

Approved:
Date: 2-19-02

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 February 5, 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:

Jeffery Bottenberg, representing State Farm Financial Services
Trudy Racine, SRS
David Brant, Securities Commissioner

Others attending: See attached list.

Introduction of bills

Jeffery Bottenberg, representing State Farm Financial Services, requested introduction of a bill that would allow insurance agents to transact mortgage business in Kansas without registration under the Kansas Mortgage Business Act. (Attachment 1)

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

Trudy Racine, SRS, requested introduction of a bill that would allow SRS to request in writing financial records of public assistance applicants or recipients. (Attachment 2)

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

Hearing on: SB 398 - Regulating securities; Powers of the Commissioner

David Brant, Kansas Securities Commissioner, provided written testimony in support of **SB 398**, which would amend various statutes under the Kansas Securities Act. Mr. Brant noted that all of the proposed amendments in the bill were also proposed last year in **HB 2243** which was tabled due to several provisions which would have provided for the functional regulation of agents selling variable annuities. All references to variable annuities had been deleted and not proposed this year. **SB 398** would allow the Securities Commissioner to consider all criminal convictions of an applicant when determining the approval of a securities license. It would also give the Commissioner authority to require financial statements of a securities issuer to be reviewed or audited by independent certified public accountants in accordance with generally accepted auditing standards. Mr. Brant requested an amendment to the bill that the Commissioner by rule and regulation or order may require the filing of a notice and specify conditions for exemption from the registration requirements as shown in a balloon of the bill. (Attachment 3)

There were no opponents to the bill.

Senator Teichman made a motion to adopt the proposed amendment, seconded by Senator Feleciano. The motion carried.

Senator Feleciano made a motion the committee recommend **SB 398 as amended** favorable for passage, seconded by Senator Teichman. The motion carried

Adjournment

The meeting was adjourned at 10:00 a.m. The next meeting is scheduled for February 6, 2002.

SENATE FINANCIAL INSTITUTIONS & INSURANCE
COMMITTEE GUEST LIST

DATE: 2-5-02

NAME	REPRESENTING
David Brant	Securities Commissioner
Rick Fleming	Securities Commission
Wiley Kassar	Securities Commission
Steve Wasson	✓ ✓
Jeff Bottaberg	State Farm
Rex B Hoy	" "
Gandy Braden	Ks Assoc Financial & Ins Advisors
Kathy Olsen	Ks Bankers Assn
Matthew Gaudin	HCBA
Trudy Racine	SES
Don Kuyper	KTLA
John Peterson	Ks Guental Consult
David Hanson	Ks Insur. Assns.
Gina Portner	Sen. Jim Barnett
Kristin Theohany	Sen Jim Barnett

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Memorandum

TO: The Honorable Sandy Praeger, Chair
Senate Financial Institutions and Insurance Committee

FROM: Jeffery S. Bottenberg

RE: Amendments to K.S.A. 9-2202

DATE: February 5, 2002

Madam Chair, members of the Committee, my name is Jeff Bottenberg and I represent State Farm Financial Services, F.S.B. ("State Farm Bank"). State Farm Bank is a federally chartered savings bank, regulated by the Office of Thrift Supervision ("OTS") and is wholly-owned by State Farm Mutual Automobile Association ("State Farm").

State Farm Bank respectfully requests that legislation be introduced that will allow insurance agents to transact mortgage business in Kansas without registration under the Kansas Mortgage Business Act ("KMBA"). Such exemption will allow properly trained State Farm insurance agents, who are considered independent contractors under the law, to offer their long-standing customers mortgage loans. Such exemption merely eliminates the current discrepancy in the KMBA, as employees of State Farm are considered exempt from registration, while independent contractors must register. Although our position will be fully explained and supported at the time of hearing, it is important to note that State Farm agents will be properly trained to offer mortgage loans, and the Bank Commissioner, as well as the OTS, will have full

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555 Kansas Avenue, Suite 201
Senate Financial Inst. & Insurance
Date: 2-5-02
Attachment No. 1

authority to discipline State Farm Bank for the actions of State Farm agents that violate the KMBA.

