

Approved: 2-25-09

Date

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 12, 2009, in Room 136-N of the Capitol.

All members were present.

Committee staff present:

Bruce Kinzie, Office of the Revisor of Statutes  
Melissa Calderwood, Kansas Legislative Research Department  
Terri Weber, Kansas Legislative Research Department  
Beverly Beam, Committee Assistant

Conferees appearing before the committee:

Melissa Calderwood, Principal Analyst,  
Joan Wagon, Secretary of Revenue, (Attachment 1)  
Wayne Mayhew, President, Central National Bank (Attachment 2)  
Robert Munson, President, Central National Bank (Attachment 3)  
Tom Thull, State Banking Commissioner (Attachment 4)  
Doug Wareham, Kansas Bankers Association (Attachment 5)  
Scott M. Gates, Director, Learning Quest (Attachment 6)  
Kevin Glendening, Office of the State Banking Commissioner (Attachment 7)  
Craig Yaryian, Kansas Association of Mortgage Professionals (Attachment 8)  
A. W. Pickle, Kansas Association of Mortgage  
Ron Gaches, Kansas Association of Financial Services (Attachment 9)  
Kathleen Olsen, KBA (written only) (Attachment 10)  
Martha Neu Smith, Kansas Manufactured Housing Association (Attachment 11)

Due to Chairman Teichman's absence, Senator Brownlee, Vice Chair, conducted the meeting.

Hearing on

**SB 239 - Enacting the rural risk bank loan guarantee loan program.**

Melissa Calderwood, Principal Analyst, Research Department, gave an overview of the bill. Ms. Calderwood stated that this bill would establish the Kansas Rural Risk Bank Loan Guarantee Program that would be implemented by the State Treasurer. She said this program would authorize the State Treasurer to provide loan guarantees against risk of default for rural development projects with rural developers for the renovation or construction of commercial, manufacturing, or value-added agricultural facilities or equipment. She noted that the total principal amount of outstanding loan guarantees for any single borrowing organization could not exceed \$3.0 million and the total outstanding amount of all loan guarantees for borrowing organizations could not exceed \$15 million. She said this bill would also establish the Rural Risk Bank Loan Guarantee Review Committee within the office of the State Treasurer. She noted that the State Treasurer or his designee would serve as nonvoting chairperson and the review committee would elect a vice-chairperson from its members. She said **SB 239** would also create the Rural Risk Bank Loan Guarantee Fund that would receive all fees and charges for the purposes of implementing the program. In conclusion, she said the State Treasurer indicates the agency would have increased workload and expenditures associated with administering this program.

Joan Wagon, Secretary of Revenue, testified in support of **SB 239**. She stated the problem came to light in

## CONTINUATION SHEET

Minutes of the Senate Financial Institutions And Insurance Committee at 9:30 a.m. on February 12, 2009, in Room 136-N of the Capitol.

Joan Wagnon, Secretary of Revenue, testified in support of **SB 239**. She stated the problem came to light in discussions in the Kansas Innovation Consortium even before the financial crisis emerged. She said entrepreneurs were reporting that banks are increasingly reluctant to loan funds for buildings in very rural areas. She said their costs of construction often exceed their value as collateral, therefore banks elevate their pricing or fail to loan because if the business doesn't survive, there may not be another use in the community for the building. She noted that the proposed solution is for the legislature to authorize a loan guarantee program to encourage lending in rural areas to entrepreneurial ventures so that local banks can be involved and innovative companies can locate in rural areas. (Attachment 1)

Wayne Mayhew, Edenspace Vice President of Finance and Chief Financial Officer, testified in support of **SB 239**. Mr. Mayhew said Edenspace is developing proprietary crops to reduce the cost of producing cellulosic ethanol, butanol and other fuels from non-food plant biomass (biofuel). He said these crops demonstrate innovative traits that are expected to help make cellulosic biofuel cost-competitive with gasoline. He said Edenspace plans to sell seed directly to farmers and refinery operators, and to license traits to other seed producers for incorporation in their own commercial seed. Mr. Mayhew said in 2007 Edenspace relocated its headquarters and primary energy crop development to northeastern Kansas. He said a new state-of-the-art facility is planned in Junction City, Kansas but the company had three significant concerns in relocating to the Junction City area: 1. their ability to hire the necessary management and scientific personnel to meet the company's needs, 2. distance to major airports and 3. availability of adequate facilities, including specialized laboratories and greenhouse space for research and development. He said Edenspace believes the program as outlined in the Rural Risk Bank Loan Guarantee Program would be of substantial assistance to technology companies like Edenspace that need specialized facilities to locate, grow and prosper in rural Kansas. (Attachment 2)

Robert C. Munson, President, Central National Bank, Junction City, testified in support of **SB 239**. Mr. Munson said the primary advantage of the Rural Risk Guarantee Program is that it would assist entrepreneurial enterprises to be able to actually obtain a loan, thus mitigating the "rural risk" that exists in a banker's mind because a large or specialized commercial building has limited resale possibilities in a rural area. He said bankers in rural communities are facing a number of issues with regard to commercial loan financing for building construction or renovation. He said there is some risk of loss to the state under this program. (Attachment 3)

Tom Thull, State Banking Commissioner, testified in support of **SB 239**. Mr. Thull stated collateral is a major issue. He said the ability to establish a collateral value certainly weighs heavy on the minds of lenders when they are pondering a lending decision. He said we are very concerned about the value of collateral and the adequacy of that collateral to protect the interests of the depositor whose money was loaned. He noted that it would be beneficial to have a guaranteed program to take some of the risk from our bankers and would free up credit availability in rural communities. (Attachment 4)

Doug Wareham, Kansas Bankers Association, testified in support of **SB 239**. He said KBA sees this bill as a useful tool in filling the gap between the market value of the completed structure versus the construction costs of building it. He said this bill would allow a bank in a non-metropolitan area to apply for a state loan guarantee of up to 50% of a commercial construction loan. He said KBA's mission is to support and assist Kansas banks and Kansas bankers. (Attachment 5)

Scott M. Gates, General Counsel, State Treasurer's Office, testified in support of **SB 239**. He stated the Treasurer's Office will be able to implement this program with existing resources by charging fees to recover the program's costs. He noted, however, that he is concerned with the provision in section 3 requiring all claims against the guarantee to be approved by the joint committee on special claims against the state. He said eventually, funds will need to be set aside to fund the guarantee without looking to the state general fund claims process. He said a good benchmark is 10% of the outstanding loan balances. He said this would not be necessary until 2011 or 2012 after the program ramps up. He said an unfunded guarantee may discourage banks from participating in the program or increase the interest rates they charge borrowers. (Attachment 6)

Following discussion, the chair closed the hearing on **SB 239**.

## CONTINUATION SHEET

Minutes of the Senate Financial Institutions And Insurance Committee at 9:30 a.m. on February 12, 2009, in Room 136-N of the Capitol.

Hearing on

### **SB 240 - Mortgages, the regulation of.**

Melissa Calderwood gave an overview of **SB 240**. She stated **SB 240** would amend both the Kansas Uniform Consumer Credit Code and the Kansas Mortgage Business Act relating to mortgages and mortgage loan originators. She said the bill would bring these state laws into compliance with recently enacted federal legislation under sections of the Housing and Economic Recovery act of 2008, commonly known as the SAFE Act. She said the bill would also prohibit a loan processor or underwriter from advertising that they perform the duties of a mortgage loan administrator. She continued that the bill would require the Office of the State Bank Commissioner to continue to regulate the industry and to participate in the Nationwide Mortgage Licensing System and Registry. She said the bill would allow the office of the State Bank Commissioner to assess the cost of the administration of the Kansas Mortgage Business Act in a similar way as current law permits under the Uniform Consumer Credit Code. She said all mortgage loan originators would be required to comply with additional reporting and other requirements.

