

Approved: 3/9/94
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Chairperson Richard Bond at 9:10 a.m. on March 8, 1994 in Room 529-S of the Capitol.

All members were present.

Committee staff present: William Wolff, Legislative Research Department
Fred Carman, Revisor of Statutes
June Kossover, Committee Secretary

Conferees appearing before the committee: James W. Parrish, Kansas Securities Commissioner
Stephen A. English, The Trust Company of Kansas

Others attending: See attached list

Senator Steffes moved to approve the minutes of the meeting of February 24 as submitted. Senator Praeger seconded the motion; the motion carried.

The chairman opened the hearing on **HB 2658**, which would amend two sections of the Kansas Security Act and enact one new section. James Parrish, Kansas Securities Commissioner, appeared as a proponent of this legislation. (Attachment #1.) Commissioner Parrish explained that section one would give the Kansas Security Agency authorization to participate in a centralized securities registration depository currently being formulated by the North American Securities Administrators Association. This would allow for simultaneous electronic filings nationwide with state and federal securities agencies. Section two would extend status comparable to that granted the Canadian government to securities issued or guaranteed by any foreign government with which the United States maintains diplomatic relations. Mr. Parrish advised that there is little need for extensive state oversight of foreign government mutual funds since these are regulated by the federal government.

Section three of **HB 2658** amends a transactional exemption found in KSA 17-1262(i) which exempts offers, but not sales, of securities for which a registration statement has been filed under the Kansas Securities Act and the Federal Securities Act. This is called registration by coordination or the "red herring" exemption and allows registered broker-dealers to solicit offers to buy securities during a waiting period after a registration statement has been filed, but before it is ordered effective. The amendment would extend the exemption to cover offers during the waiting period to those filed under either the Kansas Securities Act or the Federal Securities Act. In response to Senator Praeger's concern that the marketability of a security would affect whether not approval is given for sale, Mr. Parrish responded that he has seen nothing to indicate that marketing would affect the approval decision and that the product can only be offered by registered broker-dealers and there cannot be any sales until approval is given.

Senator Praeger made a motion, seconded by Senator Lee, to recommend **HB 2658** favorably. The motion carried. Senator Corbin will carry this bill.

The hearing was opened on **HB 2691**, relating to cemetery corporations and trust companies. Stephen English, The Trust Company of Kansas, appeared as a proponent of this legislation. (Attachment #2.) Mr. English informed the committee that reference to trust companies was deleted from Kansas statutes pertaining to cemetery merchandise contracts and this bill would amend the statutes to allow cemetery corporations to place permanent maintenance funds with trust companies located within the state. There were no questions and no further conferees. Mr. Carman advised that the Senate Local Government Committee has been assigned a bill (HB 2944) that amends the same statute that this bill does; however, passage of this bill would not affect HB 2944.

Senator Lee made a motion to pass **HB 2691** favorably and to place it on the Consent Calendar. The motion was seconded by Senator Corbin. The motion carried.

The chairman announced that the subcommittee assigned to consider the amendments to **SB 622** will meet at 9:00 a.m. on Monday, 3/14, and that **SB 828** has also been assigned to that subcommittee.

The committee adjourned at 9:42 a.m. The next committee meeting is scheduled for Wednesday, March 9.

GUEST LIST

SENATE

COMMITTEE: FINANCIAL INSTITUTIONS AND INSURANCE

DATE: 3/8/94

[illegible]

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Joan Finney
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James W. Parrish
Securities Commissioner

BEFORE THE SENATE COMMITTEE ON
FINANCIAL INSTITUTIONS AND INSURANCE

TESTIMONY IN SUPPORT OF HB 2658

by JAMES W. PARRISH
KANSAS SECURITIES COMMISSIONER
March 8, 1994

House Bill No. 2658 enacts one new section of the Kansas Securities Act (Act), and amends two sections.

New Section 1.

New Section 1 authorizes agency participation in a centralized securities registration depository (SRD). The SRD is a computerized system being implemented by the North American Securities Administrators Association (NASAA) to enable simultaneous electronic filings nation-wide with state and federal securities agencies. The SRD is intended to facilitate uniformity and efficiency of securities registrations. The subsections are necessary to allow coordination with NASAA and other agencies.

The new section is adopted from Sec. 420 of the Uniform Securities Act (1956), as amended. While we believe it will result in improved regulatory efficiency, it is not possible to estimate the savings this will bring.

