

Approved: Feb. 1, 2006

Date

MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS COMMITTEE

The meeting was called to order by Chairman Ray Cox at 3:30 P.M. on January 25, 2006 in Room 527-S of the Capitol.

All members were present except:

Anthony Brown- excused

Tom Thull- excused

Committee staff present:

Melissa Calderwood, Kansas Legislative Research Department

Bruce Kinzie, Revisor of Statutes Office

Patti Magathan, Committee Secretary

Conferees appearing before the committee:

Patricia Lightener - HSBC

Judi Stork - Office of State Banking Commissioner

Rick Fleming - Kansas Securities Commission

Ed Cross - Kansas Independent Oil and Gas Association.

Others attending:

See attached list.

Chairman Cox welcomed the committee and opened the floor for bill introductions.

Patricia Lightener, HSBC, proposed expanding the definition of appraised value to section six (6) of the Uniform Consumer Credit Code. Existing code has an option A and an option B. She proposed adding an option C to allow an alternative evaluation method.

Without objection, Chairman Cox introduced the bill and opened the floor to hear **HB 2662 - Banks and trust companies, examinations, electronic filings.**

Judi Stork, Deputy Bank Commissioner for the Office of the State Bank Commissioner, reviewed the changes proposed for six statutes within existing banking code. These changes generally apply to timing of reports to allow for a single electronic report, authorizing banks to file their director's oaths using electronic means, removing mandatory filing of certain information which is already readily available electronically, and allowing the commissioner to ask that replies to information requests be submitted electronically. Attachment 1

Following a brief question and answer session, **Chairman Cox closed the hearing on HB 2662 and opened hearings on HB 2663 - Kansas uniform securities act; regulations.**

Rick Fleming, General Counsel of the Office of the Securities Commissioner, explained that the Kansas Uniform Securities Act (K.U.S.A.) was rewritten and became effective July 1, 2005, replacing the former Kansas Securities Act in its entirety. **HB 2663** is intended to fix some of the flaws discovered during the implementation of K.U.S.A. Firstly, the bill removes erroneous cross-references and removes a form letter. Secondly, language would be added to exempt oil and gas securities without going through the securities registration process. Thirdly, the Securities commission asks for the authority to deny or revoke licenses for people who lack sufficient character or reputation to warrant the public trust. Attachment 2

Ed Cross, Executive Vice President of Kansas Independent Oil and Gas Association, voiced his organization's support of **HB 2663** and the proposed changes to section 2 of K.U.S.A. No written testimony.

Following questions, Chairman Cox closed the hearing on **HB 2663.**

Chairman Cox asked the committee if the complexity of the requested bills would preclude working them today. The committee responded in the negative.

CONTINUATION SHEET

MINUTES OF THE House Financial Institutions Committee at 3:30 P.M. on January 25, 2006 in Room 527-S of the Capitol.

Chairman Cox asked the committee if they had further questions on **HB 2662**. There were none. Representative Grant made a motion to favorably pass **HB 2662**. Motion was seconded by Representative Brunk. Motion passed.

Chairman Cox asked the committee if they had further questions or comments on **HB 2663**. Representative O'Malley motioned that the committee recommend **HB 2663** favorably for passage. Seconded by Representative Dillmore. Motion passed.

Representative Grant made a motion to accept minutes of the January 18 meeting as read unless there were corrections. Chairman Cox asked if there were any changes. There were none. Minutes of January 18 stand approved.

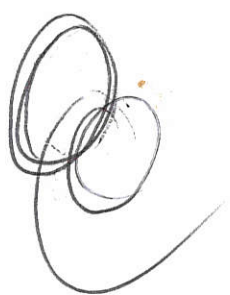
The next meeting will be Wednesday, February 1, 2006 at 3:30 P.M.

Meeting was adjourned at 4:00 P.M.

**FINANCIAL INSTITUTIONS COMMITTEE
GUEST LIST**

DATE: 1-25-06

NAME	REPRESENTING
Judi Stork	OSBC
Sonya Allen	✓
Ed Cross	KIOGA
PATRICIA LIGHTNER	HSBC
Clancy Messin	OSBC
Leslie Kaufman	Ks Coop Council
Cynthia Smith	OCC Health System
Tracy Olson	Rep Olson
Rick Fleming	Securities Commission
Amanda Kiefer	visitor
Matt Goddard	HCSA
Kathy Olsen	KBA
Stuart Little	CBA





KANSAS

KATHLEEN SEBELIUS, GOVERNOR

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

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS

January 25, 2006

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 2662**. This bill amends six statutes within the banking code.

I will review the changes section by section as I think this will be easiest to follow.

