

## MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS.

The meeting was called to order by Chairperson Ray Cox at 3:30 p.m. on January 19, 2000 in Room 527-S of the Capitol.

All members were present except: Representative Bruce Larkin - Excused  
Representative Bonnie Sharp - Excused

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

Conferees appearing before the committee: David Brant, Securities Commissioner  
Bill Sneed, Conesco Financial Services  
Representative Gwen Welshimer  
Kathy Olsen, Kansas Bankers Association  
Franklin Nelson, Bank Commissioner

Others attending: See attached

Chairman Cox introduced Representative Ray Merrick, and welcomed him as a new member on the committee this year.

Chairman Cox opened the floor for introduction of bills and recognized Securities Commissioner David Brant.

**Commissioner Brant** handed out a history and summary of the Office of the Securities Commissioner and gave a brief overview of it. He introduced Angela Cichocki who is the new full-time Director of Investor Education. As of January 1, 2000, there is a new competency exam, developed by State Securities Commissioners, which is required nationwide. All new applicants for Investment Advisor Licenses need to take the exam. It is similar to the stock brokers exam but also covers a number of other areas including tax questions, ethics and financial planning type questions. It more closely reflects the actual work that most investment advisor do. He referred to a joint letter from him and the Insurance Commissioner to all Kansas Insurance Agents involving viatical settlement contracts and the joint cooperation of the two agencies in helping the agents handle them properly. (**Attachment 1**) He then submitted a request for a bill to be introduced which would make several technical amendments to the Kansas Securities Act. The purpose of the bill is functional regulation. The amendment expands the definition of "securities" to include variable annuities and it provides for shared jurisdiction with the Insurance Commissioner. (**Attachment 2**)

Representative Helgerson made a motion for the committee to introduce this legislation. Representative Humerickhouse seconded the motion. The motion carried.

Chairman Cox recognized **Bill Sneed**, Legislative Council, Conesco Financial Services, Inc. who requested a bill be introduced amending two statutes in the Uniform Commercial Credit Code (UCCC). Both deal with the applicability of UCCC on manufactured housing. (**Attachment 3**)

Representative Helgerson made a motion for the committee to introduce this legislation. Representative Grant seconded the motion. The motion carried.

Chairman Cox recognized **Representative Gwen Welshimer** who pointed out to the committee that private landowners, who subdivide and sell lots in high risk situations, are limited to 8% interest (unless they know how to write their mortgage contracts subject to the uniform commercial code). Current law on Real Estate Loans caps interest rates at 18% for banks, credit unions and Consumer Loan companies. In order to treat private landowners fairly, she requested the committee introduce legislation which would raise their allowable interest rate to the same 18% allowable to financial institutions. (**Attachment 4**)

Representative Helgerson made a motion for the committee to introduce the legislation. Representative

CONTINUATION SHEET

MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS, Room 527-S Statehouse, at 3:30 p.m. on January 19, 2000.

Vickrey seconded the motion. The motion carried.

Chairman Cox recognized **Kathy Olsen**, Kansas Bankers Association, who made a request to amend a bill which was introduced last year that dealt with "good funds". She requested the words "teller's checks" be added to that legislation. (**Attachment 5**)

Representative Helgerson made a motion that the committee introduce the legislation. Representative Tomlinson seconded the motion. The motion carried.

Chairman Cox recognized our new State Bank Commissioner, **Franklin Nelson**, who requested introduction of two items of legislation. The first item would amend the Consumer Credit Code to address clean up issues related to last year's revisions. The second request is to amend K.S.A. 9-1114 which addresses the annual stockholders' meetings for banks and trust companies. It allows them to be called for and held at any time during the year. (**Attachment 6**)

Representative Grant made a motion that the committee introduce both pieces of legislation. Representative Helgerson seconded the motion. The motion carried.

**Commissioner Nelson** gave an overview of the Bank Commissioner's Office. The consolidation of the Office of the State Bank Commissioner and the Office of the Consumer Credit Commissioner took place on July 1, 1999. It resulted in the separation of duties into two divisions within the OSBC. They are the Division of Banks and Trust Companies and the Division of Consumer and Mortgage Lending. Overall things are running smoothly. However, with the increased enforcement powers and penalties granted by the legislature last year, there is a need for 5 additional Full Time Equivalent (FTE) examiners positions. He hopes the legislature will be supportive of his office's request for increased budget authority to fill them. (**Attachment 7**)

The meeting adjourned at 4:05 p.m.

The next meeting is scheduled for January 26.





# KANSAS

Bill Graves  
Governor

OFFICE OF THE SECURITIES COMMISSIONER

David Brant  
Commissioner

Legislative Update  
January 19, 2000

## 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

27.8 Total FTEs: 1 Commissioner, 4 Attorneys, 8 Investigators (certified law enforcement), 2 Certified Public Accountants, 6 Examiners (auditors), 1 Office Administrator and 4.8 Support Staff. Six of the staff work out of the agency's branch office in Wichita.

	<u>FY 1998</u>	<u>FY 1999</u>
Beginning Fund Balance	50,102	49,507
Revenues	7,080,110	7,651,891
Expenditures	1,756,460	1,863,909
Transfer to General Fund	5,323,752	5,787,489
Ending Fund Balance	50,000	50,000
Authorized Budget	1,787,378	1,899,959

*House Financial Institutions*  
*1-19-00*  
*Attachment 1*

### 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:** Our agency reviews 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.

	<u>FY 1998</u>	<u>FY 1999</u>
Registration reviews	112	76
Exemption filings	364	372
New mutual fund filings	1,449	1,360
Renewal mutual fund filings	4,858	5,341
Deficient offerings withdrawn	44	28

**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.

Broker Dealer Firms	1,517	1,593
(based in Kansas)	39	37
Broker Dealer agents	56,416	63,871
Investment Adviser firms	602	633
(based in Kansas)	174	168
Investment Adviser representatives	1,538	1,539
Broker Dealer exams	21	33
Investment Adviser exams	19	59
License Applications Withdrawn	176	208
License Denials or Revocations	5	8

**Enforcement:** Our agency has investigators and attorneys that investigate and prosecute fraud, "white collar crime," and unregistered activity. Current enforcement cases include prime bank investments, promissory notes, viatical settlements, internet offerings, telephone solicitations, in addition to the usual variety of pyramid and Ponzi schemes.

Cases investigated	160	172
Administrative Orders	152	232
Criminal Convictions	31	12
Fines	\$21,875	\$42,000
Restitution and Rescission	\$2,400,974	\$6,284,510

**Investor Education:** In October, Angela Cichocki joined the agency as the full-time Director of Investor Education. Our agency continues to place Yellow Page ads 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. Our staff is available to make presentations at senior fairs, service clubs meetings, and schools.

The agency continues to provide \$20,000 annually to the Kansas Council on Economic Education ("KCEE") to sponsor *The Stock Market Game*.

	<u>FY 1998</u>	<u>FY 1999</u>
Telephone directories with Yellow Page Ads	2,000,000	2,164,100
"Investor Hotline" 800 calls	1,870	2,133
Speeches/Seminars/Booths	44	30
Internet Website "visits"	6,271	8,000

### **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 ("SROs") such as the National Association of Securities Dealers (the "NASD").

### **Recent Developments**

In November, the Gramm-Leach-Bliley Act (S.900) was enacted in order to modernize the delivery of financial services by removing depression-era barriers that separate banking, securities, and insurance functions. A summary of the bill is attached.

### **Proposed 2000 Legislation**

The House Financial Institutions Committee is being asked to introduce a bill to amend the definition of "securities" to include variable annuities and to provide for shared jurisdiction with the Insurance Commissioner.

### **Exhibits**

Press Clip: "New Investment Adviser Exam Requirements"  
Policy Statement for New Investment Adviser Exam Requirements  
Press Clip: "State to regulate life insurance trades"  
Joint letter regarding Viatical Settlements  
Various Press Clips  
    "Topeka brokerage firm must pay after employee fraud"  
    "Investors get warning" (Wade Cook Seminars)  
    "Commissioner helps state lead the way in protecting investors"  
    "Civil suits filed against pyramid participants"  
Financial Services Overhaul: Summary of the Gramm-Leach-Bliley Act of 1999

### **Handouts**

Magnifying ruler: "Investigate Before You Invest"  
Pamphlet: "Investing in a Viatical Settlement"

**Office of the Securities Commissioner  
Statewide Press Release  
Distributed via Kansas Press Association  
December 28, 1999**

Press Clipping Division  
Kansas Press Assn., Inc.  
5423 SW 7th Street  
Topeka, Kansas 66606-2330

KANSAS  
Russell Daily News  
D. 2,901

JAN 03 2000

## **New Investment Advisers Must Take Competency Exams Jan. 1**

TOPEKA — Starting Jan. 1, new investment adviser representatives applying for a license in Kansas will have to take a new "competency exam" to show that they know what they're talking about. In general, money managers and financial planners that provide investment advice need to obtain a license as an investment adviser.

The new exam consists of 130 questions, which will cover economics, investment products, investment strategies, and ethics. This exam replaces Kansas' current requirements, which include the 75-question Series 65 exam, which focused mainly on securities law. Applicants will have 180 minutes to complete the new exam, which will cost \$110.

"The number one goal of the exam is to achieve a higher level of investor protection," said David Brant, Kansas Securities Commissioner. Brant noted that investment advisers are one of the fastest growing segments of the financial services industry.

Kansas has issued licenses to 1,539 investment adviser representatives and 63,871 stockbrokers from across the country. By contrast, there are an estimated 125,000 investment adviser representatives and more than 500,000 stockbrokers nationwide.

Kansas, and at least forty-one other states, will adopt the new exam, which was developed by the North American Securities Administrators Association (NASAA). Practicing investment advisers with professional certifications, such as Certified Financial Planner (CFP) and Chartered Financial Analyst (CFA), will be exempt from the new testing requirement.

For more information about the new exam requirements, prospective investment advisers can call the Kansas Securities Commissioner's Office at 785-296-3307 or visit the NASAA web site at [www.nasaa.org](http://www.nasaa.org).

**Office of the Kansas Securities Commissioner**  
**Investment Adviser Examination Requirements**  
**January 1, 2000**

(A) EXAMINATION REQUIREMENTS. An individual applying to be registered as an investment adviser or investment adviser representative under the Act shall provide the Commissioner with proof of obtaining a passing score on one of the following examinations:

- (1) The Uniform Investment Adviser Law Examination (Modified Series 65 examination); or
- (2) The General Securities Representative Examination (Series 7 examination) and the Uniform Combined State Law Examination (Modified Series 66 examination).

(B) GRANDFATHERING.

- (1) Any individual who is registered as an investment adviser or investment adviser representative in any jurisdiction in the United States on the effective date of this Rule shall not be required to satisfy the examination requirements for continued registration, except that the Commissioner may require additional examinations for any individual found to have violated any state or federal securities law.
- (2) An individual who has not been registered in any jurisdiction for a period of two (2) years shall be required to comply with the examinations requirements of this Rule.

(C) WAIVERS. The examination requirement shall not apply to an individual who currently holds one of the following professional designations:

- (1) Certified Financial Planner (CFP) awarded by the International Board of Standards and Practices for Certified Financial Planners, Inc.;
- (2) Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania;
- (3) Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;
- (4) Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts;
- (5) Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.; or
- (6) Such other professional designation as the Commissioner may by rule or order recognize.



# State to regulate life insurance trades

The Associated Press

**T**he state is getting more aggressive in regulating the relatively new business of trading life insurance policies for the terminally ill as investments.

A new Kansas law deals with instances in which the terminally ill sell their life insurance policies for less than their face value to raise money to pay expenses. Companies buying the policies turn around and sell them to investors, who collect on the policies when their original holders die.

The new law requires companies that sell other people's life insurance policies as investments to register their products with the state securities commissioner.

The same law requires people who deal in such investments to be licensed both as securities dealers

and insurance agents.

Also, Insurance Commissioner Kathleen Sebelius and Securities Commissioner David Brant are stepping up their efforts to publicize the law and to provide information to consumers. Sebelius and Brant had a Statehouse news conference Wednesday.

"We want to urge consumers and the industry to proceed with caution," Sebelius said.

Neither the Insurance Department nor Brant's office know how many life insurance policies' death benefits are being traded as investments in Kansas.

Brant told reporters his office knows of \$5 million worth but added, "I suspect it could be double that — easily."

The new Kansas law took effect July 1. It is known as the Viatical Settlement Act, after the industry term for the investments.



Kathleen Sebelius  
Commissioner of Insurance  
**Kansas Insurance Department**

David Brant  
Securities Commissioner  
**Office of the Securities Commissioner**

July, 1999

To Kansas Insurance Agents:

We are aware that insurance agents licensed and located in Kansas are being solicited to sell viatical settlement contracts. Under this sort of contract, a terminally ill person sells the death benefit in his life insurance policy in return for cash, which can be used for current expenses. Although this arrangement may provide some real benefits to the terminally ill insured, it can also create serious problems for the individuals that buy and sell the contracts.

As the sale of viatical settlements becomes more widespread, so do the problems associated with them. Defaults on policy premium payments, medical developments that increase life expectancies of the terminally ill, incompetence of promoters, and even fraud are just a few of the problems you may be selling your clients—and taking on for yourself.

