory structure is working to protect investors while promoting capital formation. The Kansas Securities Commissioner’s office has a good track record and a very capable and knowledgeable staff. Investor education should continue to be a priority and further expanded.

Education is the key to investing wisely

By CAROL CRUPPER
HARRIS NEWS SERVICE

TOPEKA — As the stock market surfs Wall Street's high tide, more people find themselves taking the investment plunge.

Trouble is, when it comes to investments, many are wet behind the ears.

People need to educate themselves, said Marsha Meyer, president of InvestEd, a Chicago firm that offers investment education programs.

"Your company is not going to support you, the government is not going to help you," she said. "We have to do this stuff ourselves."

Meyer, former editor of "Morningstar Investor" and past contributor to "Money" magazine, was featured Friday at a seminar sponsored by the Kansas Securities Commissioner.

The session was part of an educational push by the U.S. Securities and Exchange Commission. Its focus was mutual funds.

This form of investment lures many.

Some 437,000 Kansans hold shares in mutual funds, with investments of \$39.3 billion, said Kansas Securities Commissioner David Brant.

In the past 15 years, Meyer said, the number of mutual funds in the United States has grown from 1,000 to 9,000.

The key to selecting funds right for you, she said, is in weighing risk and return.

And that starts with education.

Meyer listed five advantages of mutual funds:

- Instant diversification. "This is your most important tool for reducing risk."

- Liquidity. If you call the broker, your investment can be pulled at the end of that day.

- Accessibility. You can purchase mutual funds from the comfort of your living room.

- Professional management. Specialists know trends in fields the investor may know nothing about.

- Convenience. Record keeping is minimal. But, Meyer said, mutual funds also display some distinct disadvantages:

- They are not insured. "There are no guarantees. You can easily lose money as well as make money."

- Investors have unrealistic expectations. People have grown accustomed to this unprecedented bull market and assume it will continue, Meyer said.

- It's complex. Managers use strategies and risks many people don't understand. "A mutual fund manager's job is not to take care of your money," Meyer said. "His or her job is to pursue a particular investment strategy that may or may not be in your best interest."

- May give a false sense of security.

- Pricing confusion. People need to know how the different fee payments work.

Investment can reap rewards, said Meyer, who expressed concern that the national savings rate has dropped to 3.8 percent of income.

But it's important to know the risks. Mutual funds aren't like savings accounts.

"We need to adjust our savings so the amount we're saving is enough to support our financial well being no matter what the market does."

Today's market will eventually stop its upward spiral, she said. It's just a matter of when.

"We don't want to incur losses we can't handle," she said.

People who invest need to know the market, and they need to know themselves.

Myers urged folks to head to their public library to research their investments.

Education is the key, Meyer said.

"How much return do we need and how much risk are we willing to take?" she said. "Pain and gain are two sides of the same coin. You don't get one without the other."

The higher the investment's potential returns, the greater the risk.

"The trick is to understand what is most appropriate for your circumstances," she said.

People need to know their own risk tolerance. "Seventy percent of all investors are risk-averse," she said.

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APR 25 1998

Too many investors entering market are ill-prepared, state official says

By CAROL CRUPPER
HARRIS NEWS SERVICE

Mass migration into a soaring stock market has securities officials concerned.

"Many people confuse a bull market with brilliance on their part," said Arthur Levitt, chairman of the U.S. Securities and Exchange Commission.

A record 41 percent of American families now own stock and mutual funds.

But three out of four Americans don't know what they need for retirement. And the savings rate has slipped to 3.8 percent, the lowest in 58 years.

Those statistics alert Kansas Securities Commissioner David Brant, who said too many arrive at the market ill-prepared.

"You should at least spend as much time choosing an investment as you do choosing a refrigerator," he told an investment seminar recently at Washburn University.

Officials said while the industry is basically honest, investors must stay alert.

Brant said his office handles from 200 to 250 cases of investment fraud a year. Last year, courts ordered \$8 million returned to Kansas investors.

He offered some investment tips:

- Ask questions.

- Be informed.

- Realize that the securities products, including those you buy in banks, are not federally insured. You could lose your money.

- There are legitimate businesses on the Internet — but check them out carefully.

- Be extremely cautious when investing over the telephone.

- Don't let your guard down. "Affinity fraud" happens when investors trust people because of church connections, ethnic affiliations or the like and don't bother to check them out.

Those with questions about an investment may call the Kansas Securities Commissioner's investor services hot line at (800) 232-9580.

APR 08 1998

U.S. facing 'financial literacy' crisis

David Brant ¹⁵⁸
Kansas Securities Commissioner

There's good news and bad news about Wall Street's historic bull market. The good news is that stock and mutual fund ownership has doubled in the past seven years to reach a record of 41 percent of U.S. families. The bad news is that three out of four Americans don't have any idea how much they need to save for retirement, and the U.S. savings rate last year was 3.8 percent, the lowest in 58 years.

