

MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

The meeting was called to order by Chairman Ruth Teichman at 9:30 A.M. on February 17, 2005 in Room 234-N of the Capitol.

All members were present.

Committee staff present:

Melissa Calderwood, Kansas Legislative Research Department
Terri Weber, Kansas Legislative Research Department
Ken Wilke, Office of Revisor of Statutes
Sandy Yingling, Committee Secretary

Conferees appearing before the committee:

Jarrold Forbes, Kansas Insurance Department
Melissa Jinks, Kansas Association of Mortgage Brokers
Kevin Glendening, Deputy Commissioner, OSBC

Others attending:

See attached list.

Vice Chair Wysong opened the hearing on **SB 175**.

SB 175; Insurance companies, requirements on certain types of securities.

Jarrold Forbes, KID, testified in favor of a technical change to **SB 175** (Attachment 1). KID is changing "subsection (a)" to "this section." There were no questions.

Senator Barnett moved to place **SB 175** on the consent agenda; Senator Schmidt seconded the motion. The motion carried.

Vice Chair Wysong opened the hearing on **SB 196**.

SB 196; Kansas mortgage business act amendments.

Melissa Calderwood, Kansas Legislative Research Department, gave an overview on **SB 196**. **SB 196** would amend the Kansas mortgage business act to assign addition powers to the Bank Commissioner.

Melissa Jinks, Kansas Association of Mortgage Brokers, testified in favor of **SB 196**. (Attachment 2) Their biggest change is the fingerprinting of the applicants and employees. Ms. Jinks stated the belief is, fingerprinting will help legitimize the mortgage industry. There were no questions.

Kevin Glendening, OSBC, testified in favor of **SB 196**. (Attachment 3) Mr. Glendening stated currently the KBI is doing the background investigations on licensees. Mr. Glendening stated they are seeing an increase of in violations in the mortgage industry. The FBI reported that mortgage fraud is one of the top white collar crimes. The OSBC has noticed an increase with people with a criminal record attempting to be licensed with the state. The second item pointed out is on page 3, line 27 which will provide additional assistance, if requested, to prosecute. The third change is on page 6, line 4 the change which adds a provision with the record keeping requirements prohibiting destruction or concealment of a record with the intent to impede an investigation. On page 6, line 19 would raise the potential fine for violations. Also, the OSBC would like to add a provision that allows us to require refunds. Finally, raise the potential criminal violations from the current misdemeanor to a felony.

Senator Wysong asked Ken about the proposed charge. Mr. Wilke stated that it is a drafting error. Senator Wysong asked where would it go? Mr. Wilke stated he would insert that ahead of section 1. Senator Brownlee asked if the names of individuals who move from place to place are put on the OSBC's web site? Mr. Glendening answered yes, we do. Senator Brownlee asked if a supervised bank or lender was trying to hire a mortgage loan officer would they have access to that information. Mr. Glendening answered absolutely. Senator Brownlee asked in regard to the penalty language on page 6, does that mean anything in the mortgage

CONTINUATION SHEET

MINUTES OF THE Senate Financial Institutions and Insurance Committee at 9:30 A.M. on February 17, 2005 in Room 234-N of the Capitol.

act, if there is a violation that they could end up with a felony charge? Mr. Glendening answered, yes, he believes that is correct. Senator Brownlee asked if there were any minor rules or regulations that could be violated? Mr. Glendening answered right now even though there are criminal penalties, there are many, many violations that we simply let the companies know what is wrong so they may correct it. Senator Brownlee asked how would we be assured that they wouldn't end up with a \$10,000 a day fine? Mr. Glendening answered any application for a fine must go through a process where there are administrative hearings involving a third-party hearing officer. Determination would be made if the fine is appropriate or not. Senator Brownlee wanted to know if this would be swatting flies with sledge hammers?

Senator Wilson pointed in lines 16 and 19 would raise the potential fine from \$5,000 to \$10,000 than you went on to say you had a penalty for elderly and disability and you also said the commissioner could issue an order requiring restitution to the consumer. Would all that be in addition to the \$5,000 to \$10,000 fine and would that also be on top of a civil penalty? Or does the fining of the Commissioner end it? Mr. Glendening stated he could not specifically speak to the private right of action to sue, so in answer to the questions it would yes, you could be levied a fine and yes you could be required to have a refund plan to make restitution. Senator Wilson asked if there was any limit to this restitution which the Commissioner could fine? Mr. Glendening answered the restitution would be for whatever the administrative fee could be demonstrate as to the amount of the losses incurred. Mr. Wilson asked if punitive damages could be levied on top of that? Mr. Glendening's legal counsel answered yes.

