

MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS COMMITTEE

The meeting was called to order by Chairman Ray Cox at 3:30 P.M. on January 26, 2005 in Room 527-S of the Capitol.

All members were present.

Committee staff present:

Melissa Calderwood, Kansas Legislative Research Department  
Bruce Kinzie, Revisor's Office  
Patti Magathan, Committee Secretary

Conferees appearing before the committee:

Matthew Goddard, Heartland Community Banker's Assoc.  
Judi Stork-Kansas, Banking Department Proponent **HB -2097, HB -2098**  
Doug Wareham, Kansas Banking Association, Proponent **HB -2098**  
Bill Henry, Kansas Credit Union Association, Proponent **HB -2099**  
Jerel Wright, Kansas Dept. Of Credit Unions, Proponent **HB -2099**

Others attending:

See attached list.

Representative Cox welcomed the committee and invited new members to introduce themselves. New members included Oletha Faust-Goudeau representing the 84<sup>th</sup> district, Tom Thull representing the 72<sup>nd</sup> district, Anthony Brown representing the 38<sup>th</sup> district, Pat George representing the 119<sup>th</sup> district and Bob Olson representing the 26<sup>th</sup> district.

Representative Cox opened the floor for bill introductions.

**Matthew Goddard**, Vice President Heartland Community Bankers Association, requested a bill that protects the use of lender trade names and trademarks, as well as nonpublic loan information. The bill 1) restricts the use of nonpublic loan information in business solicitations and 2) prohibits the deceptive use of a financial institution's or other mortgage lender's name and trademarks. For enforcement purposes, the bill authorizes lenders to seek a court injunction and damages. (**Attachment 1**)

Representative Cox said that without objection the bills would be introduced.

The chairman opened hearings on **HB -2097 Banks and trust companies, exchange of certain examinations and reports.** There is no fiscal implication.

Proponent **Judi Stork** said that this is an amendment to bill K.S.A. 9-1303 which authorizes information sharing between the State Banking office and various other regulatory bodies. The main purpose of this amendment is to add the Office of Thrift Supervision and the Financial Crimes Enforcement Network to the list of entities which can receive confidential bank examination information. The amendment also removes the ability for the bank commissioner to accept a report of examination from a CPA or independent auditor who audits the accounts of any bank insured by a private insurer. No banks are privately insured. (**Attachment 2**) She offered one amendment to this bill which is on line 24. An "or" should be inserted between "federal deposit insurance corporation" and "the federal reserve bank."

There were no questions or oppositions.

Representative Cox closed the hearing on **HB -2097** and opened hearings on **HB -2098 Banks, granting of trust authority.** There is no fiscal implication.

Proponent **Judi Stork** said that this bill amends K.S.A. 9-1601 which authorizes the commissioner to issue trust powers to a bank to perform various trust activities. This amendment expands the bank's ability to offer Medical Savings Accounts (M.S.A.) and Health Savings Accounts (H.S.A.) to their customers without

CONTINUATION SHEET

MINUTES OF THE House Financial Institutions Committee at 3:30 P.M. on January 26, 2005 in Room 527-S of the Capitol.

obtaining trust powers from the commissioner, as long as these funds are only invested in bank deposits. (Attachment 3)

Proponent **Doug Wareham** spoke to lend the support of Kansas Banking Association to **HB -2098**. This bill levels the playing field for State Banks since Federally chartered banks can already offer these accounts. This bill also positions banks to handle the increasing demand for this type of account. The bill would become effective when it is published in the register. (Attachment 4)

Rep. Brown questioned the difference between M.S.A. and H.S.A. plans. Rep. George clarified that an M.S.A. is employer owned while an H.S.A. is individually owned.

Rep. Brunk asked who could offer these accounts. Mr. Wareham replied that both State and Federally chartered Banks can administer these accounts. Neither Mr. Wareham nor Ms. Storks was aware of any other institutions offering these accounts.

Representative Cox closed the hearing on **HB -2098** and opened hearings on **HB -2099 Credit unions; powers of the administrator.**

Proponent **Bill Henry** stated that HB -2099 extends authority of the State Credit Union Administrator to insure parity between state chartered credit unions and foreign chartered credit unions. This mirrors similar legislation passed in 2001 to grant parity between state and federally chartered banks and credit unions. Mr. Henry gave an example of a Missouri chartered credit union with operations in Kansas who is offering a service allowed in Missouri but not allowed in Kansas. A Kansas-chartered credit union could request permission to allow the same service. When the Administrator issues such a special order, a written report would be filed with the President and the Minority Leader of the Senate and with the Speaker and the Minority Leader of the House. This bill also equalizes language related to examination fees and extends this language to include foreign-based credit unions. (Attachment 5)

**Jerel Wright**, proponent, spoke voicing the support of the State Credit Union Department regarding **HB -2099**. He stated that the bill gives the administrator equal authority to authorize activity for credit unions that are either state, foreign, or federally chartered. This amendment also requires the administrator to examine and collect examination fees for foreign credit unions with approved offices in Kansas. (Attachment 6)

Chairman Cox stated that this hearing would not be closed and would be continued in the next meeting.

