

Approved: _____

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 January 26, 1994 in Room 527-S of the Capitol.

All members were present except:

Representative Henry Helgersen, Excused
Representative George Teagarden, Excused
Representative Robert Watson, Excused

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

Conferees appearing before the committee: Chuck Stones, Kansas Bankers Association
James Maag, Kansas Bankers Association
JoLana Pinion, Assistant State Treasurer
Andrew Jetter, Federal Home Loan Bank
Kathy Taylor, Kansas Bankers Association

Others attending: See attached list

Hearing on HB 2654: Mortgages on real property. satisfaction thereof

Chuck Stones, Kansas Bankers Association, testified regarding the proposed amendment to Chapter 58 of Kansas Statutes (Attachment 1). The three areas addressed were:

1. Strikes the language prohibiting a mortgagee from charging the mortgagor a fee for releasing the mortgage.
2. Would allow any officer authorized by corporate resolution to execute a release of mortgage.
3. Repeal of an old law that makes it unlawful for a married person to give a non-purchase money security interest in exempt personal property unless both spouses consented. This law applies even where the property is solely owned by either the husband or wife.

Hearing on HB 2655: Safe deposit boxes. forcible entry

Chuck Stones, Kansas Bankers Association, explained the proposed amendment which would make it clear that when the last surviving lessee of a safe deposit box dies, an interested party and two employees of the bank may open the safe deposit "forcibly if necessary." (Attachment 2).

Hearing on HB 2657: Pledging guaranty bonds on state deposits

Jim Maag, Kansas Bankers Association, stated that the bill would allow banks to pledge guaranty bonds to secure that portion of state deposits which exceeds FDIC insurance coverage (Attachment 3).

JoLana Pinion, Assistant State Treasurer, offered a balloon amendment which would allow two additional options to financial institutions who hold state funds and one option for those which hold local dollars (Attachment 4). The first option is the use of Federal Home Loan Bank letters of credit. This is proposed for both state and local statutes. It is currently in use in Colorado with a variety of limitations. The second addition is the use of a surety bond policy which has been defined by the Kansas Bankers Association as a guaranty bond.

Andrew Jetter, Federal Home Loan Bank, stated that the proposed legislation would amend the definition of "security" (local and state deposits) to clarify that the term "obligations" with respect to United States sponsored enterprises includes letters of credit (Attachment 5). This would give the state more flexibility in dealing with public money. The states of Iowa and Colorado currently allow letters of credit issued by the Federal Home Loan Bank to be used as security for state and local government deposits.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,
Room 527-S Statehouse, at 3:30 p.m. on January 26, 1994.

Hearing on HB 2659: Machine readable instruments, definition

Kathy Taylor, Kansas Bankers Association, stated that the meaning of machine readable instruments was debit cards. These cards are used at ATM or point of sale terminals (Attachment 6). The proposed amendment would include a definition of what is considered to be an unauthorized transaction by a machine readable instrument. The customer would be liable for up to \$300 for an unauthorized transaction.

The meeting adjourned at 4:20. The next meeting is scheduled for January 27, 1994.

GUEST LIST

COMMITTEE:

P.L.D

DATE:

1-26-94

[illegible]

The Kansas Bankers Association

1500 Merchants National Bank Bldg.

Topeka, KS 66612

913-232-3444 FAX 913-232-3484

1-26-94

TO: House Financial Institutions and Insurance Committee

FROM: Chuck Stones, Director of Research

RE: HB 2654

Mr. Chairman and Members of the Committee:

The Kansas Bankers Association appreciates the opportunity to appear before you to discuss HB 2654. While HB 2654 amends Chapter 58 of Kansas Statutes it really addresses 3 separate issues. Please allow us to address these separately.

1) Page one, Lines 20 & 21 strikes the language prohibiting a mortgagee from charging the mortgagor a fee for releasing the mortgage. This language is in conflict with KSA 16-207(d) which allows the lender to *"collect from the borrower: (1) The actual fees paid a public official or agency of the state, or federal government, for filing, recording or releasing any instrument relating to a loan"*. Striking the language in 58-209a will allow the mortgage release to be governed by 16-207 similar to other promissory notes, and will eliminate the confusion created by the conflict between these two statutes.

2) HB 2654 (Page 2, Lines 9 & 10) also amends KSA 58-2318 to allow any officer authorized by corporate resolution to execute a release of mortgage. Current law provides that only the president, vice-president, secretary, cashier or treasurer of the corporation may do so. This bill allows the bank a little more flexibility. Especially in the case where the corporate offices are located in another city or county. As you know, consolidation is happening in the banking industry, making this situation more and more common. It may authorize, by corporate resolution, who may execute a release of mortgage.

