

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Chairperson Sandy Praeger at 9:30 a.m. on January 15, 2002 in Room 234 N of the Capitol.

All members were present except:

Committee staff present: Dr. Bill Wolff, Kansas Legislative Research Department
Ken Wilke, Office of the Revisor of Statutes
JoAnn Bunten, Committee Secretary

Conferees appearing before the committee:
David Brant, Kansas Securities Commissioner
Linda DeCoursey, Kansas Insurance Department

Others attending: See attached list.

Introduction of Bills

Chairperson Praeger welcomed FI&I Committee members and staff back to the first meeting of the 2002 session and called for introduction of bills.

David Brant, Kansas Securities Commissioner, requested introduction of a bill that would revive portions of former 2001 **HB 2243** and amend various statutes under the Kansas Securities Act in order to make it uniform with other states. (Attachment 1)

Senator Feleciano made a motion that the Committee introduce the proposed legislation, seconded by Senator Teichman. The motion carried.

Linda DeCoursey, Director of Government Affairs, Kansas Insurance Department, requested introduction of three bills relating to risk based capital, reinsurance and sharing of information. (Attachment 2)

Senator Feleciano made a motion that the Committee introduce the proposed legislation, seconded by Senator Teichman. The motion carried.

Briefing, Discussion and Action on bills in Committee

Dr. Bill Wolff, KLRD, briefed the Committee on the 2001 carry-over bills in Committee and recommendations that were made during the interim. The Chair noted that the Committee may want to consider action on the carry-over bills later in the session.

During Committee discussion on **SB 258 - Report to the legislature regarding counties opting into the state employees health plan**, Harry Bossi, Division of Personnel Services, noted that results of a survey regarding the addition of county and city employees in the state employees health plan would be available in March. Senator Feleciano made a motion that the Committee introduce legislation relating to criteria for expanding participating in the state employees health plan by cities and counties, seconded by Senator Brundgardt. The motion carried.

The Chair called for action by the Committee to strike **SB 274 - Insurance; providing coverage for certain mental health conditions**. Senator Feleciano made a motion to strike SB 274, from the Committee Calendar, seconded by Senator Teichman. The motion carried. The Chair noted that amendments were put into **HB 2563**, the Securities Commission bill, during a conference committee at the end of the 2001 session that needed to be removed and the bill brought back to the Committee.

Staff brought the Committee's attention to recommendations made during the interim that included introduction of a new bill to remove the sunset date of July 1, 2002, from the Business Health Partnership Act as well as reviewing the status of the Delta Dental Plan. The Chair noted that the Committee may want to hear from Doral Dental later in the session. The Committee was also given an update on next week's agenda.

Adjournment

The meeting was adjourned at 10:30 a.m. The next meeting is scheduled for January 22, 2002.

SENATE FINANCIAL INSTITUTIONS & INSURANCE
COMMITTEE GUEST LIST

DATE: 1-15-02

NAME	REPRESENTING
Bill Sneed	Ameritas
Harvey Bossi	Div of Reg. Svcs
Kevin Davis	Am Family Bus
John Lennon	Productions
David Brant	Securities Commissioner
Kathy Olsen	K&S Bankers BSN.
Chuck Stones	KBA
Jim Liu	JOB
Sandy Brader	KAIFA
Jane Jones	Kansas Ins. Dept.
Cathy McNorton	KTLA
BOB HAYES	HCST
George Barbee	G B B A
Sandra McGowan	Ks. Ins. Dept
John Frederick	
Bill Kenny	KCUA
Lee Wilt	FARMERS INS
Rick Pittman	Health Midwest
Ron Hess	Hein + Weir, Chtd

SENATE BILL NO. _____
Summary and Explanation of Provisions
Office of the Kansas Securities Commissioner

The Securities Commissioner requests that the 2002 Senate Committee on Financial Institutions and Insurance revive portions of former House Bill 2243, which was tabled by the House Committee on Financial Institutions on February 14, 2001.