A motion was made by Rep. Bob Grant that the minutes of January 19 be accepted as written. Chairman Cox stated that without objection the minutes would be approved.

Meeting was adjourned.

Next meeting is scheduled for February 2, 2005

# FINANCIAL INSTITUTIONS COMMITTEE GUEST LIST

DATE: Jan. 26, 2005

NAME	REPRESENTING
Bill Lenny	Ks Credit Union Association
Donald G. Dick	" "
Leslie Kaufman	"
Jared O'Neil	Ks Dept of Credit Unions
Renée Murray	CBA
Earl Johnson	Ks Dept of Credit Unions
Din Snyder	Rob Olson
Sonja Allen	Office of State Bank Commissioner
Katie Gonzales	Frederico Consulting
Kathy Olsen	Ks Bankers Assn.
Matt Goddard	Heartland Community Bankers Assoc.
Dary Wardham	Kansas Bankers Assn.
John Peterson	Ks Governmental Consultm
Clancy Norris	Comm. Off. of St. Banking Off.
Bred Smart	BCBS



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To: House Financial Institutions Committee

From: Matthew Goddard  
Heartland Community Bankers Association

Date: January 26, 2005

Re: Bill Introduction Request

The Heartland Community Bankers Association appreciates the opportunity to appear before the House Financial Institutions Committee to request introduction of legislation protecting the use of lender trade names and trademarks, as well as nonpublic loan information.

The attached bill restricts the use of nonpublic loan information in business solicitations and prohibits the deceptive use of a financial institution's or other mortgage lender's name and trademarks. For enforcement purposes, the bill authorizes lenders to seek a court injunction and damages.

We respectfully request the attached legislation be introduced and referred back to the committee for hearings and deliberations. Thank you.

House Financial Institutions  
January 26, 2005  
Attachment 1

New Section 1. (a) No person may include the name, trade name or trademark of a lender or a name, trade name or trademark similar to that of a lender in a solicitation for products or services without the consent of the lender unless the solicitation clearly and conspicuously states in bold-faced type on the front page of the correspondence that the person is not sponsored by or affiliated with the lender and that the solicitation is not authorized by the lender, which shall be identified by name. The statement shall include the name, address and telephone number of the person making the solicitation and that any loan information referenced was not provided by the lender.

(b) No person may include a loan number, loan amount, or other specific loan information that is not publicly available in a solicitation for the purchase of products or services.

(c) No person may include a loan number, loan amount, or other specific loan information that is publicly available in a solicitation for the purchase of products or services if use of such information is prohibited by K.S.A. 45-230 and amendments thereto.

(d) No person may include a loan number, loan amount, or other specific loan information that is publicly available in a solicitation for the purchase of products or services and allowed in K.S.A. 45-230 and amendments thereto unless the solicitation clearly and conspicuously states in bold-faced type on the front page of the correspondence that the person is not sponsored by or affiliated with the lender and that the solicitation is not authorized by the lender, which shall be identified by name. The statement shall include the name, address and telephone number of the person making the solicitation and that any loan information referenced was not provided by the lender.

(e) No person shall make reference to an existing lender without the written consent of the lender or make reference to a loan number, loan amount or other specific loan information on the outside of an envelope, visible through the envelope window, or on a postcard in connection with any written communication that includes or contains a solicitation for products or services offered by the other lender.

(f) A lender or owner of a name, trade name or trademark may seek an injunction against a person who violates this section to stop the unlawful use of the name, trade name, trademark, or loan information. The person seeking the injunction shall not have to prove actual damage as a result of the violation. Irreparable harm and interim harm to the lender or owner shall be presumed. The lender or owner seeking the injunction may seek to recover actual damages and any profits the defendant has accrued as a result of the violation. The prevailing party in any action brought pursuant to this section is entitled to recover costs associated with the action and reasonable attorney fees from the other party.

(g) The following are exempt from the provisions of this section:

(1) Any communications by a lender or its affiliates with a current customer of the lender or with a person who was a customer of the lender during the immediately preceding eighteen months; and

(2) Any advertisement or solicitation for products or services that compares the products or services offered by the other lender provided that person making the comparison clearly and conspicuously identifies itself in the advertisement or solicitation.

(h) As used in this section, "lender" means a bank, savings and loan association, savings bank, credit union, finance company, mortgage bank, mortgage broker and any affiliate.

