

MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS.

The meeting was called to order by Chairperson Ray Cox at 3:30 p.m. on February 12, 2001 in Room 519-S of the Capitol.

All members were present except:

Committee staff present:

Dr. Bill Wolff, Legislative Research
Bruce Kinzie, Revisor's Office
Maggie Breen, Committee Secretary

Conferees appearing before the committee:

Whitney Dameron, Kansas Payday Loan Assn.
Jerel Wright, Kansas Credit Union Department
David Brant, Securities Commissioner
Rick Fleming, Office of Securities Commissioner
Carl Wilkerson, American Council of Life Insurers
Rick Friedstrom, Kansas Association of Insurance
and Financial Advisors
Larry Magill, Ks. Association of Insurance Agents
Amy Lee, Security Benefit Group

Others attending: See attached list

Chairman Cox opened the discussion on **HB 2193 - Payday loans, limitation on number of loans to same borrower,** which was amended by the House Committee of the Whole and re-referred back to the committee.

The Chairman asked **Whitney Dameron**, who represents the Kansas Payday Loan Association, if he had any comments on **HB 2193**. Whitney said the association he represents supports the original bill and has concerns with the amendments made on the House Floor. Some other states have instituted a flat fee on payday loans which is a different issue than multiple loans which the Deputy Bank Commissioner is worried about. But a flat rate does seem to minimize the benefits of loan splitting. The amendments potentially further confuse the industry. He thinks its going in the wrong direction by over-complicating the statute on something that should be simplified.

The Chairman Cox asked **Kevin Glendenig**, Deputy Bank Commissioner, what he thought of the amended bill. Kevin said that the amendments didn't affect what he wanted to do with the bill but he tended to agree with Whitney that it would confuse the issue.

Vice-Chairman Humerickhouse said an explanation for asking for the re-referral was that it was a little difficult to understand exactly what the amendment by Representative DiVita did. But in looking at what her amendments does, it drastically reduces the fees and interest that can be charged on loans. If he was in the business, he's not so sure he could afford to stay in it.

Representative Vickrey mentioned that there was also an amendment made by Ward Lloyd saying the notice to the borrower was to be in their native language.

Whitney Dameron said it might make for an interesting precedent. Perhaps then native language would be required on home mortgages, on consumer finance, and so forth.

Chairman Cox closed the discussion on **HB 2193** and opened the hearing on **HB 2252 - Credit union, rules and regulations, reserves.**

Proponent:

Jerel Wright, Kansas Department of Credit Unions, spoke in favor of **HB 2252**. It amends two sections of Kansas credit union law. The first amendment is to K.S.A. 17-2217: Reserve income; payments into

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reserve fund. The National Credit Union Administration enacted new federal regulations requiring minimum capital reserves for all credit unions throughout the U.S., including all state-chartered, federally insured Kansas credit unions. This amendment provides parity for all state-chartered credit unions by requiring compliance with federal law. Section 2 amends K.S.A. 17-2223a: Administrator's approval required before foreign credit union does business in state; examination; hearing. It provided the credit union administrator with authority to adopt rules and regulations. (**Attachment 1**)

Chairman Cox closed the hearing on **HB 2252** and asked for a motion on the bill.

Representative McCreary made a motion to pass out **HB 2252** favorably and, since it is of a non-controversial matter, place it on the consent calendar. Representative Sharp seconded the motion. The motion carried.

Chairman Cox opened the hearing on **HB 2243 - Regulating securities, powers of the commissioner.**

Proponents:

David Brant, Securities Commissioner, said **Rick Fleming**, General Counsel for the Office of the Securities Commissioner, would cover the amendments not dealing with variable annuities. Rick explained that Part A of the testimony has miscellaneous amendments which amend various statutes under the Kansas Securities Act to update or remove obsolete provisions, promote uniformity with other states' and federal securities laws. He pointed out several sections including: 1) Pg. 6, Ln. 16 which gives the commissioner broader discretion in determining whether the criminal convictions of an applicant warrant the denial of a securities license. The language allows the commissioner to take into account all convictions, not just felonies. And 2) Pg. 19, Lns. 31-42 which replaces obsolete immunity language by incorporating the new provisions concerning transactional immunity and use immunity. Part B covers the Use of Fines and Settlements for Investor Education. It establishes the Investor Educational Fund for the purpose of providing for the education of consumers in matters concerning securities regulation and investments. They think this would provide a valuable service and allow them to operate in a pro-active manner. Twelve other states have this provision and the Office of the Kansas State Bank Commissioner also has a similar fund. Part C covers Authority to Order Disgorgement and Restitution. It grants the commissioner the authority to order the disgorgement of illegal investment income and the payment of restitution to compensate investors for losses arising from violations of the securities laws. It also permits the commissioner to assess interest up to 15%, the same rate that is permissible in civil suits. (**Attachment 2**)

