

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 16, 2005 in Room 234-N of the Capitol.

All members were present.

Committee staff present:

Melissa Calderwood, Kansas Legislative Research Department
Terri Weber, Kansas Legislative Research Department
Ken Wilke, Office of Revisor of Statutes
Sandy Yingling, Committee Secretary

Conferees appearing before the committee:

Jarrold Forbes, Kansas Insurance Department
Bud Burke, CFSA
Arthur Chartrand, Home Service Contractors Association of America
John Campbell, Kansas Insurance Department
Whitney Dameron, Kansas Pay Day Loan Association
Kevin Glendening, OSBC

Others attending:

See attached list.

Madam Chair opened the meeting by announcing that the Committee would hear **SB 176**, **SB 178** and **SB 223**.

Madam Chair opened the hearing on **SB 176**. Fiscal note (Attachment 1)

SB 176;- Insurance brokers, change of terminology to insurance producers. .

Jarrold Forbes, Kansas Insurance Department, offered testimony in support of **SB 176**. (Attachment 2) Jarrold stated that current law makes reference to a licensed “agent or broker,” terms that are no longer appropriate for this area of the law. Therefore, the KID is proposing replacing those references with “producer.” Ken Wilke stated that this does not change “broker” to “producer” throughout the code that this only does it for one Act and then questioned if that the intention? Mr. Forbes stated, that is correct. Senator Steineger asked why would that be? Mr. Forbes stated that to his understanding it deals with captive insurers. Senator Steineger asked Mr. Wilke if there is any other implication by not having this changed throughout the statutes? Mr. Wilke answered no, not really. The other major place this would be done would be in the Insurance Agent’s or Broker’s Licensing Act which was passed about two years ago. Mr. Wilke stated it was originally started with the term “producer” and there was an amendment to change it back to “agent.” The way it is defined in that Act covers both terms, but the way **SB 176** is put together, it makes “producer” in this Act and cross links with the necessary definition in the Agent/Licensing Act. Mr. Wilke stated it is not a problem, he was simply clarifying that **SB 176** did not make the change throughout the insurance code. Chair Teichman asked Mr. Wilke if there would be any problem putting **SB 176** on the consent calendar? Mr. Wilke answered not to his knowledge. There were no other questions.

Madam Chair closed the hearings on SB 176.

Senator Barnett moved to put **SB 176** on the consent calendar. The motion was seconded by Senator Wilson. The motion carried.

Madam Chair opened the hearings on **SB 178**.. Fiscal note (Attachment 3).

SB 178 - Home service contract act.

Melissa Calderwood, Kansas Legislative Research Department, gave an overview defining Home Service Contract Act in the Contractor Agreement for service, repair, replacement or maintenance on all or any part of the structural component in compliance with utility system in any residential property. The Act would exempt warranties, maintenance agreements in service contracts including those agreements offered by public

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utilities regulated by the Kansas Corporation Commission.

Bud Burke, in favor of **SB 178**, introduced Mr. Art Chartrand. Mr. Burke also announced that Mr. John Campbell from the Insurance Department was present to answer questions.

Art Chartrand, National Home Services Contractors Association of America, testified in favor of **SB 176**. (Attachment 4) Mr. Chartrand stated he represents the premier providers of home service contracts. Mr. Chartrand pointed out that these are not home warranties, but simply annual-based service contracts. Mr. Chartrand stated that Kansas does not have an existing law or definition on what this industry is or is not. Senator Wilson asked if registration would be through the Kansas Insurance Department. Mr. Chartrand stated that is correct. Senator Wilson asked what "financial assurance mechanism" means and what are you looking for? Mr. Chartrand stated there are three options under **SB 178**: 1) reserves; 2) provide service contract reimbursement coverage; and 3) filing proof to the state that you have substantial net worth. Senator Wilson asked if a business would go through an insurance company to reinsure so in the event they can perform the service in which they are contractually liable and if this insurance company would make it good with the homeowner? Mr. Chartrand stated that is one of the options, correct. Senator Brungardt asked if registration would be with the Insurance Department and regulated by the same? Mr. Chartrand stated yes, the insurance department would be an avenue for someone with a problem to resolve their complaint.

Ken Wilke asked how this would affect homeowner association where the association or the owner basically agrees to maintain the exterior of a living facility, could they potentially be covered? Mr. Chartrand answered he does not believe so, but had not had this suggested to him before. If someone built the project and was continuing to maintain it, they would be exempt, but if someone was a third party who was taking in the funds for future services to continued maintenance or repairs, yes they could be. Mr. Wilke stated that was exactly what he had discovered. Madam Chair instructed Mr. Chartrand to get the committee more information on this issue. John Campbell, Kansas Insurance Department, stated that he does not agree that the following are exempt from this act of the maintenance agreement see section 1(b)(2). Mr. Chartrand agreed that is absolutely correct that if the Homeowner's Association is only providing maintenance, unless they are getting into repair or replacement Senator Barnett stated the definition between maintenance or replace/repair seems like a very fine line because over time it will be repair/replacement. Mr. Chartrand stated that under SB 178 once one gets into repair and replacement they would be covered, absolutely. If they were strictly doing maintenance only, they would not be covered.

Senator Steineger stated that trying to regulate the construction industry is difficult at best. Especially the small repair type guys who got started in this country with a box of tools and a pick-up truck. It is difficult to say who can do what and who should be licensed and what constitutes repair vs. replacement and Senator Steineger personally has qualms about this bill. Senator Steineger suggested more studying needed to be done before a good bill could be made. Mr. Chartrand stated that **SB 178** was not to regulate the homebuilding industry, local contractors, remodelers or anyone else, but this is a third-party person who is taking in funds now and who is providing service repair and replacement on your household. It regulates the providers of the service contract industry, not the actual plumbers, electricians, etc. who are doing this work. Senator Steineger stated he understands, but it actually does affect them using Repairs Unlimited out of Kansas City as an example. Mr. Chartrand stated that this is simply the provider entities which are defined in this Act.