Just as disturbing, while 63 percent of Americans know the difference between a football halfback and a quarterback, only 14 percent know the difference between an income stock and a growth stock. Surveys show that four out of five Americans are "financially illiterate," meaning they don't know the answers to even the cost basic questions about handling money. At a time when Americans are increasingly responsible for their own financial futures, all this spells trouble.

There's an old saying that "knowl-

edge is power." When it comes to investing, however, knowledge is protection. Uninformed, unsophisticated investors make tempting targets for crooks. Securities regulators fear the fundamentals could be in place for a long-term bull market in fraud. These fundamentals include record numbers of Americans investing in the equity markets, many with unrealistic expectations: baby boomers worried about having enough money for retirement; and older Americans trying to live on fixed incomes in an era of low interest rates.

That's why a grass-roots education effort to fight financial illiteracy was launched nationwide on March 29 by the U.S. Securities and Exchange Commission, state securities regulators and others. The campaign's slogan is "Get the Facts. It's your money. It's your future."

The Office of the Kansas Securities Commissioner is promoting investor education in a number of ways. Already our toll-free telephone number (1-800-232-9580) is listed in more

than 2,000,000 Kansas telephone directories statewide as a resource to call to obtain background information on any broker or investment adviser. Governor Bill Graves has declared the month of April as "saving and Investing Education" month in Kansas highlighting the need for consumers to take responsibility for their financial future. We have provided a copy of the recently published book "How to be an Informed Investor" to every public library in the state. On April 17, in Topeka, and April 18, in Wichita, our agency will sponsor a free investor education seminar. And, we will be speaking at schools, fairs and civic clubs statewide delivering the investor education message.

Investors themselves are the true first line of defense against crooks. Investors need to be well armed — with knowledge and a healthy skepticism. Wall Street is no short cut to Easy Street.

Success takes persistence, patience and practice. In fact, Wall Street can be a mean street for those who aren't

careful with their money.

There are, however, a few simple steps investors can take to protect themselves:

One — Get the facts, always check up on your investment professionals and their firms by calling the Office of the Kansas Securities Commissioner to see if they're licensed to sell in Kansas and what, if any, disciplinary record they have.. Call us at 1-800-232-9580.

Two — Hang up on aggressive, cold-callers and never allow yourself to be pressured into making an investment over the phone.

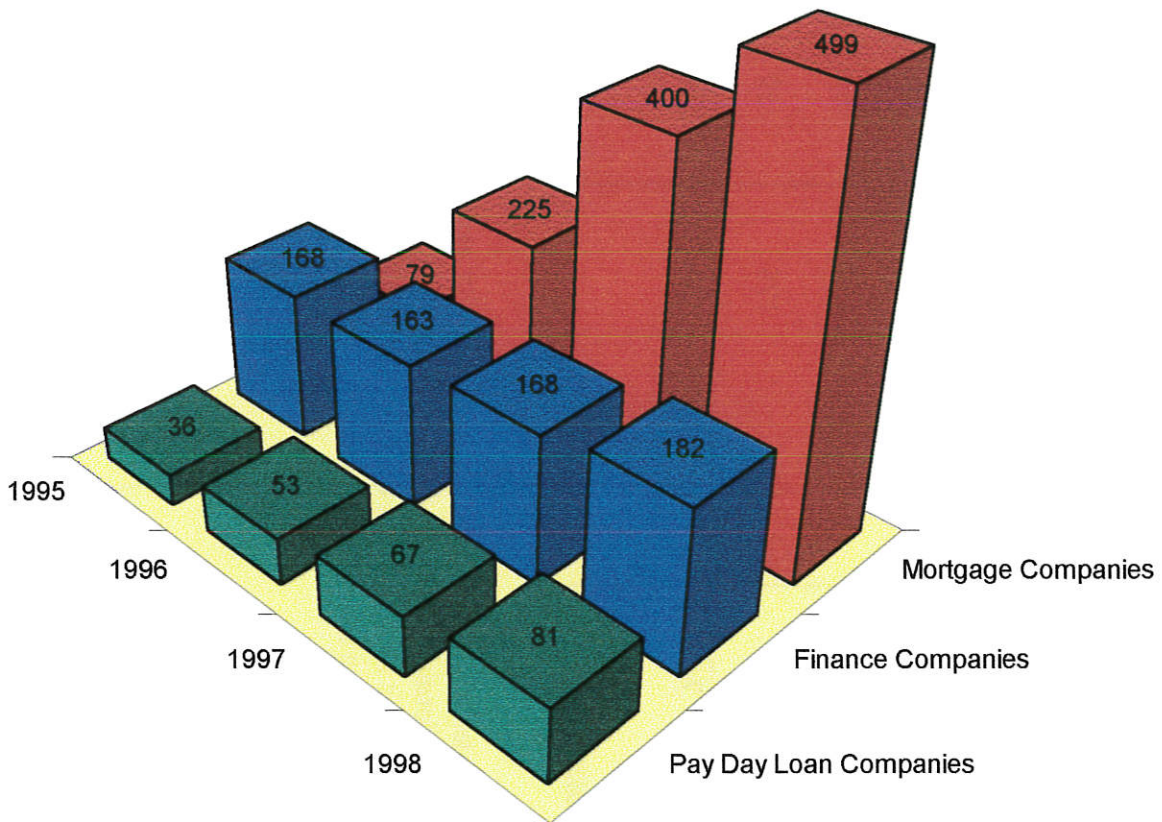
Three — If you have problems, after you have written your broker, his or her supervisor and the compliance officer of the firm, always forward a copy of your complaint to our office.

