

Approved: February 23, 1993  
Date

## MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Chairperson William Bryant at 3:30 p.m. on February 18, 1993 in Room 527-S of the Capitol.

All members were present except: Henry Helgersen, Excused

Committee staff present: William Wolff, Legislative Research Department  
Bruce Kinzie, Revisor of Statutes  
Nikki Feuerborn, Committee Secretary

Conferees appearing before the committee:

Representative Marvin Smith  
Elwaine Pomeroy, Topeka Escrow Service  
Hayden St. John, Lawyers Title Insurance  
Karen France, Kansas Association of Realtors  
Judi Stork, Kansas Banking Commission  
Wayne Warfel, Credit Union Department  
Greg Winkler, Kansas Credit Union Association

Others attending: See attached list

Representative Weiland moved for the approval of the minutes of February 16, 1993. Representative Crabb seconded the motion. The motion carried.

### Hearing on HB 2341 - Escrow Agencies

Representative Marvin Smith reviewed the escrow situation and ultimate bankruptcy proceedings of Homestead which has impacted one of his constituents. He requested the passage of the legislation which would require the bonding of escrow agencies and penalization for noncompliance (Attachment 1).

Elwaine F. Pomeroy, Topeka Escrow Service, Inc., asked that in establishing the legislation it be equitable and workable (Attachment 2). He reviewed how escrow services work and what their responsibilities and charges are. Many financial institutions in Topeka have relinquished their escrow business to private escrow services. Mr. Pomeroy made the following suggestions regarding the bill:

1. Page 1, Lines 23-25: should be broadened as the language is too restrictive. There are few escrow accounts which are loans secured by a lien on real property. Most accounts are where an individual has sold a parcel of real estate under contract to a purchaser so the escrow does not involve any loan.
2. There should be no discrepancy between "escrow agent" and "escrow agency."
3. In Section 2 the exemptions are listed and title insurance company should be exempted from the regulations.
4. In Section 4 bond requirements are listed. Line 42 should provide that the minimum amount of the bond shall be \$25,000.00, leaving the discretion in the Commissioner as set forth in Line 37 to provide a larger amount of bond where appropriate.
5. Further exploration of what the expense for examination should be.
6. It is impractical and unnecessary to totally segregate the funds (co-mingle). The important thing is that there are liquid assets on hand to cover all liabilities. Escrow agents should be entitled to interest earned on funds held in liquid assets.
7. Instead of using the suggested effective date of July 1, the date should be changed to January 1 because all escrow records are kept on an annual basis and reporting has to be made on an annual basis of the total amount

## CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,  
Room 527-S Statehouse, at 3:30 p.m. on February 18, 1993.

paid or received by each customer as interest and as principal.

8. Appointment of an interim committee to study the proposal. The legislation should only provide the necessary protection to the public, not create such burdens that established, reputable escrow services could not operate under.

Hayden St. John of Lawyers Title appeared in support of the bill. He indicated their interest in serving on an interim committee.

Karen France, Kansas Realtors Association, voiced their support of regulation of escrow agents (Attachment 3). Without some sort of bonding requirement of pool of money available to consumers who get caught by an escrow agent who is dishonest or bankrupt, there is no recourse for getting the money put in escrow back. Two amendments were suggested:

1. Exempt real estate licensees because they have created their own Recovery Fund in order to protect customers.

2. Provide that title insurance companies who have escrow activity would be required to meet the requirements of the statute as it relates to their escrow activity.

Judi Stork, Kansas Banking Department, said that one of their primary concerns is that since the bill would place escrow activity under their oversight, they are concerned with the lack of information regarding the current level of activity in this field (Attachment 4). Additional staff members may be required to accept applications, issue licenses, supervise activities, examine the offices and provide follow up oversight. The fiscal impact as a result of this duty is undeterminable and they were unsure if the Banking Department was the most appropriate place for oversight of this activity. Concerns on language in the bill were:

1. Would trust accounts, established by real estate companies holding earnest money of a buyer of real estate, be considered an escrow account for purposes of this bill?

2. Does the bill require the licensing of local title companies that are really agents for the title underwriter?

The Banking Department recommends further study of the bill due to the above questions and there are certain parts of the bill that do not mesh with current banking regulations.

Chairman Bryant appointed a Subcommittee with Representative Cornfield serving as Chair: Representatives Cornfield, Cox, and Correll.

### Hearing on HB 2431 - Credit unions, regulation thereof.

Wayne Warfel, Administrator of the Kansas State Department of Credit Unions, reviewed the requested revisions for statutes (Attachment 5):

1. Format which deals with the expulsion of credit union members has been rewritten to improve clarity and remove areas of ambiguity from the existing statute.

2. In the process of examining credit unions, the bill would make it clear that all information obtained is considered confidential, document that the information is the property of the state, and clarify to whom confidential information may be provided and under what circumstances.

3. Technical revision regarding who may submit individuals as candidates for council positions.

Greg Winkler, Kansas Credit Union Association, voiced support for the bill.

The meeting was adjourned at 4:15 p.m. The next meeting is scheduled for February 22, 1993.

## GUEST LIST

COMMITTEE:

DATE:

2/18/93

[illegible]

MARVIN E. SMITH  
REPRESENTATIVE, FIFTIETH DISTRICT  
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TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
CHAIRMAN: GOVERNMENTAL ORGANIZATION  
& ELECTIONS  
MEMBER: EDUCATION  
TRANSPORTATION  
JOINT COMMITTEE ON ADMINISTRATIVE  
RULES & REGULATIONS

February 18, 1993

TESTIMONY ON HOUSE BILL 2341

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

Mr. Chairman and members of the committee:

Thank you for holding a hearing today on HB 2341.

Last fall a constituent of the 50th District became a victim of an escrow that was serviced by Homestead. He had sold a parcel of property (seller) to a purchaser (buyer). The buyer had been paying his installments in a timely manner. The money was NOT flowing through to him the last two payments. Then Homestead became involved with bankruptcy proceedings. So, now the wait and see process affects all of those sellers that did NOT receive full payment.

Although this bill may need considerable improvement by the committee, I would urge your favorable consideration of HB 2341.