Kevin Glendening, Administrator, Kansas Uniform Consumer Credit Code, testified in support of **SB 240**. He stated the amendments in this bill have been structured to meet the requirements put forth by HUD in order to comply with the minimum federal requirements. (Attachment 7)

Craig Yaryan, President, Kansas Association of Mortgage Professionals, testified in support of **SB 240**. Mr. Yaryan stated there are three important factors that must be considered when a consumer is applying for a loan: 1. For most consumers, their home is their largest and most important investment, 2. The process of purchasing a home is a very complicated process, one in which underwriting guidelines are constantly changing, new loan products are either being introduced or removed from the market on a regular basis, appraisal requirements are changing, and the loan closing process can differ from one state to another, and 3. It is quite evident that homeownership is the foundation of this country's economy. He said the only way to insure that all three of the above factors have been adequately addressed is to create a level playing field and establish the same minimum criteria for any individual that the consumer and our economy place such a large trust in. He said it is also imperative that this legislation works in concert with the Department of HUD. (Attachment 8)

A. W. Pickle, Kansas Association of Mortgage Professionals testified in support of **SB 240**. He said in 1996 he helped write the bill with the Banking Commissioner at the time. He said he is currently legislative Chair for the Kansas Association of Mortgage Brokers and fully supports this bill. He noted if we don't continue to tightened this up, it will continue to be a much greater problem. We would like to make sure home owners are protected and that loan originators are registered and educated.

Ron Gaches, representing the Kansas Association of Financial Services, testified in support of **SB 240**. Mr. Gaches said while some of the KAFS members continue to examine the language of the bill and pose clarifying questions to the Commissioner's Office, they believe it is a reasonable and prudent proposal to bring Kansas into compliance with federal guidelines for such legislation. (Attachment 9)

Kathleen Olsen presented written testimony in support of **SB 240**. (Attachment 10)

Martha Neu Smith, Kansas Manufactured Housing, testified as neutral on **SB 240**. She stated that in Kansas, all aspects of the manufactured housing industry are already licensed under the Kansas Manufactured Housing Act, including manufactured home retailers. She said at this time they have conflicting opinions on whether the manufactured home retailer's actions would bring them under the requirements of the S.A.F.E. Act or not. She suggested an amendment to insert "and" in front of "or" so it will read "and or" on page 4, line 37 of the bill. We are just asking for clarification that we are not a loan originator by definition, she said. She noted they have received conflicting opinions on whether the manufactured home retailer's actions would bring them under the requirements of the S.A.F.E. Act or not. She said it is not their goal to slow this process down and they are amenable to other suggestions that would provide clarifications. (Attachment 11)

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Minutes of the Senate Financial Institutions And Insurance Committee at 9:30 a.m. on February 12, 2009, in Room 136-N of the Capitol.

Chair asked the Committee for questions. Senator Brownlee asked Mr. Glendening for his thoughts on the proposed amendment that Manufactured Housing suggested. Mr. Glendening responded that a couple of issues come into play there. The original language of the S.A.F.E. Act did have an "and" instead of the "or" in the federal bill that was passed. He stated as far as implementation of that, they have commented to say they are going to interpret it that you can't link the activity of taking applications. He said in his opinion, as long as you are not actively participating in origination of that mortgage, they would not be considered loan originators. He said if we took all of these S.A.F.E. comments out of our existing law, since 1996, our existing law has never linked the two things together.

The Vice Chair closed the hearing on **SB 240**.

The next meeting is scheduled for February 17, 2009.

The meeting was adjourned at 10:30 a.m.

February 12, 2009

Testimony for SB 239 Rural Risk Loan Guarantee Program  
Senate Committee on Financial Institutions and Insurance

**The problem** surfaced in discussions in the Kansas Innovation Consortium, even before the financial crisis emerged. Entrepreneurs were reporting that banks are increasingly reluctant to loan funds for buildings in very rural areas. Their costs of construction often exceed their value as collateral. So, banks elevate their pricing, or fail to loan because if the business doesn't survive, there may not be another use in the community for the building.

To illustrate that point, I've invited two of the Innovation Consortium members to testify. Mr. Chuck Comeau of Dessin Fournir was unable to attend but his written testimony is attached. Mr. Bruce Ferguson of Edenspace is represented by Mr. Wayne Mayhew, Edenspace's Vice President of Finance and Chief Financial Officer.

**The proposed solution** is for the Legislature to authorize a loan guarantee program to encourage lending in rural areas to entrepreneurial ventures so that local banks can be involved and innovative companies can locate in rural areas.

I've also invited Mr. Robert Munson, President of Central National Bank in Junction City to speak about why this solution would be an incentive to banks that do business in rural communities to participate. He may also have some suggestions to improve the bill's language.

**The bill as drafted reflects these components:**

- Banks lending in non-metropolitan areas may apply for a state loan guarantee not to exceed 50% of the loan for commercial building projects if approved by the state. (page 1, lines 21-23, p. 2, l. 35-37)
- The bank originating the loan shall be responsible for monitoring the loan, and in the case of any default, working out the loan with the borrower to obtain the collateral. The bank shall be in first position and the state, second. (page 2, l-9)
- Underwriting requirements for these loans must conform to standard bank policy and cannot be modified just to qualify for this program. Repayment ability from the cash flow of the business is a primary consideration in making the loan, in addition to the business management capability, collateral and owner's equity contributions. (p. 2, lines 1-9)

- Loan pricing cannot reflect an increased amount for “rural risk” and should reflect comparable pricing for similar commercial ventures in other areas.
- The program shall be administered by the State Treasurer and shall describe the application process in rules and regulation. A fee may be charged by the State Treasurer for loan administration. (page 2, lines 10-19)
- Approved loans shall be for commercial, manufacturing or value-added agricultural facilities and equipment. Loans may not be used for working capital or inventory. (page 1, lines 24-27)
- The State Treasurer shall establish an advisory committee to aid in evaluating the loan applications and determining which applicants should receive the guarantee. (section 5)
- This state guarantee for rural risk may be combined with other guarantee programs, if they are available, such as SBA loan guarantees.
- The State Treasurer may set an annual limit for loans guaranteed by the state. (sec. 5)

In Section 5 a rural risk bank loan guarantee fund is created in the state treasury. However, there will need to be an appropriation to put money in the fund. We are recommending that effective in FY2011, an amount not to exceed ten percent of the value of the guaranteed portion of all loans shall be appropriated annually to fund this program until a cap of \$15 million is reached.

Thank you for your consideration.

DessinFournierCompanies

February 10, 2009

Senator Ruth Teichman  
Kansas Senate  
300 SW 10<sup>th</sup> Avenue  
Room 241-E  
Topeka, KS 66612-1504

Dear Senator Teichman:

I am writing to you today in support of SB 239 Rural Risk Bank Loan Guarantee introduced to the Senate Financial Institutions committee in January by Secretary of Revenue Joan Wagnon and ask your consideration of the following.

I have never had the pleasure of meeting you but I am a rural Kansas business owner that elected to locate and maintain his business in a rural area. For a whole variety of reasons, we feel this is the best location for our business despite the fact that we work in 15 major US cities, Europe, the UK, India, Russia, Vietnam and Thailand and our clients are located all over the world. We have been blessed that our business has prospered over the years which has allowed us to provide 90 professional people with high paying jobs in our home town of Plainville, Kansas, population 1800 people. We have never found our location to be a hindrance to our business or its expansion until we were forced several years ago to expand our physical infrastructure to facilitate our ongoing growth.