You're never too young, or too old, to learn about money and investing. Knowledge, skepticism and good investing habits will pay dividends for a lifetime. So get the facts. It's your money. It's your future.

2-5

2-5

OFFICE OF CONSUMER CREDIT COMMISSIONER



Growth of Supervised Lender Licensees

OFFICE OF CONSUMER CREDIT COMMISSIONER

1995-1998 Growth of Supervised Lender Licensees

Type	Number Licensed in 1995		Number Licensed in 1996		Number Licensed in 1997		Number Licensed To Date in 1998	
	In-State	Out-of-State	In-State	Out-of-State	In-State	Out-of-State	In-State	Out-of-State
Finance Company	150	18	149	14	148	20	135	47
Pay Day Loan Company	36	0	53	0	67	0	81	0
Mortgage Company	23	56	50	175	59	341	70	429
Total	209	74	252	189	274	361	286	476
Total Number Licensed	283		441		635		762	

Note: The total number of licensees includes both main and branch offices. For example, a national corporation may hold 14 Kansas supervised loan licenses consisting of one home office in California, 9 branch offices in Kansas and 4 other branch offices located in Colorado, Oklahoma, Missouri and Nebraska. These fourteen locations are either making supervised loans, or taking assignment of and undertaking direct collection of payments or enforcement of rights against debtors arising from supervised loans.



KANSAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

Bill Graves
Governor

Senate Committee on Financial Institutions and Insurance
January 20, 1999

David R. Brant
Acting
Commissioner

OFFICE OF CONSUMER CREDIT COMMISSIONER

Commissioner Transition

David Brant was appointed as the Acting Consumer Credit Commissioner in May 1998 due to the resignation of Bill Caton.

History

The agency was created in 1955. In the late 1960s, consumers were only beginning to make widespread use of open-end credit and nation-wide credit cards. Kansas was the seventh state to enact the Uniform Consumer Credit Code (the "U3C") which became effective on January 1, 1974. The Kansas U3C placed all aspects of consumer credit under one statutory umbrella: closed-end and revolving credit, loans and sales, motor vehicle loans, interest rates and limits on creditors remedies, truth-in-lending and credit insurance regulation. In 1993, the Kansas U3C was amended to also require "payday loan" lenders to be licensed and regulated as supervised lenders.

Statutory Authority

Uniform Consumer Credit Code	K.S.A. 16a-1-101 et seq.
Fair Credit Reporting Act	K.S.A. 50-701 et seq.
Credit Service Organizations	K.S.A. 50-1101 et seq.

Agency Mission

To protect Kansas consumers from unfair practices by suppliers of consumer credit by enforcing the laws governing retail installment sales, consumer credit transactions, and consumer loans.

Agency Staff, Budget, and Revenues

7 Total FTEs: 1 Commissioner, 4 Examiners, 1 Office Administrator and 1 Secretary. Two of the examiners work out of Topeka and the other two are based in Overland Park and Wichita.

FY 1998	Beginning Fund Balance	368,243
	Revenues	+ 733,710
	Budget Expenditures	- 454,439
	Transfer to General Fund	- <u>146,345</u>
	Ending Fund Balance	501,169

Advisory Council

The Acting Commissioner reestablished a 15 member Advisory Council which met on July 21, and on December 9, 1998.

Agency Functions

- **Licensing:** The agency registers all supervised lenders, retail credit grantors, and assignees of consumer credit transactions. Attached as Exhibit A is a chart which shows the growth in the number of licensees since 1995. Currently, there are a total of 762 licensees as compared to a total of 283 at the end of 1995, an increase of 169% in the past four years.
- **Compliance:** The agency conducts examinations of every supervised lender. The examiners may travel out-of-state (at the lenders' expense) to conduct some exams. The examiners review the permissibility of finance charges, closing costs, insurance premium charges, delinquency charges, and the disclosure statements provided to the borrower. The examiners conducted 242 exams in calendar year 1997. In addition, we handle consumer inquiries and complaints regarding interest and insurance overcharges or refund errors, lien releases, and disclosures.
- **Consumer Education:** One of the agency's objectives is to increase the level of knowledge about consumer finance and the laws regulating consumer credit. The agency currently provides \$70,000 annually to the Kansas Council on Economic Education ("KCEE") to provide training to primary and secondary teachers in personal finance and consumer credit education. Also, the agency currently provides \$12,500 to Housing and Credit Counseling, Inc. ("HCCI") to pay for credit counseling for consumers in need. The Acting Commissioner is very interested in exploring additional consumer education services and the agency is installing an 800 number for consumers.