New Section 2. This act shall take effect and be in force from and after its publication in the statute book.

# KANSAS

KATHLEEN SEBELIUS, GOVERNOR

OFFICE OF THE STATE BANK COMMISSIONER  
CLARENCE W. NORRIS, *Bank Commissioner*

## HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS

January 26, 2005

Mr. Chairman and Members of the Committee:

My name is Judi Stork. I am the Deputy Bank Commissioner for the Office of the State Bank Commissioner. I am here today to request your favorable consideration of **House Bill 2097**.

This bill amends K.S.A. 9-1303. This statute authorizes information sharing by our agency with various other regulatory bodies. The main purpose of this amendment is found on lines 39 and 40 of the bill. We are adding two entities to the list of who can receive confidential bank examination information. The first is the Office of Thrift Supervision. They are the regulator of all federal thrifts in the United States. The second is the Financial Crimes Enforcement Network (FinCEN). This entity was created in 1990 and is a division of the United States Department of the Treasury. It is a link between the law enforcement, financial, and regulatory communities and is a network to allow sharing of information and to find new ways to prevent and detect financial crime. It provides intelligence and analytical support to more than 150 federal, state, local, and international law enforcement agencies to support financial criminal investigations. FinCEN uses anti-money laundering laws, such as the Bank Secrecy Act (BSA) to require reporting and recordkeeping by banks and other financial institutions. Banks are required to file Currency Transaction Reports as well as Suspicious Activity Reports. Our agency has started reviewing bank records for compliance with BSA requirements. We have also recently entered into a Memorandum of Understanding with FinCEN to receive confidential information. We, in turn, would like to share information with them.

The other change noted in this bill can be found beginning on line 18. We are removing the ability for the bank commissioner to accept a report of examination from a CPA or independent auditor who audits the accounts of any bank insured by a private insurer. There are no banks in Kansas that are privately insured. All banks are insured by the Federal Deposit Insurance Corporation.

The remainder of the strike-outs in this bill are considered clean-up.

I would like to offer one amendment. On line 24, an "or" should be inserted between "federal deposit insurance corporation" and "the federal reserve bank".

Thank you for your consideration. I would be happy to answer any questions for the committee.



# KANSAS

KATHLEEN SEBELIUS, GOVERNOR

OFFICE OF THE STATE BANK COMMISSIONER  
*CLARENCE W. NORRIS, Bank Commissioner*

## HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS

January 26, 2005

Mr. Chairman and Members of the Committee:

My name is Judi Stork. I am the Deputy Bank Commissioner for the Office of the State Bank Commissioner. I am here today to request your favorable consideration of **House Bill 2098**.

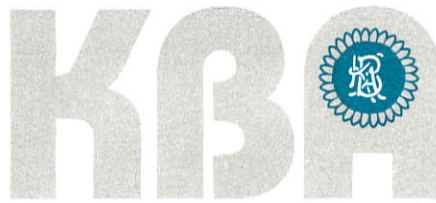
This bill amends K.S.A. 9-1601. This statute authorizes the commissioner to issue trust powers to a bank to perform various trust activities. The statute goes on to allow a bank to offer individual retirement accounts (IRA), without obtaining trust authority from the commissioner, if the IRA invests only in time or savings deposits in that bank. Various banks have requested that they be allowed to offer medical savings accounts (MSA) and health savings accounts (HSA) to their customers, without obtaining trust powers from the commissioner, if those MSAs and HSAs are invested only in bank deposits. The bank's administrative responsibilities with respect to MSAs and HSAs are similar to those in IRAs, and we believe they should be allowed to offer such accounts without trust powers. The changes found on lines 38 to 41 of the bill add this authority. The remainder of the changes noted in the bill are clean-up items.

National banks are allowed to offer these accounts to their customers without trust powers.

Thank you for your consideration. I would be happy to answer any questions for the committee.

House Financial Institutions  
January 26, 2005  
Attachment 3





Date: January 26, 2005  
To: House Financial Institutions Committee  
From: Doug Wareham, Vice President-Government Affairs  
Re: H.B. 2098

Mr. Chairman and members of the Committee, the Kansas Bankers Association appreciates the opportunity to appear in support of H.B. 2098.

H.B. 2098 will provide state chartered banks, which do not currently have trust powers, with the authority to act as trustee or custodian for medical savings accounts (MSA) and health savings accounts (HSA). Currently, state chartered banks are allowed to act as trustees or custodians of Individual Retirement Accounts (IRA). A number of the rules that apply to IRAs are very similar to those that apply to MSAs and HSAs, thus it is a natural fit for banks to provide these services to those individuals seeking these services. In fact, the federal act which established HSAs specifically states that any bank can be a HSA trustee or custodian, without regard to trust powers. This means that at the present time, nationally chartered banks have this authority, without regard to trust powers, placing state-chartered banks in a disadvantaged position.