#### **Viatical Settlement Contracts Are Considered Securities in Kansas**

Promoters of viatical settlement contracts, who solicit agents like you to sell them, often claim that these investments are not securities and that agents need not inform their broker-dealers of their activities or check with the Securities Commissioner before selling the investments. They make that claim based on a federal appeals court decision, commonly referred to as the *Life Partners* case.

You should not infer from the *Life Partners* case, however, that viatical settlement contracts sold in Kansas are not considered securities. The issues raised in the *Life Partners* case are far from settled. Only one federal appeals court has issued an opinion on the case; the Tenth Circuit, the federal appeals court that governs Kansas, has yet to rule on the issue. Given that many states and legal scholars disagree with the *Life Partners* opinion, one should not assume that the Tenth Circuit or the United States Supreme Court would affirm it. In any case, the *Life Partners* opinion is not binding on the Securities Commissioner of Kansas.

The Securities Commissioner of Kansas takes the position that most viatical settlement contracts meet the definition of an investment contract and are thus securities under the Kansas Securities Act (“the Act”). In the past year, the Office of the Securities Commissioner has investigated 14 cases involving the sale of unregistered securities by viatical companies, promoters, and agents.

If the viatical products that you wish to sell, or are selling, are in fact securities, you may violate not only the Act’s securities registration requirements, but also the prohibition against selling securities without a license. Even if you are licensed to sell securities, you may violate the prohibition against “selling away”—that is, the prohibition against selling securities that have not been approved for sale by the broker-dealer by which you are employed. You must have the permission of your broker-dealer to sell any security. Selling away, in effect, constitutes selling without a license.

420 SW 9th Street  
Topeka, Kansas 66612-1678  
785-296-3071  
1-800-432-2484 (Toll Free)

618 S. Kansas Avenue  
Topeka, Kansas 66603-3804  
785-296-3307  
1-800-232-9580 (Toll Free)

You should not rely on a viatical company to determine whether the investments you are selling are securities. You have the ultimate responsibility for knowing whether what you are selling is a security and ensuring that any sales of securities are made in compliance with Kansas law. Any of the violations described above could make you financially liable for rescinding the transactions and subject to regulatory sanctions by the Securities Commissioner. You should also understand that a violation of either the registration or antifraud provisions of the Securities Act may subject you to criminal prosecution for a felony.

#### Sellers of Viatical Settlement Contracts Must Follow Applicable Consumer Protection Laws

We are also concerned that viatical settlement contracts are not suitable investments for many of the investors to whom they are being sold. As with any investment, you as the seller must consider factors such as age, financial situation, and investment objectives of your client. Failure to do so may subject you to liability.

We are aware that some sellers of viatical settlement contracts have misled investors regarding the safety and return of the investment. Making misleading statements or material omissions of fact in the offer and sale of securities is fraud. Moreover, even if the viatical settlement contracts that you sell are not securities, making misleading statements or material omissions of fact in the offer and sale of those contracts would violate the Kansas Consumer Protection Act.

#### Sellers of Viatical Settlement Contracts Must Follow the Requirements of the Viatical Settlements Act

The Kansas Legislature recently passed Senate Bill No. 151, the Viatical Settlements Act, which will become law on July 1, 1999, and was sponsored by the Kansas Insurance Department. This act has many requirements that you must follow to solicit viatical settlement contracts in Kansas. These requirements include:

- **License.** You must obtain a license from the Insurance Commissioner to solicit viatical settlement contracts. The Commissioner can deny or revoke a license for a variety of reasons, including dishonest or fraudulent acts or a pattern of unreasonable payments to insureds.
- **Privacy.** You may not disclose the identity of the insured to anyone except under certain narrow circumstances defined in the Act. The Act also tightly controls who may contact the insured and the frequency of those contacts.
- **Disclosures.** You are required to disclose extensive information to the insured, including but not limited to the alternatives to selling the policy, warnings about the tax consequences and other consequences of selling the policy, the insured's right to rescind the sale within 15 days, the total dollar amount of the death benefit payable to the viatical provider, and certain information regarding the financing of the settlement.
- **Documentation.** To complete the sale of a viatical settlement contract, you or the viatical provider must obtain a statement signed by a licensed physician stating that the insured is of sound mind and is an otherwise appropriate candidate for a viatical settlement contract.

To Kansas Insurance Agents  
July, 1999  
3 of 3

This is merely an overview of some of the requirements of the Viatical Settlements Act. You are responsible for learning and following all the details of the Act. Failure to do so will result in administrative action by the Insurance Commissioner. And keep in mind, the Viatical Settlements Act does not affect the separate authority of the Securities Commissioner to regulate the sale of investments in viatical settlements under the Securities Act, as described above.

We urge you to contact both the Office of the Securities Commissioner and the Kansas Insurance Department before you sell any viatical settlement contracts in or from Kansas. The best way to avoid financial problems, embarrassment, and sanctions is to check out any investment before you sell it. Do not hesitate to contact us if you wish to discuss this matter, either generally or regarding a particular viatical product.

Very truly yours,

KATHLEEN SEBELIUS  
Insurance Commissioner

DAVID BRANT  
Securities Commissioner

# BUSINESS

Morgan Chilton Business Editor 295 1287, e-mail biz@cjonline.com

SECTION

C

1-10

Friday, April 9, 1999

THE TOPEKA



CAPITAL-JOURNAL

www.cjonline.com/business

## Topeka brokerage firm must pay after employee fraud

Broker forged clients' names on checks to himself.

By JONNA LORENZ  
The Capital-Journal

**A**Topeka brokerage firm was issued an order of censure and a \$10,000 fine by Kansas Securities Commissioner David Brant for several supervision failures. Allegations against Fahnestock & Co. Inc., 534 S. Kansas Ave., stem from a criminal conviction of former Fahnestock employee Steven A. Wages, who was charged in April 1997 with

misappropriation of customers' funds. Wages pleaded guilty to two felony counts of securities fraud and was ordered to pay \$97,353 in restitution.

The office of the securities commissioner took administrative regulatory action against Fahnestock once the case against Wages was settled, Brant said.

"The basis of the charge is, had the firm's procedures been more adequate, the firm would have caught him (Wages)," Brant said.

A settlement was reached without a hearing, and a consent form was signed in January censuring Fahnestock and its Topeka branch manager Terry M. Beeman and ordering the company to pay a \$10,000 fine. It is

stipulated that Fahnestock and Beeman neither admit nor deny the allegations of failure to supervise. Fahnestock also was required to negotiate settlements with customers' who were affected by the fraud.

"Changes have been made to firm security procedures that more than adequately address the unfortunate occurrence," Beeman said.

From May 1990 to October 1995, Wages caused checks to be drawn on customers' accounts without the customers' authorization, according to paperwork filed by Brant to invoke administrative sanctions. Wages then forged the customers' signatures and deposited the checks in his personal

checking account. About 30 checks amounting to more than \$90,000 were misappropriated.

The Office of the Securities Commissioner files charges in about five to 10 cases a year relating to brokers converting customers' funds, Brant said.

"It is common practice for us to review the whole case and see whether or not the company could have done something differently," he said.

About one to five of those cases result in charges against brokerage offices for supervision problems, he said.

The investigation of Wages and Fahnestock was spurred by a customer complaint, Brant said.

He advises investors to monitor

their investment accounts for unauthorized transactions, ask questions, and complain quickly and in writing when they discover a problem. Complaints should be addressed to the brokerage firm first and then to the securities commissioner if the problem isn't addressed quickly.

"We encourage investors to keep good records of their investments and keep their monthly statements," Brant said.

The Office of the Securities Commissioner regulates and monitors the offering and sale of investments and investment advice. The agency investigates complaints relating to fraud and dishonest practices and seeks to protect and inform Kansas investors.

Press Clipping Division  
Kansas Press Assn., Inc.  
5423 SW 7th Street  
Topeka, Kansas 66606-2330

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KANSAS  
Metro News  
Topeka  
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JAN 27 1992

## Topeka multi-level promoter fined for alleged securities violations

Securities Commissioner David Brant has issued a consent order naming Renaissance Designer Gallery Products, Inc., and collected a \$10,000 fine from Michael C. Cooper, Renaissance's President and CEO. The Securities Commissioner's order recites that Renaissance and Cooper neither admit nor deny allegations of the sale of unregistered securities and securities fraud.

Renaissance sells various products including jewelry, art and collectibles, and gourmet food through a nationwide network of independent marketing representatives from its offices at 1001 SW Gage Boulevard in Topeka. Renaissance also has a separate network marketing division called Advantage International Marketing (referred to as "AIM") to market tax, business, and accounting services to home-based businesses.

Without admitting or denying the allegations, Renaissance has agreed to rescind the offer of company stock to 1,196 independent marketing associates. The total amount of the rescission with interest is estimated at \$65,000. The Securities Commissioner's staff alleged that the stock offering was unregistered and contained representations and that Cooper offered the stock to network participants as an incentive to recruit additional marketing associates.

Commissioner Brant noted that the alleged securities violations were not related to the multi-level marketing structure of the company or its products. Brant encourages investors to "Investigate Before You Invest" and offers an advice pamphlet on multi-level marketing programs which is available by calling 1-800-232-9580.

# Investors get warning

By CHRISTIE APPELHANZ  
The Capital-Journal

**K**ansas Securities Commissioner David Brant on Friday cautioned consumers against taking the advice of a self-proclaimed get-rich-quick guru who claims he can teach novice investors how to make up to \$5,000 a month in the stock market.

Attorney General Carla Stovall joined Brant in his warning.

The Wade Cook Financial Corp., which is headed by taxi-driver-turned-millionaire Wade Cook, hosted a free financial clinic Friday in Topeka. A similar seminar is scheduled for today in Wichita.

*"It's risky.  
You've got  
to under-  
stand that  
going in."*

— DAVID BISEL,  
Topeka investor

Newspaper advertisements for the seminars state in bold print, "This education could change the course of your life." Cook's ads promise to teach seminar participants "the strategies I used to become a millionaire several times over."

However, Brant said Cook's company is under investigation in 17 states, including Kansas, for failing to adequately disclose the

risks involved in the trading strategies it touts.

"Investors pay for pricey seminars and merchandise but often lose more money when they try to use the high-risk strategies taught at the seminars," Brant said. "Wade Cook inappropriately gives novice investors high-risk investment advice, the same advice that caused his corporation to lose hundreds of thousands of dollars."

In 1998, the Texas attorney general sued Cook for alleged deceptive and misleading practices. The suit alleges that while the company made \$104 million in 1997 — mainly from the sale of books, tapes and seminars — it lost more than \$800,000 using Cook's trading strategies in a year the Dow Jones industrial average rose 23 percent.

Eric Rodriguez, a spokesman for Wade Cook Financial in Seattle, said the business recouped its 1997 losses in 1998.

During Friday's three-hour seminar at the Days Inn Capital Center, 914 S.E. Madison, Kirby Guinn, a Wade Cook instructor, guided 20 participants through various

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## Investors

Continued from page 1-A

"cash flow strategies," such as rolling stock and covered calling.

"I used to work 40 hours a week for peanuts, you know," Guinn said during his presentation. "Why don't any of the financial planners teach you this? I was ticked off that nobody ever told me this stuff."

Guinn told the group he turned \$6,000 into \$60,000 in four weeks using Cook's formulas — a feat he claimed to have repeated three or four times since October. However, he cautioned seminar participants they should take a more conservative approach to protect their seed money.

Guinn declined to respond to the warnings issued by Stovall and Brant, saying only that, "Wade is always getting another hit."

Rodriguez said he was disappointed the state issued the warning. He said of the 46 states the company holds seminars in, only one other state has attempted to deter participation at the events.

"I don't feel they fully understand the nature of our business or what we do," he said. "We don't give investment advice period, nor do we sell any securities at our seminars. We are an education company, not an investment company."

Brant said the firm poses as an education company as a tactic to avoid securities laws, hesitating to say more about its tactics because of an ongoing investigation by his

office and the attorney general.

Throughout the Topeka seminar, Guinn passed out copies of Cook's book titled "Cash Flow and Beyond" but never attempted to sell any book or tapes. He did, however, encourage participants to pay \$5,695 to attend the Wall Street Workshop, a 2½-day seminar scheduled for Aug. 19, 20 and 21 in Kansas City, Mo.

"If you're learning this much right now, gang, how much more are you going to learn at the Wall Street Workshop?" he asked.

Rodriguez said 60,000 people have attended the Wall Street Workshop, adding that 30 percent of them were satisfied enough to refer friends and acquaintances to Cook.

Steve Gaylor, a Topeka certified public accountant who attended Friday's seminar, said he was skeptical of the get-rich-quick claims even before he was informed of the warnings from Stovall and Brant.

"The last eight years all stocks have gone up. Will it work in a changing economy?" he asked.

Still, Gaylor said the principles taught at the seminar were financially sound.

David Bisel, a Topeka resident who said he has lost money in the stock market recently, has been to three Wade Cook seminars. Although he wasn't convinced to pay for the Wall Street Workshop, he said the information presented Friday complemented the knowledge he has gained from reading books and the Internet.

"It's a good seminar," he said. "You can make a lot, you can lose a lot. It's risky. You've got to understand that going in."

1-12

Tuesday, September 21, 1999

THE TOPEKA



CAPITAL-JOURNAL

www.c

## Commissioner helps state lead the way in protecting investors

By CHRISTIE APPELHANZ  
The Capital-Journal

**D**avid Brant was put in charge of protecting Kansas investors from securities fraud at a time when technological advances have driven more change in the industry than any other period in history.