Federal and Industry Regulation

The Federal Trade Commission (the "FTC") has jurisdiction over most non-bank lenders to enforce the Truth in Lending Act ("TILA") and other federal consumer protection laws. There is no industry self-regulatory organization. However, there are some efforts to promote voluntary standards such as the American Financial Services Association encouraging members to finance home improvement loans only when the work has been completed.

Recent Developments

The biggest challenge facing federal and state regulators is the recent growth in subprime lending, particularly for home equity loans. "Subprime" (also commonly referred to as "B/C") borrowers are consumers with relatively low incomes, or credit histories that are limited or tarnished. Credit card delinquencies and personal bankruptcies are at record levels, which negatively affect borrowers' credit histories, pushing more consumers into higher risk categories.

The subprime mortgage market has flourished because such lending has been profitable, demand from borrowers has increased, and secondary market opportunities are growing. Some large creditors now securitize nearly all home equity loans that they originate. In 1997 alone, subprime lenders originated over \$125 billion nationwide in home equity loans. In Kansas, 161 mortgage companies reported originating loans totaling \$862 million in 1997.

An example of a subprime home equity loan is a \$30,000 second-mortgage loan to a Wichita woman. The loan was originated in July 1997 for 20 years at 15.25% for the purpose of bill consolidation. Among the costs paid out of the loan proceeds was a 10% or \$3,000 fee to a California mortgage broker. The lender is a mortgage company located in San Diego, California.

The Wichita home appears to have been purchased in 1996 for \$49,500 and the amount of the first mortgage outstanding is \$48,700. The combined total of the two mortgage loans is now \$78,700. The loan application reports that the home is valued at \$80,000 (but there appears to have been no appraisal fee paid at the time of the second mortgage) which would make the loan-to-value ratio ("LTV") for the two loans at approximately 98%. However, the Sedgwick County Appraiser estimates the value of the home at \$45,400 which would make the LTV ratio at approximately 173%.

In July, the Federal Reserve Board and the U.S. Department of Housing and Urban Development (HUD) released a joint report which will require new federal legislation to amend the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA) in order to reduce settlement costs, eliminate predatory lending abuses, and strengthen enforcement provisions for home mortgage loans.

Agency Needs

- 1. Staff.** For the past six years, the agency has had a part-time Commissioner. The current challenges demand the time and attention of a full-time administrator. In addition, the agency needs a staff attorney to assist the Commissioner in drafting legislation, administrative interpretations, rules and regulations, answering legal questions, and in handling administrative hearings. Further, the Governor's FY2000 budget recommends one additional examiner to assist in reviewing license applications and in conducting exams on loans made by out-of-state mortgage companies.
- 2. Legislation.** In the coming week, I will be submitting a proposed bill containing a number of technical and substantive amendments to the Kansas Code. This bill is a collaborative effort of the Advisory Council and a "drafting" committee which has included attorneys, law professors, legislative staff, finance companies, and consumer representatives.

The proposed amendments will address a number of issues, including: licensing; origination fees; usury rates; first and second mortgage loans (including high loan-to-value loans); deceptive advertising; and administrative powers of the Commissioner.

Summary

Federal and state regulation of consumer credit is in need of review and reform. The subprime mortgage business is presenting numerous challenges. The Kansas Consumer Credit Commissioner's office is in transition and is in need of direction, additional staff, and additional substantive regulatory tools. The current staff members are experienced and dedicated. Consumer education should continue to be a priority and further expanded.

RATE OVERPAYMENT NOTIFICATION

EQUITYPLUS

Community Bank of Northern Virginia

THIS IS NOT A CHECK

168-564
12417

147817980915

September 16, 1998

THE SUM OF Forty Three Thousand Nine Hundred Fifty

DOLLARS CTS
\$43,950 00

NON-NEGOTIABLE
COUPON

To the order of S2P1
David Brant
1823 SW Collins Ave
Topeka, KS 66604-3220

E142920



NON-NEGOTIABLE. THIS IS NOT A CHECK. NON-TRANSFERABLE

You are pre-approved for \$43,950* or more ...

Dear David Brant :

Think what you could do with \$43,950 or more right now! You could pay off high interest debts and even have some cash left over. Because you're a homeowner, EQUITYPLUS can help you keep more of your hard-earned paycheck in your pocket and get the cash you need!

An EQUITYPLUS Debt Consolidation Loan can cut your monthly payments in half or more, letting you save hundreds of dollars every month. This chart gives you an example of how much you could lower your monthly payments with a Debt Consolidation Loan from EQUITYPLUS.

Your Current Total Monthly Payments

- AUTO LOAN
- CREDIT CARD #1
- CREDIT CARD #2
- NEW FURNITURE
- HOME COMPUTER LOAN
- MEDICAL/DENTAL PAYMENTS



Your EQUITYPLUS Monthly Payment



THAT'S A SAVINGS OF \$669 EVERY MONTH OR \$8,028 THE FIRST YEAR!

NO EQUITY REQUIRED! Even if you haven't built much equity in your home, call for EQUITYPLUS at 1-800-528-0011 today. We can usually give you an answer in 15 minutes or less.

Call now—this is a limited-time offer.