3) Finally, it repeals KSA 58-312 which is an old law that makes it unlawful for a married person to give a non-purchase money security interest in exempt personal property unless both spouses consented. This law applies even where the property is solely owned by either the husband or the wife. It is important to understand that this law only covers non-purchase money security interests. That is, when the money borrowed is not used to purchase the item with the security interest. This law also only applies to exempt personal property. Exempt property includes household goods, a vehicle (up to \$20,000), and tools of the trade (up to \$7,500). However, Federal Reg AA prohibits a bank from taking a non-purchase money security interest in household goods, so in effect we are only dealing with vehicles and tools of the trade. It is also important to note that Federal Reg B, The Equal Opportunity Credit Act, requires only one signature on such a transaction. Normally, you would reason, where collateral is owned by just one person, it is not necessary to get the consent of that person's spouse to obtain a valid security interest on that property. But when a bank takes a non-purchase money security interest in a married person's car or tools of the trade, the bank must obtain consent of both spouses, even if the car / tools of the trade are owned by just one spouse. If the bank doesn't do so its security interest is invalid!

If 58-312 is repealed, when exempt personal property is owned by one person in a marriage relationship, the bank could take a non-purchase money security interest in that property with the consent of that person only. If the property is jointly owned, Reg B would allow the bank to require signatures of all the interested parties.

House F.D.D.

Attachment 1

January 26, 1994

Statute # 58-312

Chapter Chapter 58.--PERSONAL AND REAL PROPERTY

Article Article 3.--MORTGAGES AND CONDITIONAL SALES

Title Exempt personal property; joint consent of husband and wife required.

Text

It shall be unlawful for either husband or wife (where that relation exists) to create any lien or security interest other than a purchase money security interest upon any personal property owned by either or both of them, and now exempt by law to resident heads of families from seizure and sale upon any attachment, execution or other process issued from any court in this state, without the joint consent of both husband and wife; and from and after the time when this act shall take effect no agreement creating such a security interest shall be valid unless executed by both husband and wife: Provided, That this act shall not be construed to invalidate any

such lien or security interest except so far as relates to the exempt property covered thereby.

History

History: L. 1889, ch. 176, S. 1; L. 1901, ch. 103, S. 1; R.S. 1923, 58-312; L. 1965, ch. 564, S. 410; Jan. 1, 1966.

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The Kansas Bankers Association

1500 Merchants National Bank Bldg.

Topeka, KS 66612

913-232-3444 FAX 913-232-3484

1-26-94

TO: House Financial Institutions and Insurance Committee

FROM: Chuck Stones, Director of Research

RE: HB 2655

Mr. Chairman and Members of the Committee:

The Kansas Bankers Association appreciates the opportunity to appear before you to discuss HB 2655. HB 2655 as written would amend KSA 9-1504 to make it clear that when the last surviving lessee of a safe deposit box dies, an interested party and 2 employees of the bank may open the safe deposit box *"forcibly if necessary"*. Current law states the box may be opened but is silent as to the method that could be used in opening the box.

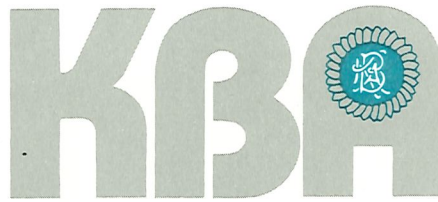
HB 2655 does not change the intent of current law, it merely gives the bank the clear authority to open a safe deposit box by force in the above mentioned circumstances. It is probable that many banks are currently opening the boxes by force since many times keys are not available. This bill would give them a higher comfort level upon doing so.

Other statutes give the bank the authority to forcibly open a safe deposit box when certain other circumstances are met. KSA 9-1506 and 9-1507 give the bank this authority for non-payment of rent on the box, and when the lessee fails to surrender the box when the lease has been terminated. HB 2655 simply spells out the banks authority in the specific instance when the last lessee has died.

The Kansas Bankers Association respectfully urges your favorable action on HB 2655.

