

MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS.

The meeting was called to order by Chairperson Ray Cox at 3:30 p.m. on February 9, 2000 in Room 527-S of the Capitol.

All members were present except: Representative Vaughn Flora - Excused
Representative Henry Helgerson - Excused

Committee staff present: Dr. Bill Wolff, Legislative Research
Bruce Kinzie, Office of Revisor
Maggie Breen, Committee Secretary

Conferees appearing before the committee: David Brant, Securities Commissioner
Professor Robert Gustavson, Washburn University
Matthew D. All, Kansas Insurance Department
Carl Wilkerson, American Council of Life Insurers
Rick Friedstrom, Ks. Assn of Financial Advisors (KAIFA)
Pat Morris, Kansas Association of Insurance Agents
Amy Lee, Security Benefit Group
Steve Handke, Community Bankers Association
Chuck Stones, Kansas Bankers Association

Others attending: See Attached

Chairman Cox asked for introduction of bills. There were none.

Chairman Cox opened the hearing on **HB 2690 - Securities, regulating variable annuities**

Proponents:

David Brant, Securities Commissioner, said that the most significant provision of the bill, in Sections 1, 2, and 5, proposes to amend the definition of "securities" to include variable annuities. It is a hybrid product involving both investments and insurance components. The merits of **HB 2690** can best be analyzed by considering the following questions: 1) Is it unreasonable to treat this hybrid insurance/investment product the same under both state and federal law? 2) Does our current law promote a "level playing field" for the regulation of variable products in the new era of financial modernization and functional regulation? 3) Does this proposed legislation add a burden or place additional cost on insurance companies or their agents? And, 4) Does **HB 2690** enhance investor protection for Kansas consumers? Commissioner Brant addressed these questions and concluded by stating that the bill does not promote bigger government or unnecessary regulation. The bill will not add any significant regulatory paperwork, fees, or licenses. Most annuity firms and the agents selling variable products will only be affected by the bill - if there is a problem. And if there is a problem in the year 2000, Kansas investors deserve a regulatory structure that is reasonable and that makes good common sense - not a structure that was devised in 1968, some 32 years ago. (**Attachment 1**) He stated that the bill also includes three additional technical amendments. (**Attachment 2**)

Professor Robert Gustavson, Washburn University, addressed the committee with a personal story involving his 86 year old father-in-law who lives in Dallas, Texas. In essence, he went to his bank with the intent of renewing a \$50,000 CD. He ended up buying a variable annuity which he felt he had been deceived into purchasing. He was almost 85 at the time and the annuity was to kick in at age 90. He wanted out of the annuity but the surrender charge ranged from \$4,000 during the first 2 years to \$2,000 during the fifth year of ownership. Although there was a beneficiary, Professor Gustavson's mother-in-law, she is also 86. After conferring with a couple of people, Professor Gustavson did contacted the bank in Texas and asked for his father-in-law's money back without any surrender cost. He advised them that if this were not done, the case would be taken to the Insurance Commissioner, Securities Commissioner and consumer advocate groups. The bank did give the father-in-law his money back without

a surrender charge. Professor Gustavson said that after seeing this situation and the reviewing of several articles, it became apparent to him that older citizens can readily be taken advantage of. They find themselves having purchased products they do not need and do not want. Regulation needs to be looked at. He supports **HB 2690**. (No handout)

Neutral:

Matthew D. All, Kansas Insurance Department, said the Insurance Commissioner supports the intent of **HB 2690**, which she understands to be to allow the Securities Commissioner to enforce his statutory and regulatory standards on sales practices in the area of variable annuities. This would be a reasonable and preferable approach to the current practice of granting exclusive and sole jurisdiction over the entire area of variable annuities to the Insurance Commissioner. It would be preferable because: 1) Those who sell variable annuities tend to also sell products that are currently defined as securities. 2) The Securities Commissioner has greater power to address wrongdoing than the Insurance Commissioner. (Of course the Insurance Commissioner would prefer to have heavier sanctions at her disposal too.) And 3) **HB 2690**, if crafted to meet its intent, will not create any significant additional burden for those who sell variable annuities. The Insurance Commissioner would not support any additional administrative burdens on insurance companies, agents, or brokers. Also, she does not support any change in the jurisdiction over product approval, or any other area of regulation of variable annuities, other than a grant of joint jurisdiction with the Securities Commissioner over sales practices. The Insurance Department supports any effort to clarify the language to more closely fit its intent. (**Attachment 3**)

Opponents:

Carl Wilkerson, American Council of Life Insurers, representing 435 members, spoke in opposition to **HB 2690**. They are oppose to the printed bill as well as the proposed technical amendments presented today. Two aspects of the bill are particularly troubling to life insurance companies. It would remove the Kansas Insurance Commissioner's sole and exclusive authority to regulate the issuance and sale of variable life insurance and variable annuities. Also, it would subject variable life insurance and variable annuities to the Kansas Securities Code for the first time. 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 regulation of the same product under the Kansas Insurance and Securities Code. It would create expensive, unnecessary compliance burdens for life insurers and salespeople, and would discourage life insurers from distributing variable life insurance and variable annuities in Kansas. It would impose a forth layer of regulation on variable life insurance and variable annuities on top of comprehensive SEC, NASD, and state insurance regulation. The need for the amendment has not been justified. A pattern of abuse has not been identified. It creates an aberrant regulatory structure in Kansas that differs from almost every other state. There are laws on the books that address misconduct and misrepresentation. These are being taken care of through the SCC, NASD and State Insurance Department. Mr. Wilkerson had a slide presentation and presented charts showing that there has been a downward trend in disciplinary action needed in the industry since 1996 when the SCC said disciplinary action needed to be stronger. It did become stronger and people have received the message. He asked the committee to vote no on **HB 2690**.

Rick Friedstrom, Kansas Association of Financial Advisors (KAIFA), testified in opposition to **HB 2690**. His organization has worked with the Kansas Insurance Department since 1935 to craft legislation and regulation to protect the Kansas insurance consumer and Kansas insurance agent. KAIFA does not feel it is appropriate to single out variable annuities for inclusion in regulation by the Securities Commissioner. His associate is now spending 2 1/2 hours a day doing compliance and regulation work. Mr. Friedstrom does not think a fourth layer of regulation is needed on top of everything they have right now. He is in agreement with Mr. Wilkerson's testimony.

Pat Morris, Kansas Association of Insurance Agents, asked why the state legislature would be interested in adding another level of regulation oversight for agents when the current structure seems to be working? Why does the Department of Insurance feel compelled to give up the law's specific mandate that they are the sole and exclusive jurisdiction and authority to regulate the issuance and sale of such contracts? What sort of provisions or plans have been established, to ensure that this new system will be able to deal with conflicts and overlaps between the agencies? Are we are going to have multiple regulators each time we have hybrid products? His organization stands in opposition to **HB 2690**.

Amy Lee, Security Benefit Group, stated that the insurance industry is a highly regulated industry and SBG's main product is variable annuities. They spend a lot of time dealing with various states with regards to the insurance laws and also with the Securities and Exchange Commission, so they are pretty sensitive to the idea of additional

regulation. The bill does pose an additional burden on the industry. If you are selling only variable annuity products, you are dealing with NSDA regulation and the state insurance department licensing in the 50 states. If you have to deal with registration with another regulator, you're dealing with a lot of paper work. SBG thinks the current system works well. There can be difficulties if you have shared regulation. You can have a vacuum when each regulatory body thinks the other is handling a matter. She urged a no vote for **HB 2690**.

A question and answer period followed.

Chairman Cox closed the hearing on **HB 2690** and opened the hearing on:

HB 2754 - Banks and trust companies, holding of real estate

Proponents:

Steve Handke, Community Bankers Association, explained that **HB 2754** makes a technical change in K.S.A. 9-1102(a)(2), which regulates the real estate Kansas banks are allowed to hold. The present language has been in effect since 1975. The inflexibility of the law, with its rigidly defined holding period, has caused problems over the years. These problems have been accentuated in recent years with the industry's movement in Kansas toward branch banking with multiple locations. The problem is with the defined beginning point, of the seven-year holding period, that a bank has to dispose of unneeded real estate. The beginning point in the current statute is set as the date of acquisition. It makes it virtually impossible to dispose of property that has been used for banking purposes for a number of years. The proposed bill would give banks seven years, after a change in intended use of property, to dispose of it. He asked the committee to report **HB 2754** favorably.

Chuck Stones, Kansas Bankers Association, said his organization supports **HB 2754**. It allows the banks to be flexible with their "other real estate owned" category of assets. It doesn't change the seven year time frame, it changes the time the clock starts.

Chairman Cox closed the hearing on **HB 2754**.

Chairman Cox asked for a motion regarding the committee minutes for January 26, 2000 and February 2, 2000. Representative Dreher made a motion to approve the minutes as written. Representative Sharp seconded the motion. The motion carried.

The meeting adjourned at 5:06 p.m.

The next meeting is scheduled for February 14.

CONTINUATION SHEET