FINANCIAL SERVICES

15030 Avenue of Science, Suite 100, San Diego, CA 92128

***** ECRLOT ** C021

Deba M. Brant
1823 SW Collins Ave.
Topeka, KS 66604-3220

Loan Eligibility Amount:
\$110,000.00
Reservation Number: DM-17-33-A1-49806
This Offer Expires: January 5, 1999

Dear Deba M. Brant:

Your status as a Preferred Homeowner means that you now have the financial power — up to \$110,000.00 or more — with a custom-tailored program that helps you make the most from the equity in your home.

Your Reservation Number is the key to a home loan that gives you the best of all worlds. Great rates. The ability to use more of your available equity. And unparalleled convenience — every step of the way.

**More lending power. More financial freedom.
More from the equity in your home.**

At Axiom Financial Services, we believe in always giving you more than you'd expect.

That's why we'll tailor a program that meets your needs and your budget. Ready to refinance? You'll appreciate our low monthly payments. Self-employed? You'll appreciate our flexibility. And with our 125% equity programs, we can help you even if you have little or no equity. Even if your past credit is less than perfect.

This makes an Axiom home loan the perfect way for you to get the cash you need for home improvements, college expenses, a new car or anything you'd like. You have the spending power you need now — and the peace of mind that comes from knowing that you're prepared for future expenses.

Take advantage of the best rates in years.

Best of all, Axiom can help you with some of the best rates available for home loans.

With interest rates down, this is the perfect time to pay off your higher-rate debts and enjoy one low monthly payment. And better yet, because home loans are one of the few ways left to enjoy a possible tax advantage*, you'll enjoy the benefits now — and at tax-time, too.

Start enjoying this powerful financial tool today.

You'll love how easy it is to use your new Axiom home loan anytime you need additional funds. And it's just as easy to apply. Because of your Preferred Customer Status, you simply need to return the attached Acceptance Certificate, or better yet, call us toll-free at 1-888-322-6478. Or, if you prefer, fax your response to 1-888-322-6473. After that, you can complete the entire process by mail.

over, please

3-7

BUSINESS & FARM

If you have a news tip,
or a question or
comment about a story

B

Contact:
Steve Zuckerman,
268-6312

SUNDAY September 20, 1998

Home equity loans draw state scrutiny

■ Growth of subprime mortgage lending could get consumers in financial trouble, regulators say.

By Scott Rothschild

Eagle Topeka bureau

TOPEKA — A Wichita woman takes out a \$30,000 second-mortgage loan on her home in order to pay off bills.

The loan is for 20 years at 15.25 percent interest, and she paid a \$3,000 fee to a mortgage broker. She purchased the home two years ago for \$49,500, and currently owes about

\$48,700 on the first mortgage.

Now she is making payments on two mortgage loans totaling \$78,700 on a home that the Sedgwick County appraiser has valued at \$45,400.

Acting Consumer Credit Commissioner David Brant said this kind of loan is troubling. It is an example of a fairly recent phenomenon in what is called subprime mortgage lending.

Subprime mortgage lenders make home equity loans to people with either limited or bad credit.

But sometimes those loans carry exorbitant interest rates or hidden costs that may result in consumers losing their homes, money or property, officials say. Federal officials say

For more information

The Federal Trade Commission enforces a number of federal laws involving consumer credit. The FTC has a pamphlet called "Home Equity Loans: Buyers Beware!" that details fraudulent lending practices.

To receive a free copy of the pamphlet or a complete list of FTC publications, contact **Consumer Response Center, Federal Trade Commission, Washington, D.C. 20580**; or call **202-FTC-HELP**, or click on Consumer Protection and Publications at

they have uncovered a wide range of abuses in this kind of lending, calling it a "serious national problem."

The abuses "generally aim either to extract

excessive fees and costs from the borrower or to obtain outright the equity in a borrower's home," said Jodie Bernstein, director of the

Federal Trade Commission's bureau of con-

sumer protection.

Brant echoed these sentiments recently at a meeting of the Special Committee on Financial Institutions and Insurance.

"Some borrowers are being lured into borrowing more than they can afford and are being charged interest rates that don't need to be so high," said Brant.

Brant declined to identify the Wichita woman or the California company that made the loan because he said his agency was looking into the transaction.

Of the loan, he said, "The consumer may be thinking she did herself a favor. I'm troubled whether she realizes she has her home so

See **EQUITY**, Page 5B

EQUITY

From Page 1B
heavily leveraged."

But subprime lenders say they are providing a service by loaning money to people who otherwise might not be able to get a loan.

"On a general scale, these loans have a high satisfaction rate, but any industry is going to have instances of dissatisfaction," said Lynn Strang, spokeswoman for the Washington, D.C.-based American Financial Services Association, which represents a wide range of loan companies nationwide.

Brant said that "the good news" of subprime mortgage lending is that credit is being provided to borrowers who wouldn't be able to get conventional loans.

