

Approved: February 3, 1994

Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Chairperson Richard Bond at 9:07 a.m. on February 2, 1994 in Room 529-S of the Capitol.

Members present: Senators Corbin, Lawrence, Lee, Moran, Petty, Praeger, and Steffes.

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

Conferees appearing before the committee: James Maag, Kansas Bankers Association  
Judi Stork, State Banking Department  
Dean Hudgeons, Kansas Bankers Association  
Cliff Shinski, Investors Services Trust Company  
Patrick Alexander, Manhattan National Bank

Others attending: See attached list

Senator Steffes made a motion, seconded by Senator Lee to approve the minutes of the meeting of February 1 as submitted. The motion carried.

The chairman opened the hearing on **SB 540**, relating to the application process for the establishment of trust service desks and trust offices. James Maag, Kansas Bankers Association, appeared before the committee to explain that the this bill was a result of a request by a number of KBA members and has been recommended by the KBA Trust Division and the KBA State Affairs Division. (Attachment #1.) Mr. Maag urged consideration of this legislation and requested two amendments: to replace the language on pages 3-5 with the language originally intended since the language on these pages was inserted in error, and to strike an erroneous reference in KSA 9-2108(a) to subsection (d)(1) of KSA 9-2107. (Attachment #2.) Senator Bond reviewed for the committee the history and background of this legislation and stated that it is primarily a policy question of who should make decisions regarding establishment of trust branches and trust desks, the office of the Bank Commissioner or the State Banking Board.

Judi Stork, State Banking Department, appeared before the committee to provide information and clarification. (Attachment #3.) Ms. Stork advised that the Banking Department also has concerns about certain areas of the proposed legislation.

Dean Hudgeons, Kansas Bankers Association Trust Division, appeared in support of this legislation. (Attachment # 4.)

Cliff Shinski, Investor Services Trust Company of Overland Park, Kansas, offered testimony in opposition to **SB 540**. (Attachment #5.) Mr. Shinski stated that the bill will create a financial hardship and discourage competition for providing trust services.

Patrick Alexander, Manhattan National Bank, also appeared in opposition to this legislation, stating that passage of this legislation would, in his opinion, severely impact the ability of community banks in Kansas to offer the trust services desired by their customers. (Attachment #6.)

Mr. Daryl Craft of Guardian Trust Company submitted written testimony in opposition to **SB 540**. (Attachment #7.)

Chairman Bond assigned **SB 540** to a subcommittee consisting of Senator Steffes, Chair, Senator Hensley, and Senator Bond. The agenda for the subcommittee will be announced at a later date.

The committee adjourned at 10:04 a.m.

The next committee meeting is scheduled for Thursday, February 3.

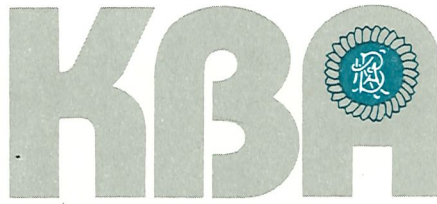
## GUEST LIST

SENATE

COMMITTEE: FINANCIAL INSTITUTIONS AND INSURANCE

DATE: 2-2-94

[illegible]



The KANSAS BANKERS ASSOCIATION  
A Full Service Banking Association

February 2, 1994

TO: Senate Committee on Financial Institutions and Insurance  
RE: SB 540 - Application Procedure for Trust Service Desks

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear in support of SB 540 which amends the banking code relating to the procedure for the establishment of a trust service desk by a "contracting trustee" (trust company or bank). The bill was requested by the KBA as the result of recommendations of the KBA Trust Division and the KBA State Affairs Committee. A task force composed of members of those two groups met in early December to discuss the best way to create a more "level playing field" when applications are made to provide trust services.

Under current law a trust service desk may be established by an agreement between a contracting trustee and an "originating trustee" (trust company, bank, s&l, or savings bank). Such an agreement would become effective unless the Bank Commissioner disapproves the agreement within 60 days after a notice has been filed by the interested parties. SB 540 would change this procedure to require the contracting trustee to file an application with the State Banking Board rather than with the Commissioner. It would also provide for a public hearing if there is any protest of the application. Final approval or disapproval of the application would be made by the Board rather than the Commissioner. Such approval or disapproval must occur within 90 days after consideration of the application by the Board.

The KBA State Affairs Committee believes this procedure which is the same as that for the establishment of a trust service office (branch) or a branch office of a bank which would offer trust services would create a fairness and uniformity which doesn't exist with the present statute. Since the originating trustee would be allowed to offer a full range of trust services once a trust desk was established - just as a trust service office or the branch office of a bank could do - it seems logical that the application procedure should be the same and should be approved by the same body. There is also the question as to whether the present trust desk procedure gives other banks in the community where the

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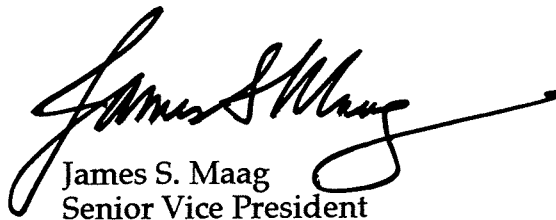
Attachment #1

desk is being established the same opportunity for public objection to the desk application as they have when a trust office or bank branch is being established.

