

Approved: January 24, 2000
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Chairperson Senator Don Steffes at 9:00 a.m. on January 18, 2000 in Room 529-S of the Capitol.

All members were present except: Senator Sandy Praeger, Excused

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

Conferees appearing before the committee: Franklin "Lynn" Nelson, State Bank Commissioner designee
Judy Stork, Deputy Bank Commissioner
Kevin Glendenning, Deputy Commissioner of Consumer
Credit, OSBC

Others attending: *See attached list*

During a discussion of upcoming topics for the Committee to address this Session, senators from Johnson County said they had been contacted regarding problems local public entities (school districts, cities, etc.) had in finding state-chartered banks to bid on their large accounts. Kansas statutes now require public monies to be deposited in state-chartered banks. A bill is being designed to address this issue.

Franklin Nelson, State Bank Commissioner designee, gave an overview of the activities and plans of the Office of the State Bank Commissioner (Attachment 1). Included in his, Judy Stork's, and Kevin Glendenning's presentation of considerations or activities were:

- Establishment of new division of consumer mortgage lending
- Responsibilities of the Bank Board and those of the State Bank Commissioner
- Need for increased budgeting authority
- Impact of low farm prices on primarily agriculture banks
- Review of the federal financial deregulation act
- Computerization of bank exam procedures
- Physical movement of consumer credit department into the Office of the State Bank Commissioner area
- Review of procedures
- Need for additional staffing of 5 FTE's in the mortgage lending area (Committee requested written explanation for the need and a fiscal note)

Of the 275 state-chartered banks in Kansas, 269 are rated as Class I or II. At least 50% are in the Class I category. The loan to deposit ratio is 68 to 74.1%. The Committee requested additional information on how many of these loans were first mortgages on real estate, how many of these loans are in the business and/or agriculture sector, the number of new banks and branches which have come into Kansas in the past year (not just state-chartered), and makeup of assets of Kansas banks,

In response to questions on how land values are affecting bank loans, Mr. Nelson stated that banks are doing a much better job in separating real estate, machinery, and livestock loans. Therefore, increased land values are not used to fund cattle loans. This has led to a better structuring of credit lines.

Mr. Nelson requested the introduction of two pieces of legislation:

- Amendments to the Mortgage Business Act which would give the authority to the Commissioner to deny or suspend registration under the Act and add additional clarification to the law as to who falls under the Act;
- Amendment to the law that addresses bank assessments. The department collects fees on a semi-

CONTINUATION SHEET

annual basis from the banks and trust companies which they regulate. If a bank merges out of existence during the course of the assessment year and is acquired by another state-chartered institution, they want to ensure the survivor pays the balance of the assessment owed to the agency.

Senator Feleciano moved that the requests be introduced into legislation. Motion was seconded by Senator Brownlee. Motion carried.

The meeting was adjourned at 10:00 a.m. The next meeting will be held on January 19, 2000.

SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE
 GUEST LIST

DATE: Jan. 18, 2000

NAME	REPRESENTING
Sonya Allen	OSBC
Judi Stork	OSBC
Gwen Hill	OSBC
J. Pierpont Frick	42#
Frank W. Tolson	OSBC
Sam Sellers	KAIA
Kevin Barone	Hendwear
Matt Goddard	HCBA
George Barbee	KAFS
Martin Hawver	Hawver's Capitol Rep
Larrie Ann Lower	KS Governmental Consulting
Danielle Noe	Governors Office
Jennifer Grant	Federico Consulting

Date 1/18/2000

Attachment # 1

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

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

January 18, 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

Senate File
Attachment 1
1/18/2000

company. A rating is assigned to each of our banks and trust companies. We assess the condition of the Capital, Assets, Management, Earnings, Liquidity, and Sensitivity to Market Risk of each bank. We then rate each component on a scale of one to five, with a one rating being the best and a five being the worst. The CAMELS rating is disclosed to each bank in their examination report.

Our office also reviews and approves various 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.