Senator Steineger stated that it appears to him that **SB 196** just helps the mortgage industry catch up with a number of financial service industries. Senator Steineger stated he thinks **SB 196** is a good bill. Senator Steineger has never been able to hit a fly with a sledge hammer.

Senator Barnett asked if the felony charge would truly be a deterrent? Mr. Glendening stated that the concept of the violation and if you will notice the second conviction carries the presumption of imprisonment. There were no other questions.

Vice Chair Wysong stated the bill should have changes in section 1.

Vice Chair closed the hearing on SB 196.

Madam Chair appreciated the indulgence of the Committee for her absence.

Madam Chair stated she believes moving **SB 175** to the consent calendar was a good move.

Madam Chair stated the Committee was going to look at **SB 178** and asked if there were questions other question on the bill.

SB 178 - Home service contract act.

Madam Chair stated that was what was heard from the insurance department that they are willing to do this and it shouldn't be a burden on them. They did agree with the bill. She appreciated it being brought to her attention and the insurance department would be willing to take on the responsibility that the state doesn't need a fiscal note to this date.

Senator Schmidt asked if the amendments had been accepted?

Madam Chair stated the amendments discussed were on Line 43 Page 1 and Line 2 on Page 2 . Under G - Provider means a person who administers, issues, makes, provides, sells, or offers to sell a service contract or (then it continues with the regular language) is contractually obligated to the home service contract holder under the terms of the home service contract, the additional language is: but shall not include individuals or other persons who simply act as employees or agents on behave of a registered provider. There were no questions or comments.

Senator Schmidt moved to accept the amendments to **SB 178. Senator Barone seconded the motion. The**

CONTINUATION SHEET

MINUTES OF THE Senate Financial Institutions and Insurance Committee at 9:30 A.M. on February 17, 2005 in Room 234-N of the Capitol.

motion carried.

Madam Chair asked for any other question on the bill.

Bill Sneed, SBC, Line 19 Page 1, the intent of the bill was to exclude public utilities out of this bill. They have the term "transmission devises" which we do not really know what that is. Madam Chair thanked Mr. Sneed. Madam Chair stated they would work the bill as planned and if corrections are needed, the corrections can be made in the House.

Senator Barnett asked if Ken Wilke's question on association dues that needed to be addressed? Madam Chair stated "no."

Madam Chair called for a motion to move this bill forward as amended.

Senator Steineger so moved to pass SB 178 as amended. Senator Barnett seconded the motion. The motion carried.

Madam Chair stated she would like to move onto **SB 114** and ask to hear remarks from KBA on where they believe we are with this bill.

Doug Wareham with KBA reaffirmed their position. The KBA offered an amendment referred to commonly as the stacking amendment. (Attachment 4) We are comfortable with the bill with that amendment. We have worked out an agreement with the Bank Commissioners' office

Senator Wysong moved to insert the amendment. Senator Wilson seconded the motion.

There was discussion by Senator Barone & Senator Brownlee.

Madam Chair stated we have a motion before us. The motion carried.

Ken Wilke stated on line 32 and 35 "civil penalty" should be "civil money penalty" so it is consistent throughout the act.

A motion was made by Senator Wysong as amended. Senator Steineger seconded the motion. The motion carried.

Madam Chair ask Mr. Wilke if there were any other places that we need to be looking at this bill. He stated, "no." Madam Chair entertained a motion to move **SB 114** out of the committee.

Senator Baron made a motion to pass SB 114 as amended. The motion was seconded by Senator Steineger. The motion carried.

A motion was made to approve February 2 and February 3 Minutes of F I & I by Sen. Schmitdt, seconded by Senator Barnett. The motion carried.

Senator Brownlee stated the February 3 minutes needed cleaning up.

Madam Chair stated the motion as amendment by Senator Brownlee. The motion carried.

Meeting adjourned.

FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE GUEST LIST

DATE: *Thurs, Feb 17, 2005*

NAME	REPRESENTING
<i>Doug Wareham</i>	<i>Kansas Bankers Association</i>
<i>Paul Fols</i>	<i>KID</i>
<i>Kevin Glendening</i>	<i>OSBC</i>
<i>Malissa Jinks</i>	<i>KS Assoc of Utty Brokers</i>
<i>Alex Kotoyantz</i>	<i>P.I.A</i>
<i>Bill Smeed</i>	<i>SBC</i>
<i>Sonya Allen</i>	<i>Office of State Bank Comm</i>
<i>Kevin Glendening</i>	<i>"</i>



Kansas Insurance Department

Sandy Praeger COMMISSIONER OF INSURANCE

COMMENTS ON

SB 175—RELATING TO SECURITIES HELD BY A COMPANY
SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

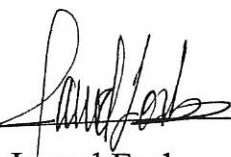
February 17, 2005

Madam Chair and Members of the Committee:

Thank you for the opportunity to visit with you on behalf of the Kansas Insurance Department.