There are those in the banking industry who believe the requirement of a full-fledged branch application process for a trust desk will discourage banks from the establishment of such desks and thereby deprive customers, particularly in smaller communities, of needed trust services. Thus the policy question for the Legislature becomes one of determining whether a uniform application process is more important than continuing the less formal process for establishment of trust services in Kansas communities.

We would direct the committee's attention to two additional amendments for consideration. One would be to reinsert the language beginning with the new sentence on line 11 on page 3 and ending on line 42 of page 3. This would retain language giving trust customers notice of impending changes and giving them authority to petition the court having jurisdiction over the fiduciary relationship to remove any contracting trustee or one about to be substituted as a fiduciary. The second amendment would amend K.S.A. 9-2108(a) to remove an erroneous reference to subsection (d)(1) of K.S.A. 9-2107.

We would simply ask the committee to give SB 540 serious consideration and determine whether this approach to trust service desk applications is superior to the one set forth in existing law. Thank you for your attention to this important banking issue.

  
James S. Maag  
Senior Vice President

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9 Trust service office; establishment or relocation; application. It shall be unlawful for any trust company to establish and operate any trust service office or relocate any existing trust service office except as provided in this act:

(a) For purposes of this section, the term "trust service office" means any office, agency or other place of business located within this state other than the place of business specified in the trust company's certificate of authority, at which the powers granted to trust companies under K.S.A. 9-2103 and amendments thereto are exercised. A trust service office shall not include a trust service desk established pursuant to ~~subsection (d)(1) of K.S.A. 9-2107 and amendments thereto;~~

(b) after first applying for and obtaining the approval of the state banking board, one or more trust service offices may be established and operated in any city with a population of 20,000 or more within this state by a trust company incorporated under the laws of this state;

(c) an application to establish and operate a trust service office or to relocate an existing trust service office shall be in such form and contain such information as rules and regulations of the state bank commissioner, adopted pursuant to K.S.A. 9-1713 and amendments thereto provide;

(d) the application shall include an affidavit of publication of notice that applicant trust company intends to file an application to establish a trust service office or relocate an existing trust service office. The notice shall be published in a newspaper of general circulation in the county where the applicant trust company proposes to locate the trust service office. The notice shall be in the form prescribed by the state banking board and at a minimum shall contain the name and address of the applicant trust company, the location of the proposed trust service office, a solicitation for written comments concerning the proposed trust service office to be submitted to the state banking board, and provide for a comment period of not less than 10 days prior to the board's final consideration of the application;

(e) upon receipt of an application meeting the above requirements, if there is any written objection to the application filed with the board, within 60 days after receipt of the application, the state banking board shall hold a hearing in the county in which the applicant trust company seeks to establish and operate a trust service office. If there is no written objection filed with the board within the time period specified under subsection (d), the board may hold a hearing on the application in such county. Notice of the time, date and

place of such hearing if one is to be held shall be published in a newspaper of general circulation in such county by the trust company seeking to establish and operate the trust service office not less than 10 or more than 30 days prior to the date of the hearing, and an affidavit of publication thereof shall be filed with the commissioner. Not less than 10 days or more than 30 days prior to any such date of the hearing, the commissioner shall give notice of the time, date and place of such hearing by registered or certified mail to all banks, national banking associations and trust companies having their principal place of business, branch banks or trust service offices in the county wherein the applicant trust company seeks to locate a trust service office. At any such hearing, all interested persons shall be allowed to present written and oral evidence to the board in support of or in opposition to the application. Upon completion of a transcript of the testimony given at any such hearing, the transcript shall be filed in the office of the commissioner and copies shall be furnished to the members of the state banking board not less than 14 days prior to the meeting of the board at which the application will be considered;

(f) The state banking board shall approve or disapprove the application within 90 days after consideration of the application and the evidence gathered during the board's investigation. If the board finds that:

(1) There is or will be at the time the trust service office is opened the need for same in the community to be served by it;

(2) there is a reasonable probability of usefulness and success of the proposed trust service office;

(3) the applicant trust company's financial history and condition is sound; and

(4) the proposed trust service office can be established without undue injury to properly conducted existing banks, national banking associations and trust companies, the application shall be granted, otherwise, the application shall be denied.

(g) Any final action of the board approving or disapproving an application shall be subject to review in accordance with the act for judicial review and civil enforcement of agency actions upon the petition of any adversely affected or aggrieved person who appeared and offered evidence at the hearing upon the application.

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"AN ACT relating to banks and trust companies; application process to contract for services; establishment of offices; amending K.S.A. 1993 Supp. 9-2107 and repealing the existing section."