*House Financial Institutions &  
Insurance*

*Attachment 1  
February 18, 1993*

# Homestead flat broke

**■ Firm is unable to  
make account  
holders' tax or  
insurance payments**

By DON MARKER  
The Capital-Journal

**P**eople who had escrow accounts with the bankrupt Homestead Land Title Co. have been told the company has no money with which to make the clients' 1992 tax or insurance payments.

The account holders were informed of that in a letter from Steven J. Martens, Wichita, court-appointed trustee for the firm.

The letter said, "We have closed the escrow company and are sending you an agreement for the surrender of documents" that will give Homestead authority to release escrow documents to whomever the account holders designate.

The letter also told clients that if they had a tax or insurance escrow account at Homestead, they would need to contact their county treasurer and insurance agent in order to make those payments direct.

The way Kathy Lutz reads the letter, she's out \$247.67, the amount that was in her reserve account when Homestead filed for bankruptcy last Aug. 28. Lutz was buying her house from a couple living in Wyoming.

She wrote her house payment check to Homestead for \$357.54. The company normally then writes a check to the seller.

"They wrote her a bum check," Lutz said. "She never got the money."

Bigger bucks were involved in the transaction of Ron Wright

and Joy Uthoff, both of Baldwin City.

Wright wrote a check for \$4,470.81 to Homestead to pay off a house he was buying from Uthoff. The company took his check, then wrote Uthoff one that was returned because there were insufficient funds in the account.

Although Wright is without liability, he's been battling to get

**S**teven J. Martens, Wichita, court-appointed trustee for the company, informed escrow account holders in a letter.

some investigative body to pay attention to the situation.

He wrote to, but never heard back from, the Shawnee County district attorney's office.

He sent his case history to the state attorney general's office but didn't hear from it, either.

Dan Kolditz, head of the consumer protection division of the attorney general's office, said Tuesday that through an office oversight, a response was sent to Joy Uthoff, but not to Wright.

Unfortunately, Kolditz said, the attorney general's office can't do anything under state law until the bankruptcy is closed. The information was referred, however, to the office of the U.S. attorney for Kansas.

Brent Anderson, first assistant U.S. attorney, said that office was aware of the Homestead situation.

Wright also contacted the office of Sen. Bob Dole, R-Kan. Kolditz acknowledged the attorney general's office had been queried by Dole's office concerning the case.

Kolditz said the attorney general's office hadn't closed its investigative file on Homestead.

February 18, 1993

REMARKS CONCERNING HOUSE BILL 2341

I am Elwaine F. Pomeroy, appearing on behalf of myself concerning HB 2341, An Act concerning escrow agencies, relating to the regulation thereof.

I commend Rep. Marvin Smith and the other two co-sponsors of this legislation for bringing this matter to the attention of this committee. I feel that some type of regulation is necessary. I would ask that this committee carefully consider what type of regulation is established, would ask that the regulation be workable, would ask that the legislation be equitable, and would ask that it apply fairly and equitably to those engaged in the providing of escrow services.

As many of you know, I am an attorney, and have been in the general practice of law since graduating from Washburn University School of Law in February, 1957. Many of you also know that I served in the Kansas State Senate, being first elected in 1968, and serving until 1984. From May 1984 until July 1990, I served as a member of the Kansas Parole Board.

In addition to my law practice and my public service, I have been closely associated with the providing of escrow services. In 1959, I founded Topeka Escrow Service, Inc., and have served as its President since that time. My wife and I are the sole stockholders of Topeka Escrow Service, Inc.. The offices of Topeka Service, Inc. are located in the Pomeroy Building, 1415 SW Topeka Boulevard, here in Topeka. During the course of the years, Topeka Escrow Service, Inc. has acted as escrow agent for 5,231 escrows. 967 of those escrows are still active.

In addition to the time that I devote to the activities of Topeka Escrow Service, Inc., there are three full time employees. On thirty-two escrows, we simply hold the documents deposited with us in escrow, and there are no monthly payments. On some of the escrows, there are annual payments; there are some with semi-annual payments; but most of the escrows have monthly payments. As payments are received from purchasers, Topeka Escrow Service, Inc. deposits those funds to

*Elwaine F. Pomeroy*  
*Attachment 2*  
*Feb. 18, 1993*

its checking account and the next business day issues checks to the sellers, or in some cases, to the bank accounts designated by the sellers, and in some instances, a portion of the payments are paid to mortgage companies to apply on existing mortgages on the properties.

In 1992, deposits were made to its checking account totalling \$7,273,585.41. Topeka Escrow Service, Inc. wrote 13,457 checks in 1992.

Some of the escrow arrangements provide for the purchasers to make monthly deposits to reserve accounts for the payment of insurance premiums and real estate taxes. In those instances, the escrow agent has to keep track of the balances in the insurance reserve account and the tax reserve account for that escrow, has to pay the insurance premium when the insurance agent of the purchaser's choosing sends a billing for the insurance premium, and pay the real estate taxes when the tax statements are received. Topeka Escrow Service, Inc. makes no additional charges for handling the tax and insurance reserve accounts.

It used to be in Topeka that most of the financial institutions served as escrow agents for their customers. However, a number of the financial institutions have decided to get out of the escrow agent business. When Merchants National Bank closed down its escrow department, it transferred its active escrow accounts to Columbian Title & Trust. A number of the other financial institutions transferred their escrows to Topeka Escrow Service, Inc., including Bank IV, Capitol Federal Savings & Loan, Highland Park Bank & Trust, and Silver Lake State Bank.

The title insurance companies in Topeka also have served as escrow agents. Unfortunately, one of those title insurance companies declared bankruptcy, and I am sure that that bankruptcy was what prompted the introduction of HB 2341.

I am not aware of very many escrow service companies in Kansas that are not affiliated with a financial institution or a title insurance company. I know there



is one such company in Hutchinson, and I am aware of two others in Topeka other than Topeka Escrow Service, Inc..

