

MINUTES OF THE HOUSE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS

The meeting was called to order by Representative Harold Dyck at \_\_\_\_\_  
Chairperson

3:30 a.m./p.m. on January 19, 1984 in room 527-S of the Capitol.

All members were present except: Representative Ed Rogers

Committee staff present: Bill Wolff, Research Department  
Myrta Anderson, Research Department  
Bruce Kinzie, Revisor of Statutes Office  
Mitchell Lousch, Intern  
Virginia Conard, committee secretary  
Vickie Bender, assistant committee secretary

Conferees appearing before the committee:

Jim Maag, Kansas Bankers Association  
Eugene C. Hegarty, Bank Commissioner

Chairman Harold Dyck opened the first committee meeting of the 1984 legislative session with a welcome to all the committee members and an introduction of new staff members. He indicated that the committee probably would meet regularly on Tuesdays and Thursdays if legislation could be worked on those two days.

Jim Maag appeared before the committee with the proposal to amend KSA 1983 Supp 9-1101, as shown in Attachment I.

Maag also presented a proposal for amendment to KSA 9-1123, as shown in Attachment II.

Rep. David Louis moved that these two pieces of proposed legislation be introduced as committee bills. Rep. Bob Ott seconded the motion. Motion carried.

Dr Bill Wolff of the Research Department briefed the committee on HB2639 and spoke on recommendations of the interim committee on said bill.

Bank Commissioner Eugene Hegarty appeared before the committee with three proposals for legislative bills. See Attachment III.

Representative Dorothy Nichols moved that these three legislative proposals be introduced as committee bills. Representative Homer Jarchow seconded the motion. Motion carried.

The following bills were then considered and motions made, seconded and voted on:

HB2385. Rep David Miller moved that HB2385 be reported adversely. Rep Ken Francisco seconded the motion. Motion carried.

HB2109. Rep Ken Francisco moved that HB2109 be reported adversely. Rep David Miller seconded the motion. Motion carried.

SB319: Rep George Teagarden moved that SB319 be reported adversely. Rep Bob Ott seconded the motion. Motion carried.

HCR5024: Rep George Teagarden moved that HCR5024 be reported adversely. Rep David Louis seconded the motion. Motion carried.

The meeting was adjourned by the Chairman at 4:25.

The next meeting is Tuesday, January 24, 1984.



Section 1. K.S.A. 1983 Supp. 9-1101 is hereby amended to read as follows:

9-1101. Any bank hereby is authorized . . .

(18) to buy, hold and sell mortgages, stock, obligations and other securities which are issued or guaranteed by the Federal Home Loan Mortgage Corporation under sections 305 and 306 of the Federal Act known as the Federal Home Loan Mortgage Corporation Act (P.L. 91-351) and amendments thereto;

(19) to buy, hold, and sell obligations or other instruments or securities, including stock, issued or guaranteed by the Student Loan Marketing Association created by public law 92-318 of the United States;

(20) to engage in financial future contracts, forward placement contracts and stand-by contracts on United States government and agency securities subject to such rules and regulations as the State Bank Commissioner may prescribe pursuant to K.S.A. 9-1713, and amendments thereto, to promote safe and sound banking practices;

(21) subject to such rules and regulations as the state bank commissioner may adopt pursuant to K.S.A. 9-1713, and amendments thereto, to promote safe and sound banking practices, upon recorded prior approval by the board of directors of the initial investment in a specific company, and pursuant to an investment policy approved by the board of directors which specifically provides for such investments, to buy, hold and sell shares of an open-end investment company registered with the Federal securities and exchange commission under the Federal Investment Company Act of 1940 and the Federal Securities Act of 1933 and of a privately offered company sponsored by an affiliated commercial bank, the shares of which are purchased and sold at par, and the assets of which consist solely of securities which may be purchased by the bank for its own account. Such shares may be purchased without limit if the assets of the company consist solely of and are limited to obligations that are eligible for purchase by the bank without limit. If the assets of the company include securities which may be purchased by the bank subject to limitation, such shares may be purchased subject to the limitation applicable to purchase by the bank of such securities.

Section 2. K.S.A. 1983 Supp. 9-1101 is hereby repealed.

Section 3. This act shall take effect and be in force from and after its publication in the statute book.