The proposed 2002 amendments delete the references to variable annuities that were contained in House Bill 2243, including the deletion of Section 11 in its entirety. Section 10 is also deleted because the provisions regarding the Investor Education Fund are now contained in a separate bill. Sections 7 and 12, regarding the investigative powers of the commissioner, are also deleted and will not be pursued this legislative session.

Summary	Amend various statutes under the Kansas Securities Act (the "Act") to update or remove obsolete provisions, and to promote uniformity with other states' and federal securities laws.
Fiscal Impact	None of the following amendments would increase costs of agency operations and there would be no effect on staffing requirements or funding sources.
Policy Impact	The proposed clarifications, updates and corrections are intended to improve the understandability and uniformity of the Kansas Securities Act. Improved uniformity benefits persons regulated by the agency by reducing costs of compliance with different requirements among several states, and it also reduces the likelihood of noncompliance due to misunderstanding.

The provisions in the proposed bill are described as follows (the citations refer to HB2243).

Sec. 1	<u>K.S.A. 17-1252</u>
Page 1, Line 25	The proposed addition of "(e)" is stricken because it relates to variable annuities. The reference to K.S.A. 17-1261(h) is obsolete because of federal preemption under the Philanthropy Protection Act of 1995.
Page 1, Line 41 Page 2, Line 17 Page 3, Line 32	Amend the definitions in subsections (e), (h), and (m)(1) for clarity. The amendments are not substantive, but the grammatical edits are important because the definitions are used for jury instructions and the current language is confusing to laymen.
Page 2, Line 34	Amend subsection (i) to add the Investment Adviser Act of 1940 to the list of federal statutes, because it is frequently cited in the act.
Page 3, Line 4-6	The proposed language to amend the definition of "security" to include variable annuities is stricken.
Sec. 2	<u>K.S.A. 17-1254</u>
Page 4, Line 24	Amend subsection (b) to be consistent with subsection (a) regarding sales made in compliance with exemptions provided by KSA 17-1262.
Page 5, Line 7	Amend subsection (d) because the current language technically requires out-of-state firms to register all their investment adviser representatives in Kansas, even those

Senate Financial Inst. & Insurance

Date: 1-15-02

Attachment No. /

- IAR's who do not have customers in Kansas. The proposed language mirrors the language at the end of (d)(2).
- Page 5, Line 26 Amend subsection (e) to delete obsolete language that expired on October 10, 1999.
- Page 6, Line 16 Amend subsection (g) to give the commissioner broader discretion in determining whether the criminal convictions of an applicant warrant the denial of a securities license. We increasingly see applicants with a series of misdemeanors or serious crimes of dishonesty pled down to misdemeanors. The new language would allow the commissioner to take into account all convictions, not just felonies.
- Page 6, Line 36 Amend subsection (i) to delete language which merely duplicates authority already granted in (h).
- Page 8, Line 10 Amend subsection (m) to delete obsolete language in subpart (2), and to clarify and correct the terminology in (m)(12) regarding a failure by management of broker-dealers and investment advisers to reasonably supervise their agents, investment adviser representatives or other employees. The proposed amendment to (m)(12) is based on the Uniform Securities Act.
- Page 9, Lines 26-39 Amend subsections (n) – (p) to add “investment adviser representatives” to all the provisions which list “broker-dealers, agents, and investment advisers.” Before the National Securities Market Improvement Act of 1996, the term “investment adviser” referred to both firms and individuals. Now the term “investment adviser” refers to the firm, and the term “investment adviser representative” refers to the individual. This portion of the statute has not been updated to take into account the change in terminology after NSMIA.
- Page 10, Lines 1-39 Amend (p) to facilitate the use of a new “investment adviser registration depository” (IARD), a centralized computer system for investment advisers. It is similar to the “central registration depository” (CRD), a system that is already in place for broker-dealers and agents. The current language of the statute explicitly authorizes our participation in the CRD system. The proposed amendments broaden our authority and permits participation in any registration depository.
- Sec. 3 K.S.A. 17-1257
- Page 11, Line 1 Amend subsection (a) to clarify that registration of securities by coordination with federal registration at the SEC does not apply if the federal registration is already in effect at the time an application is filed in Kansas. Applications for registration of securities in Kansas filed after the federal registration is effective would need to be filed by Qualification under KSA 17-1258. The effect of this change is that securities already registered with the SEC could not become registered automatically in Kansas as provided under KSA 17-1257(c), but would become registered when ordered by the Commissioner. Amend subsection (b) for clarity, and to correct an error in the current wording of (b)(3), which says “of” rather than “or.” Amend subsection (c) for clarity, to delete superfluous language, to delete obsolete language permitting the use of a telegraph for notification, and to permit the agency to give notice to a registrant without charging the registrant for it. Subdivide paragraph (c) into new (c), (d), and (e).
- Sec. 4 K.S.A. 17-1258
- Page 14, Line 26 Amend subpart (a)(14) to update descriptions of financial statements in conformity with current generally accepted accounting principles, and add new (b) to provide that the