JFD

*Attachment 2
Jan 26, 1994*



The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

January 26, 1994

TO: The House Committee on Financial Institutions and Insurance
RE: HB 2657 -- Pledging guaranty bonds on state deposits

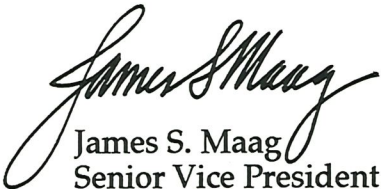
Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before the committee in support of HB 2657. The bill would allow banks to pledge guaranty bonds to secure that portion of state deposits which exceeds FDIC insurance coverage. This authority would be added to the existing list of acceptable securities for pledging as contained in K.S.A. 75-4201(p)(1-10). Another statute (K.S.A. 9-1402) already gives banks authority to pledge guaranty bonds on the deposits of local units of government.

A bank deposit guaranty bond is simply a bond issued by an insurance company guaranteeing all or part of a deposit in excess of \$100,000. Until this past year such bonds were not available, but a Kansas company is now offering such a bond to Kansas banks and other companies may offer a similar product in the future. A number of banks are using the bonds for local public funds pledging and have requested similar authority for state deposits. A brochure describing bank deposit guaranty bonds is attached to this testimony.

We have discussed this matter with the State Treasurer and she has suggested amendments to the bill which we believe to be acceptable. We would, therefore, request that the committee give favorable consideration to HB 2657 after adoption of the Treasurer's proposed amendments.

We appreciate your prompt consideration of this issue and will be happy to answer any questions concerning HB 2657.


James S. Maag
Senior Vice President

House File D
Attachment 3
Jan 26, 1994

Office of Executive Vice President • 1500 Merchants National Building
Eighth and Jackson • Topeka, Kansas 66612 • (913) 232-3444
FAX (913) 232-3484



BANK DEPOSIT GUARANTY BOND

INSURED DEPOSITS IN YOUR HOME TOWN BANK are safe and no longer limited to the \$100,000 FDIC insurance.

Investments not in a bank, such as Mutual Funds, Annuities, Stocks, etc. are types of investments which are not insured. You can lose your earnings and some or all of your principal investment when market conditions change. Your money is safer in a Bank.

Your deposits in the bank can now be insured in amounts up to **ten million dollars** (*One hundred times the \$100,000 insured by the FDIC.*)

Look to your local bank as the place to invest your money for the benefit of you and your community. Be certain your money is safe with a **BANK DEPOSIT GUARANTY BOND**.

CHECK WITH A BANK OFFICER TO SEE IF YOUR DEPOSITS QUALIFY FOR A BANK DEPOSIT GUARANTY BOND to protect your deposits in excess of the \$100,000.00 FDIC insurance.

What is a Bank Deposit Guaranty Bond?

A Bank Deposit Guaranty Bond is a bond issued by an insurance company guaranteeing that you will not lose your deposits if the bank fails.

Isn't my money already insured by the FDIC?

FDIC insures deposits up to \$100,000.00. The Bank Deposit Guaranty Bond insures your deposits which are in excess of the amount insured by FDIC. You need to consult your banker to assist you in determining whether your deposits are in excess of the FDIC \$100,000.00 limit.

Does the insurance company insure all deposits in the bank which are in excess of the \$100,000.00 FDIC insurance?

NO! The bank chooses which customers, accounts and amounts it wishes to insure. The bank sends in a form to the insurance company indicating the customer name, account numbers, and amount to be insured. The insurance company then issues a Bank Deposit Guaranty Bond in the name of the customer stating the accounts insured and the maximum amount for which those accounts are insured. The bank then gives you, the customer, the original Bank Deposit Guaranty Bond.

What kinds of deposits can be insured?

The insurance company does not restrict the kind of deposit which can be insured. Individual, Business, or Corporate accounts can be insured. Savings, checking, or Certificates of Deposit, and other types of deposit accounts can be insured.

I have several different accounts at the bank. Can one Bank Deposit Guaranty Bond cover all of my accounts?

Yes, multiple accounts owned by the same depositor can be listed on one Bank Deposit Guaranty Bond.

Our account is in both mine and my wife's name. Can we both be listed on a Bank Deposit Guaranty Bond.

Yes, multiple joint owners of accounts can be named on the Bank Deposit Guaranty Bond.

What is the maximum I can have insured?

A well-run well-capitalized bank which is eligible to purchase the Bank Deposit Guaranty Bond can purchase up to \$10,000,000.00 in total coverage for all accounts at that bank. The bank has the option to choose what customers and accounts will be issued a Bank Deposit Guaranty Bond and the dollar amount which that bond will cover.



How will I know if my deposit is covered by a Bank Deposit Guaranty Bond.

You will receive the original Bank Deposit Guaranty Bond issued in your name specifying your accounts and stating the amount of your coverage. The bank should have your Bank Deposit Guaranty Bond for delivery to you within one week of requesting the bond.