Proposed Bank Service Corporation Bill - Draft 11-15-83

Section 1. K.S.A. 9-1123 is hereby amended to read as follows: 9-1123. For the purposes of this act:

~~(a) The term "state supervisory agency" means the banking board of the state of Kansas and the state bank commissioner.~~

~~(b) The term "bank services" means services such as check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices, and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions performed for a bank;~~

(a) The term "bank service corporation" means a corporation organized to perform bank services for two or more banks, each of which owns part of authorized by this act, all of the capital stock of such corporation, and which is owned by one or more state or national banks at least one of which is a state bank subject to examination by a state supervisory agency the bank commissioner;

~~(d)~~ (b) The term "invest" includes any advance of funds to a bank service corporation, whether by the purchase of stock, the making of a loan, or otherwise, except a payment for rent earned, goods sold and delivered, or services rendered prior to the making of such payment.

(c) The term "depository institution" means a state or national bank, trust company, savings and loan association, saving's bank or credit union.

Sec. 2. K.S.A. 9-1124 is hereby amended to read as follows: 9-1124. (a) No limitation or prohibition otherwise imposed by any provision of state law exclusively relating to banks shall prevent any two or more banks state bank or banks from investing not more than ten percent (10%) 10% of the paid-in and unimpaired capital and unimpaired surplus of each of them in a bank service corporation. No bank shall invest more than 5% of its total assets in bank service corporations.

~~(b) If stock in a bank service corporation has been held by two banks, and one of such banks ceases to utilize the services of the corporation and ceases to hold stock in it, and leaves the other as the sole stockholding bank, the corporation may nevertheless continue to function as such and the other bank may continue to hold stock in it.~~

New Section 3. Without regard to the provisions of sections 4 and 5 of this act, a state bank may invest in a bank service corporation that performs, and a bank service corporation may perform, the following services only for depository institutions: check and deposit sorting and posting, computation and

posting of interest and other credits and charges, preparation and mailing of checks, statements, notices, and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions performed for a depository institution.

New Section 4. (a) A bank service corporation may provide to any person any service authorized by this section, except that a bank service corporation shall not take deposits.

(b) Except with the prior approval of the state bank commissioner and the state banking board, a bank service corporation shall not perform the services authorized by this section in any state other than this state, and all shareholders of a bank service corporation shall be located in this state.

(c) A bank service corporation in which a state bank is a shareholder shall perform only those services that such state bank shareholder is authorized to perform under the law of this state, and shall perform such services only at locations in this state in which such bank shareholder could be authorized to perform such services.

(d) A bank service corporation in which a national bank is a shareholder shall perform only those services that such national bank shareholder is authorized to perform under federal law and shall perform such services only at locations in this state at which such national bank shareholder could be authorized to perform such services.

(e) A bank service corporation that has both national bank and state bank shareholders shall perform only those services that may lawfully be performed by both its national bank shareholder or shareholders under federal law and its state bank shareholder or shareholders under the law of this state and shall perform such services only at locations in this state at which both its state bank and national bank shareholders could be authorized to perform such services.

(f) Notwithstanding the other provisions of this section or any other provision of law, other than the provisions of federal branching law and the branching law of this state regulating the geographic location of banks to the extent that those laws are applicable to an activity authorized by this subsection, a bank service corporation may perform at any geographic location any service, other than deposit taking, that the board of governors of the federal reserve system has determined, by regulation, to be permissible for a bank holding company under section 4(c)(8) of the federal bank holding company act.

New Section 5. (a) No state bank shall invest in the capital stock of a bank service corporation that performs any service under the authority of subsections (c), (d) or (e) of section 4 of this act without the prior approval of the state bank commissioner and the state banking board.

(b) No state bank shall invest in the capital stock of a bank service corporation that performs any service under authority of subsection (f) of section 4 of this act and no bank service corporation shall perform any activity under subsection (f) and section 4 of this act without the prior approval of the state bank commissioner and the state banking board.

(c) In determining whether to approve or deny any application for prior approval under this section, the state bank commissioner and the state banking board are authorized to consider the financial and managerial resources and future prospects of the bank or banks and bank service corporation involved, including the financial capability of the bank to make a proposed investment under this act, and possible adverse affects such as undue concentration of resources, unfair or decreased competition, conflicts of interest, or unsafe or unsound banking practices.

(d) In the event the state bank commissioner and the state banking board fail to act on any application under this section within 90 days of the submission of a complete application to them, the application shall be deemed approved.