Be amended:

On page 2, in line 27, after "(e)" by inserting "After first applying for and obtaining the approval of the state banking board,";

On page 3, by striking line 43;

On page 4, by striking lines 1 to 43, inclusive;

On page 5, by striking lines 1 to 32, inclusive and inserting the following:

"(f) An application to establish and operate a trust service desk shall be in such form and contain such information as rules and regulations of the state bank commissioner, adopted pursuant to K.S.A. 9-1713 and amendments thereto provide.

(g) The application shall include an affidavit of publication of notice that applicant contracting trustee intends to file an application to establish a trust service desk. The notice shall be published in a newspaper of general circulation in the county where the applicant contracting trustee proposes to locate the trust service desk. The notice shall be in the form prescribed by the state banking board and at a minimum shall contain the name and address of the applicant contracting trustee, the location of the proposed trust service desk, a solicitation for written comments concerning the proposed trust service desk to be submitted to the state banking board, and provide for a comment period of not less than 10 days prior to

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the board's final consideration of the application.

(h) Upon receipt of an application meeting the above requirements, if there is any written objection to the application filed with the board, within 60 days after receipt of the application, the state banking board shall hold a hearing in the county in which the applicant contracting trustee seeks to establish and operate a trust service desk. If there is no written objection filed with the board within the time period specified under subsection (d), the board may hold a hearing on the application in such county. Notice of the time, date and place of such hearing if one is to be held shall be published in a newspaper of general circulation in such county by the contracting trustee seeking to establish and operate the trust service desk not less than 10 nor more than 30 days prior to the date of the hearing, and an affidavit of publication thereof shall be filed with the commissioner. Not less than 10 days nor more than 30 days prior to any such date of the hearing, the commissioner shall give notice of the time, date and place of such hearing by registered or certified mail to all banks, national banking associations and contracting trustees having their principal place of business, branch banks, trust service offices or trust service desks in the county wherein the applicant contracting trustee seeks to locate a trust service desk. At any such hearing, all interested persons shall be allowed to present written and oral evidence to the board in support of or in opposition to the application. Upon completion of a transcript of the testimony given at any such hearing, the transcript shall be filed in the office of the commissioner and copies shall be furnished to the members of the state banking board not less than 14 days prior to the meeting of the board at which the application will be considered.

(i) The state banking board shall approve or disapprove the application within 90 days after consideration of the application and the evidence gathered during the board's investigation. If the board finds that:

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(1) There is or will be at the time the trust service desk is opened the need for same in the community to be served by it;

(2) there is a reasonable probability of usefulness and success of the proposed trust service desk;

(3) the applicant contracting trustee's financial history and condition is sound; and

(4) the proposed trust service desk can be established without undue injury to properly conducted existing banks, national banking associations, trust companies, trust service offices and trust service desks the application shall be granted, otherwise, the application shall be denied.

(j) Any final action of the board approving or disapproving an application shall be subject to review in accordance with the act for judicial review and civil enforcement of agency actions upon the petition of any adversely affected or aggrieved person who appeared and offered evidence at the hearing upon the application.

(k) A contracting trustee making application to the state banking board for approval of a trust service desk shall pay to the state bank commissioner a fee, in an amount established by rules and regulations adopted by the commissioner, to defray the expenses of the board, commissioner or other designees in the examination and investigation of the application. The commissioner shall remit all amounts received under this section to the state treasurer who shall deposit the same to a separate account in the state treasury for each application. The moneys in each such account shall be used only to pay the expenses of the board, commissioner or their designees in the examination and investigation of the application to which it relates and any unused balance shall be transferred to the bank commissioner fee fund.

(l) Whenever the state bank commissioner shall determine that any contracting trustee domiciled in the state has established a trust service desk in violation of the laws governing the operation of such contracting trustee, the

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commissioner shall give written notice to the contracting trustee of such determination. Within 15 days after receipt of such notification by the contracting trustee, the contracting trustee shall have the right to appeal in writing to the state banking board from the commissioner's determination, and thereupon the board shall fix a date for hearing, which hearing shall be held within 30 days from the date of such appeal and shall be conducted in accordance with the provisions of the Kansas administrative procedure act. At such hearing the board shall hear all matters relevant to the commissioner's determination and shall approve or disapprove the commissioner's determination, and the decision of the board shall be final and conclusive. If the contracting trustee does not appeal to the state banking board from the commissioner's determination or if an appeal is made and the commissioner's determination is approved by the board, the commissioner may proceed as provided in K.S.A. 9-1714 and amendments thereto, until such time that the commissioner shall determine that the contracting trustee has established its trust service desk in the manner required under the laws governing the operation of such contracting trustee.";

And the bill be passed as amended.