But, he said, there has to be a balance between letting the free market rule and protecting consumers. The balance, he said, has tipped in favor of aggressive lenders who loan to people who sometimes are either in desperate financial shape or are duped by high-pressure sales tactics. Every day, many Kansans are contacted either through the mail, by telephone or on the Internet by lenders offering home equity loans to help pay bills.

Subprime mortgage lenders generally target poor and minority borrowers, according to federal and state officials. Elderly homeowners also are frequent targets because they often have substantial equity in their homes, yet have reduced income, according to the FTC.

But Joe Shroop, a spokesman for Dallas-based Associates First Capital Corp., the nation's largest home equity lender, which does business in Kansas under the name Associates Financial Services, said his company doesn't "target" any particular group.

"We make credit available to people from all walks of life," Shroop said. He said the average home equity customer at Associates is a 45-year-old to 54-year-old white male who makes between \$40,000 and \$50,000 per year and wants to consolidate his bills.

One thing consumer advocacy groups, lenders and regulators agree on is that the subprime market is exploding. More than 90 percent of all subprime mortgage loans have been made since 1983, according to the FTC.

In 1997, subprime lenders originated more than \$125 billion nationwide in home equity loans. The Kansas portion of that amount was more than \$860 million.

Officials say the loans are profitable and demand from borrowers has increased as credit card delinquencies and bankruptcies hit record highs.

But officials say that with the growth has come unscrupulous methods used by some lenders.

One abuse is when the lender encourages a borrower to pad their income on the application form to get the loan approved. When the payments come due and the consumer can't afford them, the lender forecloses.

Another scheme is when the lender offers low monthly payments that cover only the interest, but at the end of the loan term, a "balloon" payment of the entire principal is due. Other scans include lenders charging borrowers high fees for "benefits" that aren't necessary, such as credit insurance.

Brant said he will be convening a committee to "address the need for additional substantive regulation, particularly of the growing subprime mortgage market."

Brant said the Consumer Credit Office has an experienced staff of seven people but more staff and tighter restrictions are needed to adequately regulate the industry.

The number of lenders licensed in Kansas by the Consumer Credit Office has grown from 233 in 1995 to 762, an increase of 269 percent.

Of that amount, the largest growth has been in out-of-state mortgage companies, from 46 to 429. During that same period, the Consumer Credit Office has been given one additional finance examiner to bring the total to four.

Brant is working part-time at the Consumer Credit Office because he also is in charge of the larger Office of the Securities Commissioner, which regulates investment services and prosecutes fraud and other white-collar crimes.

The Consumer Credit Office needs a full-time staffer, two more examiners and a staff attorney. But lenders say current regulations and the free market should do the job.

8-3

The KANSAS
Community Voice
DEC 1 2 1998

Consumers Urged to "Borrow Wisely: Shop Around"

If you own a home, you've likely received a wastebasket full of solicitations urging you to borrow up to 125 percent — or even more — of the value of your home.

The mail ads often come in official looking envelopes, with fake checks for more than \$40,000. The come-ons include: "Consolidate your debts and lower your monthly payments;" and "Some credit problems OK"

These ads are especially tempting for consumer facing debt problems and for those who have high credit card balances from holiday shopping.

David Brant, the Acting Consumer Credit Commissioner, is urging Kansas consumers to "Borrow Wisely: Shop Around."

"Consumers should shop around for the best rates and fees on home equity loans and they should carefully analyze the 'savings' in a lower monthly payment from debt consolidation," cautioned Brant.

The "savings" can be extremely costly over the long term. For example, ads may claim a \$709 payment on a \$20,000 credit card and car loan debt can be reduced to \$271 a month with a high loan-to-value home equity loan. Without refinancing, the consumer would be debt-free in three years. With the high-LTV loan, the consumer would pay \$271 per month for another 22 years and shell out an extra \$55,000 in interest.

Brant noted Consumer Credit examiners have found: 20 year home equity loans at rates of 15 percent and higher; loan-to-value ratios of 170 percent and higher based on no appraisal; and broker's fees of 10 percent in addition to other origination fees and closing costs.

Kansas consumers are urged to:
▼ **Shop Around!** Many consumers reply to enticing ads from lenders without checking local credit sources. Consumers should comparison shop at a bank, credit

union, finance company, or a local mortgage lender. Ask about the interest rate, the amount of origination fee or points, the annual percentage rate, other charges and if there is a separate broker's fee.

▼ **Be suspicious of "guarantees" and "up-front" fees.**

It is illegal for a company to guarantee a loan in exchange for an advance fee.

▼ **Seek help, if deep in debt.**

Consumers should visit with a local credit counselor to get help with existing debt. A good credit counselor should be able to help a consumer work out a budget and also negotiate with creditors. Once recent study indicates 2/3 of people who take out home equity loans to pay down credit card debt just end up back on the same treadmill, but now with their home

placed at risk of foreclosure if financial problems worsen.