Senate Bill 175 is a technical change. This bill deals with securities held by an insurance company. We are simply changing the phrase "subsection (a)" to "this section". We believe this is a technical error made when the original law was passed.

We believe this bill is an excellent candidate for the consent calendar if the committee so desires. With that Madam Chair I would be happy to stand for any questions the committee may have.



Jarrod Forbes
Assistant Director
Government Affairs

*Attachment 1
2/17/05
FII*



**Senate Financial Institutions & Insurance Committee
Testimony of the Kansas Association of Mortgage Brokers
Regarding SB 196: KS Mortgage Business Act Penalties
Presented by Melissa Jinks
Secretary, Kansas Association of Mortgage Brokers
Thursday, February 17, 2005**

Committee Chair and Members:

I am here representing members of the Kansas Association of Mortgage Brokers, and to support Mr. Glendenning, and his staff, in the introduction of changes to Senate Bill 196. We, as an Association, believe that the overall changes in this bill will continue to help strengthen the confidence of any consumer that deals with a Mortgage Broker for their financial needs.

Additions to Section 3., (11), (12), and (13), (b), (c), and (d) on pages 3 and 4. We are in hope that this change will encourage all Mortgage Brokers to be more thorough in the manner in which they hire any individual that they employ that comes in contact with financial information of the clients they provide services to. The other additions in this section will certainly help the banking commissioners office in their method of prosecution and the ability to facilitate local authorities in the State of Kansas or any other State as they deem necessary in the examination, investigation or prosecution of anyone they feel has committed any violations to this act.

Additions to Section 4., (a) (3) and (b) (1) (C) on page 5. These changes will allow the commissioner to be the one to determine the losses or damages incurred by any borrower or consumer that may also be covered under the surety bond issued to secure an applicant's or licensee's faithful performance of all duties and obligations under this act.

Additions to Section 5., (c) (1) and (2) on page 6. Adding this into the act hopefully will discourage any destroying or concealing of information in a consumer file that would impede in any way any investigation by the commissioner or the commissioner's designee of a consumer loan file.

*Attachment 2
2/17/05
FII*

(2)

Changes and additions to Section 6., (a) (2), (3), (4), (5) and (6) on page 6.
We concur that the increase in fines and the order to pay restitution for any loss arising from a violation of any provisions of this act will help to discourage such violations to the consumer.

We, as an Association, encourage any changes that can be made to the Kansas Mortgage Business Act that would continue to legitimize our business as we strive to provide the majority of homeowner's access to their dream of owning a home. We discourage those that only want to get into this business to make a "quick buck" and then be on their way to their next business venture. The majority of us, as Mortgage Brokers, would prefer to stay in our industry for the long haul and continue to be amazed at the various options that we are able to provide to our customers in realizing their goal of homeownership.

To reiterate again, we as an association and as consumer advocates, encourage you to look at each portion of changes and additions to this bill, from the consumer's standpoint and accept this bill in its current form.

Respectfully,



Melissa Jinks
Secretary and South Central Chapter Legislative Chair
Kansas Association of Mortgage Brokers

KANSAS

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

KATHLEEN SEBELIUS, GOVERNOR

Senate Committee on Financial Institutions and Insurance

February 17, 2005

Re: SB 196

Madame Chairman and members of the committee:

Senate Bill 196 contains several proposed amendments to the Kansas Mortgage Business Act. The Mortgage Business Act, in essence, governs licensing and other activities of lenders, brokers, and servicers in the residential real estate mortgage area. We believe these proposed amendments will benefit both mortgage lenders and brokers, as well as consumers, by further helping to deter unlawful or deceptive practices and those less scrupulous operators which exist in the marketplace. These amendments were derived in cooperation with and support of the Kansas Association of Mortgage Brokers whose members are involved in both lending and brokering activities. For the committee's information, our agency has introduced a similar Bill in the House, HB 2145, which would implement these same general provisions for entities licensed under the Consumer Credit Code. For discussion purposes, I have outlined the primary amendments below with reference to their location in the Bill.

Page 3, line 19 - Would allow the agency to receive fingerprints for the purpose of determining the identity and criminal history of an applicant or licensee. The law presently requires us to make a determination of the character and fitness of an applicant for license or registration. In addition, a criminal conviction may be grounds for denial or revocation of a license. While we presently conduct criminal background checks with the KBI, those records are limited to only in-state convictions. The KBI requires fingerprints in order to access any criminal records from other states that may be contained in the central database. Since we license and supervise entities across the country, we believe it would be prudent to verify whether or not criminal activity has occurred in another state. We would also note for the committee that the instance of individuals with serious criminal records attempting to obtain a license from our agency appears to be increasing.

