

MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

The meeting was called to order by Chairman Ruth Teichman at 9:30 A.M. on February 20, 2008 in Room 136-N of the Capitol.

All members were present.

Committee staff present:

Melissa Calderwood, Kansas Legislative Research Department
Ken Wilke, Office of Revisor of Statutes
Bev Beam, Committee Secretary
Jill Shelley, Kansas Legislative Research Department

Conferees appearing before the committee:

Pat Lightner, HSBC
Richard Cram, Dept. Of Revenue
Sandy Praeger, Insurance Commissioner
Scott Colby, NAIFA, KS
Jim Hall, ACLI
Ron Hein, Life Settlement Institute
Bill Sneed, State Farm Insurance
Natalie Brunson, Wheeler, State Farm

Others attending:

See attached list.

The Chair called the meeting to order.

Hearing on:

SB 499 - concerning sales taxation; relating to bad debts; deductions or refunds; requirements and procedures

Melissa Calderwood gave an overview of SB 499. She said this bill makes amendments to the Kansas Retailers sales tax act to allow a private label credit card account, a seller or lender who makes a proper election pursuant to Subsection C, or an assignee or affiliate of such seller or lender, to be entitled to claim a deduction on its sales and use tax returns or file a claim for refund of the state sales tax that the seller has previously reported and paid to the department, if certain conditions are met as specified in the bill.

The fiscal note provided to the Division of the Budget by the Department of Revenue estimates there would be a decrease in state revenue by \$1.7 million in fiscal year 2009. Of that amount, the state general fund is estimated to decrease by \$1.5 million and the state highway fund is estimated to decrease by \$214,000 in fiscal year 2009. The bill also is estimated to decrease local reserves by some \$434,000 for fiscal year 2009 and there is additional information that is charted out to fiscal year 2013 where the total would be a negative \$2.493 million dollars. The Department of Revenue has indicated implementation of the bill would result in additional expenditures of \$18,500 to reissue its sales tax publication.

Pat Lightner, HSBC testified in support of SB 499. Ms. Lightner stated Kansas' sales tax laws impose 100% of the sales tax up front on the full amount of the expected purchase price in installment or credit sales at the time of the sale even though the customer has not paid the full sales price for the goods. She noted, however, the general rule of sales tax is that sales tax is due only on the purchase price actually paid. Therefore, to ensure that sales tax is paid only on the actual price paid for credit or installment sales, the legislature enacted K.S.A. 79-3674 to provide for a refund or deduction of the sales tax in credit sales if the customer defaults because the customer would not have paid the full sales price for the goods. Ms. Lightner continued, stating that approximately 22 states allow the deduction or refund proposed in SB 499. She said this same legislation has been either passed or is pending in 10 states. She said SB 499 would have no real revenue impact because it is a technical correction that clarifies that Kansas retailers are entitled to this refund. She said this bill allows sellers that outsource their financing and lenders who are assignees of sellers to be on the same level of competition as sellers who finance their own sales. She stated SB 499 clearly reflects legal, economic and

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practical realities of underlying business. (Attachment 1)

Richard Cram, Department of Revenue, testified in opposition to SB 499. Mr. Cram stated SB 499 is a dramatic departure from current Kansas law, which limits the ability to take a bad debt deduction on the sales tax returned to the retailer making the sale and collecting and remitting the sales tax. He said this proposal will allow private label credit card companies who were not a party to the original sales and did not report and remit the tax to the department, but who financed the sale, to receive sales tax refunds on uncollectible debt. He stated that the fiscal note on this proposal is estimated at negative \$1.7 million. He said in addition, this bill proposes changes to statute that are not in compliance with the Streamlined Sales and Use Tax Agreement and could jeopardize Kansas' membership-in-good standing status. He said for that reason alone, the Department must strongly oppose this bill. (Attachment 2)

The Chair closed the hearing on SB 499.

The Chair opened the hearing on SB 624 and stated this is the beginning of a two-day hearing. She said the hearing will be continued to February 26. She said only the proponents will be heard today.