\_\_\_\_\_  
Chairperson

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# KANSAS

JOAN FINNEY  
GOVERNOR



## OFFICE OF THE STATE BANK COMMISSIONER

Frank D. Dunnick  
Bank Commissioner

Judi M. Stork  
Deputy Commissioner

Kevin C. Glendening  
Assistant Deputy Commissioner

William D. Grant, Jr.  
Staff Attorney

Ruth E. Glover  
Administrative Officer

TO: The Senate Committee on Financial Institutions and Insurance  
RE: Senate Bill 540  
DATE: February 2, 1994

Mr. Chairman and Members of the Committee:

I am here today on behalf of Commissioner Dunnick and the Office of the State Bank Commissioner to make some comments regarding Senate Bill 540. We do not view this bill as an issue of safety and soundness for banks or trust companies but we do have concerns about its effect on the availability of trust services in small communities. Our office is not in opposition to this bill but offers testimony more as "information givers."

First, let me make it clear the Commissioner does not consider this issue a turf war between he and the Banking Board. In fact, the Commissioner and staff enjoy a cooperative working relationship with the board members and do not consider themselves at war with the Banking Board as may have previously been suggested. The Board thoroughly reviews each application presented to them and acts in the best interest of the State of Kansas. I'm sure this additional duty would be handled in the same professional manner. Our concern lies in the effect this amendment may have on some Kansas banks, particularly small community banks.

When the "contracting trustee law" was first passed in 1989 the department viewed this legislation as accomplishing two goals. The first was to allow Kansas banks, which had relatively small trust departments, to contract with a trust company who could provide the expertise in the trust area. The second was to allow small community banks, without trust powers, the ability to provide a service to their customers without having to obtain a trust permit or hire additional personnel. I remember one former commissioner was supportive of this change in the law. He indicated to me, and I think to this committee, that it would allow him to have a trust company come into his bank, by his invitation, and service his customers. His alternative was to refer his customers to a larger bank down the street for their trust needs. By doing so, he risked losing his depository relationships with these customers.

Currently, we have seen a trend for banks to lease space in their banks, either an office or just a desk, to an annuity sales company or to an insurance company, in an effort to provide these additional services to their customers. The concept of the "contracting trustee" is very similar to this situation. It allows a bank to offer the additional service of trust activity.

Any application, when it is received by this office, is channeled through and reviewed by our Applications Review Examiner John Fowler. Whether the application is one submitted for action by the Commissioner or by the Banking Board, John reviews the application in much the same manner.

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The change in this law transferring the final consideration from the Commissioner to the Banking Board will have minimal effect on how the application is handled internally, with some exceptions. The primary change will be the added cost to the applicant associated with the consideration before the Banking Board. Rightly or wrongly, there is a certain amount of "intimidation" brought about by having to appear before the Banking Board. In almost all cases, an applicant will hire outside legal counsel and/or a consultant to put together applications and make presentations before the Board. Additionally, the establishment of a public hearing resulting from opposition to the application, results in added costs to the applicant for building rental, the cost of a court reporter, and the expense of supplying each of the nine banking board members with a transcript. While the concept of a public hearing is appropriate, we have never seen a public hearing mandated due to negative concerns by "the public." In all cases our experience has shown such hearings are held as the result of negative feedback from the applicant's proposed competition. Finally, there is no application fee currently in place for a contracting trustee agreement to be reviewed and acted upon by the Commissioner. The transfer of this duty to the banking board will impose such fee. In total, by transferring this duty to the Banking Board, an applicant will most likely incur increased costs of \$4,000 to \$10,000.

The issue has been raised by some that this increased cost will be born by the applicant, the contracting trustee, and should have no impact on the small community bank who wishes to provide this service. However, I would suggest that if a contracting trustee suddenly has his cost increase \$4,000 to \$10,000 prior to even opening his trust service desk, it may stifle his desire to establish a desk in a small community bank where net revenues may be marginal given the added expense.

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I also wish to bring to you attention some additional areas the department finds disconcerting.

1. Under subsection (e), we think language should be added to require arrangements between contracting trustees and financial institutions have approval in the same manner as subsection (b).
2. Under the old language, subsection (g) and (h), required the applicants to notify the trust account cofiduciary, surviving settlor of a trust, etc. of the pending agreement whereby their trust accounts were being transferred to the contracting trustee. The new language does not incorporate this. We think similar language should be included.
3. Under the new subsection (f), and throughout the entire portions that follow, the language is focused on an application for a "trust service desk" and does not address the issue of a contracting trustee agreement. The language of this bill should be modified to establish an approval process when a trust service desk is **NOT** established.
4. Concerns have been raised by the Banking Board that, under current law, if an individual associated with a trust account objects to having their trust transferred, their recourse is to file a petition with the court to have a new trustee, different than the contracting trustee, appointed to their trust. The banking board's concern was that such petition and transfer of their account could be quite costly to the trust account. The board questioned whether since this cost was incurred not by their own choice, but by the choice of the originating and contracting trustee, should reimbursement of the costs associated with the petition and transfer be paid by the contracting or originating trustee.

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5. Under the old subsection (f), the application was to include a copy of the agreement, the written action taken by the board of directors of the originating trustee or financial institution approving the agreement, and any other required regulatory approvals. We would like to see these items still listed under subsection (f) of the new language.