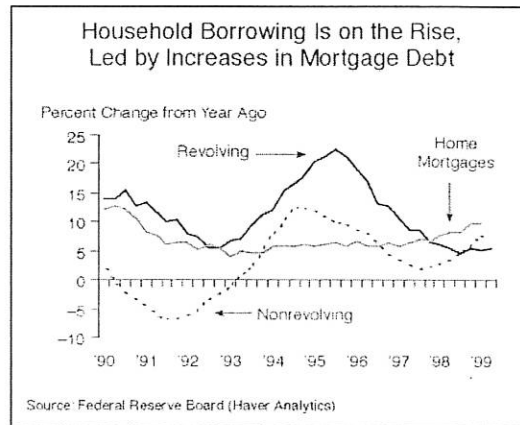
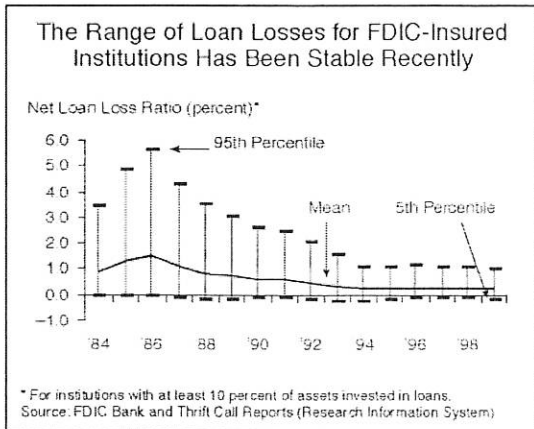
Keeping in mind that a large portion of the industries under the oversight of this division was largely unregulated by the state just three years ago, there will no doubt be varied opinions on some regulatory issues. As we move forward, we intend to seek the input of both consumers and the industries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



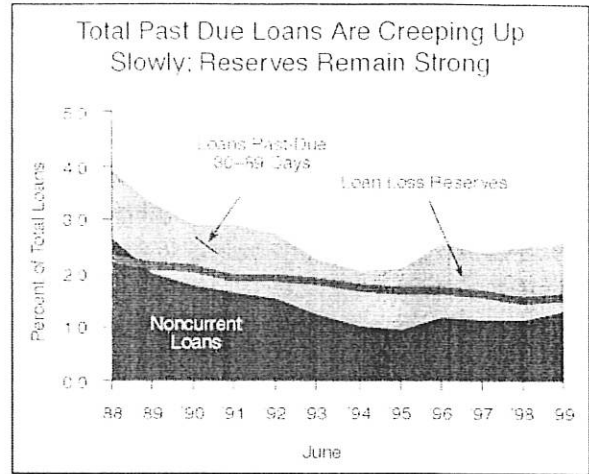
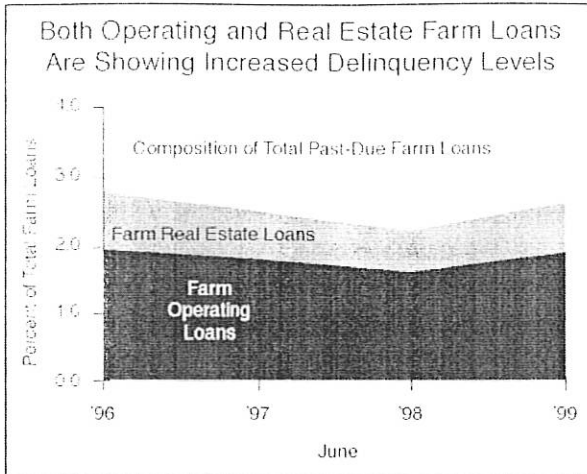
In Kansas, September 30, 1999 data shows 389 commercial banks with total assets of \$33.9 billion. Total capital in Kansas banks equaled \$3.3 billion with an equity capital to assets ratio of 9.71%. The banks' return on assets ratio equaled 1.22%, which is down from the Kansas ratio noted for September 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

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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.

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

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

January 18, 2000

Mr. Chairman and Members of the Committee:

I would request the introduction of the following legislation.