Page 3, line 27 - This language is taken from the Uniform Consumer Credit Code and would allow us to 1) provide additional assistance, if requested, to a county or district attorney who may be prosecuting a violation of the Mortgage Business Act; and, 2) subpoena records, etc. in connection with an examination or investigation of violations.

Page 6, line 4 - Adds a provision within the recordkeeping requirements prohibiting destruction or concealment of a record with the intent to impede an investigation.

Page 6, line 19 - Would raise the potential fine for violations from \$5,000 to \$10,000 for the unlawful act or practice; add an additional penalty for violations against an elderly or disabled person; add the ability for the Commissioner to issue an order requiring restitution to a consumer as part of an administrative action; and, permit barring a person from applying for a license.

Attachment 3
2/17/05

Finally, we just realized this morning that some of the proposed language we had originally provided the Revisor's office apparently did not make it into the current version of the Bill. This proposed change would raise the present possible criminal penalties from a misdemeanor to a felony. Our hope would be that a potential felony would both serve as a stronger deterrent and perhaps raise the interest level of a county or district attorney to pursue charges in some situations. The decision whether or not to seek any criminal charge would of course rest with the county or district attorney.

Thank you for your consideration of these amendments.

Respectfully,

Kevin Glendening
Deputy Commissioner
Kansas Office of the State Bank Commissioner

9-2203. (Suggested name) License required to conduct mortgage business; registration required for a loan originator; violations of act or rules and regulations; penalties; prosecution; commencement and limitations.

(a) Mortgage business shall only be conducted in this state at or from a mortgage company licensed by the commissioner as required by this act. A licensee shall be responsible for all mortgage business conducted on their behalf by loan originators or other employees.

(b) Mortgage business involving loan origination shall only be conducted in this state by an individual who has first been registered with the commissioner as a loan originator as required by this act. Loan origination shall only be conducted at or from a mortgage company and a registrant shall only engage in mortgage business on behalf of one mortgage company.

(c) Any person who willfully or knowingly violates any of the provisions of this act, any rule and regulation adopted or order issued under this act commits a severity level 7 nonperson felony. A second or subsequent conviction of this act, regardless of its location on the sentencing grid block, shall have a presumptive sentence of imprisonment.

(d) No prosecution for any crime under this act may be commenced more than five years after the alleged violation. A prosecution is commenced when a complaint or information is filed, or an indictment returned, and a warrant thereon is delivered to the sheriff or other officer for execution, except that no prosecution shall be deemed to have been commenced if the execution of such warrant issued is unreasonably delayed.

SENATE BILL No. 114

By Committee on Financial Institutions and Insurance

1-26

Attachment 4
2-17-05
FII

9 AN ACT concerning the bank commissioner; relating to the issuance of
10 civil penalties.

11
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. (a) After providing a notice and an opportunity for a public
14 hearing in accordance with the Kansas administrative procedure act, the
15 commissioner may, with the approval of the state banking board, assess
16 against and collect a civil money penalty from any bank or trust company
17 that, or any executive officer, director, employee, agent, or other person
18 participating in the conduct of the affairs of such bank or trust company
19 who:

20 (1) Engages or participates in any unsafe or unsound practice in con-
21 nection with a bank or trust company; or

22 (2) violates or knowingly permits any person to violate any of the
23 provisions of:

24 (A) The state banking code;

25 (B) any rule or regulation promulgated pursuant to the state banking
26 code; or

27 (C) any lawful order of the commissioner or the state banking board.

28 (b) The civil money penalty shall not exceed \$1,000 per day for each
29 day such violation continues. ~~In determining the amount of the civil~~
30 ~~money penalty to be assessed, the commissioner shall consider:~~

31 (1) The good faith of the bank, trust company or person to be assessed
32 with such civil penalty;

33 (2) the gravity of the violation;

34 (3) any previous violations by the bank, trust company or person to
35 be assessed with such civil penalty;

36 (4) the nature and extent of any past violations;

37 ~~(5) whether another government agency has taken similar action~~
38 ~~against the bank, trust company or person to be assessed with such civil~~
39 ~~penalty for the same act or practice; and~~

(5) 40 ~~(6)~~ such other matters as the commissioner may deem appropriate.

41 (c) Upon waiver by the respondent of the right to a public hearing
42 concerning an assessment of a civil money penalty, the hearing or portions
43 thereof may be closed to the public when concern arises about prompt

No civil money penalty shall be assessed for the same act or practice if another government agency has taken similar action against the bank, trust company or person to be assessed such civil money penalty.