How long is the bond effective?

The Bank Deposit Guaranty Bond is effective from the date of issuance until you withdraw your deposits or the bond is canceled.

Who can cancel my Bank Deposit Guaranty Bond?

You as the customer can cancel the bond by completing the Surrender of Bond page and returning it to the bank or the insurance company.

The bank can cancel the bond by choosing not to pay the annual premium when due.

The insurance company can cancel the bond only for reasons allowed by law.

How will I know if the bond is canceled?

If the bank fails to pay a premium or if the insurance company cancels the bond, in either case, the insurance company is required to send you notice of such cancellation at least 90 days prior to the effective date of cancellation. The 90 day notice must be sent to you at your address specified in the bond. You will always have at least 90 days notice before the bond is canceled. This will provide you with adequate time to decide what, if any, action you should take to protect your funds.

KANSAS BANKERS SURETY COMPANY

611 Kansas Avenue
P. O. Box 1654
Topeka, Kansas 66601
(913) 234-2631

Rated **A+** (Superior)

by A. M. Best

SALLY THOMPSON
STATE TREASURER



OFFICE OF THE STATE TREASURER
900 SW JACKSON, SUITE 201
TOPEKA, KANSAS 66612-1235
(913) 296-3171 FACSIMILE: (913) 296-7950

January 26, 1994

TO: House Financial Institutions and Insurance Committee
The Honorable Bill Bryant, Chairman

RE: House Bill 2657

I am here today on behalf of State Treasurer Sally Thompson to speak in support of House Bill 2657 as amended in the attached balloon. Our version of 2657 allows two additional options to financial institutions who hold state funds and one option for those which hold local dollars. These options offer an alternative to the traditional pledging of statutorily defined financial instruments to protect public funds above the FDIC insured amounts in the unlikely event of a bank failure.

The State Treasurer is not opposed to the use of these options under certain circumstances and with proper safeguards built into the process. Consequently, we have inserted a provision in the definition of securities (K.S.A. 75-4201) which allows our office to accept or reject any item listed in the definition of securities. This choice currently exists in K.S.A. 9-1402 which governs the collateralization of local funds. We do believe policies should be written by the Pooled Money Investment Board which will govern the acceptance of these types of collateral. The noted amendment will allow us time to define these policies.

The first option is the use of Federal Home Loan Bank letters of credit. This is proposed for both state and local statutes. It is currently in use in Colorado with a variety of limitations.

The second addition is the use of a surety bond policy which has been defined by the Kansas Bankers Association as a "guaranty bond". It is my understanding that this is a specific type of surety bond currently issued by a single insurance company in Kansas. Surety bond language is currently included in our local public funds statute as well as in statutes of other midwestern states including Colorado, Missouri and Illinois, again with restrictions.

Our office is always interested in additional options for both public entities and private industry. The attached balloon provides the best of both worlds. Thank you for your time and attention as we continue to provide safety to tax dollars held in Kansas financial institutions at both the local and state levels.

House F.I. & I.
Attachment 4
January 26, 1994

HOUSE BILL No. 2657

By Committee on Financial Institutions and Insurance

1-18

9-1402

AN ACT relating to state moneys; concerning guaranty bonds; amending K.S.A. 1993 Supp. 75-4201 and ~~75-4218~~ and repealing the existing sections.

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

Section 1. K.S.A. 1993 Supp. 75-4201 is hereby amended to read as follows: 75-4201. As used in this act, unless the context otherwise requires:

(a) "Treasurer" means state treasurer.

(b) "Controller" means director of accounts and reports.

(c) "Board" means the pooled money investment board.

(d) "Bank" means a state or national bank doing business within the state of Kansas.

(e) "State moneys" means all moneys in the treasury of the state or coming lawfully into the possession of the treasurer.

(f) "Custodial moneys" means state moneys deposited with the treasurer which, in the written opinion of the attorney general, are required by contract, bequest or law to be segregated from other bank accounts.

(g) "Special moneys" means moneys which are required to be or are deposited in a custodial bank account or a fee agency account by the state or any agency thereof.

(h) "State bank account" means state moneys or special moneys deposited in accordance with the provisions of this act.

(i) "Operating account" means a state bank account which is payable or withdrawable, in whole or in part, on demand.

(j) "Investment account" means a state bank account which is not payable on demand but shall not include custodial accounts.

(k) "Market rate" means the average of the average equivalent yields, with equivalent maturities, of: (1) United States government securities; and (2) debt obligations of the following United States government agencies, federal home loan banks, federal national mortgage association and federal farm credit bank.

