

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 26, 2009, in Room 136-N of the Capitol.

All members were present except:

Senator Jeff Colyer- excused

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, Research Department

Jim Hall, American Council of Life Insurers ([Attachment 1](#))

John Meetz, Legislative Liaison, Kansas Insurance Department

Kevin Glendening, Administrator, Office of the State Bank Commissioner ([Attachment 2](#))

Rick Fleming, General Counsel, Office of the Securities Commissioner ([Attachment 3](#))

Others attending:

See attached list.

The Chair called the meeting to order.

Hearing on

SB 174 - Removal of mandatory participation requirements for group life insurance.

Melissa Calderwood, Principal Analyst, Research Department, gave an overview of the bill. Ms. Calderwood stated that under current law, group life insurance premiums are paid by the policyholder. She said **SB 174** would allow the premiums to be paid by the policyholder, the insured employee or both. She explained that this bill eliminates mandatory participation percentages from covered employees to place a group life policy in effect. She said also under current law, a group life insurance policy for dependents is limited to 50.0 percent of the employee's insurance coverage. This bill would increase the limit to 100.0 percent of the employee's coverage, she said. She noted that the Kansas Insurance Department indicates there would be no fiscal effect associated with the enactment of **SB 174**.

Jim Hall, Regional Vice President, State Relations, American Council of Life Insurers, testified in support of **SB 174**. Mr. Hall said with this bill, the life insurance industry hopes to modernize the state's existing group insurance law. He said in recent years, employee benefits have changed significantly. He noted that there was a time when employers paid a substantial portion of the cost of employee benefits and many still do, he said. However, he said due to the increasing burden of health insurance costs, employers of all sizes have reduced or leveled their contributions to health care and to ancillary benefits in order to continue to afford employee health coverage. Mr. Hall said in light of the employers' reduced ability to fund a vast array of employee benefits, they have sought voluntary benefits for their employees. He said these are benefits for which employees can pay 100% of the premiums or at least share the cost with employers. He noted that today, 25% of the group life insurance market is fully voluntary and by offering these voluntary products through an employer group, the employer can continue to offer their employees the advantages of payroll deduction, group rates, limited underwriting, and other efficiencies in administration. He said in this bill they are seeking to modernize Kansas law by repealing or amending four categories of limitations within group laws. They are: 1. Minimum number of lives requirements; 2. Group participation requirements; 3. Prohibitions on fully employee-paid group insurance; and 4. Limitations on ability of dependents to obtain group life insurance. He said by offering these voluntary products through an employer group, the employer can continue to offer their employees the advantages of payroll deduction, group rates, limited underwriting, and other efficiencies in administration. ([Attachment 1](#))

CONTINUATION SHEET

Minutes of the Senate Financial Institutions And Insurance Committee at 9:30 a.m. on February 26, 2009, in Room 136-N of the Capitol.

John Meetz, Kansas Insurance Department, offered no written testimony; however, he said the Kansas Insurance Department stands in agreement with comments made by Jim Hall.

The Chair closed the hearing on SB 174.

Hearing on

SB 241 - Regulating distressed property consulting services.

Melissa Calderwood gave an overview of the bill. She stated SB 241 would amend the Kansas Credit Services Organization Act to place additional requirements for individuals engaged in distressed property consulting services and would address activities related to “foreclosure avoidance” scams perpetrated on consumers and legitimate mortgage lenders. She said in addition, the bill transfers oversight of loan brokers from the Office of the Securities Commissioner to the Office of the State Bank Commissioner.

Kevin Glendening, Administrator, Office of the State Bank Commissioner testified in support of SB 241. He said the amendments to the CSO Act contained in SB 241 place certain restrictions on activities sometimes referred to as Distressed Property Consulting or Foreclosure Rescue. He said based on their experience, these activities often involve convincing the consumer that the person engaging in this activity can save the consumer from losing their home, or that they have some foolproof method of solving everything with the consumer’s lender. He said to compound the situation, the consumer is often told not to respond to any communication from the lender. He noted that these plans appear to accomplish little more than take advantage of an already financially strapped consumer and create additional expense and unwarranted delays for lenders seeking to exercise their rights to the collateral for the loan. Mr. Glendening said the remainder of SB 241 transfers enforcement of the Kansas Loan Broker Act from the Office of the Securities Commissioner to the Office of the State Bank Commissioner and updates certain sections of that act. (Attachment 2)

Rick Fleming, General Counsel, Office of the Securities Commissioner, testified in support of SB 241. Mr. Fleming said the Office of the Securities Commissioner has administered and enforced the Kansas Loan Broker Act since its original adoption in 1988. He said Section 2 through 11 of SB 241 transfers these functions to the Office of the State Bank Commissioner. He said the time is right to transfer the Loan Broker Act to the Office of the State Bank Commissioner. He noted that the Act more naturally fits with that agency, and the transfer will prevent unscrupulous individuals from taking advantage of possible gaps between their regulation of loan brokers and the Bank Commissioner’s regulation of other lenders. Mr. Fleming offered the attached amendment. (Attachment 3)

The Chair closed the hearing on SB 241.