The Kansas Consumer Credit Commissioner's office, toll free 1-877-387-8523, is offering a number of free information pamphlets entitled: "Home Equity Loans" Borrowers beware;" "Advanced-Fee Loan Sharks;" and "Knee-Deep in Debt." The pamphlets were prepared by and are also available from the Federal Trade Commission. The FTC can be reached at 202-FTC-HELP or at www.ftc.gov. ▲▲▲

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NON-BANK FINANCING TRANSACTIONS

3-10

	Example Lenders	Type of State Regulation	Kansas Regulator
CREDIT CARDS	Visa MasterCard	None unless home state	Exempt unless home state
RETAIL SALES	Ed Marlings Best Buy	Notification & UCCC*	Consumer Credit Commissioner
CONSUMER LOANS	Household American General	Licensing, Notification, & UCCC	Consumer Credit Commissioner
AUTO RETAIL SALES	Auto Dealers GMAC; Ford	Notification & UCCC	Consumer Credit Commissioner
1 ST MORTGAGE BROKERS		Registration	Bank Commissioner
2 ND MORTGAGES (HOME EQUITY)	First Plus The Money Store	Licensing, Notification, & UCCC	Consumer Credit Commissioner
RENT TO OWN	Rent-A-Center Rent-ALL	Contract Terms	Attorney General
PAY DAY LOANS	QuikCash Mister Money	Licensing, Notification & UCCC	Consumer Credit Commissioner
LOAN BROKERS	(Unregistered)	Enforcement	Securities Commissioner

* transactions subject to the Uniform Consumer Credit Code

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KANSAS

Bill Graves
Governor

OFFICE OF THE SECURITIES COMMISSIONER

David Brant
Commissioner

1999 Legislative Proposal A

Title. An act amending the Kansas Securities Act: Unlawful Acts (K.S.A. 17-1253)

Summary. The attached proposal would conform the anti-fraud provisions of the Act to also pertain to investment advisers as already provided in the Model Uniform Securities Act. The amendments would enhance and clarify the agency's anti-fraud enforcement authority over both state registered investment advisers and federal covered advisers (as defined in K.S.A. 17-1252(o)).

Fiscal Impact. There should be no fiscal impact.

Policy Implications and Impact on the Agency Strategic Plan. In 1996, Congress enacted the National Securities Markets Improvement Act ("NSMIA") which ended a 14-month long debate over proposed reforms to federal and state securities regulation.

A significant NSMIA change was to divide the regulation of investment advisers between the states and the SEC. The states are now the sole regulator of investment advisers managing less than \$25 million in client assets ("state covered advisers"), while the SEC retains the primary responsibility for investment advisers managing mutual funds or large portfolios ("federal covered advisers").

Thus, federal covered advisers are no longer licensed by the state, but now submit "notice filings" to the Securities Commissioner. The only regulatory authority the state has over federal covered advisers is to investigate and bring enforcement actions with respect to fraud or deceit.

The proposed Model amendments would bring Kansas law into conformity with a number of other states and would enhance investor protection by clarifying the agency's anti-fraud enforcement authority over investment advisers. Investors are increasingly utilizing the services of investment advisers and state regulation should be prepared for future complaints.

Senate Financial Institutions & Insurance

Date 4/20/99

Attachment # 4

17-1253. Unlawful acts in connection with offer, sale or purchase of securities; qualifications; "assignment" defined; penalty.

(a) It is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly, to:

- (1) Employ any device, scheme or artifice to defraud;
- (2) make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
- (3) engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

(b) It is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise, to:

- (1) to employ any device, scheme or artifice to defraud the other person; or
- (2) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon the other person;
- (3) acting as principal for his own account, knowingly to sell any security to or purchase any security from a client, or acting as broker for a person other than such client, knowingly to effect any sale or purchase of any security for the account of such client, without disclosing to such client in writing before the completion of such transaction the capacity in which he is acting and obtaining the consent of the client to such transaction. The prohibitions of this subparagraph shall not apply to any transaction with a customer of a broker-dealer if such broker-dealer is not acting as an investment adviser in relation to such transaction; or
- (4) to engage in dishonest or unethical practices as the commissioner may define by rule.

(c) In the solicitation of advisory clients, it is unlawful for any person to make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

~~(e)-(d)~~ It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless the investment adviser provides in writing:

- (1) That the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;
- (2) that no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and
- (3) that the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

Subsection ~~(e)~~(d)(1) shall not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date, or in any other manner authorized by rules and regulations adopted by the commissioner for the purposes of furthering compatibility with federal regulations authorizing fees based upon a share of the capital gains upon or capital appreciation of client assets. "Assignment," as used in this subsection, includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding

voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

~~(d)~~ (e) It is unlawful for any investment adviser to take or have custody of any securities or funds of any client if:

(1) The commissioner by rules and regulations prohibits custody; or

(2) in the absence of such rules and regulations, the investment adviser fails to notify the commissioner that such adviser has or may have custody.

~~(e)~~ (f) A conviction for a violation of this section is a severity level 6, nonperson felony. Any violation of this section committed on or after July 1, 1993, resulting in a loss of \$25,000 or more, regardless of its location on the sentencing grid block, shall have a presumptive sentence of imprisonment.

⇒ **History:** L. 1957, ch. 145, 2; L. 1979, ch. 61, 2; L. 1986, ch. 91, 1; L. 1994, ch. 291, 14; L. 1995, ch. 251, 4; July 1.