John Campbell, attorney with the Kansas Insurance Department, testified in support of **SB 178**. Mr. Campbell offered an amendment to expand the definition. (Attachment 5), Mr. Campbell stated the reason the KID likes **SB 178** is because KID has been involved in other warranty type situations, who are now in the Cayman Islands laughing their heads off with all the money. Mr. Campbell stated their main thing was having financial surveillance and a pot of money that people can come to if the provider goes belly-up. Senator Barone asked with consumer protection laws in place, why do we need this? Mr. Campbell stated we have good consumer protection laws, but our main reason is so often that in a lot of these home repair things the homeowner gets a great judgment and it is too bad there is no money to go with it. This is to make sure there is some money in a pot for the consumer, but as far as enforcement, a consumer protection agency is great.

Senator Steineger asked if this proposed legislation became law, how would Mr. Campbell propose to go find these guys and get them licensed? Mr. Campbell stated first voluntary sign-ups and second KID would have

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to go out and look for them. This undiscovered territory and apparently 17 other states have done it. Senator Steineger asked if our surrounding states, specifically Missouri, do they license, regulate or track this industry? Is there a mechanism, a data base, for the states to share their information? Mr. Campbell answered, they would not have an NAIC number and Missouri does not, they are doing theirs under the consumers' protection laws.

Madam Chair closed the hearings on SB 178.

Madam Chair opened the hearing on **SB 223**

SB 223 - Payday loans, changes affecting fees and military personnel.

Bud Burke, appearing on behalf of Community Financial Services Association of America, in support of **SB 223 (Attachment 6)**. First, it would change the complicated declining rate structure of the current law which you can see on page 1, line 21 and concluding on line 32. The effect would be the establishment of a fixed 15% for all amounts lent up to the statutory limit of \$500. Mr. Burke offered a 2003 survey of Payday Advance Customer's Alternatives for Short Term Credit (Attachment 7). Chair Teichman asked for clarification on the 15% or 10% plus a \$5.00 fee? Mr. Burke stated he meant 15% because if you add the 10% plus the \$5.00 fee it is 15%. Senator Steineger asked what kind of study, if any, have been performed that show why people use Payday Loans, why are they in such desperate straights? Mr. Burke stated there have been independent studies done on why people utilize these loans. They utilize them because it is the best alternative for a short term small loan. Mike Waters, QC Holdings Company stated in answer to Senator Steineger's questions because they cannot go to a bank and get their loan. Senator Steineger's questions asked again why are they in such financial problems that they need to borrow \$100.00? Speakers unanimously stated that they could not answer that question, poverty and other problems. Chair Teichman stated she could tell why the person in her town borrows \$100 every other month, his income does not cover every expense.

Whitney Dameron, Kansas Payday Loan Association, testified in favor of **SB 223 (Attachment 8)**. Current rates \$15.00 for the first \$100 lent; \$19.00 for \$200; and \$22.50 for a loan of \$250 actually discourage a lender from lending more than \$100. Mr. Dameron was also encouraging the legislature to look at a flat rate instead of a stair step loan structure. The fees change on the first, second and third amounts. Chair Teichman asked if basically the only change would be the flat rate? Mr. Dameron pointed out that there is language toward the back of the bill in regard to good practices act recovering funds from deployed military personnel. Chair Teichman asked if that was a new language? Mr. Dameron stated it is a new section.

Senator Wysong stated he was missing something. That on the first page of **SB 223** it states such cash advance . . . less than \$500, so lets say \$500 and than go down to line 32 which 15% was struck to read 10%. It would be 15% on \$100 but if you do 10% on \$500 plus add the \$5.00 fee it does not stay 15%, you are down to 11%. They are ascending amounts. Senator Wysong suggested they say 15% and take out the \$5.00 fee.

Senator Wysong made a motion to amend **SB 223** to read 15% strike the \$5.00 fee. Senator Schmidt seconded the motion. All in favor unanimous. Madam Chair stated SB 223 would now read an amount equal to 15% of the amount of the cash advance.

Kevin Glendening, KID Deputy Commissioner for the Consumer & Mortgage Lending Department, offered neutral testimony and information to **SB 223 (Attachment 9)**. Mr. Glendening attachments included a letter dated January 1, 2005, to Attorney General Kline (Attachment 10). Mr. Glendening's testimony offered a chart of amounts and fees. Mr. Glendening stated the Payday Loan business in Kansas is very profitable. Mr. Glendening offered two amendments to SB 223: 1) page 1, line 34 change 7 days to read 14 days; and 2) deals with subsection 10 of the statute which would further clarify that a bank agency or broker relationship cannot be used and the end result is more fees or other charges than are otherwise allowed. Senator Wysong asked for an example. Senator Wilson stated, that based upon the testimony of Mr. Glendening that there is a place for this kind of lending and asked if Mr. Glendening was sure that only 2% of these outstanding loans are in jeopardy, is it higher? Senator Wilson stated there is a need for this type of loan with a descent interest rate. Mr. Glendening stated 2% figure stemmed from their examinations of Payday lenders last year. Madam Chair offered that a lot of the banks will not lend just \$100.

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El Centro, Inc., provided written testimony in opposition of **SB 223** (Attachment 11).

Madam Chair stated further study needed to be done on **SB 223**.

Meeting adjourned 10:30 a.m.