With that information as background, I would like to make comments on HB 2341. On page 1, lines 23 through 25 I feel should be broadened, as the existing language is, I fear, too restrictive. There are a few of the escrow accounts serviced by Topeka Escrow Service, Inc. which are loans secured by a lien on real property, but most of the escrow accounts are where an individual has sold a parcel of real estate under contract to a purchaser, and so the escrow does not involve any loan.

Throughout the bill, starting on line 26 through line 31, a distinction is made between an "escrow agency" and an "escrow agent". I am sure that this probably was patterned after the legislation regulating real estate brokers and agents. I do not feel that the analogy is accurate. In the real estate sales field, sales activity is conducted both by salespersons and by brokers. Salespersons typically move from broker to broker. That would not be true with regard to an escrow arrangement. The escrow arrangement should be a continuing one, and the distinction made in the bill between the agency and the agent is, in my humble opinion, not accurate for this particular kind of activity.

Section 2, found at the bottom of page 1, lists the exemptions. The bankruptcy which lead to the introduction of this legislation involved a title insurance company, but lines 36 and 37 exempt title insurance companies from the regulation to be provided under this act.

Section 3 again makes the distinction between escrow agent and an escrow agency, and my prior comments would be applicable throughout the act where that artificial and unnecessary distinction is made.

Section 4 sets up the requirement for bond. I feel it is certainly proper for escrow agents to be bonded. I am not sure as to what the cost of an appropriate bond would be, but in my opinion, \$25,000.00 is not a sufficiently large bond to

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truly protect the public, if the escrow agent has a number of accounts. Line 41 on page 2 establishes the amount of the bond as being \$25,000.00. On December 31, 1992, the totals of the amounts held in insurance reserve accounts by Topeka Escrow Service, Inc. was \$64,621.01, and in tax reserve accounts, \$79,126.22, for a total of \$144,547.63. Obviously, \$25,000.00 would not be sufficient protection for a firm the size of Topeka Escrow Service, Inc.. Line 42 probably should provide that the minimum amount of the bond shall be \$25,000.00, leaving the discretion in the Commissioner as set forth in line 37 to provide a larger amount of bond where appropriate.

On page 5, I am naturally concerned as to the expenses of the examinations provided for in section 11 and section 13. I do not have sufficient information to know what the cost of such an examination would be.

On page 7, lines 9 and 10, I am concerned with how the prohibition against comingling would really apply to a business such as that of Topeka Escrow Service, Inc.. In the typical escrow, the purchaser includes in the payment made to the escrow agent \$3.00 as the purchaser's share of the escrow fee, and when the payment is made the next business day to the seller, a deduction is made for the seller's share of the escrow fee. Thus, some of the money in the checking account is the money of others, and some is the money to be retained as fees. Also, it is impractical and unnecessary to totally segregate the funds. The important thing is that there are liquid assets on hand to cover all liabilities. In my opinion, escrow agents should be entitled to interest earned on funds held in liquid assets. On December 31, 1992, Topeka Escrow Service, Inc. had \$119,468.65 in its checking account, \$94,062.60 in savings accounts and certificates of deposits, \$100,000.00 in a tax exempt municipal bond, and \$19,342.24 in stocks.

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The issue of keeping funds separate also arises from the reading of Section 19 on page 9 of the bill. The practical application of total segregation of funds would be extremely difficult. At least in the case of Topeka Escrow Service, Inc., no additional charges are made to the customers for the handling of insurance reserves and tax reserves. Obviously there is a considerable amount of extra work involved in handling those reserve accounts, and the trade-off is that the escrow agreement provides that no interest is to be paid by the escrow agent on funds in reserve accounts, but the escrow agent itself retains the interest that can be generated from the careful, judicious investment of those funds. Certainly when an individual opens a savings account at Capitol Federal Savings, Capitol Federal agrees to pay a set amount of interest on that deposit, but Capitol Federal is free to invest those funds, and to keep the excess between the income generated by that investment and the interest it pays to the depositor.

Section 24, on page 10 provides that the act would take effect from and after its publication in the statute book, in other words July 1. When this is enacted, I would suggest that its effective date be on January 1, because all escrow records that I know of are kept on an annual basis, and reporting has to be made on an annual basis of the total amount paid or received by each customer as interest and as principal. I would assume also that the Commissioner would need time to prepare rules and regulations to govern escrow agents after the bill becomes law.

I would suggest that the committee request an interim study of this proposal. It is legislation that is needed, but such legislation should be carefully fine-tuned to not only provide the necessary protection to the public but not create such burdens that established, reputable escrow services could not operate under it.

I would be more than happy to make myself available for any assistance or background information that I could provide if such an interim study is undertaken.

Thank you for considering my suggestions.

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Executive Offices:  
3644 S. W. Burlingame Road  
Topeka, Kansas 66611  
Telephone 913/267-3610

TO: THE HOUSE FINANCIAL INSTITUTIONS AND INSURANCE  
COMMITTEE

FROM: KAREN FRANCE, DIRECTOR, GOVERNMENTAL AFFAIRS

SUBJECT: HB 2341, REGULATION OF ESCROW AGENTS

DATE: FEBRUARY 18, 1993

Thank you for the opportunity to testify. On behalf of the Kansas Association of REALTORS, I come to support HB 2341 and to offer some suggestions concerning the bill.

We support the regulation of escrow agents whose activities are unregulated by other state agencies. Without some sort of bonding requirement or pool of money available to consumers who get caught by an escrow agent who is dishonest or bankrupt, there is no recourse for getting the money put in escrow back. At this point in time, anyone can hang their shingle out and call themselves an "escrow agent". Given the large amounts of money consumers entrust to them, it is wise to create some sort of monitoring and bonding process to ensure the money will be there when the consumers need to get it.

A hard lesson has already been learned by consumers here in Topeka who placed their earnest money deposits with a title company in the escrow business. That title company went bankrupt and many consumers have been told they won't see their money before April, if then.

We do recommend two amendments to the bill. First, we ask that you exempt persons licensed under the Kansas Real Estate Brokers' and Salespersons' License Act, K.S.A. 58-3034 et seq.. Our license law mandates very strict procedures for escrow activity by real estate licensees. I have attached a copy of the relevant statutes to my testimony. There are strict requirements for the establishment of a trust account, the maintenance of the trust account and any disbursements from the trust account. The trust accounts are also subject to audits by the Kansas Real Estate Commission. At this point in time, given the current auditor levels at the commission, brokers are audited at least every other year.