Thus, we respectfully request introduction of the proposed legislation. Please do not hesitate to contact me if I may be of assistance or answer any questions that you may have.

Respectfully Submitted,



Jeffery S. Bottenberg

JSB
Enclosure

F:\LOBBY\SFBank intro.doc



KANSAS DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES

915 SW HARRISON STREET, TOPEKA, KANSAS 66612

JANET SCHALANSKY, SECRETARY

February 5, 2002

Senator Sandy Praeger, Chair
Senate Financial Institutions and Insurance Committee
Room 255-E, Statehouse
Topeka, Kansas 66612

Dear Senator Praeger:

I would like to request the introduction of a legislative proposal regarding access to financial records. This proposal would allow SRS to request in writing financial records of public assistance applicants or recipients. A person who applies for, or receives assistance would be deemed to have consented to the release, and financial institutions responding to those requests would be immune from suit by any account holder for the disclosure.

The Department would use the requested information for more efficient processing of estate recovery claims, which are undertaken to obtain reimbursement from the estates of individuals who have received services paid for from public funds. This proposal is intended to provide additional flexibility needed to manage through these difficult financial times.

I appreciate your Committee's introduction of this bill, and will be glad to testify or provide additional information as requested.

Sincerely,


Janet Schalansky, Secretary

cc: Bill Wolff, KLRD
Kenneth Wilke, Revisor of Statutes Office
Bruce Kinzie, Revisor of Statutes Office

Senate Financial Inst. & Insurance

Date: 2-5-02

Attachment No. 2



KANSAS

Bill Graves
Governor

OFFICE OF THE SECURITIES COMMISSIONER

David Brant
Commissioner

TESTIMONY IN SUPPORT OF SENATE BILL No. 398
Amendments to the Kansas Securities Act
Senate Financial Institutions and Insurance Committee

DAVID BRANT
Securities Commissioner
February 5, 2002

Madam Chair and members of the committee, thank you for this opportunity to testify in support of Senate Bill No. 398.

- 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 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.

All of the proposed amendments in Senate Bill No. 398 were also proposed last year in House Bill No. 2243. The House bill was tabled last year due to several provisions which would have provided for the functional regulation of agents selling variable annuities. All references to variable annuities have been deleted and will not be proposed this year. The provisions in this year's bill are described as follows:

- Sec. 1 K.S.A. 17-1252
- Page 1, Line 25 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 Amend the definitions in subsections (e), (h), and (m)(1) for clarity. The
- Page 2, Line 17 amendments are not substantive, but the grammatical edits are important
- Page 3, Line 32 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.

Sec. 2 K.S.A. 17-1254

- Page 4, Line 24 Amend subsection (b) to be consistent with subsection (a) regarding sales made in compliance with exemptions provided by K.S.A. 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 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 pleaded 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).
- Page 9, Line 16 Amend subsection (m)(12) to clarify and correct the terminology 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 (NSMIA), 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 which would include IARD.

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 K.S.A. 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 K.S.A. 17-1257(c), but would become registered when ordered by the Commissioner.
- Page 11, Lines 7-15 Amend subsection (b) for clarity, and to correct an error in the current wording of (b)(3), which says “of” rather than “or.”

- Page 11, Line 32 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.
- Page 12, Line 12 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 proposed Uniform Securities Act language and eliminate confusion arising from the use of the term “corporate” (i.e., securities issued by Canadian corporations are not exempt.)
- Page 17, Lines 4-21 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 K.S.A. 17-1261 in order to be consistent with the exclusions from the definition of agent under K.S.A. 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. 7 K.S.A. 17-1266a
- Page 19, Lines 14-20 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 19, Lines 23-26 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 19, Lines 27-29 Move language governing hearings from the last sentence of 17-1270(e) to new 1266a(d).