Action on

SB 49 - Relating to insurance; concerning mental health and alcoholism, drug abuse or other substance use disorder benefits.

Senator Barnett moved SB 49 be passed out favorably and placed on the Consent Calendar. Senator Steineger seconded. Motion passed.

Action on

SB 174 - Removal of mandatory participation requirements for group life insurance

Senator Barnett moved SB 174 be passed out favorably. Senator Masterson seconded. Motion passed.

The next meeting is scheduled for March 3, 2009.

The meeting was adjourned at 10:20 a.m.

FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE GUEST LIST

DATE: 2-26-09

NAME	REPRESENTING
Kevin Glendening	Office of State Bank Comm.
Adrian Serene	"
Sonya Allen	"
Rick Fleming	Securities Comm.
Sean Milicec	CAPITOL STRATEGIES
Lori Church	KAPCIC
Kathy Damron	Producent
Jim Hacc	ACCT
Allen Askew	Federico Consulting
Alex Kotoyantz	P. I. A.
Joe Wlosiann	Hein Law
Kari Presley	Kearney & Associates, Inc
Maree Carpenter	KAHP
Kathryn Utgen	KGC
Anne Spiess	American Cancer Society



James D. Hall
Regional Vice President, State Relations

February 26, 2009

Hon. Ruth Teichman
Chair
Senate Financial Institutions and Insurance
Room 241-E
State Capitol
300 SW 10th Street
Topeka, KS 66612

Re: Senate Bill 174 – Support

Dear Chairman Teichman:

I am writing on behalf of the American Council of Life Insurers (ACLI), a national trade association whose over 300 members account for 93 percent of the total life insurance premiums and 95 percent of the annuity considerations in the United States. ACLI has 299 members licensed in Kansas.

Thank you for the opportunity to appear in support of SB 174. With this bill, the life insurance industry hopes to modernize the state's existing group insurance law.

In recent years, employee benefits have changed significantly. There was a time when employers paid a substantial portion of the cost of employee benefits. Many corporations still do. But due to the increasing burden of health insurance costs, employers of all sizes have reduced or leveled their contributions to health care and to ancillary benefits in order to continue to afford employee health coverage.

In light of the employers' reduced ability to fund a vast array of employee benefits, they have sought voluntary benefits for their employees. These are benefits for which employees can pay 100% of the premiums or at least share the cost with employers. Today, 25% of the group life insurance market is fully voluntary.

By offering these voluntary products through an employer group, the employer can continue to offer their employees the advantages of payroll deduction, group rates, limited underwriting, and other efficiencies in administration.

*FI&I Committee
2-26-09
Attachment 1*

In looking at how best to meet the changing demands of the market place, and in particular to help small businesses, insurers discovered restrictions in the older group insurance laws of many states. These older provisions created an impediment to a number of otherwise common group insurance offerings. These limitations, written many years ago, restrict employee and dependent access to voluntary coverage. The Kansas group insurance law was originally enacted in 1951. It was updated to adopt the NAIC Model in 1972. It has been amended periodically since then, but the older restrictions were never removed.

Given the realities of today's employer group market, the outdated group insurance law appears ill-suited to protect and benefit consumers.

In SB 174, we are seeking to modernize Kansas law by repealing or amending four categories of limitations within group laws: 1) minimum number of lives requirements; 2) group participation requirements; 3) prohibitions on fully employee-paid group insurance; and 4) limitations on ability of dependents to obtain group life insurance.

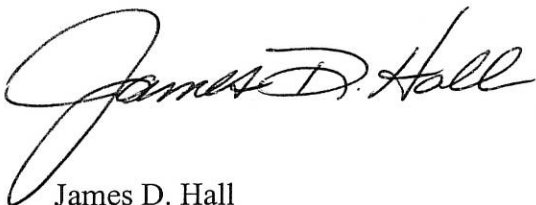
These limitations were originally written in part to protect insurers from adverse selection and were also written at a time when it was believed that the employer must pay part, or all, of the premium for the coverage in order for the contract to be legitimately an employer group plan. These assumptions no longer hold true.

By offering these voluntary products through an employer group, the employer can continue to offer their employees the advantages of payroll deduction, group rates, limited underwriting, and other efficiencies in administration. The enactment of SB 174 will make these opportunities available to Kansans.

So far, thirty-three states have modernized their group insurance laws, including our neighbors Iowa, Nebraska, Oklahoma.

Thank you for the opportunity to comment in support of SB 174.

Very truly yours,

A handwritten signature in cursive script that reads "James D. Hall". The signature is written in dark ink and is positioned above the printed name.