In our case, we needed to build additional office space and textile warehousing. For the office space expansion we had purchased a historic building in our downtown area. Our goal was to restore the buildings exteriors and to renovate the interiors to house a new textile design studio where we develop new products and meet with textile mills. The rest of the building was to be utilized to expand our accounting department and create additional office space. Total cost of the project was projected by us to be approximately \$650,000.00. The appraisal provided by the appraiser to our bank indicated a value of \$1,463,003 which would have yielded a loan to value ratio of 50% after standard depreciation for a \$650,000.00 mortgage. However, the appraiser also stated that "in his opinion, general sales data would indicate a loss of approximately 50% in value for larger office buildings located in small rural

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communities." Accordingly, the subject improvements are subject to an additional "50% external depreciation" resulting in a fully depreciated value of the improvements of \$570,571.00. Since our bank was willing to loan us 70% of our appraised value or our actual costs whichever ever was less required that we put up an additional \$171,171.00 of additional equity in order to get a loan for a building that appraised for \$1,463,003. I have attached before and after photos of the building that as I stated earlier is located in our downtown area. We later discovered that this "external depreciation" was arbitrary on the part of the appraiser simply because we were located in a rural area.

There is not a financial rationale that can be used to justify utilizing capital for the sake of such arbitrary discounts. This type of situation ultimately forces many small businesses like ours to rethink their decision to stay in rural areas no matter how much you want to. In order to preserve existing business in rural areas as well as to cultivate additional economic development in our rural areas necessitates this issue be addressed. SB 239 specifically does this and I ask that you support its passage.

From all of us rural business owners who want to stay in a rural area, we thank you for your consideration and support of this bill.

Sincerely,

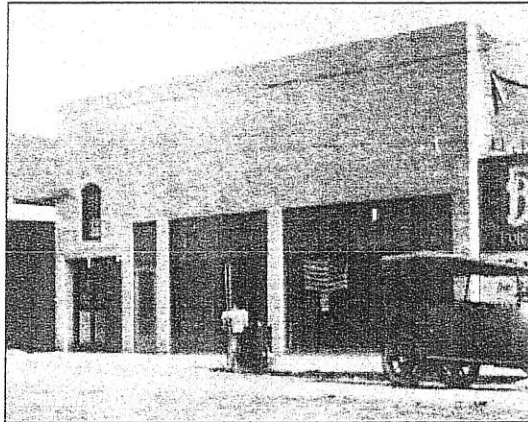


Charles G. Comeau  
The Dessin Fournir Companies  
Plainville, Kansas



# Dessin Fournir Companies Corporate Office Expansion

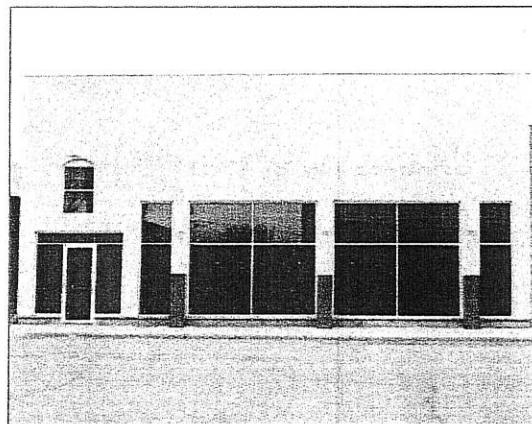
308 West Mill Street, Plainville, KS



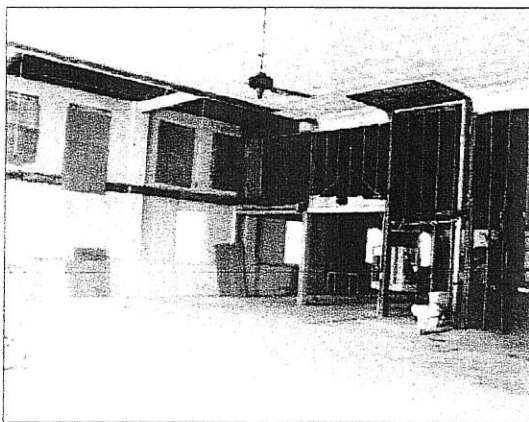
Historic



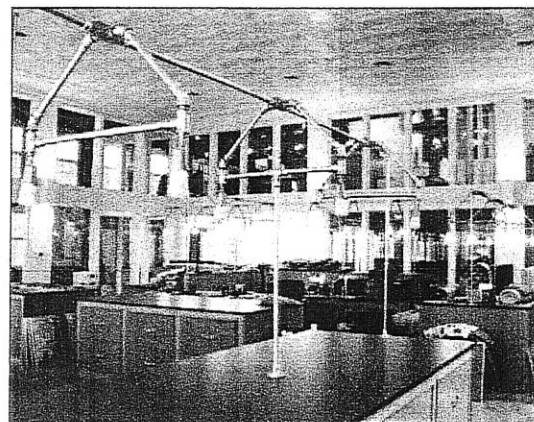
Pre-renovation 2006



Exterior Post-renovation 2008



Interior Pre-renovation 2006



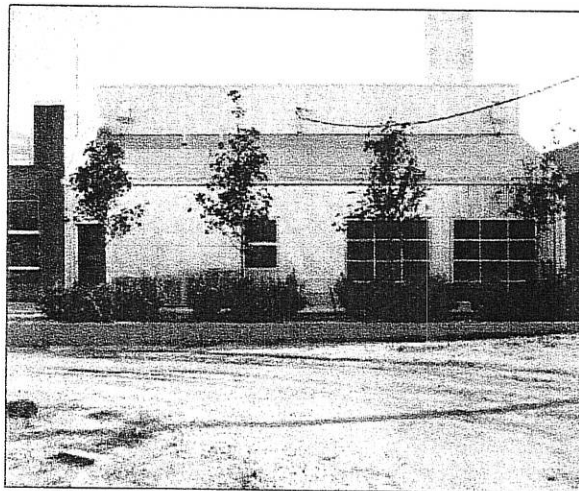
Interior Post-renovation 2009

# Dessin Fournir Companies Corporate Office Expansion

308 West Mill Street, Plainville, KS



Pre-renovation 2006



Exterior Post-renovation 2008

Statement of Mr. Wayne E. Mayhew, III  
Vice President and Chief Financial Officer  
Edenspace Systems Corporation

before the

Financial Institutions Committee  
Kansas State Senate  
Topeka, Kansas

February 12, 2009

Good morning. I am Wayne Mayhew, Vice President and Chief Financial Officer of Edenspace Systems Corporation. I am here today to speak on behalf of Edenspace in support of the proposed Rural Risk Bank Loan Guarantee Program (SB239).

Edenspace is developing proprietary crops to reduce the cost of producing cellulosic ethanol, butanol and other fuels from non-food plant biomass ("biofuels"). These bioengineered crops demonstrate innovative traits that are expected to help make cellulosic biofuels cost-competitive with gasoline. Traits include in-plant production of enzymes that replace expensive enzymes produced in microbial bioreactors. The company is bioengineering potential second-generation energy crops such as corn stover, sorghum, poplar and switchgrass in order to address multiple potential markets for its technology. Edenspace plans to sell seed directly to farmers and refinery operators, and to license traits to other seed producers for incorporation in their own commercial seed.

The company has entered into key development agreements with the U.S. National Renewable Energy Laboratory, the U.S. Department of Energy, the U.S. Department of Agriculture, Kansas State University, Michigan State University, Oklahoma State University, and the leading ethanol design/build firm, ICM, Inc. The company received the U.S. Department of Energy's 2008 Energy Innovator Award, Environmental Business Journal's 2004 Technology Award and the DaimlerChrysler 1999 Environmental Excellence award.