Sec. 6. K.S.A. 9-1125 is hereby amended to read as follows: ~~9-125. Whenever a bank (referred to in this section as an "applying bank") subject to examination by a state supervisory agency applies for a type of bank services for itself from a bank service corporation which supplies the same type of bank services to another bank, and the applying bank is competitive with any bank (referred to in this section as a "stockholding bank") which holds stock in such corporation, the corporation must offer to supply such services by either (1) issuing stock to the applying bank and furnishing bank services to it on the same basis as the other banks holding stock in the corporation, or (2) furnishing bank services to the applying bank at rates no higher than necessary to fairly reflect the cost of such services, including the reasonable cost of the capital provided to the corporation by its stockholders, at the corporation's option, unless comparable services and competitive over all costs are available to the applying bank from another source, or unless the furnishing of the services sought by the applying bank~~ No bank service corporation shall unreasonably discriminate in the provision of any services authorized under this act to any depository institution that does not own stock in the service corporation on the basis of the fact that the nonstockholding institution is in competition with an institution that owns stock in the bank service corporation, except (1) it shall not be considered unreasonable discrimination for a bank service corporation to provide services to a nonstockholding institution only at a price that fully reflects all of the costs of offering those services, including the cost of capital and a reasonable return thereon; and (2) a bank service corporation may refuse to provide services to a nonstockholding institution if comparable services are available

from another source at competitive overall costs, or if the providing of services would be beyond the practical capacity of the service corporation. In any action or proceeding to enforce the duty imposed by this section, or for damages for the breach thereof, the burden shall be upon the bank service corporation to show such availability or practical capacity.

New Section 7. (a) Whenever a bank, or any subsidiary or affiliate of such bank that is subject to examination by the state bank commissioner,, causes to be performed for itself, by contract or otherwise, any services authorized under this act on or off its premises (1) such performance shall be subject to regulation and examination by the state bank commissioner to the same extent as if such services were being performed by the bank itself on its own premises, and (2) the bank shall notify the state bank commissioner of the existence of the service relationship within 30 days after the making of such service contract or the performance of the service, whichever occurs first.

(b) The state bank commissioner and the state banking board are authorized to adopt such rules and regulations as may be necessary to enable them to administer and carry out the purposes of this act and to prevent evasions thereof.

Sec. 8. K.S.A. 9-1123, 9-1124, 9-1125, 9-1126, and 9-1127 are hereby repealed.

Sec. 9. This act shall take effect and be in force from and after its publication in the statute book.

BILL NO. \_\_\_\_\_

AN ACT relating to banks and banking; concerning the change of control.

Be it enacted by the Legislature of the State of Kansas:

Section 1. As used in this act:

(a) "Control" means the power directly or indirectly to direct the management or policies of a financial institution or to vote 25% or more of any class of voting shares of a bank.

(b) "Bank" means a state bank incorporated under the laws of Kansas.

(c) "Commissioner" means the Kansas state bank commissioner.

(d) "Person" means an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization or any other form of entity not specifically listed in this subsection.

Sec. 2. It shall be unlawful for a person, acting directly or indirectly or through concert with one or more persons, to acquire control of any bank through purchase, assignment, pledge or other disposition of voting shares of such bank, except with the approval of the commissioner or as otherwise allowed by this act.

Sec. 3. (a) The commissioner shall be given at least 60 days' prior written notice of any proposed bank acquisition. If the commissioner does not issue a notice disapproving the proposed acquisition within that time or extend the period during which a disapproval may issue for another 30 days, the proposed acquisition shall stand approved. The period for disapproval may be further extended only if the commissioner determines that any acquiring party has not furnished all the information required under section 4 or that in the commissioner's judgment any

material information submitted is substantially inaccurate. An acquisition may be made prior to expiration of the disapproval period if the commissioner issues written notice of the commissioner's intent not to disapprove the action.

(b) Within three days after the commissioner's decision to disapprove any proposed acquisition, the commissioner shall notify the acquiring party in writing of the disapproval. The notice shall provide a statement of the basis for the disapproval.

(c) Within 10 days of receipt of such notice of disapproval, the acquiring party may request a hearing on the proposed acquisition. At the conclusion, the commissioner shall by order approve or disapprove the proposed acquisition on the basis of the record made at such hearing.

(d) Any person whose proposed acquisition is disapproved by the commissioner may appeal to the district court of the proper county within 60 days from the date of the commissioner's notice of disapproval.