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Finally, Chairman Bond asked at the time of the introduction of this bill, for the banking department to offer some comments relating to the minimum statutory capital levels for a trust company. The appropriate capital level for a trust company is a difficult thing to address. Unlike the capital of a bank that is there to absorb the losses of the assets of the bank, the trust company has as its primary duty the oversight of a large amount of fiduciary assets. As a result of this, losses in such fiduciary assets generally would only affect the balance of that particular fiduciary account, not the capital of the trust company. Only if there was fraud on the part of the trust company's employees or in the case of negligence by the trustee, would the company have any of their own capital at risk. In these instances, insurance coverage for fraud and/or negligence would seem equally as important. The department would suggest an amendment to K.S.A. 9-1115 which addresses insurance coverage for banks and trust companies. We would suggest that trust companies be mandated to have a Financial Institution Crime Bond covering dishonest and fraudulent acts, an Errors and Omissions Bond covering breach of duty and negligence, and a Directors and Officers Bond covering the personal liability of directors and officers for breach of duty, negligence, and errors and omissions. We would suggest that the amount of the bond for trust companies be reviewed and approved for adequacy by the board of directors of the trust company, and then forwarded to the Commissioner for his review and approval. The current statute does not place the duty of determining an appropriate amount of coverage with the Commissioner. If the committee desires, a minimum coverage for each area could be established. I do not, however, have any suggested amount for minimum insurance levels to offer at this time. In reviewing the levels maintained on the Financial Institutions Crime Bond for the eight companies we regulate, the level of insurance varies between greater than \$2,000,000 (five of them) to \$500,000 (one of them). The department does not keep information on the other types of insurance carried by trust companies but I would be happy to survey those companies and share the findings with this committee.

I will be happy to answer any questions you may have.

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Date: February 2, 1994

To: Senate Committee On Financial Institutions and Insurance

From: Dean Hudgeons  
Chairman, Legislative Committee  
Kansas Bankers Association Trust Division

Re: Position Statement  
SB 540

I am Dean Hudgeons, Chairman of the Legislative Committee for the Kansas Bankers Association Trust Division. I would like to state the position of the KBA Trust Division, which is in support of Senate Bill 540.

We support the testimony given by Jim Maag of the Kansas Bankers Association, particularly the argument that the approval process for trust service branches and trust service desks should be uniform due to the fact that a Trust Service Provider would be providing virtually the same product through either a trust service branch or a trust service desk. Therefore, we feel that creating a uniform approval process would be the only fair method of ensuring that all entities wishing to provide trust services in the State of Kansas would receive fair treatment in their expansion plans.

This concludes my testimony.

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**COMMENTS IN OPPOSITION TO**  
**SENATE BILL 540**  
**BEFORE THE**  
**FINANCIAL INSTITUTIONS AND**  
**INSURANCE COMMITTEE**

By Clifford W. Shinski  
President and Founder  
The Investors Services Trust Company  
Overland Park, Kansas

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*Attachment # 5*



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**ORIGINAL INTENT OF CONTRACTING  
FOR TRUST SERVICES LEGISLATION IN (1989)**

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1. Enable banks with small unprofitable and perhaps understaffed Trust Departments, "Originating Trustee," to have an **administrative mechanism to turn their Fiduciary Responsibilities over to another Fiduciary** and make their Trust authority inactive.
2. Provide Financial Institutions without Trust Authority the ability to contract with a Trust Service provider, "Contracting Trustee," **to provide services to the institution's clients, and to furnish a Trust Service Desk in their facility for client convenience.**
3. The existing law provides a very timely and efficient way to accomplish those goals.

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## SENATE BILL 540 WILL CREATE INCONSISTENCY

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Passage of Senate Bill 540 will create an *inconsistency in the approval process* to provide Trust Services.

K.S.A. 9-1602 Granting of application; revoking trust authority; hearing.

(a) *The Commissioner* has the discretion to grant or reject the application of any bank to acquire trust authority.

(b) *The Commissioner* may revoke trust authority for any bank or trust company upon finding a failure to adhere to sound fiduciary practices.

K.S.A. 9-2107 (4) (g) Contracting for trust services.

*The Commissioner* may issue a notice disapproving any such application if the Commissioner determines the agreement fails to meet a public need and does not serve the public interest.

### EXAMPLE:

*The Commissioner* has the power to grant Trust Authority to the Bank A.

Bank B wishes to contract with Bank A to establish a Trust Services Desk for the convenience of Bank B's customers.

*Under Senate Bill 540 the Commissioner would not have the power to approve the relationship.* It would, instead, be vested in the Bank Board, creating an inconsistency in the overall process.

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## SENATE BILL 540 WILL DISCOURAGE COMPETITION

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### The Bill Discourages Competition for Providing Trust Services

- Requires substantial additional legal fees, approval fees and related expenses which are more easily obtained by large organizations.
- Unduly lengthens the time required for the approval process to be completed.
- Discourages smaller but very knowledgeable and efficient Trust Departments or Trust Companies from expanding services and creating additional jobs.