Most important, the Real Estate Recovery Fund has been put in place to create a pool of money available for consumers who are damaged by a licensee who is bankrupt or has skipped town. All licensees contribute to this fund in order to keep the level up. In the event the level of the fund drops below \$100,000, the commission has statutory authority to immediately assess

*House File D*  
*Attachment 3*

brokers \$10 and salespersons \$5 in order to bring it back up to the appropriate level. This Recovery Fund acts in the place of a bonding requirement, thus providing the same protection to consumers as would be provided under this bill.

Because our licensees are already heavily regulated in this area and because we have created a Recovery Fund in order to protect consumers, we request that you exempt real estate licensees from the bill.

Our second recommendation is to narrow the exemption for title insurance companies. The title company incident in Topeka which I mentioned earlier is a prime example of how a title company who is also in the escrow business needs to have their escrow business monitored. As we understand it, the Department of Insurance only regulates the title activities of such a business, but does not regulate the escrow part of the business, thus leaving consumers with no protection. We ask that you amend Section 2 (a) (2) to provide that title insurance companies who have escrow activity also would be required to meet the requirements of the statute as it relates to their escrow activity. Such a requirement would protect consumers from the problems created here in the Topeka incident.

Thank you again for the opportunity to testify. We will be glad to be of any assistance to the committee in getting this proposal into a workable system.

(14) For renewal of an approved instructor pursuant to K.S.A. 58-3046a and amendments thereto, an amount not exceeding \$15.

(b) Subject to the limitations of this section, the commission shall fix the fees provided for by this section in the amounts necessary to administer and enforce this act.

(c) The fees provided for by this section shall be applicable regardless of the type of license. (L. 1980, ch. 164, § 30; L. 1985, ch. 189, § 1; L. 1988, ch. 197, § 4; July 1.)

**58-3064. Injunction to enforce law.** Whenever any person has engaged in any act or practice that constitutes a violation of this act or rules and regulations adopted hereunder, the commission may institute an action in the district court of the county in which the person resides or in the district court in the county in which such act or practice occurred for an injunction to enforce compliance with this act or rules and regulations adopted hereunder. The commission shall not be required to give any bond or pay any filing fee for initiating such action. Upon a showing that the person has engaged in any act or practice in violation of this act or rules and regulations adopted hereunder, the court may enjoin all such acts or practices and may make any orders necessary to conserve, protect and disburse any funds involved. (L. 1980, ch. 164, § 31; July 1.)

**58-3065. Penalties for violations; reporting of minor violations for prosecution not required.** (a) Willful violation of any provision of this act is a misdemeanor punishable by imprisonment for not more than twelve (12) months or a fine of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000), or both, for the first offense and imprisonment for not more than twelve (12) months or a fine of not less than one thousand dollars (\$1,000) or more than ten thousand dollars (\$10,000), or both, for a second or subsequent offense.

(b) Nothing in this act shall be construed as requiring the commission or the director to report minor violations of this act for criminal prosecution whenever the commission or the director believes that the public interest will be adequately served by other administrative action. (L. 1980, ch. 164, § 32; July 1.)

**58-3066. Recovery revolving fund; assessment of fees to maintain balance; payments; investment of moneys; interest.** (a) The real estate recovery revolving fund established within the state treasury by K.S.A. 58-3023, and amendments thereto, is hereby continued in existence. Such fund shall be used in the manner and for the purpose provided by this act.

(b) At any time that the balance remaining in the real estate recovery revolving fund is less than \$100,000 the commission, without delay, shall assess each licensed broker a fee of \$10 and each licensed salesperson a fee of \$5. Such fees shall be deposited in the state treasury and credited to the real estate recovery revolving fund. If a licensee does not pay the assessment within 30 days from the date notice of assessment is mailed to the last residence address reported to the commission by the licensee, the licensee's license may be suspended in accordance with the Kansas administrative procedure act until the assessment is paid. A fee of \$15 shall be paid by the licensee to reinstate the suspended license. Fees paid to reinstate licenses suspended under this section shall be deposited in the state treasury and credited to the state general fund and the real estate fee fund as provided by subsection (a) of K.S.A. 58-3074, and amendments thereto.

(c) All payments and disbursements from the real estate recovery revolving fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the director of the commission or by any person or persons designated by the commission. Amounts credited to the real estate recovery revolving fund under this section shall not be subject to any limitation

imposed by any appropriation act of the legislature and disbursements from the real estate recovery revolving fund shall be subject to post audit in accordance with article 10 of chapter 4 of the Kansas Statutes Annotated and any amendments thereto.

(d) The pooled money investment board may invest and reinvest the moneys in the real estate recovery revolving fund in: (1) Direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America; (2) interest-bearing time deposits in any commercial bank located in Kansas, except that the amount so invested in any such bank or trust company shall not exceed an amount equal to the total capital and surplus of such bank or trust company and shall be secured in the manner prescribed by subsections (a) through (e) of K.S.A. 7-4218, and amendments thereto; (3) if the board determines that it is impossible to deposit such moneys in such time deposits, in repurchase agreements of less than 30 days' duration with a Kansas bank or with a primary government securities dealer which reports to the market reports division of the federal reserve bank of New York for direct obligations of, or obligations that are insured as to principal and interest by, the United States government or an agency thereof; or (4) in shares or accounts in savings and loan associations insured by the federal savings and loan insurance corporation, or other federal agency, to the extent covered by such insurance. All moneys received as interest earned by the investment of the moneys in the real estate recovery revolving fund shall be credited to such fund. (L. 1980, ch. 164, § 33; L. 1981, ch. 304, § 2; L. 1986, ch. 210, § 1; L. 1987, ch. 295, § 5; L. 1989, ch. 488; July 1.)

