

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:33 A.M. on March 6, 2006, in Room 123-S of the Capitol.

All members were present except:

David Haley- excused
Derek Schmidt arrived, 9:39 a.m.
Barbara Allen arrived, 9:40 a.m.
Phil Journey arrived, 9:44 a.m.
Donald Betts arrived, 9:55 a.m.

Committee staff present:

Mike Heim, Kansas Legislative Research Department
Helen Pedigo, Office of Revisor of Statutes
Karen Clowers, Committee Secretary

Conferees appearing before the committee:

Rick A. Fleming, General Counsel, Office of Securities Commissioner

Others attending:

See attached list.

The hearing on **HB 2663--Kansas uniform securities act; regulations** was opened.

Rick Fleming appeared in support providing background on the bill which is intended to repair flaws discovered during implementation (Attachment 1). Mr. Fleming explained the need for a "good character" clause and requested proposed amendments on page 16, lines 24-27 and page 20, lines 36-37 to restore the Commissioners's ability to deny a license when a person lacks sufficient character or reputation to warrant the public trust. He indicated similar authority is given to numerous other licensing agencies in the State of Kansas.

There being no further conferees, the hearing on **HB 2663** was closed.

The Chairman called for final action on **HB 2104--UCC securities interest in oil and gas production**. The Chairman reviewed the bill heard on February 28, including a proposed amendment by KIOGA (Kansas Independent Oil and Gas Association).

Senator Schmidt moved, Senator Goodwin seconded, to adopt the amendment proposed by KIOGA. Motion carried.

Senator Donovan moved, Senator Schmidt seconded, to recommend **HB 2104** as amended favorably for passage. Motion carried.

The Chairman called for final action on **HB 2562--Adoption; waiver of home study upon request of a relative of the child**. The Chairman reviewed the bill heard on February 28.

Senator Goodwin moved, Senator Bruce seconded, to recommend **HB 2562** favorably for passage. Motion carried.

The Chairman called for final action on **HB 2606--Theft of services**. The Chairman reviewed the bill heard on February 28.

Senator Schmidt moved Senator Goodwin seconded, to recommend **HB 2606** favorably for passage. Motion carried.

The Chairman called for final action on **HB 2610--Civil procedure; service outside the state; submitting to jurisdiction**. The Chairman reviewed the bill heard on March 1.

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:33 A.M. on March 6, 2006, in Room 123-S of the Capitol.

Senator Schmidt moved, Senator Donovan seconded, to amend page 3, lines 17-20 to add K.S.A. 50-631. Motion carried.

Senator Bruce moved, Senator Goodwin seconded, to recommend **HB 2610** favorably for passage. Motion carried.

The Chairman called for final action on **HB 2616--State may request a preliminary examination on a felony charge.** The Chairman reviewed the bill heard on March 1.

Following discussion, Senator Bruce moved, Senator Journey seconded, to change page 1, line 42 to read "if the defendant and state waive preliminary examination" Motion carried.

Senator Journey moved, Senator O'Connor seconded, to table the bill. Motion failed.

Senator Bruce moved, Senator Goodwin seconded, to recommend **HB 2616** as amended favorably for passage. Motion carried.

The Chairman called for final action on **HB 2617--Violation of a protective order includes an order issued in a criminal case ordering the defendant to refrain from having contact with another person.** The Chairman reviewed the bill heard on March 1.

Following discussion, Senator Journey moved to amend on page 1, line 40, to read, "violation of a protective order is a class A, non-person misdemeanor". No second to the motion.

Senator Goodwin moved, Senator Bruce seconded, to recommend **HB 2617** favorably for passage. Motion carried.

The Chairman called for final action on **HB 2665--In adoption proceedings, in termination of parental rights, court shall consider the best interest of the child.** The Chairman reviewed the bill heard on March 2 and indicated that Senator Journey, as the primary sponsor of **SB 400**, preferred for the committee to pass over that bill and support **HB 2665**.

Senator Donovan moved, Senator O'Connor seconded, to recommend **HB 2665** favorably for passage. Motion carried.

The Chairman called for final action on **HB 2626--Missing persons and unidentified persons and human remains, reporting and investigation of.** The Chairman reviewed the bill heard on March 2.

Senator Goodwin moved, Senator Umbarger seconded, to recommend **HB 2626** favorably for passage. Motion carried.

The Chairman called for final action on **HB 2704--Number of small claims procedures filings per year.** The Chairman reviewed the bill heard on March 2.

Senator O'Connor moved, Senator Goodwin seconded, to recommend **HB 2704** favorably for passage. Motion carried.

The Chairman called for final action on **HB 2607--Amendments to the Kansas uniform trust code.** The Chairman reviewed the bill heard on March 2.

Senator Donovan moved, Senator Allen seconded, to recommend **HB 2607** favorably for passage. Motion carried.

Senator Donovan moved, Senator Goodwin seconded, to adopt the Committee Minutes dated January 12, January 17, and January 18, 2006. Motion carried.

The meeting adjourned at 10:31 a.m. The next scheduled meeting is March 7, 2006.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3-6-06

NAME	REPRESENTING
JENNIFER Goodwin	City of Wichita
Rick Fleming	Securities Commission
Whitney Damon	KS Bar Assn.
Terry McNamee	KS Judicial Council
JIM CLARK	KBA
Sandy Barnett	KCSOV
Michael White	KCDAA
Lara Wiser	OTA
Kathy Olson	KS Bankers Assn.
Doug Smith	Pinegar, Smith & Associates



KANSAS

OFFICE OF THE SECURITIES COMMISSIONER

KATHLEEN SEBELIUS, GOVERNOR
CHRIS BIGGS, COMMISSIONER

TESTIMONY IN SUPPORT OF HOUSE BILL No. 2663
Senate Judiciary Committee

Rick A. Fleming, General Counsel
Office of the Securities Commissioner
March 6, 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.

Section 1 (page 6, line 23) and Section 4 (page 16, line 2):

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 (page 13, lines 15-19):

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 (page 15, lines 5-7):

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.

Section 5 (page 16, lines 24-27) and section 6 (page 20, lines 36-37):

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. Similar authority is given to numerous other licensing agencies in the State of Kansas, as set forth in the attached chart.

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.

Types of Licenses Requiring “Good Character”

Adult care home administrator (K.A.R. 28-38-29)
Auto dealer (K.S.A. 8-2410)
Barber (K.S.A. 64-1812)
Certified Public Accountant (K.S.A. 1-302)
Cigarette seller (K.S.A. 79-3304)
Credit service organization (K.S.A. 50-1118)
Dentist/hygienist (K.S.A. 65-1426 and 65-1455)
Doctor (K.A.R. 100-6-4)
Driving school operator (K.S.A. 8-275)
Embalmer (K.S.A. 65-1701)
Firearms trainer for private detectives (K.S.A. 75-7b21)
Funeral director’s assistant (K.S.A. 65-1717)
Insurance company (K.S.A. 40-4306)
Law enforcement officer (K.S.A. 74-5605)
Liquor seller (K.S.A. 41-2703)
Manufactured housing (K.S.A. 58-4211)
Marriage and family therapist (K.A.R. 102-5-1)
Masters level psychologist (K.A.R. 102-4-1a)
Mortgage broker/loan originator (K.S.A. 9-2204)
Optometrist (K.S.A. 65-1505)
Private detective (K.S.A. 75-7b04)
Professional counselor (K.A.R. 102-3-1a)
Racetrack facility operator (K.S.A. 74-8813)
Social worker (K.A.R. 102-2-1a)
Supervised lender (K.S.A. 16a-2-302)
Veterinarian (K.S.A. 47-824)