KANSAS

Bill Graves
Governor

OFFICE OF THE SECURITIES COMMISSIONER

David Brant
Commissioner

1999 Legislative Proposal B

Title. An act amending the rules of evidence amending K.S.A. 60-466.

Summary. In 1998, the Legislature approved House Bill No. 2854 (1998 Session Laws, Chapter 103) which amended K.S.A. 60-465 which sets forth the requirements for the authentication of governmental records as a condition to their admission into evidence.

The 1998 legislation simplifies the procedure required for the admission of records of the federal or a state government to simply require certification by the custodian. Kansas law now conforms to a less cumbersome, modern practice, consistent with the Federal Rules of Evidence and the rules of evidence in a number of states, including Colorado and Oklahoma.

However, the 1998 legislation failed to also amend K.S.A. 60-466 which references provisions of 60-465 which were re-written and re-numbered. Thus, the attached proposal corrects this oversight by deleting the reference to provisions (3) and (4) of 60-465.

Fiscal Impact. There should be no fiscal impact.

Senate Financial Institutions & Insurance

Date 4/20/99

Attachment # 5

60-466. Certificate of lack of record.

A writing admissible under exception (o) (2) of K.S.A. 60-460 is authenticated in the same manner as provided in ~~clause (3) or (4)~~ of K.S.A. 60-465.

⇒ History: L. 1963, ch. 303, 60-466; Jan. 1, 1964.

per. If within 30 days following the last publication of such resolution, a petition against such resolution signed by qualified electors of the county equal in number to not less than 5% of the electors of the county who voted for the office of the secretary of state in the last preceding election is filed with the county election officer, such resolution shall not be effective until submitted to and approved by a majority of the qualified electors of the county voting at an election called and held thereon. The question of changing the terms of office of some or all members of an elected board so that the members of the board are elected in even-numbered years shall be submitted to a vote of the qualified electors of the county at a regular county primary or county general election or, if no regular county election is to be held within six months from the date of adoption of the resolution, at a special election called for the purpose of submitting such question. Such question shall not be submitted to the electors of the county at any election more than once in any year.

(g) (h) Vacancies in the membership of the board shall be filled by appointment by the commission ~~or, in the case of an elected board, the board.~~ Any member appointed to fill a vacancy shall hold office until expiration of the term of the vacated office.

(h) (i) Members of the board are subject to removal from office in the manner and for the causes prescribed by law for other county officers.

Sec. 2. K.S.A. 19-4605 is hereby repealed.

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

Approved April 10, 1998.

CHAPTER 103
HOUSE BILL No. 2854

AN ACT concerning civil procedure; relating to the rules of evidence; concerning the authentication of copies of records; amending K.S.A. 60-465 and repealing the existing section.

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

Section 1. K.S.A. 60-465 is hereby amended to read as follows: 60-465. A writing purporting to be a copy of an official record or of an entry therein, meets the requirements of authentication if ~~(1)~~ the judge finds that the writing purports to be published by authority of the nation, state or subdivision thereof, in which the record is kept; ~~or (2)~~ or evidence has been introduced sufficient to warrant a finding that the writing is a correct copy of the record or entry; ~~or (3).~~ *Extrinsic evidence of authenticity as a condition precedent to admissibility is not required if:* (1) The office in which the record is kept is within this state and the writing is attested as

a correct copy of the record or entry by a person purporting to be an officer, or a deputy of an officer, having the legal custody of the record; ~~or (4)~~ if (2) the office in which the record is kept is within the United States or territory or insular possession subject to the dominion of the United States and the writing is attested to as required in clause (1) and authenticated by seal of the office having custody or, if that office has no seal, by a public officer having a seal and having official duties in the district or political subdivision in which the records are kept who certifies under seal that such officer has custody; or (3) the office in which the record is kept is in a foreign state or country, the writing is attested as required in clause (1) and is accompanied by a certificate that such officer has the custody of the record is ~~not within the state, the writing is attested as required in clause (3) of this section and is accompanied by a certificate that such officer has the custody of the record.~~ If the office in which the record is kept is within the United States or within a territory or insular possession subject to the dominion of the United States, the certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of the office. If the office in which the record is kept is in a foreign state or country, the which certificate may be made by a secretary of an embassy or legation, consul general, consul, vice-consul, or consular agent or by any officer in the foreign service of the United States stationed in the foreign state or country in which the record is kept, and authenticated by the seal of that office.

Sec. 2. K.S.A. 60-465 is hereby repealed.

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

Approved April 10, 1998.

CHAPTER 104
HOUSE BILL No. 2867

AN ACT concerning crimes and punishment; relating to lewd and lascivious behavior; sexual exploitation of a child; amending K.S.A. 21-3508 and 21-3516 and repealing the existing sections.

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

Section 1. K.S.A. 21-3508 is hereby amended to read as follows: 21-3508. (a) Lewd and lascivious behavior is:

(1) Publicly engaging in otherwise lawful sexual intercourse or sod

5-3

5-3