

109 SW 9th Street
Suite 600
Topeka, KS 66612



Phone: (785) 296-3307
Fax: (785) 296-6872
Investor Services: 1-800-232-9580
www.ksc.ks.gov

Aaron Jack, Commissioner

Sam Brownback, Governor

TESTIMONY IN SUPPORT OF SENATE BILL 349
Financial Institutions and Insurance Committee
Kansas Senate

February 14, 2012

Thank you for letting me stand before you today. The purpose of SB 349 is to have a conversation with the legislature where you define the proper role for the Office of the Kansas Securities Commissioner (KSC). The status quo is unacceptable and so I am seeking guidance from you.

Currently we have a \$3 million budget but we bring in \$13 million in fees. That leaves about \$10 million annually to be swept into the State General Fund (SGF). It is imperative as commissioner that I make sure all fees required by the KSC are reasonably tied back to the purpose for which they are assessed.

It is hypocritical of this particular agency to be involved in these types of sweeps because if, in the private sector, someone was soliciting money for a specific purpose and then used that money for a different purpose, it would violate the Kansas Uniform Securities Act (KUSA), it would be a felony, and we would prosecute them and put them in jail. This agency should not be assessing fees for unrelated endeavors.

Under Kansas case law these sweeps are justified by calling them a "reimbursement" to the SGF. Committee, our budget is \$3 million and \$10 million is swept. It is clear that we are not reimbursing anyone \$10 million. It only costs \$10,000 for auditing fees in our agency, not \$10 million. These illusory costs are simply a legal fiction which burdens the private sector. Furthermore, the result is that the industry turns around and burdens Kansas investors with higher charges.

If that is something the legislature wants, then you should explicitly tax these companies. However, you should not rely on this agency to continue the practice of implicitly taxing them by skimming \$10 million off the top.

With SB 349 we have put forth several options for you to consider. You can reject them or adopt them in whole or in part. These functions are related to economic development, litigation, restitution, and investor education.

My general counsel, Jeff Kruske will provide testimony on the litigation and restitution fund concepts. There is an extensive list of Kansas agencies with litigation funds so this is neither a new or fringe concept but rather a very responsible tool to protect the integrity of the financial services marketplace here in Kansas.

I also mention the James Freese case from several years ago so you can see the breadth of how the restitution fund would serve Kansas investors. Restitution in the amount of \$7,298,160.58 was ordered. However, only a mere \$125,465.44 was actually paid back to defrauded investors. That amount represents less than two percent of what was ordered to be repaid.

Finally, I will discuss the transfer authority to move money from the Securities Act Fee Fund (SAFF) over to the Investor Education Fund (IEF). The SAFF contains no taxpayer money. It is solely funded by fees from the private sector. The IEF also contains no taxpayer money. However, instead of industry fees, it is funded by money from fines and settlements. Over the past several years, in addition to the \$10 million annual sweep, the legislature has swept a total of \$11,925,000 out of the IEF over into the SGF.

I have partnered with EverFi to bring the very best personal finance program that I have ever seen to Kansas. It is called the Kansas Financial Scholars Program. In fact we are doing an event with the governor at Shawnee Heights High School later this month on February 29th. But it is unfair for our superintendents to change their curriculum to teach personal finance in their classrooms only to have me come back later and change the cost on them because my IEF was wiped out. This transfer authority would allow the KSC a minimum starting amount every year so we will not inadvertently hurt our schools.

Respectfully,

Aaron Jack, J.D., M.B.A.