But despite new investor protection problems created by such things as electronic trading, the Kansas securities commissioner said some things never change.

In a recent interview, Brant referenced a Saturday Evening Post article from 1911 about the sale of fake and wildcat securities in Kansas, saying the types of scams haven't evolved over the decades.

"Just change the dollar amounts," he said.

Kansas became the first state to regulate the securities industry by passing the Kansas Securities Act in 1911. The law, which became a nationwide model, was an attempt to prevent the sales of securities that

had nothing behind them other than the "blue sky."

Smooth-talking salesmen in the early 1990s convinced one Kansan to invest in a "magnificent" tract of land

that was about to become irrigated in New Mexico. But after the investor saw no returns coming in, he went to the site and discovered it was so remote that the only way to irrigate it would be from the moon.

More recently, Kansans have fallen prey to smooth-talking telemarketers who capitalize on headlines on the

year 2000 problem, Asian currency crisis and technology breakthroughs.

"The best source we have is to tell you who not to deal with," Brant said.

Fortunately, Kansas was a leader in 1911 and has continued that tradition, said Jim Parrish, a former state securities commissioner. "It just seems everything is operating smoothly under David Brant," he said.

Brant wants to keep it that way. Phone calls to the office of the securi-

### PERSONAL BUSINESS

**Name:** David Brant

**Age:** 40

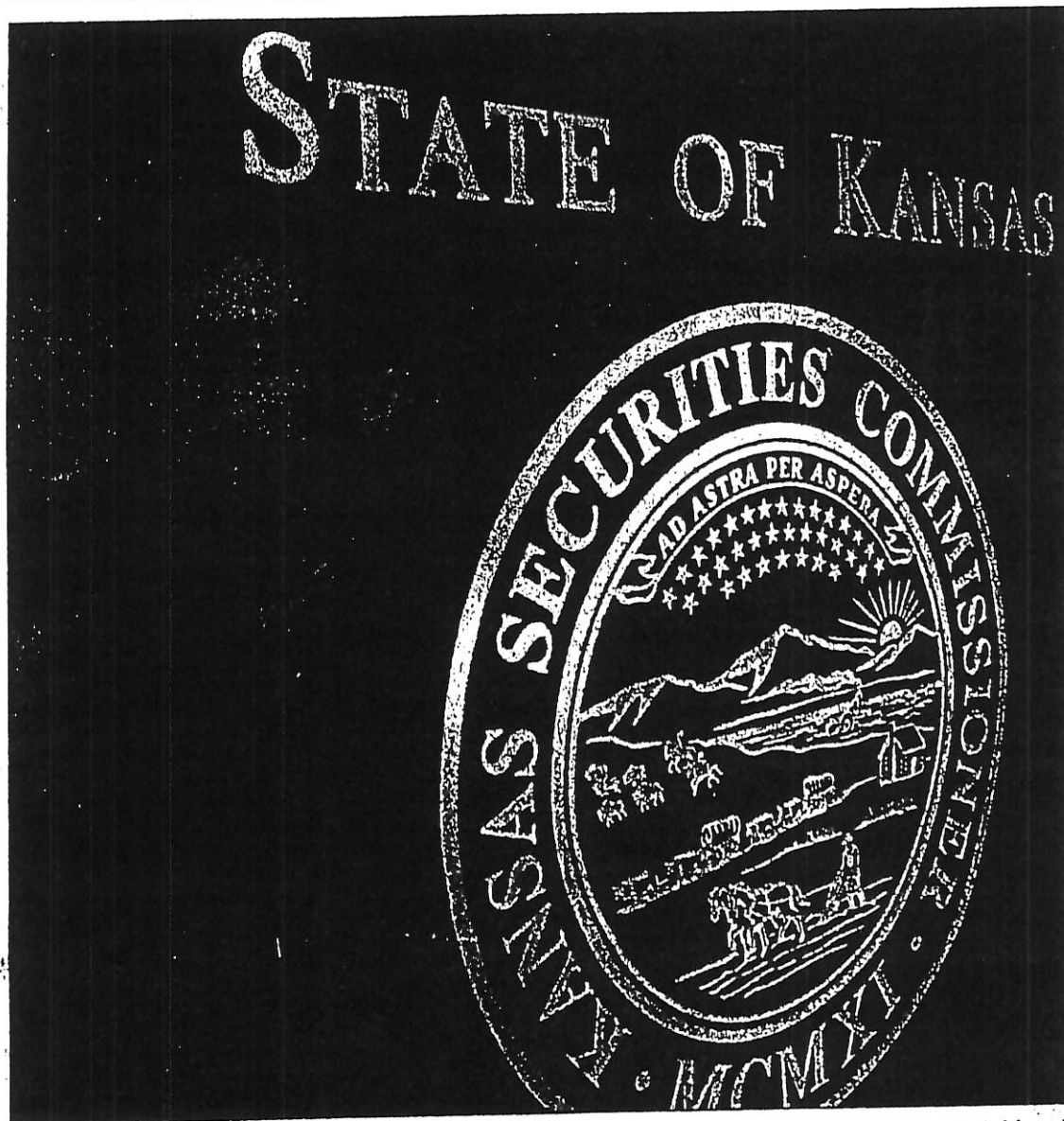
**Position:** Securities commissioner of Kansas

**Education:** Bachelor's degree in business administration, Washburn University, 1981; juris doctorate, Washburn University School of Law, 1983

**Family:** Married to Deba Brant; three children: Samantha, 10, John, 8, Alexandria, 3

**Quote:** "People's sensitivity to risk has been lessened by the fact we have been spoiled by good markets."

Continued on page 3-C, col. 1



— Chris Ochsner/The Capital-Journal

David Brant oversees the trading business in Kansas as the state securities commissioner. Since his appointment in 1996, Brant has tried to make his position more visible to the public.

1-13



# Commissioner

Continued from page 1-C

ties commissioner have increased as the number of investors has doubled during the past few years.

"People's sensitivity to risk has been lessened by the fact we have been spoiled by good markets," Brant said. "Many investors now are less sophisticated and ripe targets for scams and fraud. All new investors are only used to the stock market going up."

But ask everyone from Brant's peers to those he regulates to assess his job performance amid the challenges, and the word "competent" comes up repeatedly. Many credit his experience, which includes 12 years as an investment banker underwriting municipal bond issues and vice president of public finance for the former Bank IV.

"It's not one thing, just the manner he has done his job," said Joe Pierce, a Topeka Piper Jaffray investment

executive. "He has tried to keep the securities scene clean with exactly what we needed."

While there have been only a handful of complaints about Internet-related swindles, high-priced investment seminars, viatical investment scams and pyramid schemes are more abundant than ever.

"The bull market is now in its eighth year," Brant said. "Things look so easy."

That is why Brant has used the Kansas Securities Commissioner's office as his classroom since his appointment in April 1996.

"If everything goes wonderfully, we'd be out of a job in a few years," he joked.

The education effort began with yellow pages advertisements urging the public to check the background of brokers and advisers by calling an 800 number. Brant is preparing to add a full-time director of investment education to his staff of 29, will launch a new high school curriculum and has loaded the agency's Web site with tips for safe investing.

"Investor education is really important, and David just gets it," said Marc Beauchamp, North American Securities Administrators Association spokesman.

In addition to his securities duties, Brant served as the Consumer Credit Commissioner for 13 months ending in June. He was instrumental in the July 1999 merger of Consumer Credit with the Banking Department and in drafting Senate Bill 301, which amends the consumer credit code to prohibit abusive practices in sub-prime home equity loans.

Back on the job as securities commissioner, Brant is continuing to make the office more customer-service oriented. He frequently answers the office phones after 5 p.m. and speaks at service clubs in an effort to be more visible than past commissioners.

"David Brant is a true champion of the consumer," said Gov. Bill Graves. "He's a watchdog for integrity and fairness, and the people of Kansas are fortunate to have him on their side."

People Helping People News Releases  
Issued November 4, 1999

Newspapers:

Wichita Eagle  
Salina Journal  
Kansas City Star  
Hutchinson News (also on website)  
Winfield Courier

HUTCHINSON NEWS

# LOCAL & STATE

A3  
Thursday  
November 4, 1999

## Five Hutchinson residents among 36 state is suing for pyramid investment scheme

Securities commissioner files 2 separate suits in Shawnee County

From staff and wire reports

Five Hutchinson residents are among 36 individuals being sued by the state over what officials allege was an illegal pyramid investment scheme they operated in 1996 and 1997.

Securities Commissioner David Brant has filed two separate lawsuits in Shawnee County District Court.

One names 15 defendants and the other lists 21 defendants.

The five Hutchinson residents are Robert Caswell, 734 East 6th; Darren Cook, 3800

Olympic Lane; Julie and Randy Cook, 905 West 4th; and Bart LaGreca, 3004 Sierra Parkway.

The defendants allegedly participated in a program called "People Helping People," which billed itself as a retirement investment plan. It also was called "Friends Helping Friends," "The Support Network" and "The Board Game."

People paid \$2,000 to become one of eight "volunteers" in the plan. Each plan had four vice presidents, two presidents and one CEO.

The \$16,000 collected from the volunteers went to the CEO, who then "cashed out."

The remaining participants split into two groups and advanced a level, recruiting more volunteers.

The securities commissioner alleges the program was a fraudulent pyramid scheme.

The lawsuits, both filed Oct. 22, also said participants in the program were, in effect, unlicensed brokers selling securities without a state license.

In addition, they noted that 13 of the defendants have been fined \$2,500 each and so far have refused to pay the fine.

Brant's office also hopes to confiscate \$1.8 million in profits generated by the program.

Fourteen of the defendants are from Wichita; four from Derby; three from Augusta, three from Douglass; two from Goddard; two from Mulvane; one from Cheney; one from Wellington; and one from Dakota Dunes, S.D.

**People Helping People News Releases  
Issued November 4, 1999**

**Television Coverage:**

**KS Securities Commissioner**

*Prepared 11/8/99 by Central States Media*

Report Range: 11/1/99 - 11/7/99

*Strategic Media Services For Business*

Phone: (316) 684-4049

ReportTopics: ~\securities\pyramid\scheme\scam\helping people\brant\

Fax: (316) 685-3354

<u>Program</u>	<u>Clip Type</u>	<u>Time In/Length</u>	<u>Description</u>
<b>Thursday, November 04, 1999</b>			
<b>Wichita, KS</b>			
<b>03 KSNW</b>			
6:00 AM	VO Graphic	00:33:35 / 00:00:31	The state of Kansas is suing dozens of people claiming that they were running an illegal pyramid investment scheme. The scheme went by several names one called people helping people.
<i>Segment E6 of Kansas Today</i>			
12:00 PM	VO Graphic	00:05:25 / 00:00:21	The state is cracking down on a retirement plan that was actually a pyramid plan.
<i>Segment A10 of KSN News at Noon</i>			
5:00 PM	VO Graphic	00:02:04 / 00:00:30	The state is cracking down on an illegal pyramid operation. David Brant is filing suit against at least 35 people involved in the organization.
<i>Segment A2 of KSN News First News</i>			
<b>10 KAKE</b>			
6:00 AM	Reader	00:36:04 / 00:00:25	The state of KS says a group called People Helping People is really a scam involving pyramid schemes.
<i>Segment E4 of Good Morning Kansas</i>			
<b>12 KWCH</b>			
6:00 PM	Reporter on Set	00:04:48 / 00:02:33	The KS Securities Commissioner has filed a lawsuit against 36 people for running an illegal pyramid scheme in 1996 and 97. SB: Doug Roth, Sedg. Co. Deputy District Attorney SB: On the phone: David Brant, Securities Commissioner
<i>Segment A5 of Eyewitness News at 6</i>			

# Financial Services Overhaul

After decades of failed efforts, Congress cleared a bill (S 900) on Nov. 4 to rewrite the laws governing banks, brokerages and insurers. President Clinton signed it Nov. 12 (PL 106-102). The law lifts restrictions on cross-ownership among the industries and establishes a new regulatory framework for maintaining the safety and stability of the financial industry.

The measure drew relatively little public attention, but it is bound to rank among key laws enacted by the 106th Congress. It repeals key provisions of the 1933 Glass-Steagall Act, which erected barriers between the banking and securities industries, and the 1956 Bank Holding Company Act (PL 84-511), which imposed barriers between banking and insurance activities.

A consensus had emerged in Congress in recent years that the laws were outdated and that widespread financial collapse could be averted through less restrictive regulations. Bill supporters argued that repealing the barriers

would improve customer service by offering one-stop shopping for financial products and would help U.S. financial institutions compete globally. Court and regulatory decisions had already eroded the barriers among the industries, allowing some cross-sector affiliations to proceed. Still, the financial industry wanted new laws explicitly repealing the barriers and providing guidance for future consolidation.

The overhaul foundered in previous sessions of Congress as the industry sectors fought among themselves over the details. In 1999, they generally put aside their differences and united to get a bill approved, repeatedly applying heavy pressure on GOP leaders to keep things moving. The Senate passed S 900 (S Rept 106-44), 54-44, on May 6. The House passed its version (HR 10 — H Rept 106-74, Parts 1-3), 343-86, on July 1.