Hearing on:

SB 624 - concerning viatical settlements; pertaining to stranger-originated life insurance (STOLI)

Sandy Praeger, Kansas Insurance Commissioner, testified in support of SB 624. The Commissioner stated a STOLI is an arrangement that allows an investor without an insurable interest to profit from a life insurance policy on a stranger's death. She said The Kansas Insurance Department, as a regulatory agency, has jurisdiction over viatical and life settlements. A STOLI arrangement uses the same life insurance policy as the viatical or life settlement but the method used to obtain the death proceeds is an attempt to circumvent state insurable interest statutes. These laws are proposed to assure that when an individual purchases a life insurance policy on another person's life, the beneficiary of the insured must have an insurable interest in the life of the insured. She continued that the Kansas Insurance Department will continue to educate consumers and the public who might be considering a life insurance settlement to be aware of possible results of a STOLI arrangement including: the legality of the arrangement, loss of insurance capacity, loss of privacy and potential tax consequences. She said many insurers now require the individual to sign a statement that they are not intending to sell the policy after using premium financing to buy the policy. The Commissioner noted that exceptions to the viatical settlement act allow individuals with a wide range of hardships to legitimately sell their life insurance policies for immediate cash. She said SB 624 adds the hardship exception, "when the sole beneficiary predeceases the insured." (Attachment 3)

The Chair asked Ken Wilke for an overview of SB 624. Mr. Wilke said SB 624 deals with amendments to the viatical act. Mr. Wilke handed out a chart that compares the existing statute sections stating what SB 624 and SB 601 are so you would have some way of comparing the two. He noted there is an overlap in the two in the definition sections and there is an overlap in the amendments to K.S.A. 40-5008, but other than that, the amendments cover different sections within the existing bill. The amendments are found on page 1, lines 18 through 23 and lines 34 through 36. The reason that this section has been repealed and reinserted as new language is there was a provision put into this bill that required this act section to be reviewed by the legislature under the review provisions under the Open Records Act. It had to be done by July 1, 2007, he said. The legislature did not review it, so as a result, the protections against disclosure of records under the open records act vanished as a matter of law. After discussions in the revisor's office, we decided that probably the easiest way to deal with this issue is to repeal the existing statute and put it back in. You will note we now show this provision has to be reviewed prior to July 1, 2013. That is the reason this particular section was repealed and then reenacted. The same is true for new section 2. This is K.S.A. 2007 supp. 40-5009. There are some amendments that were put in as proposed amendments for the statute. On Page 7, Line 4, where it says, "where possible fraud . . ." down to the end of line 10, that is all new language. On line 33 through 41 you essentially have all new language again. Here we have a situation that the right to rescind has been changed from the existing 15 days to now the earlier 60 calendar days after the contract is executed or 30 days after the viatical settlement proceeds have been sent. New section 3 has been requested by the Insurance Department. Section 4 on page 10 is basically going into 40-5001 and changing the name of the act so we are now talking about the viatical settlements act of 2008. Section 5 is basically

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the definition section. You will see on the chart a cross reference to the corresponding section in SB 601. What has happened is a fraudulent viatical settlement practice changed to include what is on page 12, line 10, which is STOLI. Section 6 amends 40-5003. This adds classes of people who have been deemed to have met the licensing requirements and create some exceptions.

The main change in Section 7 deals with policy settlement in five years of the date of issuance instead of two.

In Section 8 of this bill you will find that the amendments impose a fiduciary duty on the viatical settlement broker to represent only the interest of the viator. You will also see a change in the right of rescission from 15 days to 60 days after the viatical settlement contract is executed or 60 days after the proceeds have been paid.

Section 9 changes some time periods for certain violations from two years to five years.

Scott Colby, President, NAIFA Kansas, testified in support of SB 624. He said this bill would strengthen safeguards against stranger owned life insurance practices. He said NAIFA Kansas believes that stranger owned life insurance arrangements are not consistent with the intended purposes of insurable interest in Kansas. He said these arrangements erode principles designed to ensure that life insurance is used to protect the long term interest of parties associated with the insured. (Attachment 4)

The meeting adjourned at 10:30 a.m.