### 1993 Senate Bill 121 Created "Prudent Investor Standard"

- Good Legislation.
- Changed 44 year old law which was outdated.
- Encourages delegation of investment responsibilities where the Trustee does not have the skills to provide sophisticated investment advice.
- True benefit to Trust clients.

1994 Senate Bill 540 makes it more difficult for existing or potential clients to access skilled Trust Professionals.

There is a Division of the KBA on this issue. Larger Banks with Trust Powers may be in favor of restricting healthy competition, but what about the 249 State Chartered Banks without Trust Powers. How will they compete?

Keep the process for providing Trust Services Desks in those Banks simple and inexpensive.

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## PERSONAL EXPERIENCE IN PROVIDING TRUST SERVICES

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I have 24 years experience in the Trust field. I helped create the original legislation. The Investors Services Trust Company has worked for nearly five years to develop a knowledgeable and experienced staff, efficient computer system, and solid investment expertise into a system capable of contracting successfully with other Banks. Passage of this bill will place **additional unnecessary roadblocks** in our ability to develop such relationships.

The existing law **Requires Public Notice**. Anyone with an interest for or against the proposed arrangement can respond to the Bank Commissioner.

**The Bill eliminates the required notices to Grantors and Beneficiaries of Trusts involved** in the establishment of a contracting relationship and eliminates all references to their rights which were carefully considered in the original law.

**This Bill seems to simply discourage competition** which is in the best interest of Consumers of Trust Services. Please don't make it more difficult and expensive for those of us who wish to provide Trust Service Desks in Community Banks.

STATEMENT IN OPPOSITION TO SENATE BILL 540

BY Patrick L. Alexander, President  
Manhattan National Bank  
800 Poyntz Avenue  
Manhattan KS 66502  
913/537-2298

TO FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

DATE: February 2, 1994

MR. CHAIRMAN, OTHER COMMITTEE MEMBERS, THANK YOU FOR  
THE OPPORTUNITY TO DISCUSS SENATE BILL 540.

I AM SPEAKING TO YOU TODAY AS A BANK PRESIDENT WHO IS  
CURRENTLY IN THE PROCESS OF ESTABLISHING A TRUST SERVICE  
DESK, AND QUITE A PROCESS IT IS. BUT, MORE ON THAT IN A  
MOMENT.

WE CONVERTED FROM A SAVINGS AND LOAN TO A NATIONAL BANK  
A LITTLE OVER A YEAR AGO. WE MADE THE CONVERSION SO WE  
COULD OFFER A WIDER ARRAY OF FINANCIAL SERVICES TO OUR  
CUSTOMERS. AS WE MADE THE CONVERSION MANY OF OUR CUSTOMERS  
ASKED ABOUT TRUST SERVICES AND WHEN WE WOULD OFFER THEM. AS  
A MATTER OF FACT, WE DETERMINED THAT PROVIDING TRUST  
SERVICES WAS ESSENTIAL TO RETAIN SEVERAL EXISTING CUSTOMERS  
AND COMPETE EFFECTIVELY WITH THE LARGE MULTI-BANK HOLDING  
COMPANIES. AS A RESULT OF THIS DEMAND, WE BEGAN  
INVESTIGATING THE VARIOUS OPTIONS AVAILABLE TO US. WHAT WE  
FOUND WAS NOT ENCOURAGING. RESEARCH TOLD US THAT FOR SMALL  
COMMUNITY BANKS SUCH AS OURS, OBTAINING TRUST POWERS AND  
ESTABLISHING A TRUST DEPARTMENT IS VERY EXPENSIVE AND

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Attachment #6

RESULTS IN LOSSES FOR UP TO 7 YEARS. MOST COMMUNITY BANKS CANNOT WITHSTAND LOSSES FOR SUCH AN EXTENDED PERIOD OF TIME.

WE DID FIND THAT INITIATING TRUST SERVICES VIA CONTRACTING WITH A NON-DEPOSITORY TRUST COMPANY IS A VIABLE ALTERNATIVE. SUCH AN ARRANGEMENT ALLOWS US TO MEET OUR CUSTOMERS DEMANDS FOR SUCH SERVICES AND AT THE SAME TIME IS ACCEPTABLE TO OUR STOCKHOLDERS BY MINIMIZING POSSIBLE LOSSES.

THE CURRENT PROCESS FOR ESTABLISHING A TRUST SERVICE DESK IS TIME CONSUMING AND SUFFICIENTLY BUREAUCRATIC. WE HAVE HAD OUR REQUEST FOR APPROVAL TO THE OCC FOR OVER TWO MONTHS AND STILL HAVE NOT RECEIVED A RESPONSE. OF COURSE, ONCE THE OCC RESPONDS, WE STILL HAVE TO PUBLISH MULTIPLE NOTICES IN THE NEWSPAPERS AND WAIT AN ADDITIONAL 60 DAYS FOR THE STATE BANK COMMISSIONER'S APPROVAL. WHILE THIS MAY SOUND CRITICAL OF THE CURRENT PROCESS, IT IS NOT. THE CURRENT PROCEDURES SAFEGUARD FAIRNESS BY ENSURING THAT INTERESTED PARTIES HAVE AMPLE TIME TO VOICE THEIR OPPOSITION TO THE ESTABLISHMENT OF A TRUST SERVICE DESK AND TO SHOW CAUSE AS TO WHY INCREASED COMPETITION WILL NOT BE HEALTHY FOR THE COMMUNITY.