James D. Hall

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:

SB 241 amends the Kansas Credit Services Organization Act (CSO) and the Kansas Loan Broker Act. The amendments to the CSO Act contained in SB 241 place certain restrictions on activities sometimes referred to as Distressed Property Consulting or Foreclosure Rescue. Based on our experience, these activities often involve convincing the consumer that the person engaging in this activity can save the consumer from losing their home, or that they have some foolproof method of solving everything with the consumer's lender. Typically, the plan involves the consumer paying a fee upfront or perhaps fees over several installments. In other cases, the consumer may be encouraged to deed partial interest in the property or transfer interest into a trust or some other ownership arrangement. Often, these transfers result in the consumer losing any equity in the property they might otherwise have had. We have seen several variations of these plans, but most involve slowing the lender's foreclosure process long enough to convince the consumer their foreclosure problems are over. To compound the situation, the consumer is often told not to respond to any communication from the lender. These plans, at least the ones we have investigated to date, appear to accomplish little more than take advantage of an already financially strapped consumer and create additional expense and unwarranted delays for lenders seeking to exercise their rights to the collateral for the loan.

We doubt we have seen every variation of these plans, but we have seen enough to know this activity should be more closely regulated. The amendments in SB 241 put basic protections in place and allow for improved enforcement against scams.

The remainder of SB 241 transfers enforcement of the Kansas Loan Broker Act from the Office of the Securities Commissioner to the Office of the State Bank Commissioner, and updates certain sections of that act. Given the increased regulatory presence of the Consumer and Mortgage Lending Division over the past several years, both agencies believe the Loan Broker Act would more appropriately fit under the supervision of the CML Division of the OSBC. Rick Fleming, General Counsel with the Office of the Securities Commissioner will, I believe, provide you with some history of the Loan Broker Act and I would be happy to answer any questions about the proposed amendments. Thank you for your consideration.

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

*FI&I Committee
2-26-09
Attachment 2*



KANSAS

OFFICE OF THE SECURITIES COMMISSIONER

KATHLEEN SEBELIUS, GOVERNOR
CHRIS BIGGS, COMMISSIONER

TESTIMONY IN SUPPORT OF SENATE BILL No. 241
Senate Financial Institutions and Insurance Committee

Rick A. Fleming, General Counsel
Office of the Securities Commissioner
February 12, 2009

Madam Chairperson and Members of the Committee,

The Office of the Securities Commissioner has administered and enforced the Kansas Loan Broker Act since its original adoption in 1988. Sections 2 through 11 of SB 241 transfer these functions to the Office of the State Bank Commissioner. On behalf of Securities Commissioner Chris Biggs, I testify in support of this transfer because the administration of the Loan Broker Act is more closely aligned with the current functions of the Office of the State Bank Commissioner.

In general, the Loan Broker Act prohibits the collection of an advance fee for promising to obtain a loan for someone unless the person collecting the fee is registered as a loan broker. There is an exception that allows a lender to charge an advance fee and other exceptions that permit third parties to charge advance fees for bona fide expenses such as credit reports, appraisals, title examinations, etc. In addition, there are exceptions for licensed attorneys, certified public accountants, real estate brokers, investment advisers, and feedlot operators.

In the 1980's, advance fee loan scams were very common. The scams were similar in some respects to securities fraud and the Office of the Securities Commissioner was well-equipped with law enforcement powers to deal with loan broker frauds, so the legislature gave our office the job of administering the Loan Broker Act. We took our new responsibility seriously, and during the 1990's we investigated 20 to 30 loan broker cases per year and filed enforcement actions in the majority of those cases.

In this decade, at least three things have changed. First, the volume of complaints has declined significantly. We have only averaged about 2 investigations per year for the past few years, so the responsibilities can be shifted from one agency to another without a major disruption to either agency. Second, the Office of the State Bank Commissioner has been given more robust enforcement powers to deal with consumer and mortgage lenders, so the OSBC is now well-equipped to administer the Loan Broker Act. Third, we have had situations in which people have tried to register under the Act to take advantage of exemptions in the mortgage broker laws and avoid regulation by the Office of the State Bank Commissioner.

We believe the time is right to transfer the Loan Broker Act to the Office of the State Bank Commissioner. The Act more naturally fits with that agency, and the transfer will prevent unscrupulous individuals from taking advantage of possible gaps between our regulation of loan brokers and the OSBC's regulation of other lenders.

I respectfully request that you recommend Senate Bill 241 favorably for passage. Thank you for your consideration.