In 2007 Edenspace relocated its headquarters and primary energy crop development to northeastern Kansas. It currently operates out of a 8,500 ft<sup>2</sup> Manhattan, Kansas office and laboratory location with a 2,000 ft<sup>2</sup> leased greenhouse. A new 28,000 ft<sup>2</sup> state-of-the-art office, laboratory and greenhouse facility is planned in nearby Junction City, Kansas. Key advantages of the Kansas location include:

- Proximity to Kansas State University, a major crop research university, providing ready access to an experienced labor pool and specialized agricultural and plant biology laboratories and equipment

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Attachment 2*

- Close involvement with a multi-crop farm community, including corn and sorghum farmers who are potential customers for Edenspace energy crops
- Proximity to key strategic partners such as ICM (in nearby Wichita) and ethanol plants throughout Kansas and neighboring states.

The Company had three significant concerns in relocating to the Junction City area:

1. Our ability to hire the necessary management and scientific personnel to meet the Company's needs.

The company been very successful recruiting both local hires and senior staff relocating from other states. Our mission to develop low-cost, sustainable biofuels has helped to attract top-notch engineers and scientists to a rural location in Kansas.

2. Distance to major airports.

The two-hour drive to and from Kansas City International Airport does not seem very far any more and KCI is much more convenient than many others we have used.

3. Availability of adequate facilities including specialized laboratories and greenhouse space for our research and development efforts.

Junction City has not been able to obtain industrial revenue bond financing for our proposed new facility, with the result that we continue to operate in temporary laboratory facilities in Manhattan, Kansas. The financing challenge, exacerbated by the current global credit crisis, centers on lenders' difficulties in funding a specialized laboratory facility in a rural area where there are few other prospective purchasers or tenants. The lack of a deep, well-established market for R&D real estate in our location therefore makes it extremely difficult to arrange financing for the specialized facilities we need.

We believe that the program as outlined in the Rural Risk Bank Loan Guarantee Program (SB230) would be of substantial assistance to technology companies like ours that need specialized facilities to locate, grow and prosper in rural Kansas.

*[Faint, illegible handwritten text]*



**Central  
National Bank**

802 N. Washington  
P.O. Box 700  
Junction City, Ks 66441  
785-761-2918

February 12, 2009

Senator Ruth Teichmann and  
Members of the Senate Financial Institutions Committee

RE: Rural Risk Bank Loan Guarantee Program

Dear Senator Teichmann and Members of the Senate Financial Institutions Committee:

One of the issues faced in our smaller Kansas communities is the challenge of financing business buildings, particularly if those buildings are larger than what is typical for that community, and/or has certain unique aspects or some degree of "single use" design. Because there are often few, if any, buildings of a similar value or size in the community, the building resale possibilities are limited should a financial institution have to take back the building because of a business failure.

I see a number of benefits to having the Rural Risk Guarantee Program in place. The primary advantage is that this program would assist entrepreneurial enterprises to be able to actually obtain a loan, thus mitigating the "rural risk" that exists in a banker's mind because a large or specialized commercial building has limited resale possibilities in a rural area. The state guarantee of up to 50% of the loan amount would definitely assist entrepreneurial business projects in obtaining bank financing.

As Senate Bill No. 239 works its way through the legislative process, I would urge that the maximum loan guarantee amount not be reduced below the maximum 50% amount proposed in the bill. If the loan guarantee is a much smaller amount, I do not feel this program will be utilized by lenders; I feel that the 50% guarantee limit is a good number. While some projects may be given a smaller guarantee by the rural risk loan guarantee review committee, I feel it is important that the guarantee can be up to a 50% amount if a project justifies that guarantee level.

Bankers in rural communities are facing a number of issues with regard to commercial loan financing for building construction or renovation. Once a borrower has passed the normal lending standard requirements, such as having strong management ability, a worthy business plan, strong prospects for appropriate repayment ability from the business cash flow, strong personal integrity of the principal owners, etc., the bank and borrower must address the collateral issue.

Member F.D.I.C.

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Attachment 3*

Senator Ruth Teichmann and  
Members of the Senate Financial Institutions Committee  
February 12, 2009, page 2

Regulatory agencies are placing great emphasis today on the collateral loan to value ratio, and—certainly in the case of the regulator I am familiar with—the Office of the Comptroller of the Currency—they are requiring banks to keep a list of and report all “High LTV” loans. High LTV loans are discouraged by the bank regulatory agencies. However, often entrepreneurial businesses, especially new ones, have much of the owner’s equity tied up in inventory, workforce and technology expenses, etc., which can often lead to the building not having a lot of owner equity in it, and thus the building loan is by definition a high LTV loan. Needless to say, banks do not want many loans on their high LTV list; however I feel that the partial state guarantee would be looked on very favorably by the bank examining agencies, which would reduce examiner concerns about these type loans appearing on the high LTV list.

In addition to the bank examination issue, obviously with the challenges faced in the commercial lending field in 2008 and which has continued into 2009, bank management and boards of directors are taking a very careful view of risk management; this has led to a much more conservative lending posture that potentially could be detrimental to some very good projects that would have strong community economic advantages in terms of job creation but that will not get off the ground because they are being proposed in rural areas where there is limited resale possibilities for the commercial building housing the business enterprise.

Obviously there is no perfect guarantee that every loan will pay out as planned, so there is some risk of loss to the state under this program. However, prudent lenders have no desire to put questionable loans on their books, even if there is a 50% guarantee backing the loan. In addition, the Rural Risk Bank Loan Review Committee that is proposed to be a part of this program will play an important “due diligence” role in making certain that all projects supported by this program meet appropriate lending standards and are worthy of the state support.

I would urge your support of the proposal to establish the rural risk bank loan guarantee program.

Sincerely,



Robert C. Munson  
President, Central National Bank, Junction City

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To: Senate Committee on Financial Institutions & Insurance  
Re: SB 239,  
February 12, 2009  
Date: February 13, 2009

Chairman Teichman, Vice-Chair Brownlee, and Ranking Member Steineger, I am Tom Thull, State Bank Commissioner, I'd like to thank you for the opportunity to appear before you in support of SB 239.

Asset (Loan) quality is one of the five components reviewed during a safety and soundness examination. Due to changes in the market, loans to purchase or improve commercial real estate are being carefully scrutinized by both State and Federal Bank regulators.

A factor in determining the quality of a commercial real estate loan is the value of the property securing the loan. Difficulty in establishing a value for commercial real estate in rural communities causes concern for regulators, which translates to reluctance by bankers to make loans secured by commercial real estate. The guaranty provided by SB 239 could bridge the gap that may result if the appraised value of the project is lower than the actual cost of construction.

If K.S.A. 9-1104 was amended, SB 239 has the potential to impact credit availability in rural Kansas in two more ways: 1.) The portion of the loan subject to the guaranty provided by SB 239 would be exempt from legal lending limit calculations, and 2.) Should the loan subject to the guaranty be considered non-performing, the amount of the loan subject to the guaranty would be excluded from the amount adversely classified, which would effect the provision for Loan and Lease Loss. Provisions for Loan and Lease Loss come directly from earnings and can affect the bank's capital.

With some amendments, passage of SB 239 would expand the availability of credit to rural entrepreneurs.

Thanks again for the opportunity to testify in favor of SB 239.

*FI & I Committee  
2-12-09  
Attachment 4*



February 12, 2009

To: Senate Committee on Financial Institutions and Insurance

From: Doug Wareham, Kansas Bankers Association

**Re: SB 239: Rural Risk Bank Loan Guarantee Program**

Madam Chair and Members of the Committee:

Thank you for the opportunity to present written testimony today in support of **SB 239**, which would provide for a rural loan guarantee program for rural development projects.