I FEEL VERY STRONGLY THAT SENATE BILL 540 ONLY PUTS UNNECESSARY ADDITIONAL IMPEDIMENTS ON SMALL COMMUNITY BANKS WHEN THEY ATTEMPT TO OFFER QUALITY SERVICES TO THEIR CUSTOMERS IN THE TRUST AREA. FURTHER, I FEEL SENATE BILL 540 IS NOT NECESSARY SINCE, AS I ALLUDED TO BEFORE, THE CURRENT PROCESS OFFERS THE NEEDED CHECKS AND BALANCES.

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MR. CHAIRMAN, I URGE YOU AND YOUR COMMITTEE TO NOT  
SUPPORT SENATE BILL 540. IF PASSED, THE BILL WILL SEVERELY  
IMPACT THE ABILITY OF COMMUNITY BANKS IN KANSAS TO OFFER  
TRUST SERVICES DESIRED BY THEIR CUSTOMERS.

THANK YOU AGAIN FOR THE OPPORTUNITY TO SHARE MY  
THOUGHTS WITH YOU ON THE ISSUE OF TRUST SERVICE DESKS. THIS  
IS A VERY REAL AND CURRENT ISSUE FOR THE CUSTOMERS OF  
MANHATTAN NATIONAL BANK.

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THE  
GUARDIAN  
TRUST  
COMPANY

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TESTIMONY AGAINST SENATE BILL 540

from Daryl V. Craft, President  
The Guardian Trust Company, Topeka, Kansas

Ladies and gentlemen, my name is Daryl Craft. I am the co-founder and President of The Guardian Trust Company. I am the Kansas Bankers Association Trust Division liaison to the Banking Department, but today I am not testifying on behalf of the Trust Division.

Senate Bill 540 would amend K.S.A. 9-2107, which was passed during the 1990 session of the legislature. I, as well as others in this room, participated in the committee meetings in 1989, and the Senate and House hearings in 1990, leading up to the implementation of the statute. The principal thrust of 9-2107 was to allow Kansas financial institutions, including banks, savings and loans and savings banks, to provide a resource for quality, professional trust services to their customers and others in the community in need of such services. It was contemplated that most of the institutions taking advantage of the statute would be smaller banks, some with trust departments, but most without.

The concern was raised at that time by the Banking Department that many of the trust departments in smaller banks were not adequately staffed with professional trust personnel. K.S.A. 9-2107 provides a means for those banks to contract with a trust company (or a bank trust department, as of the 1992 legislative session) to assume the liability for managing the trust accounts and to provide professional trust services. Those institutions without a trust department could contract with a trust company (or a bank trust department) to establish a trust service desk in that institution to provide trust services. The customers would be better served, and the bank would have access to a full time trust professional. 9-2107 provides for full disclosure to customers, and it provides a means for the customer to replace a

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contracting trustee if he or she is not satisfied. Further, it provides the Banking Department with the opportunity to fully review the contract, to study the proposed relationship between institutions, to obtain information on the personnel to be providing the trust services, and to review the financial adequacy of the contracting trustee.

Since its enactment, K.S.A. 9-2107, has performed as it was expected to. A number of financial institutions in the state have contracted with trust companies to provide trust services. It is my understanding that the Banking Department has had no difficulty in reviewing and approving contracting relationships under the current statute. To my knowledge, there are, as yet, no banks providing contracted trust services, but I would expect that it is only a matter of time before a bank makes application to do so.

Last year, I was one of the draftsmen of Senate Bill 179, which was passed and signed into law. That bill provides that trust companies may establish trust services offices. A trust service office is a stand alone facility to provide trust services. The application procedure for such an office is comparable to that necessary to establish a bank branch. At the time we drafted SB 179, we reviewed K.S.A. 9-2107 and determined that our proposed legislation to establish trust services offices would complement the contracting trustee provisions of 9-2107, and not replace them. I still believe that to be the case.

Two fundamental differences exist between a free standing trust service office and a contracted trust service desk. **First**, the desk is established at the invitation of an existing financial institution. As I have mentioned earlier, most likely that institution is a small commercial bank wishing to provide its customers with quality trust services. The desk will be located inside an established community financial institution. On the other hand, a trust service office will be a new, start-up branch with no ties to any other financial institution in the community. The **second** important difference between a contracted trust service desk and a trust service office is the financial cost to start and operate the desk or office. The desk would be located in an existing financial institution, and would be able to use the facilities available, including the building, furniture, phone and other utilities. A trust service office must secure office space, furnish the office and pay on going rent and utilities. The financial burden to a trust company or bank trust department to open and run a trust service office is much greater than that of a trust service desk.