**58-3067. Same; recovery from; limitations.** Payments from the real estate recovery revolving fund under the provisions of this act shall be subject to the following conditions and limitations:

(a) Payments shall be made only pursuant to an order of a court of competent jurisdiction, as provided in K.S.A. 58-3071 and amendments thereto, and in the manner prescribed by this act.

(b) Payments for claims arising out of the same transaction shall be limited in the aggregate to \$15,000, irrespective of the number of claimants or parcels of real estate involved in the transaction.

(c) Payments for claims based upon judgments against any or licensed broker or salesperson shall not exceed in the aggregate \$30,000 within any calendar year, but in no event shall payments for claims based upon judgments against any one licensed broker or salesperson exceed in the aggregate \$50,000.

(d) If, at any time, the moneys in the real estate recovery revolving fund are insufficient to satisfy any valid claim, or portion thereof, the director of the commission shall satisfy such unpaid claim or portion thereof, as soon as a sufficient amount of money has been credited to the fund as provided in subsection (b) of K.S.A. 58-3066 and amendments thereto. If there is more than one such claim outstanding, such claims shall be paid in the order that they were made. Any such unsatisfied claim, or portion thereof, shall accrue interest at the rate of 4% per annum. (L. 1980, ch. 164, § 34; L. 1981, ch. 304, § 3; L. 1986, ch. 210, § 2; July 1.)

**58-3068. Same; use of moneys; acts for which recovery allowed; persons qualified to recover; conditions; disqualifications.** (a) Moneys in the real estate recovery revolving fund shall be used in the manner provided by this act to reimburse persons who suffer monetary damages by reason of any of the following acts committed in connection with any transaction involving the sale of real estate in this state by any broker or salesperson who was licensed under the laws of this state at the time the act was committed or by an unlicensed employee of such broker or salesperson:

(1) Violation of any of the following provisions of this act:

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office and the activities of salespersons and associate brokers assigned to such office.

(c) A branch broker's license and those of salespersons and associate brokers assigned to the branch office shall be displayed in the branch office. All other licenses of brokers, salespersons and associate brokers shall be displayed in the broker's primary office.

(d) A broker shall give written notice to the director of any change in location of any office of the broker, by returning licenses for cancellation and reinstatement under the new location as provided by K.S.A. 58-3047 and amendments thereto.

(e) The requirement of maintaining an office as provided by this section shall not apply to an associate broker, to a broker whose license is on deactivated status or to an officer of a corporation, partner of a partnership or member of an association who is not designated as the supervising broker of an office. (L. 1980, ch. 164, § 27; L. 1986, ch. 209, § 12; July 1.)

**58-3061. Trust accounts.** (a) Unless exempt under subsection (f), each broker shall maintain, in the broker's name or the broker's firm name, a separate trust account in this state, or in an adjoining state with written permission of the commission, designated as such. All down payments, earnest money deposits, advance listing fees or other trust funds received in a real estate transaction by the broker or by the broker's associate brokers or salespersons on behalf of a principal or any other person shall be deposited or invested in such account unless all parties having an interest in the funds have agreed otherwise in writing. The account shall be with an insured bank or savings and loan association or credit union which is insured with an insurer or guarantee corporation as required under K.S.A. 17-2246 and amendments thereto. A broker shall not retain any interest accrued on moneys held in an interest-bearing trust account without the written consent of all parties to the transaction.

(b) Each broker shall notify the commission of the name of the bank, credit union or savings and loan association in which the trust account is maintained and of the account name by completing a consent to audit form obtained from the commission. A broker may maintain more than one trust account if the commission is advised of each such account as required by this subsection and authorized to examine all such accounts. If a separate trust account is maintained for a branch office, the branch broker shall maintain trust account records required by rules and regulations of the commission and all transaction files related to the branch office trust account.

(c) Each broker shall grant full access to all records pertaining to the broker's trust account to the commission and its duly authorized representatives. A trust account examination shall be made at such time as the commission directs.

(d) No payments shall be made from the broker's trust account other than a withdrawal of earned commissions payable to the broker or distributions made on behalf of the beneficiaries of the trust account. A broker shall not be entitled to any part of the earnest money or other money paid to the broker in connection with any real estate transaction as part or all of the broker's commission or fee until the transaction has been consummated or terminated unless otherwise agreed in writing by all parties to the transaction.

(e) A broker shall make available, for inspection by the commission and its duly authorized representatives, all records relating to the broker's real estate business. Such records shall be kept in a form and for a term prescribed by the commission. An inspection shall be made at such time as the commission directs.

(f) The requirement of maintaining a trust account shall not apply to: (A) A broker whose license is on deactivated status; (B) a broker who acts as an associate broker; (C) a broker who is an officer of a corporation, a member of an association or a partner of a partnership

and who is not the supervising broker of an office of a corporation, association or partnership; or (D) a broker whose real estate activities, in the opinion of the commission, do not necessitate the holding of trust funds.

(g) Upon acceptance of an offer and deposit of earnest money in a broker's trust account, such deposit may be disbursed only:

- (1) Pursuant to written authorization of buyer and seller;
- (2) pursuant to a court order; or
- (3) when a transaction is closed according to the agreement of the parties.

(h) Nothing in this section shall prohibit the parties to a real estate contract from agreeing, in the sales contract, to the following procedure:

"Notwithstanding any other terms of this contract providing for forfeiture or refund of the earnest money deposit, the parties understand that applicable Kansas real estate laws prohibit the escrow agent from distributing the earnest money, once deposited, without the consent of all parties to this agreement. Buyer and seller agree that failure by either to respond in writing to a certified letter from broker within seven days of receipt thereof or failure to make written demand for return or forfeiture of an earnest money deposit within 30 days of notice of cancellation of this agreement shall constitute consent to distribution of the earnest money as suggested in any such certified letter or as demanded by the other party hereto."

(i) The commission may direct a broker to remit moneys from the broker's trust account to the commission for deposit into the real estate recovery revolving fund established within the state treasury by K.S.A. 58-3023 and amendments thereto, upon the following determinations having been made by the commission:

(1) That the money has been in the broker's trust account for five or more years;

(2) if the money was an earnest money deposit, that an earnest money dispute existed or the broker did not obtain written authorization of buyer and seller to disburse the funds; and

(3) that the funds do not meet the criteria for payment to the state treasurer under the disposition of unclaimed property act. (L. 1980, ch. 164, § 28; L. 1983, ch. 76, § 7; L. 1986, ch. 209, § 13; L. 1991, ch. 163, § 4; July 1.)