This bill recognizes that new construction in rural areas can be difficult. The costs of construction can often exceed the market value of the completed structure. This makes pricing of the loan very treacherous for a lender who is trying to value the loan based on an appraisal of the finished product. In addition, there are instances where supply exceeds demand which also drives the market value of the property down.

We view this bill as a useful tool in filling the gap between the market value of the completed structure versus the construction costs of building it. The bill would allow a bank in a non-metropolitan area to apply for a state loan guarantee of up to 50% of a commercial construction loan.

The bank would be responsible for monitoring the loan and working out the loan should the borrower default. The bank would not be allowed to deviate from its standard loan policy with regard to qualifying borrowers, and would not be allowed to price the loan based on the gap between the market value of the loan and the costs of construction. In exchange, the bank would have a first lien on the property.

The program would be administered by the State Treasurer's office. We support that provision as we have had several successful working relationships with the State Treasurer's office with regard to other loan programs.

Our mission at the KBA is to support and assist Kansas banks and Kansas bankers. There are many Kansas bankers who are seeking ways to promote their local communities and to attract new business there. We support **SB 239** as one means of accomplishing that mission. Thank you.

*FI & I Committee  
2-12-09  
Attachment 5*





900 SW JACKSON ST., STE 201  
TOPEKA KS 66612-1235

STATE OF KANSAS  
**Dennis McKinney**  
TREASURER

PHONE: 785-296-3171  
FAX: 785-296-7950

Senate Bill 239 Testimony  
Senate Financial Institutions Committee  
February 12, 2009  
By Scott M. Gates, General Counsel

Treasurer McKinney understands the additional borrowing cost often incurred by rural developers. Banks often assume that commercial properties in rural areas will be more difficult to resell should the borrower default. By providing a 50% loan guarantee, S.B. 239 provides a prudent way to encourage banks to pursue these projects without charging borrowers a premium interest rate. Measures like this that increase access to capital at reasonable rates are essential to growing our economy.

The Treasurer's Office will be able to implement this program with existing resources by charging fees to recover the program's costs. I am concerned with the provision in section 3 requiring all claims against the guarantee to be approved by the joint committee on special claims against the state. Eventually, we will need to set aside funds to fund the guarantee without looking to the state general fund claims process. A good benchmark is 10% of the outstanding loan balances. This would not be necessary until FY2011 or FY 2012 after the program ramps up. An unfunded guarantee may discourage banks from participating in the program or increase the interest rates that they charge borrowers.

Thank you for considering this proposal. The State Treasurer's Office looks forward to working with interested parties to implement this new program

*FI&I Committee  
2-12-09  
Attachment 6*

OFFICE OF THE STATE BANK COMMISSIONER  
J. THOMAS THULL, Bank Commissioner

## Senate Committee on Financial Institutions and Insurance

February 12, 2009

Re: SB 241

Madame Chairman and members of the committee:

This past summer Congress passed The Housing and Economic Recovery Act of 2008. Contained in Title V of that legislation, known as the SAFE Mortgage Licensing Act, are certain federal requirements pertaining to State regulation of mortgage loan originators. The central goal of the SAFE Act is to facilitate mortgage regulation by implementing a nationwide mortgage loan originator registry to encourage uniform applications and reporting requirements for loan originators. This registry in turn, should facilitate sharing information among regulators and, for some states, improve the ability of consumers to identify individuals who may have had enforcement actions taken against them. The majority of amendments contained in SB 240 are designed to bring current State law into compliance with the provisions of the SAFE Act. The federal law generally requires states to implement these requirements by July 31, 2009.

Kansas law has regulated mortgage businesses since 1996 and required registration of individual loan originators under the Kansas Mortgage Business Act since 2001. As such, many of the SAFE Act requirements pertaining to loan originators, including continuing education, criminal background checks, and prohibited activities already exist in current state law. In relation to the SAFE Act, SB 240 adds those additional requirements mandated by the new federal law, and those necessary to participate in the nationwide registry system. Other amendments in the bill address prohibitions on advertising mortgage rates or terms unless those rates and terms are actually available; and, influencing the independent judgment of an appraiser or other person in connection with a mortgage loan. Other amendments facilitate our examination procedures, including the licensee's security and safeguarding of records containing consumer's personal or financial information, and preventing a company from escaping enforcement action by surrendering a license.

Following passage of the SAFE Act last summer, all states have been actively engaged in weekly group discussions about implementation of the federal requirements. Early in that process it was determined a practical method to facilitate communication between the states and HUD, the federal regulator charged with implementing the law, was to utilize AARMR and CSBS as conduits to HUD for questions and answers about the law. To that end, the amendments in this bill have been structured to meet those requirements put forth by HUD in order to comply with the minimum federal requirements. I thank the committee members for their favorable consideration of the bill and I am happy to answer any questions.

Kevin Glendening, Administrator  
Kansas Uniform Consumer Credit Code  
Deputy Bank Commissioner  
Office of the State Bank Commissioner

*FI&I Committee  
2-12-09  
Attachment 7*

## Homes & Communities

U.S. Department of Housing  
and Urban Development

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## SAFE MORTGAGE LICENSING ACT

### About the Act

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The Housing and Economic Recovery Act of 2008, signed into law on July 30, 2008 (Public Law 110-289) (HERA), constitutes a major new housing law that is designed to assist with the recovery and the revitalization of America's residential housing market - from modernization of the Federal Housing Administration, to foreclosure prevention, to enhancing consumer protections. The SAFE Act is a key component of HERA.

### Safe Act Model State Law

The SAFE Act is designed to enhance consumer protection and reduce fraud by encouraging states to establish minimum standards for the licensing and registration of state-licensed mortgage loan originators and for the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) to establish and maintain a nationwide mortgage licensing system and registry for the residential mortgage industry for the purpose of achieving the following objectives:

- (1) Providing uniform license applications and reporting requirements for state licensed-loan originators;
- (2) Providing a comprehensive licensing and supervisory database;
- (3) Aggregating and improving the flow of information to and between regulators;
- (4) Providing increased accountability and tracking of loan originators;
- (5) Streamlining the licensing process and reducing regulatory burden;
- (6) Enhancing consumer protections and supporting anti-fraud measures;
- (7) Providing consumers with easily accessible information, offered at no charge, utilizing electronic media, including the Internet, regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators;
- (8) Establishing a means by which residential mortgage loan originators would, to the greatest extent possible, be required to act in the best interests of the consumer;
- (9) Facilitating responsible behavior in the subprime mortgage market place and providing comprehensive training and examination requirements related to subprime mortgage lending;
- (10) Facilitating the collection and disbursement of consumer complaints on behalf of state mortgage regulators.

The new standards, as well as the uniformity and consistency of such standards, directed to be established nationwide by the SAFE Act present a significant step in the effort to increase integrity in the residential mortgage loan market, enhance consumer protections, and reduce fraud. The SAFE Act encourages states to participate in the Nationwide Mortgage Licensing System and Registry, and requires states to have in place, by law or regulation, a system for licensing and registering loan originators that meets the requirements of sections 1505, 1506, and 1508(d) of the SAFE Act. The SAFE Act requires the states to have the licensing and registration system in place by: (1) July 31, 2009, for states whose legislatures meet annually; and (2) July 31, 2010, for states whose legislatures meet biennially. For both this 1-year period and 2-year period, HUD may extend the deadline, by not more than 24 months, if HUD determines that a state is making a good faith effort to establish a state licensing law that meets the minimum requirements of the SAFE Act. (See the complete text of the SAFE Act.)