1) MORTGAGE BUSINESS ACT

As you will remember, the Mortgage Business Act was first enacted into law in 1996. We are now asking for a bill to amend the Mortgage Business Act (K.S.A. 9-2201 et. seq.) We wish to address two areas of the Act -- 1) the authority of the Commissioner to deny or suspend registration under the Act, and 2) add additional clarification to the law as to who falls under the Act.

2) BANKING

We wish to amend K.S.A. 9-1703, which is the law that addresses bank assessments. The department collects our fees on a semi-annual basis from the banks and trust companies we regulate. If a bank merges out of existence during the course of the assessment year and is acquired by another state-chartered institution, we want to ensure the survivor pays the balance of the assessment owed to our agency. This amendment accomplishes that goal.

I respectfully request the introduction of these two bills.

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Sept 20

STATE OF KANSAS
MORTGAGE BUSINESS ACT

K.S.A 9-2201 et seq.

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

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

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

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

(c) "Employee" means any individual:

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

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

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

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

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

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

(i) "Registrant" means any individual or other entity who holds a valid certificate of registration to conduct mortgage business in this state. (L. 1999, ch 45 , §1; April 8.)

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

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

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

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

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

(e) a registrant's employee. (L. 1999, ch. 45 , § 2; April 8.)

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K.S.A. 9-2203. Registration required to conduct mortgage business. It shall be unlawful for any person to engage in or to advertise, publish or otherwise hold out to the public that such person is engaged in the mortgage business without first being registered with the commissioner as required by this act. Any such individual or member or officer of any such corporation or other entity violating this section shall be guilty of a misdemeanor, and upon conviction shall be punished by a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed one year, or a fine not exceeding \$5,000 or both. (L. 1999, ch. 45 , § 3; April 8.)

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

- (1) The location and nature of the business to be conducted;
- (2) the identity, character, and qualifications of an individual applicant;
- (3) the identity, character, and qualifications of the officers, directors, members, partners and employees of the entity, if the applicant is a partnership, corporation or other business entity;
- (4) the name under which the applicant intends to conduct business; and
- (5) other information the commissioner requires to evaluate the financial responsibility and condition, character, qualifications, fitness of the applicant and compliance with the provisions of this act.

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

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

- (1) The commissioner has received the complete application and fee required by this section; and
- (2) the commissioner determines the financial responsibility and condition, character, qualifications and fitness of the applicant warrants a belief that the business of the applicant will be conducted competently, honestly, fairly and in accordance with all applicable state and federal laws. (L. 1999, ch. 45 , § 4; April 8.)

K.S.A. 9-2205. Registration; annual renewal. (a) A certificate of registration shall become effective as of the date specified on the face of the certificate.

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

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

(d) Any renewal application received by the commissioner after the expiration date of the registrant's current certificate shall be treated as an original application and be subject to all reporting and fee requirements contained in K.S.A. 1998 Supp. 9-2204 and amendments thereto. (L. 1999, ch. 45, § 5; April 8.)

K.S.A. 9-2206. Application denied; appeal. If the commissioner fails to issue a certificate of registration within 60 days or grant a renewal within 30 days after a filed application is deemed complete by the commissioner, the applicant may make written request for an appeal on the issue of the applicant's registration or renewal qualifications. The commissioner shall conduct a hearing in accordance with the Kansas administrative procedure act. (L. 1999, ch. 45, § 6; April 8.)

K.S.A. 9-2207. Denial, suspension or revocation of registration; notice. The commissioner may deny, suspend, revoke, or refuse to renew the registration of a mortgage business issued pursuant to this act, if the commissioner finds, after notice and opportunity for a hearing conducted in accordance with the provisions of the administrative procedures act, that:

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

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

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

(d) the applicant or registrant has been convicted of any crime involving fraud, dishonesty or deceit;

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

(f) the applicant or registrant, *or an employee of the applicant or registrant*, has been the subject of any disciplinary action by this agency or any other state or federal regulatory agency; ~~or~~

(g) a final judgment has been entered against the applicant or registrant in a civil action and the commissioner finds, based on the conduct on which the judgement is based, that registration of such person would be contrary to the public interest-;

(h) the applicant or registrant, or an employee of the applicant or registrant, has been convicted of engaging in mortgage business activity without authorization pursuant to K.S.A. 9-2203 or a substantially similar offense in another state; or

(i) the applicant or registrant has refused to furnish information required by the commissioner within a reasonable time as fixed by the commissioner. (L. 1999, ch. 45, § 7; April 8.)

