

Approved: 03-26-2012

(Date)

MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE
COMMITTEE

The meeting was called to order by Chairperson Ruth Teichman at 9:30 AM on Tuesday, February 14, 2012 in 152-S of the Capitol.

All members were present except:

Senator Merrick
Senator Masterson

Committee staff present:

Melissa Calderwood, Kansas Legislative Research Department
Heather O'Hara, Kansas Legislative Research Department
Ken Wilke, Revisor of Statutes Office
Marilyn Arnone, Committee Assistant

Conferees appearing before the Committee:

Aaron Jack, Commissioner, Office of Securities
Jeff Kruske, General Counsel, Office of Securities

Others in attendance:

See attached list.

Chair Teichman opened the meeting by wishing everyone a Happy Valentine's Day.

The Chair called for a short meeting for Final Action on **SB 71–Substitute for SB 71 by Committee on Financial Institutions and Insurance -- Insurance agents; additional lines, fingerprinting and criminal history record check requirements** on February 15. There will also be an informal dialogue on **SB 250–Firefighters health insurance**, following the FI&I meeting and all interested parties are invited to attend.

The Chair opened the hearing on **SB 349–Securities commissioner; litigation and restitution funds created, appointment of professional staff**. Melissa Calderwood gave an overview of

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the bill. This bill was from the Senate Commerce Committee. The bill would enact new law and amend the Kansas Uniform Securities Act, add statutory provision offering employment under the office of the securities commissioner, establish certain special revenue funds, and allow for the appointment of certain positions. There are a number of technical and amendments of definition to the bill. The bill would allow the Securities Commissioner to retain \$250,000 in the Securities Act Fee Fund at the end of a fiscal year and would eliminate the year end transfer to the State General Fund. The fiscal effect would be a decrease to state revenues.

Aaron Jack testified as a proponent of **SB 349**. He said the purpose of **SB 349** is to define the proper role for the Office of the Kansas Securities Commissioner (KSC). The status quo is unacceptable.

Currently the KSC has a \$3 million budget but \$13 million is added in fees. \$10 million annually is swept into the State General Fund (SGF). It is imperative that all fees required by the KSC are reasonably tied back to the purpose for which they are assessed. In the private sector, if someone was soliciting money for a specific purpose and then used for a different purpose, that person would be prosecuted. Under Kansas case law these sweeps are justified by calling them a “reimbursement” to the SGF.

In **SB 349**, KSC has put forth several options for consideration. KSC general counsel, Jeff Kruske will provide testimony on the litigation and restitution fund concepts.

Finally, KSC has the transfer authority to move money from the Securities Act Fee Fund (SAFF) over to the Investor Education Fund (IEF). Neither the SAFF or the IEF contain taxpayer money. KSC has partnered with EverFi to bring the very best personal finance program to Kansas called Kansas Financial Scholars Program. It is unfair to ask superintendents to change their curriculum to teach personal finance in the classrooms only to have the KSC come back later and change the cost because the IEF was wiped out. The transfer authority would allow the KSC a minimum starting amount every year so as to not inadvertently hurt the schools. (Attachment 1)

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Jeff Kruske also testified as a proponent of **SB 349**. Mr. Kruske said the Office of the Securities Commissioner is doing important work to protect investors. Financial fraud against citizens is a topic that the KSC cares about. **SB 349** can improve capital formation, economic development and more effective enforcement of our securities laws.

A useful explanation of the importance of our bill is to highlight the true magnitude of the new responsibilities that our agency faces both in the immediate term and in the future. As medical miracles allow us to enjoy a larger population of senior citizens, the task of protecting investment saving grows in importance. A number of older Americans will face difficulties in making their retirement assets last an extra decade or more. Older citizens will become prime targets for scam artists and unscrupulous financial advisors. However, the elderly are not the only vulnerable targets of fraud. Relatively savvy investors are the most likely victims of financial fraud. As regulators, the KSC Office must do all possible to ensure that the golden years are not tarnished by investment fraud. The most effective weapon against investment fraud is a one-two punch of aggressive enforcement efforts combined with financial education to protect investors from unscrupulous individuals.

Our agency has seen an increase in the sale of complex securities. These products include an investment strategy with novel, complicate or intricate derivative-like features that may make it difficult for a retail investor to understand the essential characteristics of the product and its risks. Trends include a rise in energy and precious metals scams, and fraudulent offerings of investments tied to natural gas, wind and solar energy and the development of new energy-efficient technologies.

State securities regulators have the determination, willpower and experience to pursue perpetrators of financial crime. There is little doubt that additional resources would enhance our ability to uncover and prosecute securities fraud. All of the attorneys in the agency have been deputized to serve as special assistant attorneys general to prosecute or assist in the prosecution of criminal violations on behalf of the state. Prosecuting securities fraud is not a simple task, nor is it inexpensive. Counties bear the expense of prosecutions, and very few counties have the budget to warrant fraud prosecution.

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By authorizing the securities litigation fund, our enforcement and legal staff can be self-sufficient which will improve our effectiveness.

Private litigation is sometimes the best tool for the enforcement of laws. Since public enforcement cannot handle all the needs of aggrieved parties, private litigation is the only practical mechanism for people to right civil wrongs. However, private enforcement has limitations. The intention for implementing an investor restitution fund addresses another important limitation on public and private enforcement: a judgment or award against a party is meaningless if the losing party cannot pay. Kansas investors want to be able to recover the money they lost, but there is no guarantee that a defendant is solvent.

General rules of the marketplace do not apply to the financial responsibility of individuals who sell securities. People's life savings are risked by financial advisors who operate without adequate capital or liability insurance. This undermines investor trust in the system. An investor restitution fund funded like the FDIC by industry contributions would substantially minimize the problem of unpaid awards. By creating this fund, the aim would be to put money back in the hands of innocent victims perhaps being the difference between independence and public assistance from the social services from our state.

Mr. Krushke asked that the Committee consider the recommendations to enhance the ability to pursue financial fraud and prosecute the perpetrators of these kinds of crimes. (Attachment 2)

A question and answer period followed the presentations.

Melissa John, President, Kansas County & District Attorneys Association presented written testimony in support of **SB 349**. Securities fraud is a serious problem that faces all jurisdictions across Kansas and can be a costly problem. The establishment of a securities litigation fund at state level to assist local prosecutors is appropriate. (Attachment 3)

Jonathan H. Chapman, Chief Operating Officer, EverFi, Inc. offered written testimony in support of **SB 349**. EverFi supports the work of the Securities Commissioner to undertake a program in high schools throughout Kansas on the critical topic of financial literacy. EverFi offers a program to schools using unique technology to effectively equip students to make better financial decisions that will have a positive effect on both their future and the future of the State. (Attachment 4)

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The meeting was adjourned at 10:30 AM. The next meeting will be on February 15, 2012.

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