**58-3062. Prohibited acts.** (a) No licensee, whether acting as an agent or a principal, shall:

(1) Intentionally use advertising that is misleading or inaccurate in any material particular or that in any way misrepresents any property, terms, values, policies or services of the business conducted, or uses the trade name, collective membership mark, service mark or logo of any organization owning such name, mark or logo without being authorized to do so.

(2) Fail to account for and remit any money which comes into the licensee's possession and which belongs to others.

(3) ~~Misappropriate moneys required to be deposited in a trust account pursuant to K.S.A. 58-3061 and amendments thereto, convert such moneys to the licensee's personal use or commingle the money or other property of the licensee's principals with the licensee's own money or property, except that nothing herein shall prohibit a licensee from depositing in a trust account a sum not to exceed \$100 to pay expenses for the use and maintenance of such account.~~

(4) Accept, give or charge any rebate or undisclosed commission or pay a referral fee to a person who is properly licensed as a broker or salesperson in another jurisdiction or who holds a corporate real estate license in another jurisdiction if the licensee knows that the payment of the referral fee will result in the payment of a rebate by the out-of-state licensee.

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(A) K.S.A. 58-3061 and amendments thereto; or  
(B) subsection (a)(2), (3), (22), (27) or (28) or subsection (d)(2) of K.S.A. 58-3062 and amendments thereto; or

(2) obtaining money or property by any act which would constitute any crime defined by K.S.A. 21-3701, 21-3704, 21-3705, 21-3706, 21-3707, 21-3710, 21-3711 or 21-3712, and amendments thereto.

(b) Any person may seek recovery from the real estate recovery revolving fund under the following conditions:

(1) Such person has received final judgment in a court of competent jurisdiction of this state in any action wherein the cause of action was based on any of the acts described in subsection (a);

(2) the claim is made within two years after the date that final judgment is entered;

(3) such person has caused to be issued a writ of execution upon such judgment, and the officer executing the same has made a return showing that no personal or real property of the judgment debtor liable to be levied upon in satisfaction of the judgment could be found, or that the amount realized on the sale of the judgment debtor's property pursuant to such execution was insufficient to satisfy the judgment;

(4) such person has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets, subject to being sold or applied in satisfaction of the judgment, and by such search such person has discovered no such property or assets, or that such person has discovered such property and assets and that such person has taken all necessary action and proceedings for the application thereof to the judgment and that the amount thereby realized was insufficient to satisfy the judgment;

(5) any amounts recovered by such person from the judgment debtor, or from any other source, has been applied to the damages awarded by the court; and

(6) such person is not a person who is precluded by subsection (c) from making a claim for recovery.

(c) A person shall not be qualified to make a claim for recovery from the real estate recovery revolving fund, if:

(1) The person is the spouse of the judgment debtor or a personal representative of such spouse;

(2) the person acted as principal or agent in the real estate transaction which is the subject of the claim and is a licensed broker or salesperson or is a partnership, association or corporation whose partners, members, officers and employees are licensed as provided by subsection (b) of K.S.A. 58-3042 and amendments thereto; or

(3) such person's claim is based upon a real estate transaction in which the licensed broker or salesperson was acting on the broker's or salesperson's own behalf with respect to property owned or controlled by such broker or salesperson. (L. 1980, ch. 164, § 35; L. 1981, ch. 304, § 4; L. 1986, ch. 209, § 18; L. 1986, ch. 210, § 3; L. 1989, ch. 167, § 8; L. 1992 ch. —, § 2, July 1.)

**58-3069.** Same; court order directing payment from, when; hearing; recovery limitation; attorney fees. (a) Any person who meets all of the conditions prescribed by subsection (b) of K.S.A. 58-3068 and amendments thereto, except where the court finds compliance not reasonable or practicable pursuant to subsection (b), may apply to the court in which the judgment was rendered for an order directing the real estate commission to cause payment to be made to such person from the real estate recovery revolving fund. At the time the application is made, the court shall cause notice thereof to be given to the director of the commission, stating the time set by the court for a hearing thereon, which shall not be less than 10 nor more than 30 days after the application is filed.

(b) At the hearing, the claimant shall appear and present such proof and evidence as the court may require to establish the claimant's right to recovery from the real estate recovery revolving fund, and the director of the commission may appear, in person or by counsel, and present evidence or testimony with respect thereto. Upon the hearing, the court may enter an order directing the director of the commission to cause payment to be made to the claimant from the real estate recovery revolving fund if the court determines that:

(1) The claimant meets all of the conditions prescribed by subsection (b) of K.S.A. 58-3068 and amendments thereto; or

(2) compliance with subsection (b)(4), (5) or (6) of K.S.A. 58-3068 and amendments thereto is not reasonable or practicable and the claimant is otherwise qualified and has pursued all reasonable means to collect the amount of the judgment or the unsatisfied portion thereof.

(c) The recovery allowed a claimant hereunder shall be the lesser of:

(1) An amount equal to that part of the unsatisfied portion of the judgment which reflects actual or compensatory damages plus the amount of any reasonable attorney fees incurred by the claimant in effecting recovery hereunder; or

(2) \$15,000. (L. 1980, ch. 164, § 36; L. 1981, ch. 304, § 5; L. 1986, ch. 210, § 4; July 1.)

**58-3070.** Same; duties of commission in recovery actions; fees and expenses of counsel. When the director of the commission receives notice of any action or hearing, as provided in K.S.A. 58-3068 and 58-3069, and amendments thereto, the director may intervene, enter an appearance, file an answer, defend the action or take whatever other action the director deems appropriate on the behalf and in the name of the defendant, and may take recourse through any appropriate method of review on behalf of, and in the name of, the defendant. All fees and expenses of counsel hired by the commission for the performance of duties for the commission hereunder shall be paid out of the real estate recovery revolving fund. (L. 1980, ch. 164, § 37; L. 1981, ch. 304, § 6; L. 1986, ch. 210, § 5; July 1.)

