

Approved: February 17, 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 February 15, 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: Kevin Glendenning, Office of State Bank  
Commissioner  
A.W. Pickle, III - Leader Mortgage Co, Lenexa  
Maurice Barkley, Mortgage Alliance Corporation and  
KS Assoc of Mortgage Bankers  
Karen France - Kansas Realtors Association  
Matt Goddard, Heartland Community Bankers

Others attending: See Attached

**Hearing on SB 241 - Mortgage Banking**

Kevin Glendenning, Office of the State Bank Commissioner and in charge of oversight of mortgage banking, presented testimony which is a product of meetings with the Kansas Association of Mortgage Brokers and their office. This bill would grant the Office of the State Bank Commissioner more oversight of this relatively new and under regulated industry (Attachment 1). Proposed amendments include:

- technical amendments concerning the registration process
- increased accountability and consumer protection matters
- penalties for a noncompliance with the law

This is cited as a Consumer Protection Bill as there are currently mortgage lenders operating in Kansas who are not registered, e.g., those who originate loans and sell them immediately to another company without proof of collateral or appraisal and close in the name of the investor.

A. W. Pickle III, Leader Mortgage Company of Lenexa, said that as a mortgage banker he inventories his own loans (Attachment 2). The industry has grown by "leaps and bounds" as many of the mortgage brokers are from out-of-state and operate without the benefit of on-site buildings. Many such brokers originate sub-prime loans (B & C loans). Hopefully this proposed legislation would hold mortgage brokers more accountable for registration and regulation. Me. Pickle urged the Committee to adopt statutes which would declare the minimal level of education required for such mortgage brokers. He stated that no honest broker would be in opposition to the bill.

Maurice Barkley, President of Mortgage Alliance Corporation and President of the Kansas Association of Mortgage Brokers, reported that most of the mortgage brokers are in the eastern tier of Kansas. The majority are in Douglas, Johnson, Sedgwick, Shawnee, Wyandotte, and Miami Counties. The Association has 107 registered members but when they have educational meetings nearly 170 attend.

The Committee questioned the need to assign county jail time as well as fines for mortgage brokers who do not comply with the proposed legislation. Mr. Glendenning replied that the Office of the State Bank Commissioner needed "the big stick" in order to deter out-of-state mortgage brokers from less than honest transactions. The judge in the case would decide the penalty.

Mr. Glendenning proposed an amendment on page 6, line 34 which would strike "or," strike "or" on line 37 and add "and."

CONTINUATION SHEET

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

Matt Goddard, Heartland Community Bankers Association, commented favorably on the bill which would provide greater regulation and oversight of mortgage bankers and mortgage companies operating in Kansas (Attachment 3).

Karen France, Kansas Association of Realtors, supplied testimony in support of the bill (Attachment 4). She related incidents in which mortgage brokers were asking Realtors to write two contracts, increasing the amount of the contract to cover what would appear to be a second mortgage but the second mortgage is never recorded. He then overwrites the loan to cover the entire contract.

Chairman Steffes closed the Hearing on **SB 241**.

Senator Becker moved that the minutes of February 8, 9, and 10 be approved. Motion was seconded by Senator Corbin. Motion carried.

The meeting was adjourned at 10:00 a.m. The next meeting is scheduled for February 16, 1999.

SENATE FINANCIAL INSTITUTIONS AND INSURANCE  
COMMITTEE GUEST LIST

DATE: Feb. 15, 1999

NAME	REPRESENTING
Judi Stork	OSBC
Kevin Glendening	OSBC
A.W. PICKEL, III	LEADER MORTGAGE CO.
Amy Johnson	OSBC
<del>Marissa</del> / Barkley	Mortgage Alliance Cooperation
Michael Slesky	Federico Consulting
<del>Boyd</del> / <del>Freese</del>	KGC
Tom GACHES	McGill, GACHES & ASSO.
Erik Sartorius	Johnson Co. Board of Realtors
Kathy Olsen	ICBA
Matt Goddard	HCBA
George Barbee	Barbee & Assoc's
Chuck Stones	KBA
KAREN France	Ks. Assn of REALTORS

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Attachment # 1

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

Mr. Chairman and Members of the Committee:

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

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

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

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

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

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Attachment 1

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

To the Senate Banking Committee:

Senators, Guests, and Colleagues in the mortgage industry:

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

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

This legislation builds on what has been done before by 1) allowing the state banking commissioner to have power to remove or fine those few bad apples that could damage our industry. Like any industry that is growing and serving the public, this industry has attracted many new faces. The majority of those are honest, ethical individuals. A few are not. Currently, the law does not allow for the commissioner to do anything. This would change with this bill. In addition, 2) this bill would allow for a minimum standard of entrance into the mortgage industry. Right now, if you wanted to open up your mortgage business tomorrow, all you have to do is register with the state and you are in business. No education requirements, no net worth requirements, no anything. When I started my company and because I wanted to do government loans, I had to put over \$50000 into a corporate account and it had to stay there. I had to have audited financial statements. Not everyone could do that. Albeit a tough hurdle, someone does not do that lightly. When I started, most investors would not buy loans from a broker without a net worth of \$25000. In addition, the investors would not even talk to you without experience as a mortgage loan officer for at least two years. (I learned from Doug Brownlee, husband of Senator Karin Brownlee). The industry policed itself. Today you can obtain a mortgage from a hundred more sources; most of these choose NOT to do government loans, hence no net worth requirements. (example of waiter at a restaurant) Investors will take loans from anyone. There needs to be a minimum floor that does not prevent serious folks from starting a company yet causes anyone entering this business to plan, save, and commit to it financially. You would not expect any less from a bank or savings and loan. Third, 3) this legislation allows a higher standard for out-of-state companies who do not maintain a bona fide office in this state. As you know, some states near us (fortunately not all) like Colorado allow you to become a mortgage broker if you can fog a mirror. Without some restriction on these folks, we will allow a tougher standard on our own people. We need to regulate those who attempt to do everything by phone at the dinner hour or by junk mail in our mailbox.

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

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Attachment # 2

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

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

Thank you,





Matthew S. Goddard, Vice President

700 S. Kansas Ave., Suite 512  
Topeka, Kansas 66603  
(785) 232-8215

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To: Senate Financial Institutions and Insurance Committee

From: Matthew Goddard  
Heartland Community Bankers Association

Date: February 15, 1999

Re: Senate Bill No. 241

The Heartland Community Bankers Association appreciates the opportunity to appear before the Senate Committee on Financial Institutions and Insurance in support of SB 241.

The bill provides greater regulation of mortgage brokers and mortgage companies operating in Kansas. For the first time in 1996, Kansas required these businesses to register with the Office of the State Bank Commissioner. Senate Bill 241 marks the first real attempt at meaningful state oversight.

While the bill does not apply to thrifts, SB 241 is of great importance to our members. Disreputable and shady mortgage companies are able to come into Kansas and conduct business with few checks on their business practices. Many of these companies do not follow federal Fair Lending rules (Regulation Z). This hurts not only legitimate mortgage lenders, but, more importantly, consumers as well.

Kansas has been fortunate in that mortgage brokers have not been a major problem here. We know they have been a serious problem in other states, including Colorado. We applaud SB 241 as a proactive approach by the Commissioner. It should be noted that surety bonds are already required under Nebraska law.

We do not feel the provisions in SB 241 place an unfair burden on legitimate mortgage companies. This bill is an important step in ensuring the public's confidence in the integrity of the Kansas financial services community.

We respectfully request that the Senate Committee on Financial Institutions and Insurance recommend SB 241 for passage.

Thank you.

Senate Financial Institutions & Insurance

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Attachment # 3



Kansas Association of REALTORS®

3644 S.W. BURLINGAME ROAD • TOPEKA, KANSAS 66611-2098  
TELEPHONE 785/267-3610 • 1-800-366-0069  
FAX 785/267-1867



**TO: SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE**

**FROM: KAREN FRANCE, DIRECTOR OF GOVERNMENTAL AFFAIRS**

**DATE: FEBRUARY 15, 1999**

**SUBJECT: SB 241, REGULATION OF MORTGAGE BUSINESS ACTIVITY**

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

Real estate brokers who have escrow accounts have very clear rules in the Kansas Real Estate Salespersons and Brokers Act regarding money placed in those escrow accounts. There are rules for when the money must be deposited and when it can be disbursed. On page 7, in New Section 12, at line 37, this bill requires deposits be made within 3 days of receipt, but it does not place restrictions on when the money can be disbursed. This is something you may want to consider.

You may also want to consider the impact of the high level of mortgage activity that is being solicited on the Internet. On page 5 at line 31 the bill requires that "the registrant shall identify that such registrant is registered under this act in all advertising or solicitation directed to Kansas residents." Would this mean mortgage businesses advertising on the Internet would have to provide a list of the states they are registered or licensed in? The ones I have seen do not currently do this? How will this be enforced?

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

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

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

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

We respectfully ask for your support of the legislation.

Senate Financial Institutions & Insurance

REALTOR® is a registered mark which identifies  
Code of Ethics as a r

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Attachment # 4