Partisanship ran high at times, particularly in the Senate, but the final product won bipartisan support. The Senate adopted the conference report (H Rept 106-434) on the bill, 90-8, on Nov. 4, and the House cleared it, 362-57, later that day. (CQ Weekly, p. 2654)

By Daniel J. Parks and Chuck Conlon

## Laws repealed

- **The 1933 Glass-Steagall Act.** The act's prohibitions on affiliations between the banking and securities industries are repealed.
- **The 1956 Bank Holding Company Act.** The act's prohibitions on affiliations between the banking and insurance industries are repealed.

## Structure and oversight

- **Shared bank jurisdiction.** The Federal Reserve and the Treasury Department will continue to share oversight of national banks. The Fed will continue to regulate bank holding companies and will regulate new financial holding companies created under the law. The Treasury Department will continue to be the primary regulator of national banks.
- **Functional regulation.** Each affiliate or subsidiary of a financial conglomerate will be regulated by its "functional" regulator — banks by banking regulators, securities affiliates by the Securities and Exchange Commission (SEC), and insurance companies by state insurance regulators.
- **Safeguards.** The bill authorizes federal banking regulators to restrict relationships and transactions among insured banks and their affiliates or subsidiaries if needed to avoid conflicts of interest or to enhance the financial stability of banks and the general banking system.

## Subsidiary activities and oversight

- **Bank and bank subsidiary activities.** National banks will be allowed to engage in, directly or through an operating subsidiary, activities that are "financial in nature or incidental to a financial activity." The Treasury will supervise bank activities, while the operations of individual bank subsidiaries will be supervised through functional regulation.
- **Exceptions to allowable bank subsidiary activities.** Banks or bank subsidiaries cannot conduct the following activities: insurance or annuity underwriting, insurance company portfolio investments, real estate development, real estate investment and merchant banking activities. Companies that want to engage in those activities will have to establish financial holding companies and or-

ganize the activities as affiliates, rather than as subsidiaries. However, subsidiaries could conduct merchant banking activities after five years if the Treasury and the Federal Reserve agree to allow them.

- **Subsidiary requirements.** The parent national bank and all affiliated banks must be well-capitalized and well-managed before financial activities can be conducted through a subsidiary. The parent bank also must obtain Treasury Department approval before initiating any eligible activity through subsidiaries. The consolidated total assets of all subsidiaries of any single bank will be limited to \$50 billion, or 45 percent of the assets of the parent bank, whichever is less.
- **Large bank limitations.** The largest 100 banks in the nation by total asset size can conduct securities underwriting activities in subsidiaries only if the parent bank meets certain debt rating requirements.

## Holding company activities and oversight

- **Other financial activities.** In addition to banking, insurance and securities activities, financial holding companies will be allowed to engage in activities that are "financial in nature," incidental to activities that are financial in nature, or complementary to such activities. This represents a significant expansion of previous law, which limited bank affiliates to activities "closely related to banking." The bill specifies that investment advisory activities, merchant banking and insurance company portfolio investments are financial in nature. It empowers the Federal Reserve Board — if the Treasury Department concurs — to define and authorize other eligible activities.
- **Limits on Fed oversight.** The Federal Reserve will not be allowed to examine functionally regulated non-bank affiliates unless it has reasonable cause to believe the affiliate is engaged in activities that pose a material risk to an insured bank, nor can it impose any capital adequacy rules, guidelines or other requirements beyond those already required by the affiliates' functional regulators. The bill limits the reach of the Fed's "source of strength" doctrine, which states that affiliates of insured banks may be considered part of the bank's enterprise with responsibility for financially supporting the institution. Under the new law, the SEC and state insurance regulators will be able to prevent the Fed from compelling se-

curities, investment advisers and insurance affiliates to provide funds to an undercapitalized insured bank affiliate.

- **Fed enforcement of non-bank affiliates.** The Federal Reserve can take enforcement action against a non-bank affiliate only if needed to prevent or redress a practice that poses a material risk to the financial soundness of an affiliated bank or the U.S. or international payments systems, and only if it is not possible to guard against such risk through requirements imposed directly on the bank. In overseeing non-bank affiliates, the Fed generally will have to rely on reports from the affiliates, and on examinations conducted by other regulators.

- **Prohibited activities.** The measure does not allow banks to affiliate with commercial, non-financial entities, such as retail or manufacturing businesses.

- **Exceptions to prohibited activities.** Securities and insurance firms that already own, or are affiliated with, commercial non-financial companies can affiliate with banks under a financial holding company if they were engaged in commercial activities as of Sept. 30, 1999, as long as the commercial activities made up 15 percent or less of the company's gross revenue. Such commercial activities could not be expanded, and they would have to be terminated or divested within 10 years of the bill's enactment. Also, firms that own or are affiliated with companies engaged in commodities trading or investments can affiliate with banks under a holding company if they were engaged in such commodity activities as of Sept. 30, 1997, and if such commodity activities made up 5 percent or less of the company's total assets. The measure does not require the divestiture of these activities, but it prohibits cross-marketing of banking and commodities products.

### Community Reinvestment Act

- **Confirms existing law.** The agreement generally preserves existing requirements of the 1977 Community Reinvestment Act (PL 95-128). The law is intended to spur loans in low-income areas by requiring banks to document their efforts to make loans in all areas where they collect deposits. Banks seeking to merge or open new branches must have reinvestment ratings of satisfactory or better.

- **Requirements expanded to cover new affiliations.** The bill requires that banks have a satisfactory or better reinvestment rating before they can affiliate with securities and insurance firms. It prohibits holding companies that have a bank with an unsatisfactory reinvestment rating from engaging in new financial services activities until the bank achieves a satisfactory rating.

- **"Sunshine" provision added.** The measure requires the public disclosure of any agreements made between banks and community groups involving more than \$10,000 in grants or \$50,000 in loans when the agreement is made in connection with the bank fulfilling its Community Reinvestment Act (CRA) requirements. This requirement applies only to parties that have commented on, testified about, or otherwise contacted the bank about the CRA.

- **Disclosure of expenditures.** Groups receiving funds under a CRA agreement with a bank must submit a detailed, itemized list reporting how the funds were used, including salaries, administrative expenses, travel, entertainment, consulting fees paid, and any other categories required by the banking regulator. Community groups can submit their annual reports directly to the bank, which is required to forward them to banking regulators.

- **Reduced regulatory reviews.** The bill reduces the frequency of CRA reviews for rural and small banks with less than \$250 million in assets that have good CRA records. CRA regulatory reviews will be limited to every five years for such banks that have "outstanding" CRA ratings and every four years for banks that have "satisfactory" ratings. Banks will still be subject to CRA reviews whenever they propose to open a new branch or merge, and banking regulators can conduct reviews more or less frequently if they have reasonable cause.

- **Studies required.** The Treasury Department, in consultation with federal banking agencies, is required to study the extent to which services are being provided as intended by the CRA — in-

cluding services in low- and moderate-income neighborhoods and for people of moderate means — as a result of the bill's enactment. The measure also requires the Federal Reserve to conduct a comprehensive study on the default rates, delinquency rates and profitability of loans made by banks in complying with the CRA.

### Privacy

- **Disclosure.** The bill requires financial institutions to clearly and conspicuously disclose their policies regarding the sharing of customer information with other institutions. These disclosures must describe the type of customer information collected, the institution's policies and practices for sharing information with both affiliated institutions and non-affiliated third parties, and policies for protecting the confidentiality and security of confidential customer information. Such disclosures will have to be made to every new customer, and to all existing customers at least once a year.

- **Opt-out requirement.** Banks must allow consumers to opt out of their information sharing arrangements with unaffiliated third parties. The measure does not require companies to let consumers opt out of information-sharing with affiliates or subsidiaries.

- **Opt-out exception for marketing agreements.** Banks are not required to let consumers opt out of information-sharing with third parties made in association with a financial institution's joint marketing agreement, provided the institution discloses the arrangement with its customers and the third party agrees to keep the customer information confidential. The measure prohibits financial institutions from disclosing a customer's bank account or credit card numbers — or means of accessing such accounts — to third parties for purposes of telemarketing, direct mail marketing or electronic mail marketing.

- **Additional opt-out limitations.** Consumers cannot opt out of information sharing associated with the processing of consumer-initiated transactions, maintaining consumer accounts, or complying with consumer reporting requirements, legal requirements or law enforcement investigations.

- **Privacy rules.** The measure requires federal banking regulators, the Treasury Department, the SEC and the Federal Trade Commission (FTC), in consultation with state insurance authorities, to establish standards to ensure the security and confidentiality of customer financial records and information, and to protect against unauthorized access and use of such information. Each agency must conduct its own rulemaking, although agencies must coordinate with one another and, to the extent possible, make their regulations consistent.

- **Privacy study.** The bill requires the Treasury Department to conduct a study of information-sharing practices among financial institutions and their affiliates. Among other criteria, the study must examine the purposes for which confidential consumer information is shared, and the potential benefits of sharing for financial institutions and for customers; the potential risks to consumer privacy by sharing; the adequacy of existing laws to protect privacy; and the adequacy of security protections for shared information. The study must also explore the feasibility of approaches to privacy, including opt-out and opt-in policies that allow customers to control whether their confidential information can be shared with affiliates and third parties.

- **State privacy laws.** The bill's privacy provisions establish a floor, rather than a ceiling, for consumer privacy protection by allowing states to enact more stringent privacy provisions than those established in federal law.

### Privacy and Fraud

- **Pretext calling.** The bill makes it illegal to obtain, or attempt to obtain, confidential information about a customer from a financial institution by fraudulent or deceptive means, or to request that another person obtain such information knowing that it will be done in a fraudulent manner. The most frequently noted example of such a prohibited activity is "pretext calling," in which an information broker impersonates the individual whose account information is

sought or engages in other ruses designed to trick a financial institution into disclosing information. People found guilty of violations will be subject to criminal fines and imprisonment up to five years — with penalties doubled for certain aggravated cases.

- **Pretext calling exceptions.** Exceptions to this prohibition will be provided for certain law enforcement activities, for financial institutions that are testing their internal security procedures, for investigations of allegations of improper conduct by employees, for insurance companies and agents investigating insurance fraud or other misconduct, and for state-licensed private investigators authorized by a court to help collect delinquent court-ordered child support payments.

## Automated teller machine fees

- **Disclosure.** The bill requires banks and other operators of automated teller machines (ATMs) to prominently disclose whether the machine will impose a fee on users who are not customers of the bank or other ATM operators. This must be done both through a sign on the ATM and a notice either on the ATM's screen or on a slip of paper dispensed by the machine. These provisions essentially codify procedures currently being followed voluntarily by most ATM operators. The disclosures must specify the amount of the surcharge, and the on-screen or dispensed-paper notice must provide the consumer with a chance to refuse the fee and cancel the transaction.

- **Fee disclosure exception.** The measure exempts from the on-screen or dispensed-paper requirement, until the end of 2004, any machines not technically able to display such messages on-screen or through dispensed paper.

- **Additional fee disclosure.** The bill requires ATM card issuers to notify consumers when cards are issued that surcharges may be imposed by other parties when using an ATM operated by a party other than the card issuer.

- **Liability protection.** The measure protects ATM operators from liability for violating the bill's disclosure requirements if the posted notice on the ATM has been removed, damaged or altered by other parties.

- **GAO study.** The bill requires the General Accounting Office (GAO) to study the feasibility, costs, benefits to consumers and competitive impact of requiring ATM operators to disclose to customers ATM fees that are being charged by the customer's bank.

## Thrift holding companies

The bill prohibits new and existing savings and loans, also known as thrifts, from affiliating with commercial activities. It allows existing thrift-commerce affiliations to continue, including pending affiliations in which an application was filed on or before May 4, 1999.

## SEC regulation

- **Banks as brokers and dealers.** The bill repeals the broad exemption for banks from regulation under federal securities laws, thereby providing for functional regulation of bank securities activities by the SEC. The bill extends SEC regulation of securities to the securities activities of banks by amending the definitions of "broker" and "dealer" under the 1934 Exchange Act to include banks. Subjecting banks to federal securities regulation will require banks either to register as securities broker-dealers or to move their securities activities out of banks and into registered securities affiliates or subsidiaries. However, the measure exempts specified types of bank securities activities, allowing banks to continue those activities without registering as broker-dealers.

- **Exempted securities activities.** The bill exempts certain bank securities activities from SEC broker-dealer regulation, including third-party brokerage arrangements in which a registered broker or dealer offers services on or off bank premises, but away from bank deposit-taking activities. It also exempts traditional bank trust activities, provided the bank receives no brokerage commissions and does not solicit brokerage business; transactions in commercial pa-

per, bankers acceptances, commercial bills, and municipal and other exempted securities; certain stock purchase plans, such as those made in connection with 401(k) plans and dividend reinvestment plans, as long as the bank does not solicit transactions or provide investment advice on those transactions; and sweep accounts, in which banks invest customers' deposits in registered money market funds.

- **Exemption for low-volume securities activities.** Banks that perform fewer than 500 securities transactions per year of any kind are exempt from SEC broker-dealer regulation.

- **Exemption for private placements.** Banks will be permitted to perform private placements with "qualified investors" without SEC broker-dealer regulation. These are non-public securities sales made to certain large investors. Individuals and corporations will be classified as qualified investors for all private placements — except for asset-backed securities and loan participations — if they have at least \$25 million in investments. The previous requirement was \$10 million.