(l) "Investment rate" means a rate which is the equivalent yield for United States government securities having a maturity date as published in the Wall Street Journal, nearest the maturity date for

4-2

4-3

equivalent maturities. For liquidity investments, the 0-90 day rate shall be computed on the average effective federal funds rate as published by the federal reserve system for the previous week.

(m) "Custodial account" means a state bank account of custodial moneys.

(n) "Fee agency account" means a state bank account of any state agency consisting of fees, tuition or charges authorized by law prior to remittance to the state treasurer.

(o) "Disbursement" means a payment of any kind whatsoever made from the state treasury or from any operating account, except transfer of state or special moneys between or among operating accounts and investment accounts or either or both of them.

(p) "Securities" means, for the purposes of K.S.A. 75-4218, and amendments thereto, any one or more of the following

(1) Direct obligations of, or obligations that are insured as to principal and interest by, the United States government or any agency thereof and obligations and securities of United States sponsored enterprises which under federal law may be accepted as security for public funds.

(2) Kansas municipal bonds which are general obligations of the municipality issuing the same.

(3) Revenue bonds of any agency or arm of the state of Kansas.

(4) Revenue bonds of any municipality, as defined by K.S.A. 10-101, and amendments thereto, within the state of Kansas or bonds issued by a public building commission as authorized by K.S.A. 12-1761, and amendments thereto, if approved by the state bank commissioner, except (A) bonds issued under the provisions of K.S.A. 12-1740 *et seq.*, and amendments thereto, unless such bonds are rated at least MIG-1 or Aa by Moody's Investors Service or AA by Standard & Poor's Corp. and (B) bonds secured by revenues of a utility which has been in operation for less than three years. Any expense incurred in connection with granting approval of revenue bonds shall be paid by the applicant for approval.

(5) Temporary notes of any municipal corporation or quasi-municipal corporation within the state of Kansas which are general obligations of the municipal corporation or quasi-municipal corporation issuing the same.

(6) Warrants of any municipal corporation or quasi-municipal corporation within the state of Kansas the issuance of which is authorized by the state board of tax appeals and which are payable from the proceeds of a mandatory tax levy.

(7) Bonds of any municipal or quasi-municipal corporation of the state of Kansas which have been refunded in advance of their ma-

which may be accepted or rejected by the pooled money investment board

, including but not limited to letters of credit,

turity and are fully secured as to payment of principal and interest thereon by deposit in trust, under escrow agreement with a bank, of direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America. A copy of such escrow agreement shall be furnished to the treasurer.

(8) Securities listed in paragraph (13) of subsection (d) of K.S.A. 9-1402 and amendments thereto within limitations of K.S.A. 9-1402 and amendments thereto. ~~Such securities may be accepted or rejected by the treasurer.~~

(9) All of such securities shall be current as to interest according to the terms thereof.

~~(10)~~ Whenever a bond is authorized to be pledged as a security under this section, such bond shall be accepted as a security if: (i) In the case of a certificated bond, it is assigned, delivered or pledged to the holder of the deposit for security; (ii) in the case of an uncertificated bond, registration of a pledge of the bond is authorized by the system and the pledge of the uncertificated bond is registered; or (iii) in a form approved by the attorney general, which assures the availability of the bond proceeds pledged as a security for public deposits.

(q) "Savings bank" means a federally chartered savings bank insured by the federal deposit insurance corporation and doing business within the state of Kansas.

(r) "Savings and loan association" means a state or federally chartered savings and loan association insured by the federal deposit insurance corporation and doing business within the state of Kansas.

~~(s) "Guaranty bond" means a bond guaranteeing deposits in a bank, savings bank or savings and loan association, in excess of federal deposit insurance corporation insurance, underwritten by an insurance company authorized to do business in the state of Kansas.~~

Sec. 2. ~~K.S.A. 1993 Supp. 75-4218 is hereby amended to read as follows: 75-4218. (a) All state bank accounts shall be secured by pledge of securities as provided in this section or by pledge of guaranty bonds as defined by subsection (s) of K.S.A. 75-4201 and amendments thereto.~~

(b) The bank, savings bank or savings and loan association receiving or having a state bank account shall deposit or cause its agent, trustee or an affiliate bank having identical ownership as the bank receiving or having such account to deposit, securities owned by it, or by its agent or trustee holding securities on its behalf, or by such affiliate bank, in one of the following ways:

(1) Deposit with the treasurer.