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To aid and facilitate states' compliance with the requirements of the SAFE Act, the Act directs the establishment of a nationwide mortgage licensing system and registry (NMLSR), to be developed and maintained by CSBS and AARMR. If HUD determines that a state's mortgage loan originator licensing standards do not meet the minimum requirements of the Act, HUD must implement and administer a licensing system for that state. A loan originator in such a state would have to comply with the requirements of HUD's SAFE Act-compliant licensing system for that state as well as with any applicable state requirements. A HUD license for a state would be valid only for that state, even if HUD must implement licensing systems in multiple states. Additionally, if HUD determines that the NMLSR is failing to meet the requirements and purposes of the SAFE Act, HUD must establish a system that meets the requirements of the SAFE Act.

For the last several months, CSBS and AARMR have undertaken considerable outreach to states and the financial services industry regarding the development of the NMLSR and of legislation that would meet the requirements of the SAFE Act. CSBS and AARMR have developed a model state law (MSL) designed to assist and facilitate states to enact legislation on mortgage loan originator licensing that complies with the SAFE Act and by the deadlines imposed by the SAFE Act. While states are charged with enacting licensing standards that meet the requirements of the SAFE Act, overall responsibility for interpretation, implementation, and compliance with the SAFE Act rests with HUD. In this regard, CSBS and AARMR requested that HUD review the model legislation, and advise of its sufficiency in meeting applicable minimum requirements of the SAFE Act.

### **CSBS/AARMR MODEL LEGISLATION**

HUD reviewed the model legislation to determine whether it meets the minimum requirements of the SAFE Act and finds that it does. State legislation that follows the provisions of the model legislation, whether by statute or regulation, will be determined to have met the applicable minimum requirements of the SAFE Act. The complete text of the model legislation, reviewed by HUD, is provided here.) More information about the model legislation can be found at CSBS's [website](#). The commentary that follows presents HUD's views and interpretations of certain statutory provisions that required consideration and analysis in determining that the model legislation meets the minimum requirements of the SAFE Act.

### **HUD Commentary**

Through this commentary, HUD advises of the analysis of the SAFE Act that was undertaken in reviewing the model legislation and of HUD's interpretation of certain provisions in the SAFE Act. These interpretations are designed to assist the states, as well as members of the public, in understanding how HUD determined that the model legislation meets the minimum requirements of the SAFE Act, and to assist states in adopting legislation or regulations that meet the minimum requirements of the SAFE Act.

#### **A. Standards in Legislation May Exceed Standards in SAFE Act**

The SAFE Act's licensing and registration standards for mortgage loan originators are minimum standards. (See section 1505(b).) Legislation enacted or regulations promulgated by a state may exceed the minimum standards of the SAFE Act. States may not, however, enact legislation, promulgate regulations, or otherwise impose requirements that would frustrate the objectives of the SAFE Act, keeping in mind that the SAFE Act's primary objectives include provision of a comprehensive licensing and supervisory system with uniform application and reporting requirements.

#### **B. Definition of Loan Originator**

Section 1503(3)(A)(i) of the SAFE Act defines "loan originator" as "an individual who (I) takes a residential mortgage loan application; and (II) offers or negotiates terms of a residential mortgage loan for compensation or gain." Section 1503(3)(B), entitled "Other Definitions Relating to Loan Originator" provides "For purposes of this subsection, an individual assists a consumer in obtaining or applying to obtain a residential mortgage loan' by, among other things, advising on loan terms (including rates, fees, other costs), preparing loan packages, or collecting information on behalf of the consumer with regard to a residential mortgage loan.

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" HUD interprets "application" to include any request from a borrower, however communicated, for an offer (or in response to a solicitation of an offer) of residential mortgage loan terms, as well as the information from the borrower that is typically required in order to make such an offer. HUD interprets "tak[ing]" an application to mean receipt of an application for the purpose of deciding whether or not to extend the requested offer of a loan to the borrower, whether the application is received directly or indirectly from the borrower.

Since it generally would not be possible for an individual to offer to or negotiate residential mortgage loan terms with a borrower without first receiving the request from the borrower (including a positive response to a solicitation of an offer) as well as the information typically contained in a borrower's application, HUD considers the definition of loan originator to encompass any individual who, for compensation or gain, offers or negotiates pursuant to a request from and based on the information provided by the borrower. Such an individual would be included in the definition of loan originator, regardless of whether the individual takes the request from the borrower for an offer (or positive response to an offer) of residential mortgage loan terms directly or indirectly from the borrower.

The SAFE Act also describes activities in the residential mortgage process that are excluded from the definition of "loan originator." Activities that are excluded are those that pertain to administrative or clerical tasks; real estate brokerage activities by individuals licensed or registered by a state to undertake real estate brokerage activities unless a person is compensated by a loan originator, loan processing or underwriting undertaken under the direction and supervision of a state-licensed loan originator or registered loan originator; and those individuals solely involved in extensions of credit relating to timeshare plans.

HUD interprets an individual who "takes a residential mortgage loan application" to exclude an individual who performs purely administrative or clerical tasks, such as physically handling a completed application form or transmitting a completed form to a lender on behalf of a prospective borrower. This interpretation is consistent with the exclusion defined in section 1503(3)(C) of the SAFE Act. On the other hand, HUD views activity that involves assisting or advising a prospective borrower in the completion of an application extending beyond purely administrative or clerical tasks falls within coverage of the SAFE Act provided by section 1503(3)(B). As a result, an individual who offers or negotiates residential mortgage loan terms for compensation or gain could not avoid applicability of the SAFE Act standards by having another person or entity take the application from the prospective borrower and then pass the application to the individual. A state licensing and registration system that permits such individuals to avoid compliance with SAFE Act standards would be determined by HUD to be not in compliance with the SAFE Act. A state may clarify that such individuals are not exempt from licensing requirements. The MSL provides one approach in making this clarification in section XX.XXX.030(6).

Notwithstanding the broad definition of "loan originator" in the SAFE Act, there are some limited contexts where offering or negotiating residential mortgage loan terms would not make an individual a loan originator. The provision in the definition that loan originators are individuals who take an "application" implies a formality and commercial context that is wholly absent where an individual offers or negotiates terms of a residential mortgage loan with or on behalf of a member of his or her immediate family. State legislation that excludes from licensing and registration requirements an individual who offers or negotiates terms of a residential mortgage loan only with or on behalf of an immediate family member will not be found to be out of compliance with the SAFE Act merely because of such exclusion. The MSL includes this exclusion in section XX.XXX.040(3)(b).

The commercial context implied by the taking of an "application" is also absent where an individual seller provides financing to a buyer pursuant to the sale of the seller's own residence. The frequency with which a particular seller provides financing is so limited that HUD's view is that Congress did not intend to require such sellers to obtain loan originator licenses. Accordingly, state legislation that excludes from licensing and registration requirements an individual who offers or negotiates terms of a residential mortgage loan only to the buyer or prospective buyer of the seller's residence will not be found to be out of compliance with the SAFE Act. The MSL includes this exclusion in section XX.XXX.040(3)(c).

Additionally, the definition generally would not apply to, for example, a licensed attorney who negotiates terms of a residential mortgage loan with a prospective

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lender on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, mortgage broker, or other mortgage loan originator or by an agent of such lender, mortgage broker, or other loan originator. In such cases, the duties of loyalty, competence, and diligence owed by the attorney to his or her client are significant. HUD views the SAFE Act's requirements for registration and licensing as not applying in this context, which is distinguished from the commercial context contemplated in the SAFE Act. The MSL includes this exclusion in section XX.XXX.040(3)(d).