- **Mutual fund oversight.** The bill ends the exemption from the 1940 Investment Advisors Act for banks that sell mutual funds or advise mutual fund companies, thereby authorizing SEC oversight of such bank activities. Banks that advise mutual fund companies will be required to register with the SEC as investment advisers and will be subject to SEC examination of their mutual fund activities. If a bank establishes a separately identifiable department within the bank to act as the investment adviser, only that department will be required to register with the SEC.

- **Disclosure of mutual fund risk.** The measure requires banks that sell mutual funds to prominently disclose to customers that such investments are not federally insured or otherwise guaranteed.

- **Investment trust requirements.** The measure requires the SEC to issue rules on the conditions under which a bank or bank officer may serve as custodian of the assets of an affiliated management investment company or unit investment trust. It places restrictions on loans and other transactions between a bank and an affiliated investment company, and it limits the ability of bank officers to serve on the board of such affiliated companies.

- **Oversight of new products.** The measure empowers the SEC to determine if future "hybrid" products developed by banks are securities subject to SEC regulation. Before initiating a rulemaking process, the SEC would have to seek the concurrence of the Federal Reserve, and consider the history and purpose of the hybrid product and the likely impact that regulating the product as a security would have on the banking industry. If the Federal Reserve opposes an SEC rule declaring a hybrid to be a security, the measure provides for an expedited review in the U.S. Court of Appeals, with deference given to neither agency.

- **Securities holding companies.** The bill allows securities holding companies to be voluntarily supervised by the SEC. Before the bill was enacted, such holding companies — which besides a securities firm may include other financial and non-financial affiliates (but no federally insured banks or thrifts) — were not subject to any overall regulation. Allowing voluntary SEC oversight of the entire holding company is intended to enhance the ability of certain U.S. investment bank holding companies to do business in foreign nations that require consolidated holding company supervision.

- **Limitations on voluntary SEC oversight.** The voluntary SEC oversight will apply only to securities holding companies that do not include an insured depository institution. All holding companies that include insured banks are automatically subject to regulation by the Federal Reserve.

## Bank insurance activities

- **State regulation of insurance.** The bill reaffirms the 1945 McCarron-Ferguson Act (PL 79-15), which provides that insurance is to be regulated by the states, not the federal government. It provides that no person or entity may underwrite or sell insurance in a state unless licensed by that state.

- **Insurance products defined.** The bill defines "insurance" to

help delineate which products are to be regulated as bank products and which are to be regulated by states as insurance. Insurance products are defined as anything regulated by a state as insurance as of Jan. 1, 1999, including annuities. Future bank products will be classified as insurance if they are based on certain insurance concepts and are regulated by the state as insurance. Products based on core banking products — such as deposits, loans, trusts, derivatives and guarantees — will be treated as banking products unless they are treated as insurance for tax purposes by the IRS.

- **Dispute resolution.** For federal bank and state insurance regulators who disagree over the status of a product, the measure establishes a dispute resolution process under which either the banking or the insurance regulator may file a review petition directly to the U.S. Court of Appeals, bypassing U.S. district courts. The appeals court will have to examine the case's merits under both state and federal law, consider the nature and history of a product and its regulation, and make a decision within 60 days. No deference will be given to the opinion of either the state or federal regulator. Courts previously deferred to the opinion of the Office of the Comptroller of the Currency (OCC) in disputes concerning bank products. Court decisions could be appealed to the Supreme Court.

- **Restrictions on bank insurance underwriting.** The bill generally prohibits national banks and their subsidiaries from underwriting insurance, except for products that national banks were underwriting as of Jan. 1, 1999, or those the OCC had authorized banks to underwrite as of that date. Generally, any insurance underwriting will have to be conducted by insurance affiliates of banks under a financial holding company.

- **Title insurance restrictions.** The bill generally prohibits national banks or their subsidiaries from underwriting or selling title insurance. However, they can sell title insurance if the state allows state banks to sell title insurance, but only to the same extent and manner as allowed for state banks. In addition, existing title insurance activities by banks and subsidiaries will be allowed to continue, although such activities (including both underwriting and sales) will have to be moved out of the bank or subsidiary to an insurance affiliate, if one exists.

- **Consumer protections.** The bill requires federal banking regulators to develop consumer protection rules to govern the sale of insurance by banks. Among those to be developed are anti-tying and anti-coercion rules that prohibit banks from misleading consumers into believing that a loan or extension of credit is conditional upon the purchase of insurance; disclosure rules requiring that consumers be told orally and in writing that the insurance product is not FDIC-insured, that there may be an investment risk involved, and that the product may lose value (in the case of variable annuities); guidelines on the extent to which insurance transactions should be conducted in a location away from where bank deposits are made; consumer grievance procedures to address customers complaints; and a prohibition on discriminating against victims of domestic violence in providing insurance.

### **Pre-emption of state insurance laws**

- **Pre-emption of state affiliation laws.** The bill provides that insurance is to be regulated by the states, but it specifically pre-empts state laws and rules that prevent or restrict affiliations between banks and insurance companies. State laws that regulate the "business side" of insurance (rather than sales, solicitation or cross-marketing activities) will not be pre-empted, however, and state regulators will be able to prohibit affiliations for managerial or solvency reasons. The bill authorizes state insurance regulators to gather certain information from parties proposing to acquire or merge with an insurance company to ensure that capital requirements for the company will be met and maintained. The bill pre-empts state laws that restrict the ability of banks and bank subsidiaries or affiliates to sell, solicit or cross-market insurance by codifying the standard set by the Supreme Court in its 1996 *Barnett Bank* decision (*Barnett Bank v. Nelson*). That decision held that no state laws or rules can "prevent or significantly interfere" with the rights of a national

bank to engage in insurance sales or solicitation activities under federal banking law.

- **Court guidelines for review of state insurance laws.** In the case of state laws enacted before Sept. 3, 1998, the court — in deciding whether the state law meets the *Barnett* standard — will defer to the opinion of the federal bank regulator, as was previously the case in bank product disputes. For state laws enacted on or after Sept. 3, 1998, however, the court will not defer to the opinion of either state or federal regulators, but will consider four non-discrimination tests established by the measure (the agreement specifies four types of laws to be considered discriminatory against bank insurance sales).

- **"Safe harbors" for state insurance regulation.** The bill specifies 13 kinds of state insurance sales laws that are protected and will not be pre-empted, regardless of when they were enacted. These include state laws that prohibit banks from requiring customers to obtain coverage from an affiliated insurance company if insurance is required when taking out a loan; that require banks to provide written disclosures to customers that they may obtain insurance from third parties; that prohibit banks from charging fees for handling third-party insurance policies; that prohibit advertising or other materials that could lead customers to believe that bank loans or insurance policies are government-backed, and that require written disclosures stating that such policies are not federally backed; that prohibit insurance brokerage fees or commissions for non-licensed personnel; that prohibit the release of certain insurance information on customers; and that require credit and insurance transactions to be completed through separate documents.

### **Uniform insurance licensing**

- **New standards and reciprocity.** States have different licensing and other requirements, which makes it difficult and expensive for insurance agencies to sell on a multistate basis. The bill calls for states to enact laws creating uniform state licensing standards that will provide reciprocity for licensed insurers to operate in other states.

- **Creation of federal standards.** If a majority of states fail to enact uniform licensing standards and reciprocity laws within three years, a private, nonprofit corporation called the National Association of Registered Agents and Brokers (NARAB) will be created to develop uniform standards to be applied on a multistate basis, pre-empting state licensing requirements. Insurance agents and brokers who join NARAB will be allowed to work in any state, with NARAB's licensing requirements overriding state requirements. The rights of states to license insurance agents and brokers will be preserved; however, those state requirements will apply only to state-licensed agents and brokers, and not to NARAB members.

- **NARAB guidelines.** In developing its standards, NARAB will have to make its licensing requirements comparable to the highest state licensing requirements, and its continuing education requirements will have to be comparable to, or greater than, the requirements of a majority of states. The measure requires that NARAB be created under the direction of the National Association of Insurance Commissioners (NAIC), the association of state insurance regulatory bodies. If the NAIC fails to implement NARAB, and a majority of states do not enact uniform licensing and reciprocity laws, the measure requires that NARAB be established by the president.

- **Rental car insurance.** The bill establishes a presumption that a state insurance license is not needed for employees of car rental companies who sell or market short-term insurance associated with a car rental or lease. This presumption will expire after three years and will not apply to states that have already established rules on whether car rental company employees are subject to state insurance licensing. This three-year presumption is intended to stem uncertainty in the car rental industry and give states time to determine how car rental companies should be treated.

### **Federal Home Loan Bank changes**

- **Thrift membership.** The Federal Home Loan Bank (FHLB) System provides low-cost loans to local lenders for use in providing home mortgages. The measure makes membership in the system

voluntary. Previously, federally chartered thrifts were required to join the system, but state-chartered savings and loans were voluntary members.

- **Participation requirements eased.** Under the law, small banks and thrifts will no longer be required to have at least 10 percent of their assets in mortgages or mortgage-backed securities in order to obtain FHLB advances.

- **Mission expanded.** The bill expands the mission of the home loan bank system by allowing small thrifts and banks with less than \$500 million in assets to obtain advances for use in funding small businesses and small farms. As collateral for such FHLB advances, these small thrifts and banks will be allowed to pledge secured loans they previously made for eligible activities.

- **Management changes.** The bill sets the terms for both elected and appointed FHLB bank directors at three years. Previously, elected directors served two years and appointed directors served four.

### 'Limited purpose' banks

The bill lifts certain restrictions on cross-marketing and other activities for so-called limited purpose banks. These federally insured limited-service banks are owned by major financial and commercial firms, and they either accept demand deposits or make commercial loans, but not both. These institutions are also known as "non-bank" banks. The bill allows limited-purpose banks to cross-market products of affiliates and expands the types of overdrafts such banks may incur on behalf of an affiliate.

### 'Redomestication' of mutual insurers

The measure grants mutual insurance companies the authority to redomesticate (move) to another state and reorganize into a mutual holding company or stock company. This redomestication authority applies only to mutual insurers located in states that do not have laws providing reasonable terms and conditions for such reorganizations within the state. Such moves will be subject to approval by insurance regulators in the new state. All licenses of the insurer will be preserved, and all outstanding policies, contracts, and forms will remain in force.

### Special thrift fund eliminated

The 1996 Deposit Insurance Act (PL 104-208) created a special reserve fund to augment the Savings Association Insurance Fund. The bill eliminates it. The reserve fund was intended to back up the SAIF and further protect taxpayers from thrift bailouts. It was established Jan. 1, 1999, using \$1 billion in SAIF deposits that exceeded the SAIF's designated reserve ratio of 1.25 percent of estimated insured deposits. Critics of the reserve fund contended that it would be better to make these funds available to the regular SAIF account.

### Microenterprise technical assistance

- **New grant program.** The bill establishes a new grant program to fund local nonprofit microenterprise development organizations and programs that help low-income and disadvantaged entrepreneurs. Grants could be provided to eligible organizations to provide

training and technical assistance to entrepreneurs interested in starting or expanding their own businesses, to enhance the capacity of other organizations to serve low-income and disadvantaged entrepreneurs, and to support research and development of better training and technical assistance programs. Local organizations must match \$1 for every \$2 in federal assistance provided, and at least 50 percent of federal grant funding must be used to benefit people with extremely low incomes, defined as families living at 150 percent of the poverty line or below.

- **Grant funding authorized.** The measure authorizes \$15 million a year through fiscal 2003 for the program, which would be administered by the Small Business Administration.

### Miscellaneous provisions

- **Bank municipal bond activities.** The bill authorizes national banks to underwrite, purchase and deal in municipal bonds.

- **Plain language.** The bill requires federal banking agencies to use plain language in all rulemaking proposals published in the Federal Register after Jan. 1, 2000.

- **Interest rate cap exemption.** The measure allows local banks in states in which interest rates are capped to charge higher rates equal to those charged by an interstate bank that branches into the state.

- **Name rights.** Existing thrifts that convert to national or state banks will be permitted to keep the word "federal" in their names.

- **Bank board changes.** The bill amends utility law to permit officers and directors of public utilities to serve as officers or directors of banks, trust companies or securities firms.

- **Reserve bank audits.** The bill requires the Federal Reserve Board to contract for independent annual audits of the financial statements of each Federal Reserve Bank, as well as of the board itself.

- **Foreign bank powers expanded.** The bill allows a federal or state agency of a foreign bank to upgrade to a branch with the approval of the appropriate chartering authority and the Federal Reserve Board.

- **Grand jury access for state banks.** The bill authorizes U.S. attorneys to seek court orders to provide state banking regulatory agencies with access to certain grand jury material, thereby giving state agencies parity with federal bank regulatory agencies.

### Additional studies

- **Federal Reserve.** The bill requires that the GAO study the conflict of interest faced by the Federal Reserve between its role as a primary regulator of the banking industry and its role as a vendor of services to the banking and financial services industry.

- **Treasury Department.** The bill requires the Treasury Department to study the extent to which credit is provided to small businesses and farms as a result of this legislation.

- **"S" corporations.** The measure requires the GAO to study the implications of revising rules concerning "S" corporations to allow greater access by community banks to S corporation treatment. An S corporation receives tax treatment similar to a partnership. ♦



1-22

The inordinate birth rate of the  
“sucker” is proverbial, and there is  
no birth-control measure adequate  
to inhibit the spawning of  
unscrupulous individuals who prey  
upon those who are easily duped.  
Hence we have a blue sky law.