1 an application for registration with the commissioner. The application for
2 registration shall contain:

3 (1) The disclosure document required under subsection (b) of K.S.A.
4 50-1006, and amendments thereto, and the form of the disclosure state-
5 ment proposed to be used under subsection (b)(1) of K.S.A. 50-1006, and
6 amendments thereto;

7 (2) consent to service of process under subsection (e);

8 (3) evidence of the bond required in subsection (b); ~~and~~

9 (4) a nonrefundable fee of \$250, which may be increased by rules and
10 regulations adopted by the commissioner; and

11 (5) financial statements for the loan broker's last fiscal year presented
12 in accordance with generally accepted accounting principles and reviewed
13 by an independent accountant.

14 ~~(b) A loan broker must maintain a bond satisfactory to the commis-
15 sioner in the amount of \$25,000, which shall be in favor of the state.~~

16 ~~(c) Whenever the provisions of this act have been complied with, the
17 commissioner shall issue a certificate of registration to the applicant, au-
18 thorizing the applicant to engage in the business of loan brokering.~~

19 (b) Each applicant or registrant shall file with the commissioner a
20 surety bond in a form acceptable to the commissioner. The surety bond
21 shall be issued by a surety or insurance company authorized to conduct
22 business in this state, securing the applicant's or registrant's faithful per-
23 formance of all duties and obligations of a registrant. The surety bond
24 shall:

25 (1) Be payable to the office of the state bank commissioner;

26 (2) provide that the bond may not be terminated without 30 days
27 prior written notice to the commissioner;

28 (3) provide that the bond shall not expire for two years after the date
29 of surrender, revocation or expiration of the applicant's or registrant's
30 registration, whichever shall first occur;

31 (4) be available for:

32 (A) The recovery of expenses, fines and fees levied by the commis-
33 sioner under this act; and

34 (B) payment of losses or damages which are determined by the com-
35 missioner to have been incurred by any consumer as a result of the ap-
36 plicant's or registrant's failure to comply with the requirements of this
37 act; and

38 (5) be in the amount of \$50,000. The amount of the bond may be
39 increased up to \$1,000,000, as further defined by rules and regulations
40 adopted by the commissioner.

41 (c) The application shall be approved and a nontransferable and non-
ignorable registration shall be issued to the applicant provided:

(1) The commissioner has received the complete application and fee

in accordance with standards established by the American institute of certified public accountants

1 any other person.

2 (i) Conduct credit services organization activities or *distressed prop-*
3 *erty consulting* using any name other than the name or names approved
4 by the commissioner.

5 (j) Operate as a collection agency.

6 (k) Receive or charge any fee in the form of a promissory note or
7 other promise to pay.

8 (l) Accept or receive any reward, bonus, premium, commission or any
9 other consideration for referring a consumer to any person or related
10 interest.

11 (m) Give a reward, bonus, premium, commission or any other con-
12 sideration for the referral of a consumer to the registrant's credit services
13 organization business or *distressed property consultant*.

14 (n) Lend money or provide credit to a consumer.

15 (o) Obtain a mortgage or other security interest in real or personal
16 property owned by a consumer.

17 (p) Structure a debt management services agreement in any manner
18 that would result in a negative amortization of any of the consumer's
19 debts.

20 (q) Charge for or provide credit insurance.

21 (r) Purchase any debt or obligation of a consumer.

22 (s) Use any communication which simulates in any manner a legal or
23 judicial process, or which gives the false appearance of being authorized,
24 issued or approved by a government, governmental agency or attorney-
25 at-law.

26 (t) While operating as a registrant, or a director, manager or officer
27 of such registrant or any related interest of such registrant, be a director,
28 manager, officer, owner or related interest of any creditor or a subsidiary
29 of any such creditor, that is receiving or will receive payments from the
30 registrant on behalf of a consumer with whom the registrant has entered
31 into a debt management services agreement or *distressed property con-*
32 *sulting agreement*.

33 (u) Attempt to cause a consumer to waive or agree to forego rights
34 or benefits under this act.

35 Sec. 16. K.S.A. 50-1122 is hereby amended to read as follows: 50-
36 1122. (a) Within four calendar days after receipt of any funds paid to the
37 registrant by or on behalf of a consumer for disbursement to such con-
38 sumer's creditors, a registrant shall deposit such funds in a trust account
39 established for the benefit of consumers.

40 (b) A registrant shall:

41 (1) Maintain separate records of account for each consumer to whom
42 the registrant provides debt management services or *distressed property*
43 *consulting services*;

(v) Request that a consumer transfer any portion of his or her ownership interest in a distressed property to a trust.

(w) Take any form of ownership interest in a distressed property pursuant to a distressed property consulting agreement or request or require that any form of ownership interest be transferred to a related interest of the registrant.

(x) Make any inference to a consumer that entering into a distressed property consulting services agreement will result in the consumer being allowed to remain in his or her home.

(y) Make any inference to a consumer that entering into a distressed property consulting agreement will result in an improved credit rating.

(z) Receive any compensation prior to the completion of all activities described in a distressed property consulting agreement.