As you are all aware, President Bush has stressed the importance of HSAs as part of the solution to skyrocketing health insurance costs. Health industry experts have estimated there will be more than 3.2 million individuals with some form of health savings account/arrangement by the end of 2005.

As a result of the growing desire for HSAs, KBA does believe it is important to level the playing field on this matter as quickly as possible and would like to stress the importance of having this statutory change become effective once this act is published in the Kansas register.

Once again, thank you for the opportunity to appear in support of H.B. 2098.

House Financial Institutions  
January 26, 2005  
Attachment 4



KANSAS CREDIT UNION ASSOCIATION

Testimony on HB 2099  
For  
The House Financial Institutions Committee

January 26, 2005

Chairman Cox, members of the House Financial Institutions Committee, thank you for the opportunity to share comments on behalf of the Kansas Credit Union Association. I am Bill Henry and I serve the Kansas Credit Union Association as the Director of Governmental Affairs. The Kansas Credit Union Association represents 112 credit unions with combined membership of over half a million Kansans.

I appear today as a proponent of HB 2099, which allows the Administrator of the State Credit Union Department to issue special orders to insure parity for state chartered credit unions with foreign based credit unions operating in Kansas.

The State Credit Union Administrator currently has authority that has been in place since 1982 to approve requests for parity between state chartered and federally chartered credit unions. HB 2099 will extend the Administrator's authority to provide this same parity between Kansas-chartered credit unions and out-of-state chartered credit unions with operations in Kansas. The parity provisions found in HB 2099 match the parity provisions for banks and savings and loans that were included in SB 142 passed by the Legislature in 2001 and will provide the State Credit Union Administrator with the same authority to issue orders for parity for credit unions currently held by the Kansas Bank Commissioner for banks.

The process used would follow the process that has been in place for parity requests with federally chartered credit unions. If a Missouri-chartered credit union with operations in Kansas was offering a service allowed in Missouri, but not in Kansas, then a Kansas-chartered credit union could provide a written request of the Administrator for a special order to allow it to offer that same service. The Administrator would need to determine that the special order was "reasonably required" to preserve and protect the welfare of such an institution and promote the general economy of the state as a part of this process.

Under this bill, whenever the Administrator issues such a special order, a written report would have to be filed with the president and the minority leader of the Senate and with the speaker and the minority leader of the House of Representatives.

Finally, Mr. Chairman, I would point out one further section that is included on page three, lines 31-34. This section states a foreign credit union with operations in Kansas shall pay to the Administrator the same fees for examination that a state-chartered credit union is required to pay.

I would be happy to respond to any questions the committee would have, Mr. Chairman.

Respectfully Submitted,

Bill Henry  
KCUA, Director of Governmental Affairs

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House Financial Institutions  
January 26, 2005  
Attachment 5



# K A N S A S

JEREL WRIGHT, ADMINISTRATOR

KATHLEEN SEBELIUS, GOVERNOR

DEPARTMENT OF CREDIT UNIONS

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**House Financial Institutions Committee  
Testimony on House Bill 2099  
From Jerel Wright  
January 26, 2005**

**Mr. Chairman and members of the committee:**

**I ask for the committee's support in passage of this bill.**

House Bill 2099 amends two sections of Kansas credit union law, K.S.A. 17-2206 and K.S.A. 17-2244 in the following ways.

**Section 1 amends K.S.A. 17-2206: Supervision by administrator; reports, plans and programs, penalties; examination, fees.**

This amendment requires the Administrator to examine and collect examination fees from foreign credit unions with approved offices in Kansas.

The collection of fees will allow the Kansas Department of Credit Unions to expand the pool of funds available to fund the Department while providing the ability to lower examination fees for Kansas state-chartered credit unions.

The requirement for the examination of foreign credit unions would increase the work required by the Department, although, we would anticipate this work could be handled with our current staff.

**Section 2 amends K.S.A 17-2244. Authority to operate in same activities as federal chartered credit unions; powers of the administrator; report to legislature.**

This amendment expands Administrator's authority to authorize any credit union to engage in any activity in which such credit union could engage were they operating as any other federally insured credit union, whether state or federally chartered.

This is considered a "parity" provision allowing the Administrator to have powers consistent with the powers granted to the Bank Commissioners Office by the 2001 Legislature.

Any special order adopted under this law requires specific disclosure by the Administrator to the house and senate leadership at the time of issuing the special order.

**Again, I ask for your support in passage of HB 2099.**

House Financial Institutions  
January 26, 2005  
Attachment 6

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