Justice Rosseau A. Burch

Supreme Court of Kansas

November 5, 1932

Moos v. Landowners' Oil Ass'n et al.

136 Kan. 424

HOUSE BILL No. \_\_\_\_\_

By Committee on \_\_\_\_\_

AN ACT concerning securities and insurance; concerning variable annuities; concerning shared jurisdiction by the Insurance Commissioner and Securities Commissioner; concerning definitions and exemptions under the Kansas securities act; amending K.S.A. 17-1252, 17-1261, 17-1270a, and 40-436 and repealing the existing sections.

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

**Chapter 17.—CORPORATIONS**  
**Article 12.—SECURITIES**

**17-1252. Definitions**

Section 1. On and after July 1, 2000, K.S.A. 17-1252 is hereby amended to read as follows: 17-1252. When used in this act, unless the context otherwise requires:

(a) "Commissioner" means the securities commissioner of Kansas, appointed as provided in K.S.A. ~~17-1270~~ **75-6301**, and amendments thereto.

(b) "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include an individual who represents an issuer only in transactions in securities exempted by K.S.A. 17-1261, and amendments thereto, other than ~~subsection~~ **subsections (e) and (h)** of K.S.A. 17-1261, and amendments thereto, or who represents a broker-dealer in effecting transactions in this state limited to those transactions described in section 15(h)(2) of the securities and exchange act of 1934. A partner, officer or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if such person otherwise comes within this definition.

(g) "Person" means an individual, a corporation, a partnership, **a limited liability company**, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government or a political subdivision of a government.

(j) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificates; thrift certificates or investment certificates, or thrift notes issued by investment companies; certificate of deposit for a security; certificate of interest in oil and gas royalties, leases or mineral deeds; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which

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an insurance company promises to pay *a fixed sum* of money either in a lump sum or periodically for life or some other specified period.

### 17-1261. Exempt securities.

Sec. 2. On and after July 1, 2000, K.S.A. 17-1261 is hereby amended to read as follows: 17-1261. The following securities shall be exempt from the registration requirements of K.S.A. 17-1255 through 17-1260, and amendments thereto:

(c) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution, credit union or trust company organized and supervised under the laws of this state except that the issuer of such security is subject to the supervision of the banking department, ~~savings and loan department~~ or credit union administrator of this state.

(e) Any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of any state and authorized to do business in this state ~~when such securities are sold by the issuer.~~

(h) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, fire protection, fire fighting or reformatory purposes, or as a chamber of commerce or trade or professional association if no part of the net earnings of such person inures to the benefit of any private stockholder ~~and provided that the issuer has filed with the commissioner at least 10 days prior to any sale a notice setting forth the material terms of the proposed sale, copies of any sales and advertising literature to be used, and such other information required by the commissioner, and the commissioner does not by order disallow the exemption within 10 days after filing.~~ *The commissioner may require the filing of a notice and other information pursuant to rules and regulations adopted by the commissioner.*

### 17-1262. Exempt transactions.

Sec. 3. On and after July 1, 2000, K.S.A. 17-1262 is hereby amended to read as follows: 17-1262. Except as expressly provided in this section, the following transactions shall be exempt from the registration requirements of K.S.A. 17-1254, 17-1255, 17-1257, 17-1258, 17-1259 and 17-1260, and amendments thereto:

(a) Any isolated transaction, whether effected through a broker-dealer or not.

(b) Any nonissuer distribution by or through a registered broker-dealer of outstanding securities at a price reasonably related to the current market price of such securities, if ~~Moody's manual, Standard & Poor's manual, or any recognized securities manual approved by the commissioner;~~ *pursuant to rules and regulations or order* contains (1) the names of the issuer's officers and directors; *and (2) audited financial statements, including* a balance sheet of the issuer as of a date within 18 months; and ~~a profit and~~ *an income or* loss statement for either the *full* fiscal year preceding that date or the most recent *full* year of operations. If the commissioner finds that the sale of certain securities in this state under this exemption would work or tend to

work a fraud on purchasers thereof, the commissioner may revoke the exemption provided by this subsection with respect to such securities by issuing an order to that effect and ~~sending copies~~ *providing notice* of such order to all registered broker-dealers.

(i) Any offer (but not a sale) of a security if: (1) Registration statements for such security have been filed under both this act and the securities act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either act; or (2) a registration statement for such security has been filed under K.S.A. 17-1256 ~~or~~ 17-1258, and amendments thereto, no stop order or emergency order issued pursuant to K.S.A. 17-1260, and amendments thereto, is in effect and the offer is made on behalf of the issuer by a registered broker-dealer.

#### **17-1270a. Commissioner's powers and duties; filing of fees and documents; orders.**

Sec. 4. On and after July 1, 2000, K.S.A. 17-1270a is hereby amended to read as follows: 17-1270a. (a) The commissioner, by rules and regulations or order, may require the payment of a filing fee and the filing of documents with respect to a covered security under section 18(b)(2) of the securities act of 1933, as follows:

~~(f) Notwithstanding the provisions of this section, until October 10, 1999, the commissioner may require the registration of any federal covered security for which the fees required by this section have not been paid promptly following written notification from the commissioner to the issuer of the nonpayment or underpayment of such fees. An issuer shall be considered to have promptly paid such fees if they are remitted to the commissioner within 15 days following such person's receipt of written notification from the commissioner.~~

~~(g) This section shall be part of and supplemental to the Kansas securities act.~~

### **CHAPTER 40.—INSURANCE**

#### **Article 4.—GENERAL PROVISIONS RELATING TO LIFE INSURANCE COMPANIES**

##### **40-436. Contracts for benefits in variable amounts.**

Sec. 5. On and after July 1, 2000, K.S.A. 40-436 is hereby amended to read as follows: 40-436. (a) Any domestic life insurance company may after adoption of a resolution by its board of directors, establish one or more separate accounts, and may allocate to such separate account or accounts any amounts, including without limitation proceeds applied under optional modes of settlement or under dividend options, paid to the company which are to be applied under the terms of an individual or group life or annuity contract issued in connection therewith to provide benefits payable in fixed or in variable amounts, or in both, and such contracts may provide other benefits.

(l) The commissioner shall have ~~the sole and exclusive~~ jurisdiction and authority to regulate the issuance and sale of such contracts and to promulgate such reasonable rules and

regulations as may be necessary to carry out the purposes and provisions of this act, and such contracts, the companies which issue them, and the agents or other persons who sell them, shall ~~not~~ *also* be subject to the provisions of article 12 of chapter 17 of the Kansas Statutes Annotated ~~not~~ *and* to the jurisdiction of the securities commissioner of this state.

Sec. 5. On and after July 1, 2000, K.S.A. 17-1252, 17-1261, 17-1270a, and 40-436 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.



POLSINELLI  
WHITE  
VARDEMAN &  
SHALTON

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## Memorandum

**TO:** The Honorable Ray Cox, Chairman  
House Financial Institutions Committee

**FROM:** William W. Sneed, Legislative Counsel  
Conseco Financial Services, Inc.

**RE:** Amendments to K.S.A. 16a-2-201 and 16a-2-401(a)

**DATE:** January 19, 2000

Mr. Chairman, Members of the Committee: My name is Bill Sneed and I represent Conseco Financial Services, Inc., a major provider of financial services throughout the United States. One area in which my client is actively involved deals with the financing of manufactured housing. It is in that regard that we are requesting the attached amendments be introduced as a Committee bill for your review.

During the 1999 legislative session, the Kansas Legislature made major changes to the Uniform Commercial Credit Code (UCCC). With those changes, and we believe inadvertently, the Legislature has placed a serious curtailment on our ability to provide financing to Kansas citizens for the purchase of manufactured homes.

This bill, as we will explain at further hearings, will include the financing of manufactured homes in the same regard as the financing of traditional homes under the UCCC.

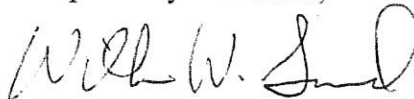
*House Financial Institutions*  
*1-19-00*  
*Attachment 3*

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One AmVestors Place  
555 Kansas Avenue, Suite 301  
Topeka, KS 66603  
Telephone: (785) 233-1446  
Telecopy: (785) 233-1939  
wsneed@pwvs.com

Thus, we respectfully request that the attached amendments be introduced and considered by your Committee. If you have any questions or comments, please feel free to contact me.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "William W. Sneed".

William W. Sneed

AN ACT relating to security interest on residential manufactured homes; amending K.S.A. 16a-2-201.

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

16a-2-201. (1) This section applies only to a closed end consumer credit sale.

(2) A seller may charge a finance charge at any rate agreed to by the parties, subject, however, to the limitations on prepaid finance charges set forth in subsection (3).

(3) A seller may charge a prepaid finance charge not to exceed the lesser of:

(a) Two percent of the amount financed; or

(b) one hundred dollars. A prepaid finance charge permitted under this subsection is fully earned when paid and is nonrefundable, unless the parties agree otherwise in writing.

(4) If the sale is precomputed:

(a) The finance charge may be calculated on the assumption that all scheduled payments will be made when due, and the fact that payments are made either before or after the due date does not affect the amount of finance charge which the creditor may charge or receive; and

(b) the effect of prepayment is governed by subsection (5).

(5) Rebate upon prepayment:

(a) Except as provided for in this section, upon prepayment in full of a precomputed consumer credit transaction, the creditor shall rebate to the consumer an amount not less than the amount of rebate provided in subsection (b), paragraph (1), or redetermine the earned finance charge as provided in subsection (b), paragraph (2), and rebate any other un-earned charges including charges for insurance. The rebate for charges for insurance shall be as prescribed by statute, rules and regulations and administrative interpretations by the administrator. If the rebate otherwise required is less than \$1, no rebate need be made.

(b) The amount of rebate and redetermined earned finance charge shall be as follows:

(1) The amount of rebate shall be determined by applying, according to the actuarial method, the rate of finance charge which was required to



be disclosed in the transaction:

(i) Where no deferral charges have been made in a transaction, to the unpaid balances for the actual time remaining as originally scheduled for the period following prepayment; and

(ii) where deferral charges have been made in a transaction, to the unpaid balances for the actual time remaining as extended by deferral for the period following prepayment.

The time remaining for the period following prepayment shall be either the full days following prepayment; or both the full days, counting the date of prepayment, between the prepayment date and the end of the computational period in which the prepayment occurs, and the full computational periods following the date of prepayment to the scheduled due date of the final installment of the transaction.

(2) The redetermined earned finance charge shall be determined by applying, according to the actuarial method, the rate of finance charge which was required to be disclosed in the transaction to the actual unpaid balances of the amount financed for the actual time the unpaid balances were outstanding as of the date of prepayment. Any delinquency or deferral charges collected before the date of prepayment do not become a part of the total finance charge for purposes of rebating unearned charges.

(c) Upon prepayment, but not otherwise, of a consumer credit transaction whether or not precomputed, other than a consumer lease, a consumer rental purchase agreement, or a transaction pursuant to open end credit:

(1) If the prepayment is in full, the creditor may collect or retain a minimum charge not exceeding \$5 in a transaction which had an amount financed of \$75 or less, or not exceeding \$7.50 and in a transaction which had an amount financed of more than \$75, if the finance charge earned at the time of prepayment is less than the minimum allowed pursuant to this subsection.

(2) If the prepayment is in part, the creditor may not collect or retain a minimum finance charge.

(d) For the purposes of this section, the following defined terms apply:

(1) "Computational period" means the interval between scheduled due dates of installments under the transaction if the intervals are substantially equal or, if the intervals are not substantially equal, one month

if the smallest interval between the scheduled due dates of installments under the transaction is one month or more, and otherwise one week.

(2) The "interval" between specified dates means the interval between them including one or the other but not both of them. If the interval between the date of the transaction and the due date of the first scheduled installment does not exceed one month by more than fifteen days when the computational period is one month, or eleven days when the computational period is one week, the interval may be considered by the creditor as one computational period.

(e) This section does not preclude the collection or retention by the creditor of delinquency charges.

(f) If the maturity is accelerated by any reason and judgment is obtained, the consumer is entitled to the same rebate as if payment had been made on the date maturity is accelerated.

(g) Upon prepayment in full of a precomputed consumer credit transaction by the proceeds of consumer credit insurance, the consumer or the consumer's estate is entitled to the same rebate as though the consumer had prepaid the agreement on the date the proceeds of the insurance are paid to the creditor, but no later than ten business days after satisfactory proof of loss is furnished to the creditor.

(6) This section does not apply to a sale of an interest in land *or a manufactured home as defined by 42 U.S.C. 5402 (6)*. Subsection (11) of K.S.A. 16a-2-401, and amendments thereto, governs the limitations on finance charges for a contract for deed to real estate where the parties agree in writing to make the transaction subject to the uniform consumer credit code.

AN ACT relating to security interest on residential manufactured homes; amending K.S.A. 16a-2-401(a).

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

K.S.A. 16a-2-401(a). For any consumer loan incurred pursuant to open end credit, including, without limitation, a loan pursuant to a lender credit card, a lender may charge a finance charge at any rate agreed to by the parties, subject, however, to the limitations on prepaid finance charges set forth in subsection (6). This subsection does not apply to a consumer loan secured by a first mortgage or a second mortgage.