Sec. 4. A notice of a proposed bank acquisition filed pursuant to section 3 shall contain the following information:

(a) The identity, personal history, business background and experience of each person by whom or on whose behalf the acquisition is to be made, including such person's material business activities and affiliations during the past five years and a description of any material pending legal or administrative proceedings in which the person is a party and any criminal indictment or conviction of such person by a state or federal court;

(b) a statement of the assets and liabilities of each person by whom or on whose behalf the acquisition is to be made, as of the end of the fiscal year for each of the five fiscal years immediately preceding the date of the notice, together with related statements of income and source and application of funds for each of the fiscal years then concluded, all prepared in accordance with generally accepted accounting principles

consistently applied, and an interim statement of the assets and liabilities for each such person, together with related statements of income and source and application of funds, as of a date not more than 90 days prior to the date of the filing of the notice;

(c) the terms and conditions of the proposed acquisition and the manner in which the acquisition is to be made;

(d) the identity, source and amount of the funds or other considerations used or to be used in making the acquisition and, if any part of these funds or other considerations has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction, the names of the parties, and any arrangements, agreements or understandings with such persons;

(e) any plans or proposals which any acquiring party making the acquisition may have to liquidate the bank, to sell its assets or merge it with any company or to make any other major change in its business or corporate structure or management;

(f) the identification of any person employed, retained or to be compensated by the acquiring party or by any person on such person's behalf to make solicitations or recommendations to stockholders for the purpose of assisting in the acquisition and a brief description of the terms of such employment, retainer or arrangement for compensation;

(g) copies of all invitations or tenders or advertisements making a tender offer to stockholders for purchase of their stock to be used in connection with the proposed acquisition; and

(h) any additional relevant information in such forms as the department may require by specific request in connection with any particular notice.

Sec. 5. The commissioner may disapprove any proposed acquisition if:

(a) The proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or attempt to monopolize the business of

banking in any part of this state;

(b) the effect of the proposed acquisition of control in any section of this state may be substantially to lessen competition or to tend to create a monopoly or the proposed acquisition of control would in any other manner be in restraint of trade and the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served;

(c) the financial condition of any acquiring person is such as might jeopardize the financial stability of the bank or prejudice the interests of the depositors of the bank;

(d) the competence, experience or integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be in the interest of the depositors of the bank or in the interest of the public to permit such person to control the bank; or

(e) any acquiring person neglects, fails or refuses to furnish the commissioner all the information required by the commissioner.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.

BILL NO. \_\_\_\_\_

AN ACT relating to banks and banking; concerning reserves; amending K.S.A. 9-1001 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 9-1001 is hereby amended to read as follows: 9-1001. Each bank shall maintain reserves against its deposits in such ratios as shall be determined from time to time by the commissioner with approval of the board. Such determinations by the commissioner and the board shall not be subject to the provisions of article 4 of chapter 77 of the Kansas Statutes Annotated, and amendments thereto.

The reserves shall be kept in cash in its vaults or in net balances with correspondent federal reserve banks, ~~national banks or state banks of this and other states, or both, but none of the stockholders of such depository bank shall be stockholders in the depositing bank, except when approved by the commissioner~~ or a pass through correspondent.

~~No bank shall make any new loan or pay any dividend unless, at the time, the required reserves are maintained. A bank shall be given credit against the reserve requirements determined by the commissioner with approval of the board for any reserves held as required by the laws or regulations of the federal government or agencies thereof.~~

Sec. 2. K.S.A. 9-1001 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

*Atch. III<sup>6</sup>*

BILL NO. \_\_\_\_\_

AN ACT relating to banks and banking; concerning certain qualifications for directors, officers and employees of banks.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) Except with the written consent of the commissioner, no person shall serve as a director, officer or employee of a bank who has been convicted, or who is hereafter convicted, of any crime involving dishonesty or a breach of trust.

(b) Any bank which willfully violates subsection (a), shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of \$100 for each day the violation continues.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

BILL NO. \_\_\_\_\_

AN ACT relating to banks and banking; concerning directors, officers and employees of banks and trust companies.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) Except with the written consent of the commissioner, no person shall serve as a director, officer or employee of a bank who has been convicted, or who is hereafter convicted, of any crime involving dishonesty or a breach of trust.

(b) Any bank which willfully violates subsection (a), shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of \$100 for each day the violation continues.

Sec. 2. Every bank and trust company shall report promptly to the commissioner any change, for whatever reason, in the chief executive officer or directors, including in its report a statement of the past and current business and professional affiliations of the new chief executive officer or directors.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

*Atch. III*