A bond guaranteeing deposits in a bank, savings bank or savings and loan association, in excess of federal deposit insurance corporation insurance, underwritten by an insurance company authorized to do business in the state of Kansas.

(10)

(11)

K.S.A. 1993 Supp. 9-1402 is hereby amended to read as follows:

(See substitution on following two pages)

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(d) Any state or national bank, state or federally chartered savings and loan association or federally chartered savings bank may deposit, maintain, pledge and assign, or cause its agent, trustee or an affiliate bank having identical ownership as the bank receiving the deposit of public moneys or funds to deposit, maintain, pledge and assign, for the benefit of the governing body of the municipal corporation or quasi-municipal corporation in the manner provided in this act, securities owned by it directly or indirectly through its agent or trustee holding securities on its behalf, or owned by such affiliate bank, the market value of which is equal to 100% of the total deposits at any given time, and such securities may be accepted or rejected by the governing body of the municipal corporation or quasi-municipal corporation and shall consist of:

(1) Direct obligations of, or obligations that are insured as to principal and interest by, the United States of America or any agency thereof and obligations and securities of United States sponsored corporations which under federal law may be accepted as security for public funds;

, including but not limited to letters of credit,

(2) bonds of any municipal corporation or quasi-municipal corporation of the state of Kansas which have been refunded in advance of their maturity and are fully secured as to payment of principal and interest thereon by deposit in trust, under escrow agreement with a bank, of direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America;

(3) bonds of the state of Kansas;

(4) general obligation bonds of any municipal corporation or quasi-municipal corporation of the state of Kansas;

(5) revenue bonds of any municipal corporation or quasi-municipal corporation of the state of Kansas if approved by the state bank commissioner in the case of banks and by the savings and loan commissioner in the case of savings and loan associations or federally chartered savings banks;

(6) temporary notes of any municipal corporation or quasi-municipal corporation of the state of Kansas which are general obligations of the municipal or quasi-municipal corporation issuing the same;

(7) warrants of any municipal corporation or quasi-municipal corporation of the state of Kansas the issuance of which is authorized by the state board of tax appeals and which are

9-1402. Securities for deposits of public funds; securities not accepted; expenses. (a) Before any deposit of public moneys or funds shall be made by any municipal corporation or quasi-municipal corporation of the state of Kansas with any state or national bank, state or federally chartered savings and loan association or federally chartered savings bank, such municipal or quasi-municipal corporation shall obtain security for such deposit in one of the following manners prescribed by this section.

(b) Such bank, state or federally chartered savings and loan association or federally chartered savings bank may give to the municipal corporation or quasi-municipal corporation a personal bond in double the amount which may be on deposit at any given time.

(c) Such bank, state or federally chartered savings and loan association or federally chartered savings bank may give a corporate surety bond of some surety corporation authorized to do business in this state, which bond shall be in an amount equal to the public moneys or funds on deposit at any given time and such bond shall be conditioned that such deposit be paid promptly on the order of the municipal corporation or quasi-municipal corporation making such deposits.

payable from the proceeds of a mandatory tax

bonds of either a Kansas not-for-profit corporation or of a local housing authority that are rated at least Aa by Moody's Investors Service or AA by Standard & Poor's Corp.;

(9) bonds issued pursuant to K.S.A. 12-1740 *et seq.*, and amendments thereto, that are rated at least MIG-1 or Aa by Moody's Investors Service or AA by Standard & Poor's Corp.;

(10) notes of a Kansas not-for-profit corporation that are issued to provide only the interim funds for a mortgage loan that is insured by the federal housing administration;

(11) bonds issued pursuant to K.S.A. 74-8901 through 74-8916, and amendments thereto;

(12) bonds issued pursuant to K.S.A. 68-2319 through 68-2330, and amendments thereto; or

(13) (A) Negotiable promissory notes together with first lien mortgages on one to four family residential real estate located in Kansas securing payment of such notes when such notes or mortgages:

(i) Are underwritten by the federal national mortgage association, the federal home loan mortgage corporation, the federal housing administration or the veterans administration standards; or are valued pursuant to rules and regulations which shall be adopted by both the state bank commissioner and the savings and loan commissioner after having first being submitted to and approved by both the state banking board under K.S.A. 9-1713, and amendments thereto, and the savings and loan board. Such rules and regulations shall be published in only one place in the Kansas administrative regulations as directed by the state rules and regulations board;

(ii) have been in existence with the same borrower for at least two years and with no history of any installment being unpaid for 30 days or more; and

(iii) are valued at not to exceed 50% of the lesser of the following three values: outstanding mortgage balance; current appraised value of the real estate; or discounted present value based upon current federal national mortgage association or government national mortgage association interest rates quoted for conventional, federal housing administration or veterans administration mortgage loans.