(2) For any consumer loan incurred pursuant to closed end credit, a lender may charge a periodic finance charge, calculated accordingly to the actuarial method, not to exceed: (a) 36% per annum on any such loan in an amount of \$860 or less, and (b) 21% per annum on any such loan in an amount which exceeds \$860, subject, however to the limitations on prepaid finance charges set forth in subsection (6). This subsection does not apply to a consumer loan secured by a first mortgage or a second mortgage.

(3) For any consumer loan secured by a second mortgage, a lender may charge a periodic finance charge, calculated according to the actuarial method, not to exceed 18% per annum, subject, however to the limitations on prepaid finance charges set forth in subsection (6). This subsection does not apply if the lender and the consumer agree in writing that the finance charge for the loan is governed by K.S.A. 16-207(b), and amendments thereto.

(4) If the parties to a consumer loan secured by a first mortgage agree in writing to make the transaction subject to the uniform consumer credit code, then the periodic finance charge for the loan, calculated according to the actuarial method, may not exceed 18% per annum, subject, however to the limitations on prepaid finance charges set forth in subsection (6).

(5) This section does not limit or restrict the manner of calculating the finance charge, whether by way of add-on, discount or otherwise, so long as the rate and the amount of the finance charge does not exceed that permitted by this section.

(6) Prepaid finance charges on consumer loans are limited as follows:

(a) For a consumer loan secured by a first mortgage or a second mortgage, *or a security interest in a manufactured home as defined by 42 U.S.C. 5402(6)*, prepaid finance charges in an amount not to exceed 8% of the amount financed may be charged, provided that the aggregate

amount of prepaid finance charges payable to the lender or any person related to the lender do not exceed 5% of the amount financed; and

(b) for any other consumer loan, prepaid finance charges in an amount not to exceed the lesser of 2% of the amount financed or \$100 may be charged.

Prepaid finance charges permitted under this subsection are in addition to finance charges permitted under subsection (1), (2), (3) and (4), as applicable. Prepaid finance charges permitted under this subsection are fully earned when paid and are non-refundable, unless the parties agree otherwise in writing.

(7) The finance charge limitations in subsections (3) and (4) do not apply to a consumer loan the finance charge for which is governed by subsection (h) of K.S.A. 16-207, and amendments thereto.

(8) If a loan secured by a first mortgage constitutes a "consumer loan" under subsection (17) of K.S.A. 16a-1-301, and amendments thereto, by virtue of the loan-to-value ratio exceeding 100% at the time the loan is made, then the periodic finance charge for the loan shall not exceed that authorized by subsection (b) of K.S.A. 16-207, and amendments thereto, but the loan is subject to the limitations on prepaid finance charges set forth in paragraph (a) of subsection (6), which prepaid finance charges may be charged in addition to the finance charges permitted under subsection (b) of K.S.A. 16-207, and amendments thereto.

(9) If, within 12 months after the date of the original loan, a lender or a person related to the lender refinances a loan with respect to which a prepaid finance charge was payable to the same lender pursuant to subsection (6), then the following apply:

(a) If a prepaid finance charge with respect to the original loan was payable to the lender pursuant to paragraph (a) of subsection (6), then the aggregate amount of prepaid finance charges payable to the lender or any person related to the lender with respect to the new loan may not exceed 5% of the additional amount financed.

(b) If a prepaid finance charge with respect to the original loan was payable to the lender pursuant to paragraph (b) of subsection (6), then the aggregate amount of prepaid finance charges payable to the lender or any person related to the lender with respect to the new loan may not exceed the lesser of 2% of the additional amount financed or \$100.

(c) For purposes of this subsection, "additional amount financed" means the difference between: (i) The amount financed for the new loan,

less the amount of all closing costs incurred in connection with the new loan which are not included in the prepaid finance charges for the new loan; and (ii) the unpaid principal balance of the original loan.

(10) For any period in which a finance charge is due on a consumer loan pursuant to open end credit, the parties may agree on a minimum amount.

(11) If the parties to a contract for deed to real estate agree in writing to make the transaction subject to the uniform consumer credit code, then the transaction is subject to the same limitations as set forth in subsections (4) and (6) for a consumer loan secured by a first mortgage.

(12) This section does not apply to a payday loan governed by K.S.A. 16a-2-404, and amendments thereto.

STATE OF KANSAS

GWEN WELSHIMER  
REPRESENTATIVE, EIGHTY-EIGHTH DISTRICT  
SEDGWICK COUNTY  
6103 CASTLE  
WICHITA, KANSAS 67218  
316-685-1930  
DURING SESSION  
LEGISLATIVE HOTLINE  
1-800-432-3924  
OFF: 785-296-7687



TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS

MEMBER: GOVERNMENTAL ORGANIZATION  
& ELECTIONS, RANKING MINORITY MEMBER  
BUSINESS, COMMERCE & LABOR  
KANSAS 2000  
LOCAL GOVERNMENT  
REP., NATIONAL CONFERENCE OF  
STATE LEGISLATURES

Date: January 19, 2000

To: House Financial Institution Committee  
Representative Ray Cox, Chairperson

A handwritten signature in cursive script that reads "Gwen Welshimer".

From: Representative Gwen Welshimer

Current usury law on Real Estate Loans caps interest rates at 18% for banks, credit unions and Consumer Loan companies.

However, private landowners who subdivide and sell lots in high risk situations are limited to 8% interest unless they know to write their mortgage contracts as subject to the uniform commercial code.

Most landowners are unaware of this and sometimes so are attorneys. When they are unaware and charge 10 or 12% on high risk carry backs, some find themselves as defendants in class action suits.

If the landowner loses the class action suit, the plaintiff is usually awarded just enough to pay the attorney. Often a class action suit goes on for years and is very stressful to a landowner who often is retired and living on fixed income.

I don't believe private landowner carry backs were taken in consideration when these statutes were made for banks.

I would like this committee to equalize the interest rate allowable for banks and landowners by raising the landowner's interest rate cap from 8% to the 18% in order to treat them fairly and equally with banks on our interest rate laws.

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*1-19-00*  
*Attachment 4*

MR. CHAIRMAN:

I move to amend **SB 301**, as amended by Senate Committee of the Whole, on page 3, by striking all in lines 30 through 43;

On page 4, by striking all in lines 1 through 6 and inserting: "The maximum rate of interest which may accrue on any indebtedness secured by a real estate mortgage or contract for deed, other than any indebtedness incurred primarily for personal, family or household purposes and secured by a second or other subordinate real estate mortgage, shall be the rate of interest agreed to by the parties."; by striking all in line 27; in line 28, by striking all preceding "a" and inserting "Nothing in subsections (a) and (b) shall limit the amount of interest that may be charged for"; in line 29, by striking "unless a loan is made" and inserting "a business or agricultural loan includes any loan, credit sale or other credit transaction which is not made or incurred"; in line 30, by striking all following "purposes"; by striking all in lines 31 and 32; in line 33, by striking all preceding the period; in line 34, by striking "Loans" and inserting "Nothing in subsections (a) and (b) shall limit the amount of the interest that may be charged in any loan or other credit extension"; in line 36, by striking all following "participant"; in line 37, by striking all preceding the period; in line 38, by striking all following "(h)"; by striking all in line 39 and inserting "Nothing in subsections (a) and (b) shall limit the amount of interest that may be charged in any loan secured by a real estate mortgage or other real property security interest in any"; in line 40, by striking "to real estate"; also in line 40, preceding "per-" by inserting "or any related document"

Steven Weiskamer  
88<sup>th</sup> District.



The KANSAS BANKERS ASSOCIATION  
A Full Service Banking Association

January 19, 2000

TO: House Committee on Financial Institutions

FROM: Kathleen Taylor Olsen, Kansas Bankers Association

RE: Introduction of Legislation

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before the committee with a bill introduction request.

Last year, the Legislature passed a bill that dealt with title insurance companies and the regulation of escrow accounts. One very small part of that bill dealt with what is commonly called "good funds" or "wet funds" as it provides that all funds deposited for real estate closings in excess of \$2,500 must be in one of the forms suggested in the statute. The statute then listed three types of "bank" checks: cashier's checks, certified checks or bank money orders.

We later learned that another type of bank check was what was commonly used. It is called a "teller's check" and is defined in the UCC as a draft drawn by a bank on another bank or payable at or through a bank. The UCC treats all of these bank checks the same.

We brought this to the attention of the Insurance Commissioner and her General Counsel issued a letter stating that they would not be critical of any title insurance company using a teller's check for depositing good funds. However, even with knowledge of this letter, some title insurance companies are not accepting teller's checks because they are not a type listed in the law.

That is why we are here – to put what was common practice into the law so it can continue. Thank you for your attention to this matter.

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1-19-00  
Attachment 5*



AN ACT to the insurance department; concerning municipal pools; concerning insurance and escrow accounts; concerning the insurance department service regulation fund; amending K.S.A. 12-2620, 12-2622 and 44-586 and K.S.A. 1998 Supp. 12-2621, 40-112, 44-584 and 44-585 and repealing the existing sections; also repealing K.S.A. 1998 Supp. 40-112a.

**New Sec. 10.** A title insurance agent may operate as an escrow, settlement or closing agent, provided that:

(a) All funds deposited with the title insurance agent in connection with an escrow, settlement or closing shall be submitted for collection to, invested in or deposited in a separate fiduciary trust account or accounts in a qualified financial institution no later than the close of the next business day, in accordance with the following requirements:

(1) The funds shall be the property of the person or persons entitled to them under the provisions of the escrow, settlement or closing agreement and shall be segregated for each depository by escrow, settlement or closing in the records of the title insurance agent in a manner that permits the funds to be identified on an individual basis;

(2) the funds shall be applied only in accordance with the terms of the individual instructions or agreements under which the funds were accepted; and

(3) an agent shall not retain any interest on any money held in an interest-bearing account without the written consent of all parties to the transaction.

(b) Funds held in an escrow account shall be disbursed only:

(1) Pursuant to written authorization of buyer and seller;

(2) pursuant to a court order; or

(3) when a transaction is closed according to the agreement of the parties.

(c) A title insurance agent shall not commingle the agent's personal funds or other moneys with escrow funds. In addition, the agent shall not use escrow funds to pay or to indemnify against the debts of the agent or of any other party. The escrow funds shall be used only to fulfill the terms of the individual escrow and none of the funds shall be utilized until the necessary conditions of the escrow have been met. All funds deposited for real estate closings, including closings involving refinances of existing mortgage loans, which exceed \$2,500 shall be in one of the following forms:

(1) Lawful money of the United States;

(2) wire transfers such that the funds are unconditionally received by the title insurance agent or the agent's depository;

(3) cashier's checks, certified checks or bank money orders issued by a federally insured financial institution and unconditionally held by the title insurance agent;

(4) funds received from governmental entities or drawn on an escrow account of a real estate broker licensed in the state or drawn on an escrow account of a title insurer or title insurance agent licensed to do business in the state; or

(5) other negotiable instruments which have been on deposit in the escrow account at least 10 days.

(d) Each title insurance agent shall have an audit made of its escrow, settlement and closing deposit accounts, conducted by a certified public accountant or by a title insurer for which the title insurance agent has a licensing agreement, according to the following schedule. Audits shall be considered current if dated within the 12 months prior to submission of the audit as required herein. The title insurance agent shall provide a copy of the audit report to the commissioner and to each title insurance company which it represents within 160 days after the close of the calendar year for which an audit is required. Title insurance agents who are attorneys and who issue title insurance policies as part of their legal representation of clients are exempt from the requirements of this subsection. However, the title insurer, at its expense, may conduct or cause to be conducted an annual audit of the escrow, settlement and closing accounts of the attorney. Attorneys who are exclusively in the business of title insurance are not exempt from the requirements of this subsection. Audits shall be required as follows:

(1) Annual audit required in counties having a population of 40,001 and over;

(2) biennial audit required in counties having a population of 20,001 - 40,000; and

(3) triennial audit required in counties having a population of 20,000 or under.

(e) The commissioner may promulgate rules and regulations setting forth the standards of the audit and the form of audit report required.

(f) If the title insurance agent is appointed by two or more title insurers and maintains fiduciary trust accounts in connection with providing escrow and closing settlement services, the title insurance agent shall allow each title insurer reasonable access to the accounts and any or all of the supporting account information in order to ascertain the safety and security of the funds held by the title insurance agent.

(g) Nothing in this section is intended to amend, alter or supersede other laws of this state or the United States, regarding an escrow holder's duties and obligations.

, teller's checks

STATE OF KANSAS  
BILL GRAVES  
GOVERNOR

Franklin W. Nelson  
*Bank Commissioner*

Judi M. Stork  
*Deputy Bank Commissioner*



Sonya L. Allen  
*General Counsel*

Kevin C. Glendening  
*Acting Deputy Commissioner  
Consumer and Mortgage Lending*

OFFICE OF THE  
STATE BANK COMMISSIONER

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS

January 19, 2000

Mr. Chairman and Members of the Committee:

I would request the introduction of the following legislation.

**1) CONSUMER CREDIT CODE**

As you will remember, substantial revisions were made to the Consumer Credit Code during the last legislative session. We request a bill be introduced to amend certain provisions of the Code to address "clean up" issues related to last year's revisions.

**2) BANKING**

We request a bill be introduced to amend K.S.A. 9-1114, which is the law that addresses annual stockholders' meetings for banks and trust companies. We would like to amend the law to allow a regulated entity to hold this meeting at any time during the year.

I respectfully request the introduction of these two bills.

