

MINUTES OF THE House COMMITTEE ON Commercial & Financial Institutions

The meeting was called to order by Representative Harold P. Dyck at
Chairperson

3:30 ~~am~~/p.m. on March 23, 1983 in room 527-S of the Capitol.

All members were present except:

Representative King, excused

Committee staff present:

Bill Wolff, Legislative Research
Bruce Kinzie, Revisor of Statutes' Office
Martha Evans, Committee Secretary

Conferees appearing before the committee:

Chairman Dyck welcomed committee members and explained that this meeting was for the purpose of taking final action on SB 64, SB 58, SB 227 and SB 319, bills which had been heard the previous day.

SB 64 - An act relating to banks and banking; concerning the powers thereof; relating to the board of directors; amending K.S.A. 9-701, 9-1101, 9-1114 and 9-1116 and repealing the existing sections.

Representative Louis moved that SB 64 as amended be passed favorably. Representative Holderman seconded the motion.

Representative Ott made a substitute motion to amend SB 64 by including in the bill a proposed amendment (Attachment 1) which was an authorization for bank holding companies.

Representative Ott explained that this amendment was essentially HB 2001 as amended by the committee with the exception that there was language in this amendment that said a one-bank holding company could start a new bank. In other words it said that a multi-bank holding company cannot start a new bank but an individual could open a one-bank holding company and start a new bank.

Representative Jarchow then seconded the substitute motion and the motion passed. A division was called for - 9 voted in favor of the substitute motion and 6 opposed it.

Representative Holderman moved that the amendment passed on SB 64 the previous day which set the date for the bill to take effect, if passed, from its publication in the statute book to its publication in the state register be changed back. Representative Wilbert seconded the motion.

Representative Ott made a substitute motion that SB 64 be reported out of committee favorably, as amended. Representative Louis seconded the motion and the motion carried.

SB 58 - An act relating to the bank commissioner; providing for a deputy commissioner; amending K.S.A. 75-3135 and repealing the existing section.

Vice Chairman Miller made a conceptual motion that SB 58 be amended in lines 31 to 34 to read that the deputy commissioner shall have at least five years' experience as a state bank officer or a state bank examiner in lieu of the requirements there listed. Representative Nichols seconded the motion and the motion carried.

Representative Ott moved that SB 58 be passed favorably as amended. Representative Sand seconded the motion and the motion passed.

Sb 227 - An act relating to trust companies; amending K.S.A. 17-2015, 17-2023 and 17-2024 and repealing the existing sections.

Representative Miller made a conceptual motion that in line 8 of SB 227 the dollar amount (\$35 per diem) be changed so that it would tie into the per diem amount allowed in 75-3223. Representative Francisco seconded the motion and the motion carried.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Commercial & Financial Institutions,
room 527-S, Statehouse, at 3:30 ~~am~~ p.m. on March 23, 1983.

Representative Schmidt moved that SB 227 be passed favorably as amended. Representative Wilbert seconded the motion and the motion carried.

SB 319 - An act relating to savings banks; amending K.S.A. 17-5525 and repealing the existing section.

Representative Miller made a conceptual motion that the original law be designated 17-5525a and the new language be designated as 17-5525b. Representative Ott seconded the motion and the motion carried.

Representative Miller then moved to strike the language on lines 31 and 32 "unless the context indicates otherwise." Representative Francisco seconded the motion.

There was some discussion of the language and why it was present in the bill.

Representative Holderman made a substitute motion to move SB 319 favorably as amended. Representative Louis seconded the motion and the motion carried.

Chairman Dyck told the committee that this was most probably the last meeting of the year. He thanked the committee members for their cooperation. With regard to the amending and passing of SB 64 he said that he thought the committee had done the right thing. He remarked that the leadership had felt the matter important enough to call for an interim study last summer, that the interim study had introduced HB 2001, and that he felt that in fairness the entire House should be allowed to consider the multi-bank holding company issue.

