Approved: January 31, 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 19, 2000 in Room 529-S of the Capitol.

All members were present except:

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

Conferees appearing before the committee: David Brant, Securities Commissioner

Others attending: See attached list

Ken Wilke, Revisor of Statutes Office, requested the introduction of bill regarding the transfer of powers from the bank board to the State Bank Commissioner (Attachment 1 on file in the Office of the Chair of the Committee).

Senator Barone moved to introduce the bill into legislation. Motion was seconded by Senator Becker. Motion carried.

David Brant, Securities Commissioner, presented an overview of the department's past and current activities (Attachment 2). He no longer is Acting Commissioner of Consumer Credit as Kevin Glendenning has been given this responsibility. Mr. Brant reviewed the approved plan for testing new and established investment advisors. Even with the great activity of securities and investments within the state, there appears to be very little need for reactionary enforcement by the department. He introduced Angela Cichocki as a new hire in the department with the responsibility of educating the public and working with schools in investments, 401K's, securities, stocks, bonds, and fraud. Plans also include working with the Insurance Department in the area of viatical settlements. Dissemination of such information will be through yellow page advertising, booths at fairs, and availability at other public events. Mr. Brant emphasized his desire to keep regulation at the state level even with the implementation of the financial deregulation act passed at the federal level. He indicated the department's willingness to work with the Office of the State Bank Commissioner and the Insurance Department in designing uniformity in state and federal regulations and enforcement.

Senator Brownlee moved for the approval of the minutes of January 12, 2000. Motion was seconded by Senator Feleciano.

The meeting was adjourned at 10:00 a.m. The next meeting is scheduled for January 20, 2000.

SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE
GUEST LIST

DATE: Jan 19, 2000

NAME	REPRESENTING
Trish Hein	SBG
Jeff Bottenberg	HIAA
John Federico	KCUA
Marc Namann	Div. of the Budget
Roger Franzke	KGC
Angela Cichocki	Securities
David Brant	Securities Commissioner
Kevin Barone	Hein/weir
Kathy Olsen	KBA
Matthew Goddard	HCBA

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.

	FY 1998	FY 1999
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

Investor Services 1-800-232-9580
http://www.ink.org/public/ksecom

618 S. KANSAS AVENUE
TOPEKA, KANSAS 66603-3804

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.

	FY 1998	FY 1999
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

- can be joint actions w/ other states.

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*.

	FY 1998	FY 1999
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

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.

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

The 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.

2-6

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.

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

SECTION C

BUSINESS

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

Friday, April 9, 1999 THE TOPEKA CAPITAL-JOURNAL www.cjonline.com/business

2-10

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 alleged supervision failures.

The 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 occurence," 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.

2-12

11-2

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

KANSAS
Metro News
Topeka
W 1,509

JAN

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 (refered 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

Kansas 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 understand 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."

2-13

Commissioner helps state lead the way in protecting investors

By CHRISTIE APPELHANZ
The Capital-Journal

David 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.

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."

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.