In section 1 of the bill, page one, line 22, we are changing when a bank is required to submit their complete list of stockholders. Currently the report is due by January 31 of each year. This report is usually submitted in conjunction with other reports that detail a bank's newly elected board of directors, as well as a report showing all officers elected for the year by the board. These latter two reports are due AFTER the bank has their annual meeting. We are asking this statute be changed to coincide with the filing requirements for the other reports. In other words, we would like all reports to be submitted at one time, after the bank's annual meeting. Additionally, on line 27, and throughout other parts of this bill, we are asking that the commissioner be given the authority to have banks submit requested reports using an electronic means. Our agency is currently updating our information technology systems and in the future we will have the ability to receive information submitted over the Internet and transfer this information directly into our database. This process will save us considerable time as we will not be required to receive paper reports, and then manually load them into our computer data base. We know banks are capable of filing electronically as currently, all banks are required to file quarterly reports with the FDIC using an electronic means, so adding this provision to state law should pose no additional burden on the banks.

House Financial Institutions
Jan. 25, 2006
Attachment 1

In section 2 of the bill, page one, line 34, we are again asking that the commissioner be given the authority to have banks file their oaths of directors using an electronic means.

Please skip to section 4 of the bill, page 4, line 30. In this section we are eliminating the mandatory filing of a fiduciary report by trust departments of state banks. Currently, each bank which has a trust department files an annual report of those fiduciary assets with the bank commissioner on an annual basis. The information that is provided as part of this annual report is readily available to our agency from Schedule T of the FDIC's call report. This information can be easily accessed on-line and downloaded into our data systems. Implementing this change would reduce the regulatory burden on banks with trust departments by eliminating the need to complete two different fiduciary reports – one for this agency and one for the FDIC. The changes in this section give the commissioner the ability to request such a report if he deems it appropriate to do so. It also allows the commissioner to require this report be filed by electronic means.

Please return back to section 3. This statute governs the state banking department's assessment of banks and trust companies. The language that begins on line 18 of page two and appears again beginning on line 29, allows the banking department to base our annual trust assessments for trust departments on the information we obtain from the FDIC's call report, as I just described. As we can download this information directly into our assessment calculation, it would eliminate the need for us to input this information manually and would allow our agency to more quickly and easily calculate trust department annual assessments.

Section 5 begins on page 4, line 35. In this section we are eliminating the need for a mandatory annual filing of receipts and disbursements by banks and trust companies. Again, this information is readily available to our agency from the FDIC's call report repository. We have left language in the statute that allows the commissioner to request such information, if appropriate. We have also allowed for the electronic filing of such information.

Finally, section 6 requires the banking department to notify all banks and trust companies, in writing, if there is a request for information pursuant to K.S.A. 9-1704, 9-1705, and 9-1706. It is anticipated that our agency will not be requesting this information very often, but will instead use the readily available information from the FDIC. The new language allows for the commissioner to request any such report be submitted by electronic means.

Thank you for your time. I would be happy to answer any questions.



KANSAS

OFFICE OF THE SECURITIES COMMISSIONER

KATHLEEN SEBELIUS, GOVERNOR
CHRIS BIGGS, COMMISSIONER

TESTIMONY IN SUPPORT OF HOUSE BILL No. 2663
House Financial Institutions Committee

Rick A. Fleming, General Counsel
Office of the Securities Commissioner
January 25, 2006

Mr. Chairman and members of the committee,

The Kansas Uniform Securities Act (KUSA) became effective July 1, 2005, and replaced the former Kansas Securities Act in its entirety. House Bill 2663 is intended to fix some of the flaws discovered during the implementation of KUSA.

Sections 1 and 4:

Sections 1 and 4 correct erroneous cross-references in KUSA. As KUSA was going through the legislative process, some of the section numbers in the original bill were changed. Unfortunately, there are two places where the internal cross-references to those amended sections were not properly updated. As a result, K.S.A. 2005 Supp. 17-12a102(22) refers to a non-existent "section 67" and 17-12a405(c) refers to a non-existent subsection (e) of 17-12a410. Those errors are corrected at page 6, line 23, and page 16, line 2, of HB 2633.

Section 2:

K.S.A. 2005 Supp. 17-12a202 contains several exemptions that allow investments to be sold under certain circumstances without going through the securities registration process. Under the former Kansas Securities Act, an additional exemption for oil and gas securities was codified at K.S.A. 17-1262a. However, because it was a non-uniform exemption, the Office of the Securities Commissioner did not seek to include the exemption within the new KUSA. Instead, we intended to move the oil and gas exemption into our regulations by using the rulemaking authority of K.S.A. 2005 Supp. 17-12a203, and we made a commitment to the Kansas Independent Oil and Gas Association and others that we would preserve the exemption as it had existed under former K.S.A. 17-1262a.