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

(b) Prior to entering into any contract for the provision of services or prior to the registrant receiving any compensation or promise of compensation for a mortgage loan the registrant shall acquire from the customer a signed acknowledgment containing such information as the commissioner may prescribe by rule and regulation.

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

(d) No registrant shall conduct mortgage business in this state using any name other than the name or names stated on the certificate of registration. (L. 1999, ch. 45, § 8; April 8.)

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

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

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

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

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

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

(f) disclose to any person or entity that an applicant's or registrant's certificate of registration has been denied, suspended, revoked or refused renewal-; (L. 1999, ch. 45, § 9; April 8.)

(g) require or permit any person to file a statement in writing, under oath or otherwise as the commissioner determines, of all the facts and circumstances concerning any apparent violation of this act, or any rule and regulation or order hereunder; and

(h) as a condition in settlements of investigations or examinations, receive a payment designated for consumer education to be expended as directed by the commissioner for such purpose.

K.S.A. 9-2210. Fees; disposition. All fees collected by the commissioner pursuant to this act shall be subject to the provisions of K.S.A. 75-1308 and amendments thereto. (L. 1996, ch. 175, §10; April 25.)

K.S.A. 9-2211. Financial responsibility requirements; alternatives. (a) Each applicant or registrant who maintains a bona fide office shall comply with at least one of the following:

(1) Submit written evidence which establishes, to the commissioner's satisfaction, that the applicant or registrant

is approved as a mortgagee by:

- (A) The federal department of housing and urban development;
- (B) the federal national mortgage association; or
- (C) the federal home loan mortgage corporation.

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

- (i) The bond or letter of credit shall be payable to the office of the state bank commissioner;
- (ii) the terms of the bond or irrevocable letter of credit shall provide that it may not be terminated without 30 days prior written notice to the commissioner; and
- (iii) the bond or irrevocable letter of credit shall be available for the recovery of expenses, fines and fees levied by the commissioner under this act, and for losses or damages which are incurred by any borrower or consumer as a result of the applicant's or registrant's failure to comply with the requirements of this act; and

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

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

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

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

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

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

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

(2) Submit evidence that establishes, to the commissioner's satisfaction, that the applicant or registrant shall at all times maintain a minimum net worth of \$50,000. Evidence of net worth shall include the submission of a balance sheet accompanied by a written statement by an independent certified public accountant attesting that the balance sheet has been reviewed in accordance with generally accepted accounting principles. (L. 1999, ch. 45, §10; April 8.)

K.S.A. 9-2212. Prohibition against using unregistered persons; exception. (a) Except for those persons meeting the requirements of K.S.A. 1998 Supp. 9-2202 and amendments thereto, a registrant shall not pay compensation to, contract with or employ as an independent contractor any person engaged in mortgage business who does not hold a valid certificate of registration.

(b) No person who has had a certificate of registration denied, revoked or suspended, or been convicted of any crime involving fraud, dishonesty or deceit, shall be employed by a registrant without the prior written approval of the commissioner. (L. 1999, ch. 45, §11; April 8.)

K.S.A. 9-2213. Time limit for deposit of escrow funds; records required. (a) Within three business days of receipt a registrant shall deposit all fees and money received from a borrower prior to the time a loan is consummated in an escrow account in a bank, savings bank, savings and loan association or credit union incorporated under the laws of this state, or organized under the laws of the United States or another state ~~and which has a main or branch office in this state.~~

(b) For each borrower the registrant shall maintain a separate record of all money received for any service performed or to be performed, including any payment to a third party, setting forth:

- (1) The date the money was received;
- (2) the amount of money received;
- (3) the date the money was deposited in the escrow account; and
- (4) the date, description, and justification for each disbursement.