### **C. Definition of "Dwelling"**

The SAFE Act's definition of "residential mortgage loan" includes a loan secured by a consensual security interest on a "dwelling" and cross-references the definition of dwelling in section 103(v) of the Truth in Lending Act (TILA) (15 U.S.C. 1601 note).

Regulation Z, which implements TILA, defines dwelling to mean "a residential structure that contains 1 to 4 units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence." (12 CFR 226.2(a)(19).) Since both the SAFE Act and TILA address consumer protections for borrowers in housing finance transactions, HUD finds that the same interpretation applies under the SAFE Act. In addition, HUD interprets "mobile home" to include a manufactured home, as defined in the National Manufactured Housing Construction and Safety Standards Act of 1974. (42 U.S.C. 5402(6).)

### **D. Delayed Effective Date of Requirement to Obtain and Maintain a License**

Under the SAFE Act, HUD may determine the acceptability of states' licensing and registration systems and of their participation in the NMLS as early as July 31, 2009, or July 31, 2010, as applicable. As a result, states are facing tight deadlines before they must enact legislation and implement systems to carry out licensing and registration requirements. To meet the SAFE Act's licensing requirements, NMLSR will have to develop tests and approve educational courses, mortgage loan originators will have to comply with testing, education, and bonding requirements, and states will have to evaluate the records of thousands of applicants.

Although a state should enact legislation or promulgate regulations by the applicable deadline, HUD's position is that Congress did not intend for states to require all mortgage loan originators to be licensed in accordance with the SAFE Act's standards immediately upon enactment of the state's legislation or issuance of regulations. Such a requirement could cause a massive disruption in the housing finance industry at a time when millions of Americans may be seeking to refinance their existing mortgages or to purchase a new home. The ability of loan originators to facilitate such transactions is critical to ameliorate the current conditions in the housing market, but in many states, individuals currently performing loan originations may not be able to meet the educational, testing, and background check requirements by the time required legislation or regulations become effective. In addition, HUD is aware that some states already require licensure of loan originators, and that some individuals in those states will hold licenses that do not expire until as late as December 2010. Nonetheless, the provision for HUD to enforce the SAFE Act's standards in any state that fails to implement these standards reflects the underlying statutory concern that loan originators who do not meet these standards pose a significant risk to borrowers and the housing finance system. As a result, any period during which loan originators may operate without a SAFE Act-compliant license must be only as long as necessary for substantial numbers of qualified loan originators to obtain licenses.

Accordingly, HUD will not determine that a state's legislation is not in compliance with the SAFE Act merely because the legislation or regulations provide for a reasonable period following enactment for certain loan originators to be licensed under the new requirements. Considering the education, testing, and background check standards that license applicants must meet, HUD views a reasonable delay, with respect to individuals who do not already possess a valid loan originator license, is one which does not extend past July 31, 2010. Such a delay generally provides one year from state enactment of legislation for individuals to come into compliance with applicable requirements. (HUD has determined that all state

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legislatures that meet only biennially meet in 2009, which means that these states will have the opportunity to enact SAFE Act compliant legislation by July 31, 2009.) For individuals who possess licenses granted under a system that was in place prior to the SAFE Act-compliant system, HUD views a reasonable delay is one that does not extend past December 31, 2010. This effective date will accommodate individuals with two-year licenses that were granted or renewed as late as December 2008, and also synchronizes with the NMLSR's uniform annual license expiration date of December 31. The MSL provides in section L26-(1)(2) for these delayed effective dates for the state licensing requirement, and provides that these effective dates could be further extended only with HUD's approval. HUD may approve a later date only upon a state's demonstration that substantial numbers of loan originators (or of a class of loan originators) who require a state license face unusual hardship, through no fault of their own or of the state government, in complying with the standards required by the SAFE Act to be in the state legislation and in obtaining state licenses within one year.

#### **E. State of Licensure**

Section 1504(a) of the SAFE Act prohibits an individual from "engag[ing] in the business of a loan originator" without first obtaining a registration or state license. HUD interprets this provision to mean that an individual must comply with licensing and registry requirements of a state in order to engage in the business of a loan originator with respect to any residential property in that state, regardless of whether the individual or the prospective borrower is located in the state. This interpretation ensures that each state is able to establish and enforce the provisions of its SAFE Act licensing system and prevents an individual from circumventing a state's requirements simply by physically locating outside of the state and conducting business by telephone or other means. This interpretation, however, does not affect the level of reciprocity a state may grant to another state's determination that its own SAFE Act-compliant licensing requirements have been met. This interpretation promotes clarity by unambiguously determining which state's license is required for a given transaction. The MSL incorporates this interpretation in section XX.XXX.040(1).

#### **F. Felony Convictions**

Section 1505(b)(2) of the SAFE Act provides that, to be eligible for a license, an individual must not have been convicted of any felony within the preceding seven years or convicted of certain types of felonies at any time prior to application. Since the provision is triggered by a conviction, rather than by an extant record of a conviction, HUD interprets the provision to make an individual ineligible for a loan originator license even if the conviction is later expunged. Pardoned convictions, in contrast, are generally treated as legal nullities for all purposes under state law and would not render an individual ineligible. The law under which an individual is convicted, rather than the state where the individual applies for a license, determines whether a particular crime is classified as a felony. The MSL clarifies that a pardoned conviction does not render an individual ineligible for a license under section XX.XXX.060(2)(c).

#### **G. Surety Bond**

Section 1508(d)(6) of the SAFE Act provides that states must set minimum net worth or surety bond requirements or establish a recovery fund paid into by loan originators. HUD has determined that a state may comply with the SAFE Act requirement by providing that, in the case of a company that employs more than one loan originator, the bonding requirement may be met at the company level. Individual loan originators would not have to be bonded separately. The MSL incorporates this interpretation in section XX.XXX.140(1).

**FURTHER INFORMATION CONTACT:** For information contact William Matchneer, Office of Regulatory Affairs and Manufactured Housing, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410-8000; telephone number 202-708-6401. (This is not a toll-free number.) Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

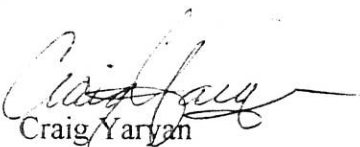
My name is Craig Yaryan, President of the Kansas Association of Mortgage Professionals (KAMP) and I am here to express our association's support for SB 240. I would like to take this opportunity to underscore KAMP's long history of supporting professionalism in the industry and limiting access to this important market by "fly-by-night operators".

It doesn't matter whether a consumer is applying for their loan at a large national bank, small local bank, credit union, mortgage broker, or someone covered by the UCCC Code, there are three important factors that must always be considered.

1. For most consumers, their home is their largest and most important investment.
2. The process of purchasing a home is a very complicated process. One in which underwriting guidelines are constantly changing, new loan products are either being introduced or removed from the market on a regular basis, appraisal requirements are changing, and the loan closing process can differ from one state to another.
3. It is quite evident that homeownership is the foundation of this country's economy.

Most consumers only go through this very complicated process once or twice in their lifetime. It is absolutely critical that those individual(s) that are in a position to meet with the consumer and either, take a loan application, quote interest rates, give advice, or any combination there-of have met a minimum standard of knowledge and ethics.

The only way to insure that all three of the above critical factors have been adequately addressed is to create a level playing field and establish the same minimum criteria for any individual that the consumer and our economy place such a large trust in. We also believe that it is imperative that this legislation works in concert with the Department of HUD.