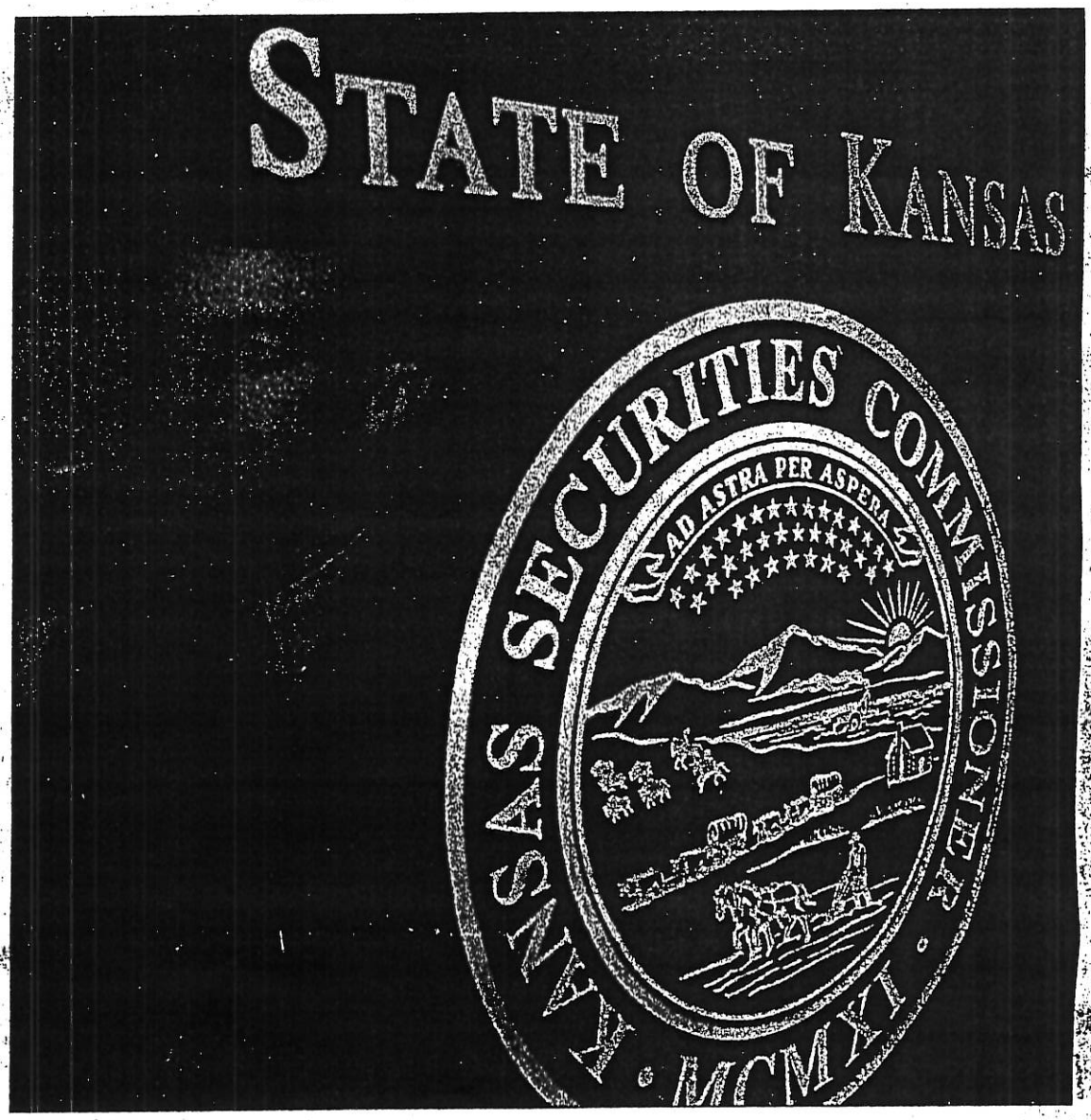
More recently, Kansans have fallen prey to smooth-talking telemarketers who capitalize on headlines on the year 2000 problem, Asian currency crisis and technology breakthroughs.

"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-

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.

H1-8

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 a 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 subprime home equity loans.

Back on the job as securities commissioner, Brant is continuing to make the office more customer-service orientated. 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

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.

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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

Program	Clip Type	Time In/Length	Description
Thursday, November 04, 1999			
Wichita, KS			
03 KSNW			
6:00 AM ***Segment E6 of Kansas Today***	*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.
12:00 PM ***Segment A10 of KSN News at Noon***	*VO Graphic*	00:05:25 / 00:00:21	The state is cracking down on a retirement plan that was actually a pyramid plan.
5:00 PM ***Segment A2 of KSN News First News***	*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.
10 KAKE			
6:00 AM ***Segment E4 of Good Morning Kansas***	*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.
12 KWCH			
6:00 PM ***Segment A5 of Eyewitness News at 6***	*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

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 organize 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-

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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 — including 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

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...t 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 paper, 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

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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

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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. ◆

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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