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

- (1) Within five business days of consummation of the loan; or
- (2) within five business days of receipt of written notice of the borrower's intention to withdraw from the loan transaction. (L. 1999, ch. 45, § 12; April 8.)

K.S.A. 9-2214. Ownership of documents. All original documents provided to the registrant by the borrower or at the expense of the borrower, including any appraisals, are the property of the borrower and at the borrower's request, shall be returned to the borrower without further expense if the loan is not consummated. (L. 1999, ch. 45, §13; April 8.)

K.S.A. 9-2215. Change in registrant's business; notice. (a) A registrant shall provide written notice to the commissioner within 10 business days of the occurrence of any of the following events:

- (1) A change in the registrant's main office address;
- (2) the opening, closing or relocation of any branch office of the registrant located in this state;
- (3) a change in the registrant's name or legal entity status; or
- (4) the addition of an officer, partner or director to the registrant's business.

(b) The commissioner may request additional information concerning any written notice received pursuant to subsection (a). (L. 1999, ch. 45, § 14; April 8.)

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

(b) All books, records and any other documents held by the registrant shall be made available for examination and inspection by the commissioner or the commissioner's designee. Certified copies of all records not kept within this state shall be delivered to the commissioner within three business days of the date such documents are requested. (L. 1999, ch. 45, §15; April 8.)

K.S.A. 9-2217. Confidentiality of examination reports; exceptions. Examination reports and correspondence regarding the reports made by the commissioner or the commissioner's examiners are confidential, except that the commissioner may release examination reports and correspondence regarding the reports in connection with a disciplinary proceeding conducted by the commissioner, a liquidation proceeding or a criminal investigation or proceeding. Additionally, the commissioner may furnish to federal or other state regulatory agencies or any officer or examiner thereof, a copy of any or all examination reports and correspondence regarding the reports made by the commissioner or the commissioner's examiners. (L. 1999, ch. 45, §16; April 8.)

K.S.A. 9-2218. Cease and desist orders; civil fines. (a) If the commissioner determines after notice and opportunity for a hearing pursuant to the Kansas administrative procedure act that any ~~registrant~~ person has engaged, is engaging or is about to engage in any act or practice constituting a violation of any provision of this act or any rule and regulation or order hereunder, the commissioner by order may require any or all of the following:

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

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

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

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

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

(4) If no hearing is requested and none is ordered by the commissioner, the emergency order will remain in effect until it is modified or vacated by the commissioner. (L. 1999, ch. 45, §17; April 8.)

K.S.A. 9-2219. Injunction. Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this act or any rule and regulation or order hereunder, the commissioner may bring an action in any court of competent jurisdiction to enjoin the acts or practices and to enforce compliance with this act or any rule and regulation or order hereunder. Upon a proper showing, a permanent or temporary injunction, restraining order, restitution, writ of mandamus or other equitable relief shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner shall not be required to post a bond. (L. 1999, ch. 45, §18; April 8.)

K.S.A. 9-2220. Citation of act. The provisions of K.S.A. 1998 Supp. 9-2201 through 9-2210, and amendments thereto, and sections 10 through 19, shall be known and may be cited as the Kansas mortgage business act. (L. 1999, ch. 45, §19; April 8.)

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K.S.A. 9-1703. Annual assessment, banks, trust companies and savings and loan associations; examinations; disposition of receipts; bank commissioner fee fund.

(a) The expense of every regular examination, together with the expense of administering the banking and savings and loan laws, including salaries, travel expenses, supplies and equipment, shall be paid by the banks and savings and loan associations of the state, and for this purpose the bank commissioner shall, prior to the beginning of each fiscal year, make an estimate of the expenses to be incurred by the department during such fiscal year. From this total amount the commissioner shall deduct the estimated amount of the anticipated annual income to the fund from all sources other than bank and savings and loan association assessments. The commissioner shall allocate and assess the remainder to the banks and savings and loan associations in the state on the basis of their total assets, as reflected in the last March 31 report called for by the federal deposit insurance corporation under the provisions of section 7 of the federal deposit insurance act, 12 USC 1817 and amendments thereto or K.S.A. 17-5610 and amendments thereto, except that the annual assessment will not be less than \$1,000 for any bank or savings and loan association.