**58-3071.** Same; conditions on court order of directing payment. Any order of the court issued pursuant to K.S.A. 58-3069 shall be conditioned as follows:

(a) Upon receipt by the claimant of the payment from the real estate recovery revolving fund, the claimant shall assign the claimant's right, title and interest in the judgment, to the extent of such payment, to the director of the commission, and thereupon the director shall be subrogated to such right, title and interest of the claimant; and any amount subsequently recovered on the judgment by the director, to the extent of the director's right, title and interest therein, shall be for the purpose of reimbursing the real estate recovery revolving fund.

(b) If the limitations on payments from the real estate recovery revolving fund, as prescribed by K.S.A. 58-3067, preclude payment of the entire amount stated in the court's order, the director of the real estate commission shall be obligated to cause payment to be made therefrom only to the extent permitted under K.S.A. 58-3067. (L. 1980, ch. 164, § 38; July 1.)

**58-3072.** Same; payment from in settlement of claim; revocation of license until reimbursement of amount paid. Upon the payment of any amount from the real estate recovery revolving fund in settlement of a claim in satisfaction of a judgment against a licensed broker or salesperson, the license of such broker or salesperson shall be automatically revoked. No such broker or salesperson shall be eligible to receive a new license until the broker or salesperson has

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repaid in full the amount paid from the real estate recovery revolving fund on such broker's or salesperson's account plus interest on that amount at the rate provided by K.S.A. 16-204 and amendments thereto for a judgment rendered on the same date that the amount was paid from the fund. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this section. (L. 1980, ch. 164, § 39; L. 1986, ch. 210, § 6; July 1.)

58-3073. Same; unlawful acts; penalty. It shall be unlawful for any person or such person's agent to file with the commission any statement or other document, required under the provisions of K.S.A. 58-3066 to 58-3071, inclusive, and amendments of such sections, which is false or untrue or contains any material misstatement of fact. Violation of the provisions of this section is a class A misdemeanor. (L. 1980, ch. 164, § 40; L. 1981, ch. 304, § 7; July 1.)

58-3074. Disposition of moneys received by commission; real estate fee fund. (a) Except as provided by subsections (b) and (c), the director of the commission shall remit all moneys received by or for the director from fees, charges or penalties to the state treasurer at least monthly. Upon receipt thereof the state treasurer shall deposit the entire amount in the state treasury. Twenty percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the real estate fee fund established by former K.S.A. 58-3014, which fund is hereby continued in existence. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the director or by a person or persons designated by the director.

(b) The director of the commission shall remit to the state treasurer at least monthly all moneys received by or for the director pursuant to K.S.A. 58-3066 through 58-3072, and amendments thereto. Except as provided by subsections (b) and (d) of K.S.A. 58-3066 and amendments thereto, upon receipt of such moneys the state treasurer shall deposit the entire amount in the state treasury and credit it to the real estate recovery revolving fund.

(c) The director of the commission shall remit to the state treasurer at least monthly all moneys received by or for the director pursuant to K.S.A. 58-3050 and amendments thereto. Upon receipt thereof the state treasurer shall deposit the entire amount in the state treasury and credit it to the state general fund. (L. 1980, ch. 164, § 45; L. 1980, ch. 270, § 2; L. 1981, ch. 304, § 8; L. 1986, ch. 210, § 7; L. 1988, ch. 197, § 5; July 1.)

74-4201. Kansas real estate commission; membership. (a) The Kansas real estate commission shall consist of five members appointed by the governor. Subject to the provisions of section 1 of 1992 House Bill 3203, one member shall be appointed from each congressional district and the remainder from the state at large. Each member shall have been, for a period of five years immediately preceding the member's appointment, a citizen and a resident of Kansas. Not less than three members shall have been real estate brokers for five years and not less than one member shall have never engaged in business as real estate brokers and shall not be so engaged while serving on the commission.

(b) At the expiration of the term of any member of the commission, the governor shall appoint a successor for a term of four years and until a successor is appointed and qualifies. In the event of a vacancy in the membership of the commission, the governor shall appoint a member to serve for the unexpired portion of the vacated term and until a successor is appointed and qualifies. Each member of the commission shall, before entering upon the member's duties, take and file with the commission an oath to faithfully perform the duties of the office. (L. 1947, ch. 411, § 6; L. 1959, ch. 260,

§ 5; L. 1961, ch. 391, § 1; L. 1978, ch. 308, § 66; ch. 164, § 41; L. 1981, ch. 304, § 9; L. 1992, ch. —, § —, July 1.)

74-4202. Same; organization; duties; compensation and expenses; meetings; office; records; seal. (a) Within thirty (30) days after the appointment of the members to be regularly appointed within any year, the commission shall meet in the city of Topeka for the purpose of organizing by selecting from its membership a chairperson and such other officers as the commission may deem necessary and appropriate. A majority of the members of the commission shall constitute a quorum for the exercise of the powers or authority conferred upon it.

(b) The commission shall receive applications for, and issue licenses to, brokers and salespersons, as provided in this act and shall administer the provisions of this act. The commission may do all things necessary and convenient for carrying into effect the provisions of this act and may adopt rules and regulations not inconsistent with it. For the purpose of this act, the commission shall make all necessary investigations, and every licensee shall furnish to the commission such evidence as the licensee may have as to any violation of this act or any rules and regulations adopted hereunder. The commission may enforce any order by an action in the district court of the county where the alleged violator resides or where the violation allegedly occurred.

(c) Each member of the commission shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223 and amendments thereto.

(d) The commission shall hold meetings and hearings in the city of Topeka or at such places as it shall determine at such times as it may designate and on request of two (2) or more of its members.

(e) The commission shall maintain an office in the city of Topeka, and all files, records and property of the commission shall at all times be and remain therein. All records kept in the office of the commission under authority of this act shall be open to public inspection under such reasonable rules and regulations as the commission may prescribe.