Commissioner may require financial statements to be audited by independent certified public accountants in accordance with generally accepted auditing standards. The remaining proposed amendments edit for clarity and adopt neutral pronouns.

Sec. 5

K.S.A. 17-1261

Page 15, Line 9

Amend subsection (b) to adopt NCCUSL language and eliminate confusion arising from the use of the term “corporate” (i.e., securities issued by Canadian corporations are not exempt.) Delete subsections (n) and (o) which specify exempt securities issued by Kansas-based nonprofit organizations, because those provisions are non-uniform, redundant and confusing in relation to other exemptions and laws. The types of securities specified in these subsections are also exempt under subsection (h) of this statute. Charitable gift annuities and similar securities are not subject to registration or exemption conditions due to preemption of state law under the federal Philanthropy Protection Act of 1995.

Sec. 6

K.S.A. 17-1263

Page 17, Line 38

Amend the exclusions from the requirements for filing a consent to service of process form with respect to exempt securities under KSA 17-1261 in order to be consistent with the exclusions from the definition of agent under KSA 17-1252(b).

Page 18, Line 23

Add subsection (d) to permit service of process under the less burdensome KAPA procedure rather than service through the Secretary of State.

Sec. 8

K.S.A. 17-1266a

Page 20, Lines 36-39

Amend (c) to change “licensed” to “registered” and “sales representative” to “agent,” to be consistent with the terminology used in the Act. Amend (c)(1) to add investment adviser representatives to the list of registered people (the list was not updated after NSMIA—see notes to 17-1254(n) above.)

Page 21, Line 2

Amendment enables the Commissioner to order the disgorgement of illegal investment income and the payment of restitution to compensate investors for losses arising from violations of the securities laws. Also permits the Commissioner to assess interest up to 15% (the same interest rate that is permissible in civil suits under K.S.A. 17-1268).

Page 21, Lines 6-8

Move language governing hearings from the last sentence of 17-1270(e) to new 1266a(d).

Sec. 9

K.S.A. 17-1270

Page 21, Line 19

Delete the last phrase from subsection (c), which indicates that the Commissioner may not require the filing of documents or information by issuers whose securities or transactions are exempt under KSA 17-1261 or 17-1262. This conflicts with authority provided under other sections which require such filings.

Page 21, Line 31

Amend subsection (d) to delete the authority to set fees for reimbursement of examination costs by rules and regulations because the authority is sufficiently provided by statute and a regulation would be redundant. Move the last sentence of (e) to 17-1266a(d), and subdivide (f) for clarity.



Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

January 15, 2002

TO: Senate Committee on Financial Institutions and Insurance
FROM: Linda J. De Coursey, Director of Government Affairs
RE: Bill Introductions

Madame Chairperson and members of the Committee:

I am appearing today to on behalf of Insurance Commissioner Kathleen Sebelius to request the introduction of bills by this committee for of the Kansas Insurance Department. The proposed legislation deals with several technical issues:

Risk Based Capital

Amends K.S.A. 40-2c01(j) to change the date in the statute from "2000" to "2001" for the effective date of the RBC instructions used by carriers to file data with the insurance department.

Reinsurance

Amends K.S.A. 40-221a to correct an inconsistency between the terminology in the reinsurance statutes and newly proposed regulation. Currently, Kansas law refers to a "bank which is insured by the federal deposit insurance corporation". To be consistent with the new language in the NAIC Model Regulation that the Insurance Department is in the processing of adopting, the statute needs to be changed to "qualified United States financial institution".

Sharing of Information

Amends K.S.A. 40-222 to broaden the language to allow for information sharing pursuant to GLBA. Kansas Bank Commissioner's office had a similar problem that was corrected last year. The proposed language for the insurance commissioner is the same authority granted to the bank commissioner to allow sharing of information pursuant to GLBA.

**Bill proposals requested by the Insurance Commissioner
introduced in the
House Committee on Financial Institutions and Insurance**

- **Viatical law update** - The viatical bill would have been a carry over issue from last session, however it must be reintroduced because it died on general orders. This proposed bill updates the viatical law passed in 1999. Because of the changing environment with these types of insurance products, the NAIC has revised the model act to improve state insurance regulation. The proposed legislation establishes the necessary safeguards for viators' privacy, covers life settlements, and lays out protections for investors. The proposed changes include: 1) new definitions, 2) advertising restrictions and guidelines, 3) privacy issues; 4) expands disclosure requirements; 5) adds fraud prevention and control section; 6) expands the licensing laws for agents and brokers; 7) establishes conduct and procedures for examinations of companies; and 8) requires that any transaction involving a viatical investment is regulated by the Securities Commissioner.

KANSAS INSURANCE DEPARTMENT

Topeka Office:
420 SW 9th Street
Topeka, KS 66612-1678
785-296-3071 FAX: 785-296-7805
email: sebelius@ins.state.ks.us
Homepage: <http://www.ksinsurance.org>

KEY DEPARTMENT STAFF

Wichita Office:
130 S. Market Street, Ste. 4030
Wichita, KS 67202-3802
316-227-6010
Fax: 316-337-6018

KATHLEEN SEBELIUS, INSURANCE COMMISSIONER

PHONE: 785-296-7801 ~ email: sebelius@ins.state.ks.us

Matthew All

Assistant Commissioner
296-7804
mall@ins.state.ks.us

Kathy Greenlee

General Counsel
296-7806
kgreenle@ins.state.ks.us

Linda De Coursey

Director, Government Affairs Division
296-7802
ldecours@ins.state.ks.us

Leroy Brungardt

Director, Agents & Brokers Division
296-7859
lbrungar@ins.state.ks.us

Ken Grotewiel

Director, Consumer Assistance Division
296-7827
kgrotewi@ins.state.ks.us

Jay Rogers

Director, Accident & Health Division
296-7850
jrogers@ins.state.ks.us

Nicole Corcoran Basso

Director, Public Affairs Division
368-7163
nbasso@ins.state.ks.us

Bill Wempe

Director, Fire & Casualty Division
296-7845
bwempe@ins.state.ks.us

Marlyn Burch

Director, Life Division
296-7856
mburch@ins.state.ks.us

Don Gaskill

Director, Financial Surveillance Division
296-7821
dgaskill@ins.state.ks.us

Sabrina Wells

Comptroller
291-3191
swells@ins.state.ks.us

Jeremy Anderson

Special Assistant to the Commissioner
296-7807
janderso@ins.state.ks.us