Craig Yaryan  
President

Kansas Association of Mortgage Professionals

*FI&I Committee  
2-12-09  
Attachment 8*





# GACHES, BRADEN & ASSOCIATES

Government Relations & Association Management

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825 S. Kansas Avenue, Suite 500 ♦ Topeka, Kansas 66612 ♦ Phone: (785) 233-4512 ♦ Fax: (785) 233-2206

**Testimony of Kansas Association of Financial Services  
In Support of SB 240  
Submitted to Senate Financial Institutions and Insurance Committee  
Presented by Ron Gaches  
Thursday, February 12, 2009**

Thank you Chairman Teichman and members of the committee for this opportunity to speak in support of Senate Bill 240, a bill amending the Kansas Uniform Consumer Credit Code. My name is Ron Gaches and I represent the Kansas Association of Financial Services.

Senate Bill 240 is introduced in response to new federal law that requires all states to become compliant with minimum licensure requirements for residential mortgage loan originators. Also, the bill makes a number of other changes regarding the regulation of financial service firms and loan originators, and allows Kansas and Kansas licensees to participate in a nationwide licensure program.

The members of KAFS have participated in the formation of these standards at the national level and have provided input to the Kansas Bank Commissioner's Office as they developed this legislation. While some of our members continue to examine the language of the bill and pose clarifying questions to the Commissioner's Office, we believe it to be a reasonable and prudent proposal to bring Kansas into compliance with the federal guidelines for such legislation and we endorse its passage by the committee.

*FI&I Committee  
2-12-09  
Attachment 9*



February 12, 2009

To: Senate Committee on Financial Institutions and Insurance

From: Kathleen Taylor Olsen, Kansas Bankers Association

**Re: SB 240: Regulation of Mortgages**

Madam Chair and Members of the Committee:

Thank you for the opportunity to present written testimony in support of **SB 240** which makes several amendments to the Mortgage Business Act as well as to the Uniform Consumer Credit Code (U3C). We appreciate the fact that most of these changes are necessary to bring state law into compliance with the provisions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008. This will effectively keep the licensing and registry of mortgage lenders with the Office of the Bank Commissioner, as the nation prepares for a national registry of mortgage lenders.

We also support the clarification in the U3C of the calculation of time found in New Section 1. The long-standing practice in the industry has been to calculate periods of time specified in the U3C by using calendar days. However, we realized some time ago, that while that was the practice, it was not specifically addressed in the U3C. When we learned that this bill was going to amend the U3C in other areas, we approached the Banking Department and asked if they would consider clarifying this practice. They graciously agreed to do so.

In conclusion, we respectfully request that the Committee act favorably on **SB 240**. Thank you.

*FI:I Committee  
2-12-09  
Attachment 10*



3521 SW 5th, Topeka, KS 66606  
785-357-5256  
785-357-5257 fax  
kmha1@sbcglobal.net

TO: Senator Ruth Teichman, Chairman  
And Members of the Committee

FROM: Martha Neu Smith  
Executive Director

DATE: February 12, 2009

RE: SB 240 – S.A.F.E. Act

Chairwoman Teichman and members of the Committee, my name is Martha Neu Smith and I am the Executive Director for Kansas Manufactured Housing Association (KMHA) and I appreciate the opportunity to comment on SB 240 and offer one amendment.

KMHA is a statewide trade association, which represents all facets of the manufactured and modular housing industry including manufacturers, retail centers, community owners and operators, finance and insurance companies, service and supplier companies and transport companies.

When Congress drafted the "Secure and Fair Enforcement for Mortgage Licensing Act of 2008" (SAFE), we do not believe there was any intent to include manufactured housing retailers within the scope of persons who should be "Loan Originators". The reason we believe that is because in the federal SAFE Act, Congress defines the term "loan originator" as an individual who "takes a residential loan application and offers and negotiates terms of a residential mortgage loan for compensation or gain". Because manufactured home retailers do not offer or negotiate loan terms for compensation or gain, they clearly would not be covered under the federal definition.

By changing "and" to "or" it expands upon Congress's definition and could be interpreted to include anyone who takes a loan application including a manufactured home retailer.

Below is an explanation of the activities of a typical retailer regarding the financing of a home by a purchaser. Congress did not intend that these activities should trigger licensing as loan originators.

- A customer at a retail sales center selects a home and signs a purchase agreement that is contingent on the customer securing the necessary financing.
- Because many lending institutions do not finance the purchase of manufactured homes, customers are not always familiar with lenders that are engaged in this business. Because retailers are usually aware of lenders that finance

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manufactured homes either on a national level or locally they provide this information to the homebuyer.

- The retailer will provide the customer with a standard home loan application, or an application specific to a lender. The retailer will fax the application to the lender, which the homebuyer selects.
- The lender will communicate back to the retail sales center and the customer (normally by fax or call to the retail sales center and by letter and call to the customer), with an approval or disapproval of the loan application. The retailer does not negotiate the term or interest rate of the loan and does not receive any compensation from the lender.

In Kansas, all aspects of the manufactured housing industry are already licensed under the Kansas Manufactured Housing Act (K.S.A. 58-4201 to 58-4227) including manufactured home retailers.

At this time we have received conflicting opinions on whether the manufactured home retailer's actions would bring us under the requirements of the S.A.F.E. Act or not.

Attached is a suggested amendment, page 4, line 37, it inserts "and" in front of "or" so it will read "and or". It is not our goal to slow this process down and we certainly are amenable to other suggestions that would provide clarification.

Thank you for the opportunity to comment and please support an amendment that would provide clarification.

1 the property or engage in any activity that would constitute a violation of  
2 K.S.A. 58-2344, and amendments thereto; or

3 (m) fail to comply with the uniform consumer credit code, or rules  
4 and regulations promulgated thereunder, or fail to comply with any other  
5 state or federal law, including the rules and regulations promulgated  
6 thereunder, applicable to any business authorized or conducted under  
7 the uniform consumer credit code.

8 (2) This section shall be part of and supplemental to the uniform  
9 consumer credit code.

10 Sec. 4. K.S.A. 9-2201 is hereby amended to read as follows: 9-2201.  
11 As used in this act:

12 (a) "Bona fide office" means an applicant's or licensee's principal  
13 place of business which meets all of the following requirements:

- 14 (1) The office is located in this state;  
15 (2) the office is not located in a personal residence;  
16 (3) the office has regular hours of operation;  
17 (4) the office is accessible to the public;  
18 (5) the office is leased or owned by the licensee and serves as an  
19 office for the transaction of the licensee's mortgage business;

20 (6) the office is separate from any office of another registrant; and

21 (7) all of the licensee's books, records and documents are accessible  
22 through that office.

23 (b) "Branch office" means a place of business, other than a principal  
24 place of business, where mortgage business is conducted, and which is  
25 licensed as required by this act.

26 (c) "Commissioner" means the Kansas state bank commissioner.

27 (d) "License" means a license issued by the commissioner to engage  
28 in mortgage business as a mortgage company.

29 (e) "Licensee" means a person who is licensed by the commissioner  
30 as a mortgage company.

31 (f) "Loan originator" means an individual:

32 (1) Who engages in mortgage business on behalf of a single mortgage  
33 company;

34 (2) who is registered with the commissioner as required by this act;

35 ~~(3)~~ whose conduct of mortgage business is the responsibility of the  
36 licensee; ~~and~~ and

37 (3) *who takes a residential mortgage loan application or offers or*  
38 *negotiates terms of a residential mortgage loan for compensation or gain*  
39 *or in the expectation of compensation or gain; and*

40 (4) whose job responsibilities include ~~direct~~ contact with borrowers  
41 during the loan origination process, which can include soliciting, negoti-  
42 ating, acquiring, arranging or making mortgage loans for others, obtaining  
43 personal or financial information, assisting with the preparation of loan