David Brant, covered Part D, Variable Products. A variable annuity is a hybrid product involving both investment and insurance components which is typically marketed as a long-term investment for retirement. It provides future payments, the amount of which depends on the performance of the portfolio's securities. The U.S. Supreme Court has ruled that variable insurance products are securities and subject to regulation by the S.E.C.. He presented the question "Is it unreasonable to treat this hybrid insurance/investment product the same under both state and federal law?" The Gramm-Leach-Bliley Act of 1999 provides for "functional regulation" of financial entities and their products. For a hybrid product, such as variable annuities, functional regulation requires split jurisdiction between securities and insurance at the same level as it does at the federal level. The purpose of the bill is not to impose any additional burden or cost to the insurance companies that package or the agents who sell variable annuities. Many agents currently have both securities and insurance licenses. For those who need to obtain a securities licenses, the annual fee is \$50. The bill will not add significant regulatory paperwork, fees or licenses. Most annuity firms and agents selling variable products will only be affected by this bill if there is a problem. The bill will provide better investor protection. He covered the content of letters from legal experts and licensed agents, as well as articles regarding variable annuities, which were included in his written testimony. Commissioner Brant urged the committee to vote favorable on the bill. (**Attachment 2**)

Jim Parrish, Former Securities Commissioner, spoke in favor of the bill. He believes it is good consumer protection legislation and does not believe the bill would, as has been charged, place undue burden on the industry. He said it's important to look beyond the number of problem cases that involving the product and look at the people involved. Even though there may not be a crisis situation, he believes it is a crisis for that retired couples that lost money, because someone was unscrupulous, and there was no regulator to step in and help. He urged the committee to vote favorable upon the bill. (No written testimony.)

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Opponents:

Carl Wilkerson, Chief Counsel - American Council of Life Insurers, representing 426 life insurance companies said that they oppose the bill due to three troubling aspects. 1. **HB 2243** modifies the Kansas Insurance Commissioner's sole and exclusive authority to regulate the issuance and sale of variable life insurance and variable annuities. 2. It would subject variable life insurance and variable annuities to the Kansas Securities Code for the first time. And 3. In scope and purpose, **HB 2243** governs matters substantially similar to those in **HB 2690**, which the Committee evaluated and rejected in February 2000. Nothing has occurred to warrant reconsideration of these issued in 2001. Variable life insurance and variable annuities are one of the most heavily regulated financial products in today's broad marketplace. The bill would disrupt a coordinated system of state and federal regulation established by the U.S. Supreme Court. It would cause duplicate registration of the same product. The need has not been justified. A pattern of abuse has not been identified. Expanded jurisdiction is not warranted. In reviewing five years of disciplinary action reports, only one involved the state of Kansas. Disciplinary action was taken. The system works. The Gramm-Leach-Bliley Act anticipated this kind of problem. They said that if you are dealing with a hybrid product that has dual characteristics (such as variable annuities or variable life which are part securities, part insurance), if it's defined in the Internal Revenue Service as insurance, it's regulated by the insurance commissioner. The purpose is to avoid duplicate overlapping regulation. He urged the committee to vote no to the proposed legislation. (**Attachments 3 and 4**)

Rick Friedstrom, Kansas Association of Insurance and Financial Advisors (KAIFA), is very, very much against the bill. The Kansas insurance agent who is also a Registered Representative is regulated quite heavily already. KAIFA does not see a clear and compelling reason for the legislation and urges the committee to vote in opposition to **HB 2243**. (**Attachment 5**)

Larry Magill, Kansas Association of Insurance Agents, talked in opposition to **HB 2243** saying most comments have been covered by previous conferees who oppose the bill. He did comment on the hybrid product issues. Variable life and annuities is a hybrid product but there are a lot of life and annuity products that have an investment element to them. They could also be categorized as a hybrid product. For example, universal life. There is side fund to universal life and it's a combination of term insurance and the side fund. If the insurance company does better on the guaranteed rate of return than the side fund, the insured benefits from it; and the side fund does better, the side fund is used to flatten out the premium for universal life. If we're going to start dividing products, there could be a lot to divide. (**Attachment 6**)

Amy Lee, Security Benefit Life Insurance Company, testified that having worked at an attorney at Security Benefit 14 years, with her emphasis being on developing variable insurance product and variable insurance products compliance. The approach of regulating the product as insurance at the state level and as security at the federal level has worked well. She pointed out that most of the complaints that she has dealt with are of an administrative nature, such as incorrect addresses and something being processed incorrectly. There have been very few serious complaints over the years. The serious complaints have basically been that the consumers rep didn't tell them everything they needed to know about a product. Those kind of complaints have been referred to the insurance department of the state involved and have been dealt with adequately. The insurance department has a very strong interest in getting those complaints resolved as the agents are agents of the insurance company. She requested the committed vote against the bill. (**Attachment 7**)

Chairman Cox closed the meeting on **HB 2243**.

Chairman Cox presented the minutes for the January 31 meeting. Representative Grant made a motion to approve the minutes as written. Representative Vickrey seconded the motion. The motion carried.

The meeting adjourned at 5:22 p.m.

The next meeting is scheduled for February 14.