Unfortunately, we discovered a problem when we began moving the language of old 17-1262a into a regulation. Subsection (c) of 17-1262a contained a provision that limited a seller of oil and gas securities to the oil and gas exemption if the seller wanted to avoid the securities

registration process. It specifically prohibited the use of most other exemptions that are generally available for all types of securities transactions. However, new K.S.A. 2005 Supp. 17-12a203 only gives us the authority to *expand* exemptions by regulation – it does not give us the authority to *restrict* statutory exemptions. Therefore, we cannot adopt a regulation that prohibits the seller of oil and gas interests from relying upon the full range of statutory exemptions in new K.S.A. 2005 Supp. 17-12a202. As a result, we cannot keep our promise to adopt an oil and gas regulation that preserves the exemption as it existed under the former statute.

We have consulted with the Kansas Independent Oil and Gas Association concerning this problem. They agree that sellers of oil and gas interests should continue to be limited to the oil and gas exemption, with a few exceptions as formerly provided under K.S.A. 17-1262a. Therefore, we propose the adoption of a new subsection (24) to new K.S.A. 2005 Supp. 17-12a202, at page 13, lines 15-19 of HB 2633. This provision will give us the authority to restrict the use of other statutory exemptions within the oil and gas regulation.

Section 3:

The purpose of section 3 is to eliminate a form letter. Once a securities registration statement is filed with our office, an amendment must be filed whenever there is a material change in the information or documents contained in the registration statement. K.S.A. 2005 Supp. 17-12a305(j) currently states that the amendment does not officially become “effective” until the Securities Commissioner sends written notice that the amendment has been accepted. However, the amendments are usually very technical and are very rarely rejected. Therefore, the proposed language on page 15, lines 5-7 would allow the amendments to become effective upon filing, without specific approval by the Securities Commission. In the rare cases when an amendment is objectionable, K.S.A. 2005 Supp. 17-12a306 provides a means for the Commissioner to suspend or revoke the effectiveness of the amendment.

Sections 5 & 6:

Sections 5 & 6 give the Securities Commissioner the authority to deny or revoke licenses for people who lack sufficient character or reputation to warrant the public trust. A similar provision existed in the former Kansas Securities Act, at K.S.A. 17-1254(g), but it was not included in the new uniform act.

The new act, in K.S.A. 2005 Supp. 17-12a412(d), contains a list of specific disciplinary events that constitute grounds for denying or revoking a securities license. For example, the Commissioner may deny a license to a person who has been convicted of a felony or a securities-related misdemeanor, sanctioned by another financial services regulator, etc. However, KUSA does not contain any type of moral turpitude standard that would give the Commissioner the ability to deny a license to someone who simply has no business managing the life savings of Kansas citizens. For example, we have historically used the “good character” language of old K.S.A. 17-1254(g) to challenge applicants who have been convicted of a pattern of non-securities misdemeanors such as shop-lifting, conversion of property, etc. We have also

challenged out-of-state applicants with a history of customer complaints who have migrated from one boiler room or penny stock firm to another.

The need for the “good character” clause is underscored by a recent case in which the Commissioner denied a license to a person who applied under the old statute. Among many other things, the following facts demonstrated his lack of good character and his general unfitness to hold a securities license:

- He was fired from a brokerage firm in 1996 for failing to attend compliance training.
- He was charged with defacing a window at a different brokerage firm in 1996 and was charged with telephone harassment of its employees in 2003. In both cases, he was ultimately granted a diversion. During the 1996 case, he was held in contempt of court for calling the judge a profane name. During the 2003 case, he violated the conditions of his bond by sending the employees a picture of himself wearing an unbuttoned shirt and nothing else.
- In 2003, he sent a “resume” to various real estate and investment firms containing graphic references to oral sex. He also sent out a photo featuring himself nude with big lips superimposed over his genitals.
- He continues to believe that his ownership of stock in a brokerage firm gives him the right to go into any branch office and use its equipment for personal business.

Unfortunately, the new KUSA would not give us clear grounds to deny a license to this individual if he chose to reapply. Therefore, we have proposed the amendments at page 16, lines 24-27, and page 20, lines 36-37, to restore the Commissioner’s ability to deny a license when a person lacks sufficient character or reputation to warrant the public trust.

Mr. Chairman and members of the committee, on behalf of the Office of the Securities Commissioner, I respectfully request that you recommend HB 2663 favorably for passage.