Representative Ott moved that the minutes of March 22 be approved. Representative Wilbert seconded the motion and the motion carried.

The meeting was adjourned by the Chairman at 4:00 p.m.

There are no more scheduled meetings of the committee. Monday, March 28, the committee will meet only on the call of the Chairman.

PROPOSED AMENDMENT TO SENATE BILL NO. 64

AN ACT relating to bank holding companies; amending K.S.A. 17-1252 and repealing the existing section; and also repealing K.S.A. 9-504, 9-505, 9-505a, 9-505b and 9-505c.

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

New Section 1. For the purpose of this act:

(a) "Bank holding company" means any company which has control over any bank or over any company that is or becomes a bank holding company.

(b) "Control" means a company has control over a bank or company if:

(1) The company directly or indirectly or acting through one or more other persons owns, controls or has power to vote 25% or more of any class of voting securities of the bank or company;

(2) the company controls in any manner the election of a majority of the directors or trustees of the bank or company; or

(3) the commissioner determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the bank or company. There is a presumption that any company which directly or indirectly owns, controls or has power to vote less than 5% of any class of voting securities of a given bank or company does not have control over the bank or company;

(4) however; no company shall be deemed to have control over a bank or a company:

(A) By virtue of its ownership or control of shares acquired by it in connection with its underwriting of securities if such shares are held only for such period of time as will permit the sale thereof on a reasonable basis;

(b) which is formed for the sole purpose of participating in a proxy solicitation;

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(C) which acquires ownership or control of shares in securing or collecting a debt previously contracted in good faith, until two years after the date of acquisition; or

(D) which acquires ownership or control of shares in a fiduciary capacity. Bank shares shall not be deemed to have been acquired in a fiduciary capacity if the acquiring bank or company in its capacity as trustee of a trust has sole discretionary authority to exercise voting rights with respect to those shares.

(c) "Company" means any corporation, partnership, business trust, association or similar organization, or any other trust unless by its terms it must terminate within 25 years or not later than 21 years and 10 months after the death of individuals living on the effective date of the trust, but shall not include any corporation the majority of the shares of which are owned by the United States or by any state.

(d) "Bank" means any bank, trust company or national banking association which accepts demand deposits and makes loans and which has its principal place of business in Kansas.

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

New Sec. 2. A bank holding company which controls more than one bank, is prohibited from:

(a) Obtaining control of any bank if: (1) The total deposits in the bank together with the total deposits in all banks in Kansas controlled by the bank holding company exceed 10% of the total bank deposits in all banks in the state, determined as of the date of the last simultaneous request for reports of condition issued by the federal deposit insurance corporation, the comptroller of the currency and the commissioner, for which totals are available, preceding the date the bank holding company files an application with the commissioner; or (2) the bank has been in operation for less than five years.

(b) Chartering a new bank.

New Sec. 3. (a) A bank holding company which seeks to acquire control of a bank or a bank holding company shall file with the commissioner a copy of any application which the bank

holding company is required to file with the board of governors of the federal reserve system, together with such supplemental data as will enable the commissioner to determine if the acquisition is lawful under the provisions of section 2. The commissioner shall, within 30 days after receiving the application, issue an order declaring the acquisition to be lawful or unlawful under the provisions of section 2. The order of the commissioner shall be the final administrative decision which may be appealed in the district court of the county of proper venue within 30 days after the mailing or delivery of notice of the commissioner's order, by any party aggrieved by the order.

(b) The commissioner shall also determine if the proposed acquisition of a bank by a bank holding company is consistent with the interests of promoting and maintaining a sound banking system and sound trust companies, the security of deposits and depositors and other customers, the preservation of the liquid position of banks and in the interest of preventing injurious credit expansions and contractions. If the commissioner determines that the proposed acquisition is not consistent with these objectives, the commissioner shall, within 30 days of receipt of the application, communicate the objections to the proposed acquisition to the board of governors of the federal reserve system.