(B) Securities under (A) shall be taken at their value for not more than 50% of the se-

curity required under the provisions of this section.

(C) Securities under (A) shall be withdrawn immediately from the collateral pool if any installment is unpaid for 30 days or more.

(D) A status report on all such loans shall be provided to the investing governmental entity by the financial institution on a quarterly basis.

(e) No state or national bank, state or federally chartered savings and loan association or federally chartered savings bank may deposit and maintain for the benefit of the governing body of a municipal or quasi-municipal corporation of the state of Kansas, any securities which consist of:

(1) Bonds secured by revenues of a utility which has been in operation for less than three years; or

(2) bonds issued under K.S.A. 12-1740 *et seq.*, and amendments thereto, unless such bonds have been refunded in advance of their maturity as provided in subsection (d) or such bonds are rated at least Aa by Moody's Investors Service or AA by Standard & Poor's Corp.

(f) Whenever a bond is authorized to be pledged as a security under this section, such bond shall be accepted as a security if (1) in the case of a certificated bond, it is assigned, delivered or pledged to the holder of the deposit for security; (2) in the case of an uncertificated bond, registration of a pledge of the bond is authorized by the system and the pledge of the uncertificated bond is registered; or (3) in a form approved by the attorney general, which assures the availability of the bond proceeds pledged as a security for public deposits.

(g) Any expense incurred in connection with granting approval of revenue bonds shall be paid by the applicant for approval.

27-6

~~(2) Deposit with a bank having adequate modern facilities for the safekeeping of securities and doing business in the state of Kansas, and which facilities shall have had the prior approval of the board. Any such bank receiving securities for safekeeping shall be liable to the state for any loss suffered by the state in the event such bank relinquishes the custody of any such securities contrary to the provisions of this act or rules and regulations adopted thereunder. No such deposit of securities shall be made in any facility owned or controlled directly or indirectly by the bank depositing the same.~~

~~(3) Deposit with the federal reserve bank of Kansas City, Missouri.~~

~~(4) Deposit with the federal home loan bank of Topeka, Kansas.~~

~~(5) Any combination of (1), (2), (3) and (4).~~

~~(c) Any such deposit of securities, except with the treasurer, shall have a joint custody receipt taken therefor with one copy going to the treasurer and one copy going to the bank, savings bank or savings and loan association which deposits such securities. In lieu of the initial deposit of securities provided for in this subsection (c), the treasurer or the treasurer's duly authorized deputy, for a period of not to exceed 10 calendar days, may accept the telephone assurance of a bank qualified as provided in (2) or (3) of subsection (b), that the depository bank has requested the issuance of a joint custody receipt with the state of Kansas, specifying the securities pledged, for the purpose of compliance with this section and that such joint custody receipt will be forthcoming.~~

~~(d) Securities deposited to comply with this section may be withdrawn on application of the bank, savings bank or savings and loan association depositing the securities, if such application is approved by the treasurer or the treasurer's duly authorized deputy for the reason that such deposit of securities is no longer needed to comply with this section or are required for collection by virtue of their maturity or for exchange. Securities withdrawn for collection by virtue of their maturity or for exchange shall be replaced within 15 calendar days, but until replaced the state shall retain a first lien on the withdrawn security or the proceeds therefrom.~~

~~(e) Operating accounts, investment accounts, fee agency accounts and custodial accounts shall be secured by pledge of securities the market value of which is equal to 100% of the amount of the account, less so much of any such account as is protected by the federal deposit insurance corporation or by pledge of guaranty bonds the value of which is equal to 100% of the amount of the account, less so much of any such account as is protected by the federal deposit insurance corporation. Any agency responsible for a fee agency ac~~

4-8

1 count shall transfer immediately all moneys not so secured to the
2 state treasurer for deposit in the state treasury.

3 Sec. 3. K.S.A. 1993 Supp. 75-4201 and ~~75-4218~~ are hereby re-
4 pealed.

9-1402

5 Sec. 4. This act shall take effect and be in force from and after
6 its publication in the ~~statute book~~.

Kansas register.

Federal Home Loan Bank Letters of Credit as
Security for State and Local Deposits

The proposed legislation amends the definition of "security" in K.S.A. 1993 Supp. 75-4201(p)(1) (state deposits) and K.S.A. 1993 Supp. 9-1402 (d)(1) (local deposits) to clarify that the term "obligations," with respect to United States sponsored enterprises, includes letters of credit. The purpose of the change is to allow the State Treasurer and local government units to accept letters of credit issued by the Federal Home Loan Bank of Topeka ("FHLB") as security for their deposits in banks and thrifts.