(b) The expense of every regular trust examination, together with the expense of administering trust laws, including salaries, travel expenses, supplies and equipment, shall be paid by the trust companies and trust departments of banks of this state, and for this purpose, the bank commissioner, prior to the beginning of each fiscal year, shall make an estimate of the trust expenses to be incurred by the department during such fiscal year. The commissioner shall allocate and assess the trust departments and trust companies in the state on the basis of their total fiduciary assets, as reflected in the last December 31 report filed with the commissioner pursuant to K.S.A. 9-1704 and amendments thereto, except that the annual assessment will not be less than \$1,000 for any active trust department or trust company. A trust department or a trust company which has no fiduciary assets, as reflected in the last preceding year-end report filed with the commissioner, may be granted inactive status by the commissioner and the annual assessment shall not be more than \$100 for an inactive trust department or trust company. No inactive trust department or trust company shall accept any fiduciary assets or exercise any part of or all of its trust authority until such time as it has applied for and received prior written approval of the commissioner to reactivate its trust authority.

(c) A statement of each assessment made under the provisions of subsection (a) or (b) shall be sent by the commissioner to each bank, savings and loan association, trust department and trust

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company on July 1 or the next business day thereafter. If a bank, savings and loan association or trust company exists as a corporate entity with the secretary of state's office as of the close of business on June 30, and is authorized by the office of the state bank commissioner to conduct banking, savings and loan or trust business, one-half of the amount so assessed shall be due and payable on or before July 15. If a bank savings and loan association or trust company exists as a corporate entity with the secretary of state's office as of close of business on December 31, and is authorized to conduct banking, savings and loan or trust business, the remaining one-half of the amount assessed shall be due and payable on or before January 15. Any expenses incurred or services performed on account of any bank, trust department or trust company or other corporation which are outside of the normal expense of an examination required under the provisions of K.S.A. 9-1701, and amendments thereto or K.S.A. 17-5612 and amendments thereto, shall be charged to and paid by the corporation for whom they were incurred or performed. The commissioner may impose a penalty upon any bank, savings and loan association, trust department or trust company which fails to pay its annual assessment. The penalty shall be assessed in the amount of \$50 for each day the assessment is not paid. The counting period for such penalty will begin February 1 or August 1.

The bank commissioner shall remit all moneys received by or for such commissioner from such examination fees to the state treasurer at least monthly. Upon receipt of each remittance, the state treasurer shall deposit the entire amount in the treasury. Twenty percent of each deposit shall be credited to the state general fund and the balance shall be credited to the bank commissioner fee fund. All expenditures from the bank commissioner fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the bank commissioner or by a person or persons designated by the commissioner.

(d) As used in this section, 'savings and loan association' means a Kansas state-chartered savings and loan association.

(e) **(1)** In the event a bank, savings and loan association or trust company is merged into, consolidated with, or the assets and liabilities of which are purchased and assumed by another bank, savings and loan association or trust company, between the preceding March 31 and June 30 , for banks and savings and loan associations, or the preceding December 31 and June 30 , for trust companies, ~~and July 1~~, the surviving or acquiring bank, savings and loan association or trust company is obligated to pay the assessment on the assets of the institution being merged, consolidated or assumed for the fiscal year commencing July 1.

(2) In the event a bank, savings and loan association or trust company is merged into, consolidated with, or the assets and liabilities of which are purchased and assumed by another bank. Savings and loan association or trust company, between July 1 and December 31, the surviving entity is obligated to pay the unpaid portion of the assessment of the institution being merged, consolidated or assumed for the fiscal year commencing July1, which would have been due on or before January 15.