

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 17, 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
Melissa Jinks, Kansas Association of Mortgage Brokers
Kevin Glendening, Deputy Commissioner, OSBC

Others attending:

See attached list.

Vice Chair Wysong opened the hearing on **SB 175**.

SB 175; Insurance companies, requirements on certain types of securities.

Jarrold Forbes, KID, testified in favor of a technical change to **SB 175** (Attachment 1). KID is changing "subsection (a)" to "this section." There were no questions.

Senator Barnett moved to place **SB 175** on the consent agenda; Senator Schmidt seconded the motion. The motion carried.

Vice Chair Wysong opened the hearing on **SB 196**.

SB 196; Kansas mortgage business act amendments.

Melissa Calderwood, Kansas Legislative Research Department, gave an overview on **SB 196**. **SB 196** would amend the Kansas mortgage business act to assign additional powers to the Bank Commissioner.

Melissa Jinks, Kansas Association of Mortgage Brokers, testified in favor of **SB 196**. (Attachment 2) Their biggest change is the fingerprinting of the applicants and employees. Ms. Jinks stated the belief is, fingerprinting will help legitimize the mortgage industry. There were no questions.

Kevin Glendening, OSBC, testified in favor of **SB 196**. (Attachment 3) Mr. Glendening stated currently the KBI is doing the background investigations on licensees. Mr. Glendening stated they are seeing an increase of in violations in the mortgage industry. The FBI reported that mortgage fraud is one of the top white collar crimes. The OSBC has noticed an increase with people with a criminal record attempting to be licensed with the state. The second item pointed out is on page 3, line 27 which will provide additional assistance, if requested, to prosecute. The third change is on page 6, line 4 the change which adds a provision with the record keeping requirements prohibiting destruction or concealment of a record with the intent to impede an investigation. On page 6, line 19 would raise the potential fine for violations. Also, the OSBC would like to add a provision that allows us to require refunds. Finally, raise the potential criminal violations from the current misdemeanor to a felony.

Senator Wysong asked Ken about the proposed charge. Mr. Wilke stated that it is a drafting error. Senator Wysong asked where would it go? Mr. Wilke stated he would insert that ahead of section 1. Senator Brownlee asked if the names of individuals who move from place to place are put on the OSBC's web site? Mr. Glendening answered yes, we do. Senator Brownlee asked if a supervised bank or lender was trying to hire a mortgage loan officer would they have access to that information. Mr. Glendening answered absolutely. Senator Brownlee asked in regard to the penalty language on page 6, does that mean anything in the mortgage

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act, if there is a violation that they could end up with a felony charge? Mr. Glendening answered, yes, he believes that is correct. Senator Brownlee asked if there were any minor rules or regulations that could be violated? Mr. Glendening answered right now even though there are criminal penalties, there are many, many violations that we simply let the companies know what is wrong so they may correct it. Senator Brownlee asked how would we be assured that they wouldn't end up with a \$10,000 a day fine? Mr. Glendening answered any application for a fine must go through a process where there are administrative hearings involving a third-party hearing officer. Determination would be made if the fine is appropriate or not. Senator Brownlee wanted to know if this would be swatting flies with sledge hammers?

Senator Wilson pointed in lines 16 and 19 would raise the potential fine from \$5,000 to \$10,000 than you went on to say you had a penalty for elderly and disability and you also said the commissioner could issue an order requiring restitution to the consumer. Would all that be in addition to the \$5,000 to \$10,000 fine and would that also be on top of a civil penalty? Or does the fining of the Commissioner end it? Mr. Glendening stated he could not specifically speak to the private right of action to sue, so in answer to the questions it would yes, you could be levied a fine and yes you could be required to have a refund plan to make restitution. Senator Wilson asked if there was any limit to this restitution which the Commissioner could fine? Mr. Glendening answered the restitution would be for whatever the administrative fee could be demonstrate as to the amount of the losses incurred. Mr. Wilson asked if punitive damages could be levied on top of that? Mr. Glendening's legal counsel answered yes.

Senator Steineger stated that it appears to him that **SB 196** just helps the mortgage industry catch up with a number of financial service industries. Senator Steineger stated he thinks **SB 196** is a good bill. Senator Steineger has never been able to hit a fly with a sledge hammer.

Senator Barnett asked if the felony charge would truly be a deterrent? Mr. Glendening stated that the concept of the violation and if you will notice the second conviction carries the presumption of imprisonment. There were no other questions.

Vice Chair Wysong stated the bill should have changes in section 1.

Vice Chair closed the hearing on SB 196.

Madam Chair appreciated the indulgence of the Committee for her absence.

Madam Chair stated she believes moving **SB 175** to the consent calendar was a good move.

Madam Chair stated the Committee was going to look at **SB 178** and asked if there were questions other question on the bill.

SB 178 - Home service contract act.

Madam Chair stated that was what was heard from the insurance department that they are willing to do this and it shouldn't be a burden on them. They did agree with the bill. She appreciated it being brought to her attention and the insurance department would be willing to take on the responsibility that the state doesn't need a fiscal note to this date.

Senator Schmidt asked if the amendments had been accepted?

Madam Chair stated the amendments discussed were on Line 43 Page 1 and Line 2 on Page 2 . Under G - Provider means a person who administers, issues, makes, provides, sells, or offers to sell a service contract or (then it continues with the regular language) is contractually obligated to the home service contract holder under the terms of the home service contract, the additional language is: but shall not include individuals or other persons who simply act as employees or agents on behave of a registered provider. There were no questions or comments.

Senator Schmidt moved to accept the amendments to **SB 178**. Senator Barone seconded the motion. The

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motion carried.

Madam Chair asked for any other question on the bill.

Bill Sneed, SBC, Line 19 Page 1, the intent of the bill was to exclude public utilities out of this bill. They have the term “transmission devises” which we do not really know what that is. Madam Chair thanked Mr. Sneed. Madam Chair stated they would work the bill as planned and if corrections are needed, the corrections can be made in the House.

Senator Barnett asked if Ken Wilke’s question on association dues that needed to be addressed? Madam Chair stated “no.”

Madam Chair called for a motion to move this bill forward as amended.

Senator Steineger so moved to pass **SB 178** as amended. Senator Barnett seconded the motion. The motion carried.

Madam Chair stated she would like to move onto **SB 114** and ask to hear remarks from KBA on where they believe we are with this bill.

Doug Wareham with KBA reaffirmed their position. The KBA offered an amendment referred to commonly as the stacking amendment. (Attachment 5) We are comfortable with the bill with that amendment. We have worked out an agreement with the Bank Commissioners’ office

Senator Wysong moved to insert the amendment. Senator Wilson seconded the motion.

There was discussion by Senator Barone & Senator Brownlee.

Madam Chair stated we have a motion before us. The motion carried.

Ken Wilke stated on line 32 and 35 “civil penalty” should be “civil money penalty” so it is consistent throughout the act.

A motion was made by Senator Wysong as amended. Senator Steineger seconded the motion. The motion carried.

Madam Chair ask Mr. Wilke if there were any other places that we need to be looking at this bill. He stated, “no.” Madam Chair entertained a motion to move **SB 114** out of the committee.

Senator Baron made a motion to pass **SB 114** as amended. The motion was seconded by Senator Steineger. The motion carried.

Senator Brownlee stated the February 3 minutes needed cleaning up.

A motion was made to approve February 2 and February 3 Minutes as amended by Sen. Schmitdt, seconded by Senator Barnett. The motion carried.

Meeting adjourned.