Sec. 8 K.S.A. 17-1270

- Page 19, Line 40 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 K.S.A. 17-1261 or 17-1262. This conflicts with authority provided under other sections which require such filings.
- Page 20, Line 9 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.
- Page 20, Line 28 Move the last sentence of (e) to 17-1266a(d), and subdivide (f) for clarity.

In conclusion, all of these proposed amendments were also proposed last year in House Bill No. 2243. These amendments have been reviewed and endorsed by the Advisory Council to the Securities Commissioner. The Advisory Council is comprised of industry representatives of broker-dealer and investment advisory firms, attorneys, legislators, and former Commissioners.

In addition, I would like to request that the committee approve the attached amendment to the bill. The attached language would amend K.S.A. 2001 Supp. 17-1261(h) in Section 5 of the bill on page 16, line 2.

In the last week, we realized the need for this amendment which would authorize the Commissioner to issue an order to adopt the requirements for exemption filings for non-profit offerings, including church bond offerings.

The authority to issue an order is consistent with several other provisions in the Act and will allow more expedient adoption of new exemption requirements until such time that new regulations can be approved.

I would be glad to answer any questions.

Proposed Amendment

K.S.A. 2001 Supp. 17-1261(h)
Section 5

SB 398

16

1 association if no part of the net earnings of such person inures to the , by rule and regulation or order,
2 benefit of any private stockholder. The commissioner may require the
3 filing of a notice and specify conditions for this exemption pursuant to
4 ~~rules and regulations adopted by the commissioner.~~

5 (i) Any commercial paper which arises out of a current transaction or
6 the proceeds of which have been or are to be used for current transac-
7 tions, and which evidences an obligation to pay cash within nine months
8 of the date of issuance, exclusive of days of grace, or any renewal of such
9 paper which is likewise limited, or any guarantee of such paper or of any
10 such renewal.

11 (j) Any securities issued in connection with an employee's stock pur-
12 chase, savings, pension, profit-sharing or similar benefit plan, or a self-
13 employed person's retirement plan.

14 (k) Any security evidencing membership in, or issued as a patronage
15 dividend by, a cooperative association organized under the laws of this
16 state exclusively for the purpose of conducting an agricultural, dairy, live-
17 stock or produce business, or selling, processing, storing, marketing or
18 otherwise handling any agricultural, dairy, livestock or produce, and any
19 activities incidental to these purposes.

20 (l) Any security issued by and representing an interest in or debt of,
21 or evidencing membership in, or issued as a patronage dividend to resi-
22 dents or landowners of not to exceed five contiguous counties in Kansas
23 by a cooperative association organized under the laws of this state exclu-
24 sively for the purpose of conducting an agricultural, dairy, livestock or
25 produce business, or selling, processing, storing, marketing, retailing, or
26 otherwise handling any agricultural, dairy, livestock or produce, or farm
27 supplies, and any activities incidental to these purposes.

28 (m) Securities constituting part of an issue, which, in whole or in part
29 has been lawfully sold and distributed to the public in this or any other
30 state, when offered for resale in good faith and not directly or indirectly
31 for the benefit of the issuer or for the direct or indirect purpose of pro-
32 moting any scheme or enterprise having the effect of violating or evading
33 any provisions of this act, except that this exemption shall not apply (1)
34 where the authority to sell such securities has been prohibited or denied
35 under the provisions of this act, or (2) where the sale of such securities
36 in this state has been enjoined as provided in this act or (3) until there
37 shall have been filed with the securities commissioner of Kansas by any
38 registered broker-dealer a prospectus in such form as may be prescribed
39 by the commissioner containing: (A) Latest available financial statement
40 of the issuer; (B) management personnel; and (C) such other available
41 information as the commissioner may require. The filing of the prospectus
42 and its approval by the commissioner shall constitute the exemption
43 herein provided. Any prospectus may be disapproved at any time, if after