The FHLB is a United States sponsored enterprise chartered in 1932 and is one of twelve Federal Home Loan Banks. Its district is comprised of Kansas, Colorado, Nebraska and Oklahoma. The obligations of the FHLB are eligible security for deposits of federal funds. 12 U.S.C. § 1435. The FHLB is regulated and examined by the Federal Housing Finance Board, an agency of the United States Government. As of the end of 1993, the FHLB had over \$9 billion in assets, \$525 million of capital and the following membership composition: 288 commercial banks, 75 thrifts, and 5 credit unions.

The primary mission of the FHLB is to support housing lenders by providing a long-term source of funds using home mortgages as collateral. The FHLB is very conservative in its lending policies. It has not incurred a loss on an extension of credit in its entire 62-year history. The FHLB is rated AAA by Moody's Investors Service.

The FHLB issues unconditional, standby letters of credit. The letter of credit is a letter from the FHLB addressed to the beneficiary. The text of the letter provides that the beneficiary may present draws on the letter to the FHLB, which the FHLB will honor. In the case of the deposit of public funds, the beneficiary will be the State Treasurer or the local government entity. The letter of credit is the primary and direct obligation of the FHLB. It is unconditional in that the beneficiary need only present a draw; the beneficiary is not required to make any certification or representation in order to draw on the letter. The letter of credit is classified as a "standby" letter in that the intent is to only have a draw on the letter if the financial institution holding the deposit fails to honor the deposit.

The letter of credit is an independent obligation of the FHLB. The ability of the beneficiary to draw against the letter is not affected by the FHLB's ability to be reimbursed by the financial institution requesting the letter. The risk of reimbursement falls squarely and solely on the FHLB. The insolvency of the financial institution will not change the FHLB's obligation to pay under the letter of credit. Payment is made immediately upon demand by the beneficiary, making the letter of credit more easily convertible to cash than other types of collateral (e.g., marketable securities and home mortgages).

The states of Colorado and Iowa currently allow letters of credit issued by a Federal Home Loan Bank to be used as security for state and local government deposits.

House File D
Attachment 5
Jan 26, 1994



The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

January 26, 1994

TO: House Committee on Judiciary

FROM: Kathleen A. Taylor, Associate General Counsel
Kansas Bankers Association

RE: HB 2659: Unauthorized Transactions on Machine Readable Instruments

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before the Committee on the matter of amending the Kansas Banking Code as it relates to unauthorized transactions and machine readable instruments.

The term "machine readable instrument" as it is used in the Banking Code refers to what you and I call bank debit cards. These cards allow the bank customer to access his or her bank account through the use of an electronically encoded card and a machine that has the capacity to read the code. Typically this will be an ATM machine or a "point of sale" terminal. The difference between a bank debit card and a credit card is that the debit card gives a bank customer access to funds in a bank account, whereas the credit card allows the holder of the card to incur unsecured debt.

HB 2659 would amend KSA 9-1111d to include a definition of what is considered to be an "unauthorized transaction by a machine readable instrument". This term had not been defined by statute before, creating uncertainty for banks and for bank customers in some situations.

The definition which our bill incorporates is found in Federal Regulation E which also deals with debit cards. Regulation E governs debit cards issued by entities other than state-chartered banks, which would include national-chartered banks in Kansas.

The language of Regulation E attempts to address the gray areas by not only defining what an unauthorized transaction is, but also specifically stating certain transactions that are NOT included in the definition.

Situations that are specifically excluded, and so are considered authorized transactions for which the bank customer would be liable (but never in excess of \$300), include those instances where the debit card was given to another person by the bank customer and then the bank customer claims the transactions made were not authorized. The bank customer will be liable for transactions conducted by this person - unless the customer has notified the bank that transfers by that person are no longer authorized. Subsection (b) then defines what is considered "notification" to the bank.

unl(?)
House F&D
Attachment 6
Jan 26 1994

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In addition, the bank customer would be liable for any fraudulent transactions conducted by the bank customer and/or a co-conspirator . The final exemption just makes it clear that the bank is allowed to debit the customer's account for service fees, etc. that are permitted by law or that are agreed to by the bank customer and the bank.

In summary, this bill would clear up some confusion regarding unauthorized transactions for state-chartered banks offering machine readable instruments, by using definitions that are already in place for national-chartered institutions in Kansas.