*House Financial Institutions*  
*1-19-00*  
*Attachment 6*

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OFFICE OF THE  
STATE BANK COMMISSIONER

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS

January 19, 2000

Mr. Chairman and Members of the Committee:

My name is Franklin Nelson. I was appointed Bank Commissioner by Governor Graves and have served in that role since December 20, 1999. I have been in banking for 26 years as a bank owner and chief executive officer.

I am pleased to be here 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 (OSBC) 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 275 state-chartered banks, 11 trust companies, 56 trust departments in state banks, 19 money transmitter companies, and over 1200 consumer and mortgage lenders and brokers. 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. All staff, including trust and consumer credit examiners, works out of these field offices. In Topeka, we maintain a review examination staff, a legal department with three attorneys, an administrative unit, information tech staff, and support staff.

The consolidation of the Office of the State Bank Commissioner and the Office of the Consumer Credit Commissioner occurred on July 1, 1999. This consolidation resulted in the separation of duties into two divisions within the OSBC. They are the Division of Banks and Trust Companies and the Division of Consumer and Mortgage Lending. The consolidation was a common sense approach to regulation of two similar industries and the transition is generally progressing smoothly.

**DIVISION OF BANKS AND TRUST COMPANIES**

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 provided to the bank or trust

company. A rating is assigned to each of our banks and trust companies. We assess the condition of the **C**apital, **A**ssets, **M**anagement, **E**arnings, **L**iquidity, and **S**ensitivity 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 banking and trust company 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.

## **DIVISION OF CONSUMER AND MORTGAGE LENDING**

The new Division of Consumer and Mortgage lending created last year has seen a continued growth in the number of companies and individuals for whom it has regulatory oversight responsibilities. Substantial revisions were made to both the Consumer Credit Code and the Mortgage Business Act in the last legislative session. Through our discussions with our counterparts in other states, we believe the revisions made by the legislature last session put Kansas among the top in terms of regulatory enforcement tools available to bring about meaningful consumer protection in the consumer credit area. Since the division's inception last July, we have been focusing our limited resources in several areas, including developing regulations to implement recent changes in the Consumer Credit Code and compiling a more user friendly consumer and mortgage law book, which is being distributed to the entities we regulate. Additional work is underway to revise and update basic examination practices and procedures related to the consumer credit area. The nature of the consumer and mortgage lending industries present unique challenges in terms of examination and oversight. A combination of both on site and off site examination procedures will be required to provide much needed oversight in this area. Of particular importance in the area of consumer protection, we have established a goal of initiating a greater level of communication with County Attorneys in an effort to leverage our resources and maximize the benefits of strengthened enforcement tools added to the law last year. Over the past six months, this has led to several criminal prosecutions in Johnson County, and valuable assistance from both Wyandotte and Sedgewick counties in other mortgage and consumer lender investigations. In the area of consumer education, we are working with several groups to improve consumer knowledge through sponsorship of free seminars and counseling services. Our goal in this area is to broaden the accessibility of these services to all Kansans.

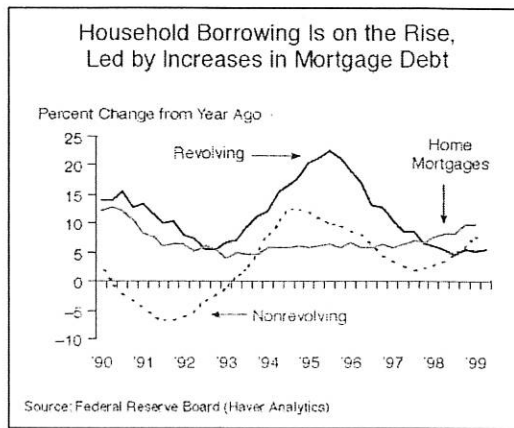
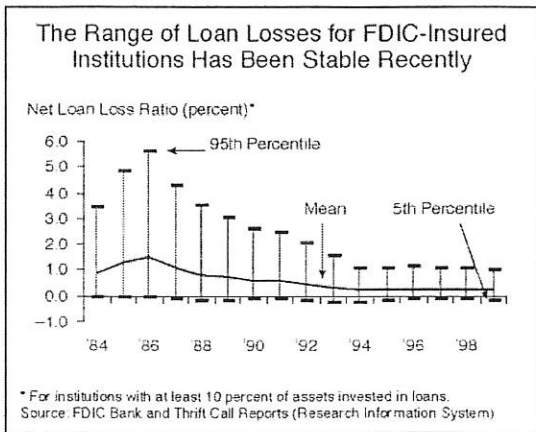
Keeping in mind that a large portion of the industries under the oversight of this division was largely unregulated by the state just three years ago, there will no doubt be varied opinions on some regulatory issues. As we move forward, we intend to seek the input of both consumers and the industries we supervise in order to strike a reasonable and balanced approach to regulation.

There are a number of important issues in this area which remain to be addressed. Last year the legislature wisely strengthened the enforcement powers and penalties associated with these laws, taking a balanced approach toward meaningful consumer protection and the perspective of the industry. Our assessment over the past six months indicates a critical need in the areas of training and staffing. We believe improvements in these areas can be paid for without increases in fees utilizing available funds. We hope the legislature will be supportive of our request for increased budget authority to address these areas. Given the sheer number of entities involved, it will be impossible to adequately implement and enforce the enhanced consumer protection provisions adopted by the legislature without additional staff. Our best estimate at this time would indicate a need for five additional FTE examiner positions in order to attempt to meet a 24 month examination cycle.

## **CONDITION OF BANKING**

The condition of banking in Kansas and in the United States continues to remain strong. The FDIC reported in a year-end press release that third quarter 1999 earnings for commercial banks in the United States totaled \$19.4 billion. This earnings figure is up by \$1.4 billion from the previous record high of \$18.0 billion set in the first quarter of 1999. The

return on assets for commercial banks rose to an all time high of 1.42% for quarter ending September 30, 1999. Two out of every three banks – 66 percent – had an ROA of one percent or higher in the third quarter. The average ROA for the first nine months of 1999 equaled 1.33 percent. This record-breaking performance was propelled by improved results at many of the largest banks, where earnings were previously held down by weak results from overseas operations and one-time expenses related to mergers and restructurings. Asset-quality indicators remained fairly stable. Improvement in credit card portfolios were noted and helped offset the deterioration noted in commercial and consumer/installment loans. Net charge-offs were \$254 million higher than in the second quarter but are about 12.6 percent below the level of a year ago, when charge-offs due to credit card losses inflated the amount of losses. The industry's noncurrent loan rate rose to 0.96 percent at the end of the third quarter, and is \$2.8 billion (9.5 percent) higher than a year ago. The noncurrent rate on consumer/installment loans rose to 1.16 percent, a seven-year high. The number of commercial banks declined by 53 institutions during the third quarter; 109 banks merged, three failed and there were 59 new charters. FDIC's problem bank list rose from 62 to 69 during the quarter. There were 70 problem banks at the same time last year.



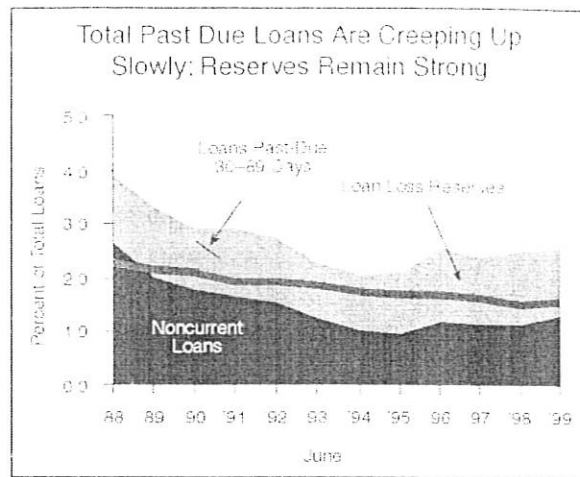
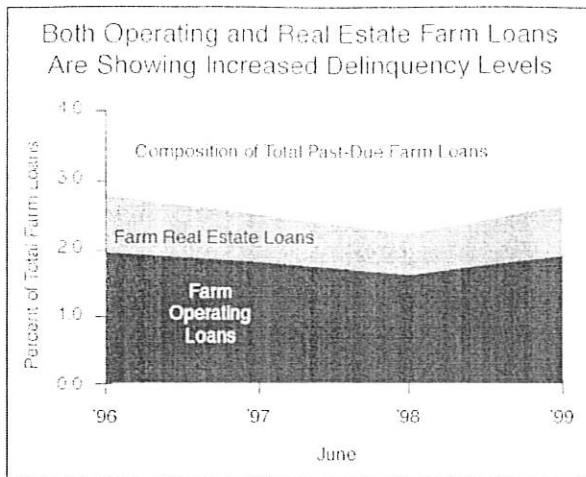
In Kansas, September 30, 1999 data shows 389 commercial banks with total assets of \$33.9 billion. Total capital in Kansas banks equaled \$3.3 billion with an equity capital to assets ratio of 9.71%. The banks' return on assets ratio equaled 1.22%, which is down from the Kansas ratio noted for September 30, 1998 of 1.33%. Currently there are 275 state chartered banks with 269 falling in the 1 and 2 CAMELS rated category.

Information provided in a recent FDIC Regional Outlook noted that the Kansas City region's **farm banks** continued to report strong earnings with a 1.22- percent aggregate return-on-assets ratio. (A farm bank is defined as any bank with ag loans of at least 25 percent of total loans. There are 1340 farm banks in the KC region as of June 30, 1999.) Declines in corn, soybean, wheat, and hog prices that started in 1998 are beginning to affect farm banks' delinquent loan levels in 1999. Problem loans are increasing but remain manageable, at 2.57percent of total loans as of June 30, 1999. Farm banks reported 2.80 percent of farm operating loans and 2.29 percent of farm real estate loans as past-due at June 30, 1999, a 41 basis point increase in each loan category from a year earlier. Increases in past-due loan ratios generally lag falling prices by at least two harvests because farm banks typically "carry over" unpaid loans from poor years. Based on this the past due ratios noted reflect farmers' strong earnings in 1996 and 1997. Based on the low commodity prices forecast by the U.S. Department of Agriculture through 2000, much higher levels of problem loans may result in the near future.

TABLE 1

PRICES ARE EXPECTED TO REMAIN DEPRESSED THROUGH 2000					
	PRICE (\$)			OCTOBER EST. 1999	PROJECTED 2000
	1996	1997	1998		
CORN	3.24	2.71	2.43	1.95	1.85
WHEAT	4.55	4.30	3.38	2.65	2.55
SOYBEANS	6.72	7.35	6.47	5.05	5.00
HOGS	53.39	51.36	34.72	37.00	35.50
CATTLE	65.06	66.32	61.48	64.50	69.00

NOTE: GRAIN PRICES ARE FOR MARKETING YEAR OF EACH CROP. CROP QUANTITIES ARE PER BUSHEL; LIVESTOCK ARE PER HUNDREDWEIGHT.  
SOURCE: USDA



### FINANCIAL MODERNIZATION

We are currently reviewing the provisions contained in the Gramm-Leach-Bliley Financial Modernization Act. We have identified two or three areas that may need possible legislative action this year. Other than these areas, we think a "wait and see" attitude would serve us well. Once the final regulations are drafted and the law is fully implemented, additional changes may be needed. The wildcard statute is available to us to address any such issues until next legislative session.

### SPECIAL ORDERS

One Special Order was issued by the OSBC during calendar year 1999. The order concerns pledging bank assets as security for deposit of Indian Funds. Federal law requires both state and national banks to collateralize deposits of Indian funds that are still in the control of the Secretary of the Interior, Bureau of Indian Affairs, or their designee, pursuant to Title 25. However, neither current Kansas statutes nor Federal law clearly provide authority for state banks to pledge assets to collateralize Indian funds not in control of the Secretary of the Interior. A state chartered bank requested that a Special Order be issued to grant parity between state and national banks concerning the ability of banks to pledge assets to collateralize deposits of Indian tribes. Title 12 of the United States Code, Section 90, authorizes national banks to pledge assets to collateralize deposits of any tribal funds, not just those funds which are deposited by and are still in the control of the Secretary of Interior. This broader authority for national banks placed state banks at a disadvantage when competing with their national bank counterparts for tribal deposits. Furthermore, the bank suggested in its request that some contiguous states' laws allow state banks located in those states to pledge to all tribal deposits, which is encouraging movement of funds outside the state of Kansas. Based on these facts, it was determined that Special Order 1999-1 should be issued, allowing state banks to pledge assets to collateralize the deposits of any funds of Federally-recognized Indian tribes, to the same extent as national banks. Issuance of this Special Order was necessary to eliminate the competitive inequity created by discrepancies between the laws governing state and national banks operating in this state.

Finally, I want to share with you some of the current issues the staff of the OSBC is working on. We have spent a considerable amount of time and devotion of resources to improving the information systems within our office. Our examination procedures are now largely computerized which has enhanced our overall efficiency. We continue to look for ways to make technology help us work smarter and more efficient. We are in the process of expanding our physical office to ensure our entire staff is in one location. We are hopeful this expansion/remodeling will be complete within the next month. In compliance with the Governor's recommendation in his State of the State address, we will begin a review of all regulations. We did this task four years ago and found it very beneficial. We also want to look at ways we can

provide information to consumers and make them aware our agency is available to assist them. We have funding for a toll free number, but have not had the human resources to date to implement its use.

In closing, 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.