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Section 2.

Section 2 amends K.S.A. 17-1261(b), which currently exempts securities issued or guaranteed by the Canadian government, and its political subdivisions. The amendment would extend comparable status to securities issued or guaranteed by any foreign government with which the United States maintains diplomatic relations.

Increasing globalization of securities markets has made debt and other securities issued by foreign governments (such as Euro bonds) an attractive investment option. Only two other states like Kansas restrict the exemption to Canadian issuers. The text is taken from the Uniform Securities Act as approved by the National Conference of Commissioners on Uniform State Laws. The following rationale is offered in support of this amendment:

- Foreign government securities are essentially a national matter and should not be subject to inconsistent state requirements.
- All foreign government securities must be registered with the Securities and Exchange Commission before being sold in any state. Because of the special scrutiny these issues receive at the federal level, state registration offers only minimal additional protection. Thus, this exemption removes a redundant layer of government "red tape."
- Government securities normally involve debt offerings which are sold by brokerage firms regulated by our agency.
- The amendment applies to securities issued or guaranteed by foreign governmental entities. Private foreign issuers are subject to the same registration laws as U.S. companies.

Section 3.

Section 3 amends a transactional exemption found in K.S.A. 17-1262(i). The law currently exempts offers (but not sales) of securities for which a registration statement has been filed under

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both the Kansas Act and the Federal Securities Act of 1933. This is called registration by coordination and is provided for by K.S.A. 17-1257. This is commonly called the "red herring" exemption. It allows registered broker-dealers to solicit offers to buy securities from customers during a waiting period after a registration statement is filed, but before it is ordered effective. The exemption is not currently available when a registration is filed only under the Kansas Act and not the federal act (registration by qualification or notification, K.S.A. 17-1256 and 17-1257). The amendment would extend the exemption to cover offers during the waiting period for the qualification and notification registrations if offered through registered broker-dealers.

This proposed change in Kansas law was prompted by recent federal amendments which expand the use of exemptions available under Regulation A and Regulation D, Rule 504, of the 1933 securities act. The proposed state amendment will allow the "red herring" exemption to be used in Kansas for these federally exempt offerings during the waiting period. This will enable more uniform and equitable treatment of smaller offerings but will not reduce the regulatory protection of Kansas investors (no sales can occur until offerings are reviewed and made effective by order).

The two proposed amendments to existing exemptions will have no discernible fiscal impact either on this agency, other governmental agencies or the general public. Nothing in HB 2658 will impact other state agencies.

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TESTIMONY FOR STEPHEN A. ENGLISH
IN FAVOR OF HOUSE BILL 2691
before
SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE
MARCH 8, 1994

My name is Stephen A. English. I reside at 304 Warren Way, Arkansas City, Kansas. I am President and a substantial owner of stock of The Trust Company of Kansas, headquartered in Wichita, Kansas. We currently manage over \$100 million of trust funds.

I come before this committee to speak in favor of House Bill 2691.

Back in 1989 when the legislature made significant amendments to the statutes pertaining to trust companies, references to "trust companies" were inadvertently deleted from a number of statutes pertaining to "cemetery merchandise contracts" in K.S.A. 16-320, et seq. and "cemetery corporations in K.S.A. 17-1311, et. seq. These statutes pertain respectively to the establishment of trusts whereby consumers can pay for various types of cemetery merchandise in advance; or where a percentage of the purchase price for a burial lot can be designated in trust for the cemetery's permanent maintenance fund for future use. In both situations, prior to 1989 trust companies had the power granted under those statutes to serve as trustee for these purposes. However, in 1989 the references to trust companies in K.S.A. 16-322, 16-324, 17-311 and 17-312 were deleted. These statutes, as currently written, give Kansas state banks the power to serve as trustees in these situations, but not

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trust companies.

Although K.S.A. 9-2101 enacted in 1989 prohibits trust companies chartered under the 1989 amendments from accepting deposits, the funds placed in trust for cemetery merchandise and cemetery maintenance funds are not "deposits" as contemplated by K.S.A. 9-2101. Instead, they are merely funds placed in trust that are no different from other funds placed in trust that trust companies manage every day pursuant to their fiduciary responsibilities.

Therefore, I request that this committee give favorable consideration to this bill.

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