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To now change the application and approval process for a trust service desk would be to create a regulatory and financial burden too great for most smaller institutions to bear. It has been estimated by some that the total cost of obtaining approval for a trust service desk under Senate Bill 540 would be between **three and eight thousand dollars!** For the bank with a small, unprofitable trust department, or for the financial institution with no trust department, this cost would effectively preclude them from taking advantage of the benefit of having trust services provided by a contracting trustee. The trust customer, or potential trust customer, is the one being harmed, and the whole purpose for K.S.A. 9-2107 is defeated.

There are three additional issues relating to the contracting of trust services which I will briefly discuss. The **first** issue is whether or not an institution that wishes to contract with a trustee should be required to first obtain trust powers from the Banking Department. It is my position that this is unnecessary and serves no purpose. The institution, which I will refer to as the originating financial institution, will not be providing trust services. It will have no liability to the trust customer, nor will it come under regulatory review for the trust services being provided by a contracting trustee. This situation is similar to that of a bank contracting for discount brokerage services through a correspondent bank. Banks are currently not required to obtain securities licenses for their employees who act as a go-between with the discount brokerage service, nor would we consider such licensing necessary.

When contracting for trust services, the issue of release from liability will be dealt with in the contract executed with the contracting trustee. Under the current statute, the Commissioner will review this contract. If the Commissioner feels the language is not properly worded to relieve the originating financial institution from any liability, he or she will require changes to be made before the contract will be approved. To require an originating financial institution to obtain trust powers before it can negotiate and execute a contract with a bank trust department or trust company to provide trust services will create an additional burden, and it defeats the purpose and intent of K.S.A. 9-2107.

The **second** issue I will address deals with suggestions by some that the Banking Department should review the safety and soundness of the originating financial institution before allowing that institution to enter into a contract with a trustee to provide trust services. Again, I would like to use the analogy of a bank contracting

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for discount brokerage services. We would be outraged if a regulator was required to review the bank for safety and soundness considerations before we could contract with a correspondent to provide discount brokerage services to our customers! In this example, the bank is not the provider of the service, it is merely a facilitator to get the customer in contact with the provider of services. The same situation exists between an originating financial institution and a contracting trustee. The originating financial institution has no liability to the customer, nor does it have exposure which would jeopardize its capital.

**Finally**, I have spoken with some bankers who have concerns about the relative safety of a trust customer with a trust company, as compared to a customer of a trust department of a bank. They are concerned that should a bank contract out its trust services to a trust company, that the trust customer might end up with a less safe institution. Some would argue that banks have capital, generally measured in the millions of dollars, while trust companies have capital measured in the hundreds of thousands of dollars. It is critically important to understand that capital in a bank serves an entirely different purpose than does capital in a trust company. Banks receive money from people (deposits) and then use that money to benefit the profitability of the bank and its owners (by making loans and purchasing securities in the bank's name). Should a loan fail or a security lose value, the bank has **risked its depositors' money**, and it must have capital to make those depositors whole again. If a bank has problems with a series of loans, as many of our Kansas banks have experienced with the farm crisis over the last several years, the bank must have lots of capital to protect its depositors' money.

With the exception of one trust company, Kansas trust companies cannot make loans, and trust companies cannot use their customer's funds for the company's own purpose! To do so is a criminal offense, punishable by fines and jail terms. Trust funds are invested for the benefit of each trust customer, and are titled either in that customer's name or in a nominee name which reflects the customers as the owners of the securities so held. A trust customer **cannot** lose money due to bad loans, so that reason for large amounts of capital does not exist. A trust customer **can** lose money due to market value declines in securities, due to gross misconduct of the employees or criminal actions by employees.

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Fluctuations in market values are an accepted risk when dealing with securities. Absent gross misconduct in purchasing the securities, or holding the securities past the point when a prudent person would have sold same, courts and statutes have held that trustees have no liability. Trust companies are required to purchase insurance to protect the customers where there has been gross misconduct or criminal conduct. This insurance is what protects the trust customer, not the company's capital. The Kansas Banking Department oversees the purchase of this insurance coverage.

In my seventeen years experience as a trust officer, I do not know of one single instance where a trust customer has lost money in a trust relationship, other than by market value declines. In every other instance, the insurance has made the customer whole again! This is a record that is not matched by the brokerage community, nor is it true when non trust professionals, such as attorneys or accountants, manage money for clients.

Many people do not realize that banks are not required to set aside or segregate capital for the trust department. When banking regulators review the capital adequacy of a bank, that capital is allocated to the lending, or at-risk, portion of the bank's business. No review is made to determine that the bank has sufficient capital to cover any lending losses and potential trust losses. Trust companies are the only regulated financial entities that have capital specifically for the trust operation. My own company, Guardian Trust, has more capital dedicated to the trust operation than does the largest bank in Kansas. I strongly believe, and the facts bear me out, that a regulated Kansas trust company is equally as safe as the trust department of a bank. And I believe that trust companies and banks should continue to be able to provide trust services to banks and other financial institutions under K.S.A. 9-2107, without change.

I thank you very much for your time!

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