(f) The commission shall adopt a seal by which it shall attest its proceedings. Copies of all records and papers required by law or the commission to be filed in the office of the commission, when duly certified by the director, assistant director or chairperson of the commission and attested by the seal of the commission, shall be received in evidence in all courts of the state of Kansas equally and with like effect as the originals. (L. 1947, ch. 411, § 7; L. 1970, ch. 223, § 2; L. 1974, ch. 348, § 69; L. 1980, ch. 164, § 42; July 1.)

74-4203. Same; director; employees; administrative expenses. (a) The commission shall employ a director, who shall keep a record of all proceedings, hearings, meetings, communications and official acts of the commission, and perform such other duties as the commission may require. The director shall call a meeting of the commission upon written request of two (2) or more of its members.

(b) The commission may employ such other employees as may be necessary, fix salaries of all its employees, and make such other expenditures as are necessary to properly carry out the provisions of this act. (L. 1947, ch. 411, § 8; L. 1980, ch. 164, § 43; July 1.)

74-4206. Duties of attorney general; independent counsel authorized. The attorney general shall render opinions to the commission on all questions of law relating to the interpretation of this act or arising in the administration thereof and shall act as attorney for the commission in all actions and proceedings brought by or against the commission under or pursuant to any of the provisions of this act. The commission may hire independent counsel when the commission deems appropriate. Except as provided by K.S.A. 58-3070 and amendments thereto, all fees and expenses of such inde-

STATE OF KANSAS

Frank D. Dunnick  
Bank Commissioner

Judi M. Stork  
Deputy Commissioner



OFFICE OF

**BANKING DEPARTMENT**  
**TOPEKA**

Kevin C. Glendening  
Assistant Deputy Commissioner

Ruth E. Glover  
Administrative Officer

**HOUSE BILL 2341**

**Testimony given by Judi Stork**  
**Deputy Commissioner**  
**Office of the State Bank Commissioner**

**February 18, 1993**

Mr. Chairman, Members of the Committee -- My name is Judi Stork. I am the Deputy Commissioner and I am here today on behalf of the Banking Department to present testimony on House Bill 2341. At this point in time the department is neither supportive of this bill or in opposition to such, primarily due to the limited information we have regarding this bill. We are, however, here to express general concerns that we have with House Bill 2341.

It is our understanding this bill will require that any escrow agent or escrow agency, that is operating in Kansas, apply for and receive a license from the Kansas Banking Department. Excluded from this are specific financial institutions, title insurance companies, attorneys, or any lending corporation which is supervised by an agency of the federal government or this state. From our understanding, escrow activities are not currently regulated and this bill would place regulatory oversight and examination of this business.

*House F D D*  
*Attachment 4*

One of our primary concerns is we do not have any information which indicates the current level of activity in this field. Are there ten agencies with 20 agents or are there 100 agencies with 250 agents? Given this unknown we cannot predict the fiscal impact this additional supervisory responsibility would have on our agency.

Additional staff members may be required to accept applications, issue licenses, supervise activities, examine the offices, and provide follow up oversight. Additionally, we are unsure of the task necessitated to seek out and find any illegally operating escrow agencies or agents. The fiscal impact as a result of this duty is undeterminable. Also, we are unsure if the Kansas Banking Department is the most appropriate place for oversight of this activity.

In reviewing the language of the bill, we have specific concerns of provisions within the bill. Examples of this would be whether or not the trust accounts, established by real estate companies holding earnest money of a buyer of real estate, would be considered an escrow account for purposes of this bill. Since such trust accounts within the real estate companies are closely supervised by the real estate commission, and since the company does not receive additional compensation for holding these funds, we would think this activity would be exempt from this act. Clarification of this issue would be warranted. Also, does this bill require the licensing of local title companies that are really agents for the title underwriter? Again, clarification is needed. Financial institutions and title companies, as well as attorneys, are exempted from licensing, however, escrow activities at banks and title companies are not

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currently reviewed by regulatory bodies. Is this exemption giving false comfort levels to consumers? We have other concerns with language we feel needs clarification. These comments are detailed and specific but I will be happy to share such with the committee if you so desire.

If the introduction of this bill is to avoid a recurrence of apparent fraud that happened with a local title insurance company here in Topeka, I am unsure if this bill will accomplish such goal. The reason for this is the defunct Topeka title insurance company most likely would have been exempted from licensing and examination required by the provisions of this bill, pursuant Section 2, (a) (2), line 36. Because of the clarifications and unknowns associated with this bill in its present form, we would ask the committee to refer this bill for further study before passage.

I will be happy to answer any questions from the committee.

TESTIMONY ON H B 2431

STATUTES RELATING TO CREDIT UNIONS

Presented to the

HOUSE COMMERCIAL, FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

William Bryant, Chairman

February 18, 1993

Mr. Chairman, Members of the Committee:

I am Wayne Warfel, Administrator of the Kansas State Department of Credit Unions. My agency is responsible for regulating 139 state chartered credit unions in the state of Kansas. My purpose today is to provide you with information about our bill which contains three statutes that have been revised as follows:

KSA 17-2219, which deals with expulsion of credit union members, has been re-written to improve clarity and remove areas of ambiguity from the existing statute.

KSA 17-2227, which deals with the handling of confidential information secured in the process of examining credit unions, has been entirely re-written. This was done primarily for three reasons, (1) to make it clear that all information obtained in the examination process is considered confidential, (2) to document that this information is the property of the state, and (3) clarify to whom confidential information may be provided and under what circumstances. The re-written statute as presented is very similar to the confidentiality statute banking presently uses.

KSA 17-2232, which deals with the credit union council is being amended to provide a technical correction clarifying who may submit individuals as candidates for council positions. When this statute was submitted last year, it was changed to restrict the submission of names of potential council members to only state chartered credit unions since the previous statute did not address this situation. The way the previous statute was written, it was possible that all candidates submitted could be from federally chartered credit unions over which our department has no regulatory authority. However, in making this change, we inadvertently restricted the list of candidates to only state chartered credit unions, which did not allow submission of names for the at large positions on the council.

I would like to respectfully ask the committee's support for this bill.

*J.D.D.*

*2-18-93*

*Attachment 5*