(c) The provisions of section 2 and subsections (a) and (b) of this section shall not apply in the case of the acquisition of a bank or bank holding company acquired at the request of the commissioner, the federal deposit insurance corporation or the board of governors of the federal reserve system in order to prevent the imminent failure of a bank.

New Sec. 4. No bank, trust company or bank holding company organized or based in any other state or country shall engage in the banking business from an office in this state, directly or indirectly, unless the office was in operation on July 1, 1983.

New Sec. 5. (a) Any bank, bank holding company, company or

any subsidiary of any of them which violates any provision of this act, upon conviction, shall be guilty of a misdemeanor and shall be fined not more than \$1,000 for each day during which the violation continues.

(b) Any person who participates in a violation of any provision of this act, upon conviction, shall be guilty of a class A misdemeanor.

(c) Any court of competent jurisdiction may enjoin violations of this act. Any bank adversely affected by any such violation, any bank organization having statewide membership and the commissioner shall have standing to sue in any such action.

New Sec. 6. The commissioner may adopt such rules and regulations necessary to carry out the provisions of this act.

New Sec. 7. Sections 1 to 7, inclusive, of this act shall be known and cited as the Kansas bank holding company act.

Sec. 8. K.S.A. 17-1252 is hereby amended to read as follows: 17-1252. When used in this act, unless the context otherwise requires:

(a) "Commissioner" means the securities commissioner of Kansas, appointed as provided in K.S.A. 17-1270, and amendments thereto.

(b) "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities. "Agent" does not include an individual who represents an issuer only in transactions in securities exempted by subsections (a), (b), (c), (f), (i), (j), (l) or (p) of K.S.A. 17-1261, and amendments thereto. A partner, officer or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if such person otherwise comes within this definition.

(c) "Broker-dealer" means any person engaged in the business of purchasing, offering for sale or selling securities for the account of others or for such person's own account; but the term does not include an agent, issuer, bank, bank holding

company, ~~as defined in K.S.A. 9-504,~~ savings institution, insurance company, or a person who effects transactions in this state exclusively with the issuer of the securities involved in the transactions or with any person to whom a sale is exempt under subsection (f) of K.S.A. 17-1262, and amendments thereto.

(d) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(e) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates or collateral-trusts certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type; the term "issuer" also means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(f) "Non-issuer" means not directly or indirectly for the benefit of the issuer.

(g) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(h) (1) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value. (2) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value. (3) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. (4) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same

or another issuer, and every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security. (5) A purported gift of assessable stock is considered to involve an offer and sale of such stock.

(i) "Securities act of 1933," "securities exchange act of 1934," "public utility holding company act of 1935," and "investment company act of 1940" mean the federal statutes of those names.

(j) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificates; thrift certificates or investment certificates, or thrift notes issued by investment companies; certificate of deposit for a security; certificate of interest in oil and gas royalties; leases or mineral deeds; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or some other specified period.

(k) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

(l) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports

concerning securities. The term does not include (1) a bank, savings and loan association, credit union, or trust company; (2) a lawyer, accountant, engineer, management consultant or teacher whose performance of these services is solely incidental to the practice of the individual's profession; (3) a broker-dealer whose performance of these services is solely incidental to the conduct of business as a broker-dealer and who receives no special compensation for them; (4) a publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation; (5) a person who has no place of business in this state if (A) such person's only clients in this state are other investment advisers, broker-dealers, banks, savings and loan associations, credit unions, trust companies, insurance companies, investment companies as defined in the investment company act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (B) during any period of 12 consecutive months such person does not direct business communications into this state in any manner to more than five clients other than those specified in subsection (1)(5)(A), whether or not such person or any of the persons to whom the communications are directed is then present in this state; or (6) such other persons not within the intent of this definition as the commissioner designates by order or by rules and regulations.

Sec. 9. K.S.A. 9-504, 9-505, 9-505a, 9-505b, 9-505c and 17-1252 are hereby repealed.

Sec. 10. This act shall take effect and be in force from and after its publication in the statute book.