

MINUTES OF THE SENATE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS.

The meeting was called to order by Sen. Neil H. Arasmith at
Chairperson

9:00 a.m. ~~p.m.~~ on February 8, 1984 in room 529-S of the Capitol.

All members were present except:

Senators Hess and Feleciano - Excused

Committee staff present:

Bill Wolff, Legislative Services
Myrta Anderson, Legislative Services
Bruce Kinzie, Revisor's Office

Conferees appearing before the committee:

Senator Ross Doyen

The chairman called the meeting to order. The meeting had been called for the sole purpose of the introduction of a banking bill which includes the multi-bank holding company proposal.

Sen. Ross Doyen presented brief testimony in support of the introduction of the bill for the sake of resolving issues involved by discussion. (See Attachment I.) He added that he feels that the bill has more safeguards for the Banking Commissioner to use and again encouraged the introduction of the bill for open debate and discussion.

The chairman called for committee action on the request for introduction of the bill.

Sen. McCray made a motion that the bill be introduced and referred back to committee.
Sen. Werts seconded the motion. The motion carried.

The chairman announced that hearings on the bill would be held on February 13 and 14.

The meeting was adjourned.

SENATE BILL NO. _____

AN ACT relating to banks and banking; enacting the community credit protection act; amending K.S.A. 17-1252 and repealing the existing section; 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. This act may be cited as the community credit protection act and shall have for its purpose the maintenance and enhancement of local credit availability and of competitive services between banks. It is deemed to be in the public interest that competition prevail in the banking system in the state of Kansas and that the acquisition of Kansas banks, whether by individuals or corporations, be allowed only if the acquiring party is prepared to meet local community lending needs and only if such acquisition would not have monopolistic or anticompetitive effects.

New Sec. 2. As used in this act the following terms shall have the following meanings:

(a) "Bank" means any national banking association or any state bank or banking association, whether organized under the laws of Kansas, the laws of another state or the laws of the United States authorized to engage in the banking business and located in the state of Kansas.

(b) "Company" means any corporation, association, partnership, business trust or similar organization, but shall not include any corporation, the majority of the shares of which are owned by the United States or by any state.

(c) "Banking company" means any bank.

(d) "Bank holding company" means any company which directly or indirectly owns or controls at least one bank.

(e) "Subsidiary" with respect to a specified bank holding

Attachment I

company means:

(1) Any bank or company, 25% or more of whose voting shares is owned or controlled by such bank holding company;

(2) any bank or company, the election of a majority of whose directors is controlled in any manner by such bank holding company;

(3) any bank or company, 25% or more of whose voting shares is held by trustees for the benefit of the shareholders or members of such bank holding company; or

(4) any nonbanking company which a bank holding company is allowed to acquire control or ownership pursuant to the provisions of sections 1841 et seq., of title 12 of the United States Code Annotated.

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

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

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

(i) "Board" means the state banking board.

New Sec. 3. It shall be unlawful for a person, acting directly or indirectly or through concert with one or more persons, to acquire control of any bank through purchase, assignment, pledge or other disposition of voting shares of such bank, except with the approval of the commissioner or as otherwise allowed by this act.

New Sec. 4. (a) Any person seeking approval of a proposed bank acquisition shall file with the commissioner the following:

(1) Copies of the delineation of local community or communities for banks already controlled and for the proposed bank acquisition, in the form as required to be filed with the appropriate federal agency under the community reinvestment act, 12 U.S.C. 2901 et seq.; and

(2) copies of the community reinvestment act statement, required under the community reinvestment act, 12 U.S.C. 2901 et seq., for each bank controlled by the acquiring person and a proposed community reinvestment act statement for the proposed bank acquisition.

(b) Each community reinvestment act statement required to be filed with the commissioner shall include at least the following:

(1) A list of specific types of credit within certain categories, such as residential loans, housing rehabilitation loans, home improvement loans, small business loans, agricultural loans, community development loans, commercial loans and consumer loans, that the proposed bank acquisition is prepared to extend within the local community; and

(2) copies of all public notices required by 12 U.S.C. 2901 et seq., any public comments received or any written comments from any federal agency relating to the performance of any bank now controlled by the person seeking approval of a proposed bank acquisition.

(c) The commissioner, in considering approval of a proposed bank acquisition, as to the information required in subsections (a) and (b), shall consider:

(1) The reasonableness of the delineation of the local community of each bank now controlled or proposed bank acquisition;

(2) the record of performance of each bank now controlled by the person in meeting the credit needs of the local community;

(3) the extent to which the community reinvestment act statement filed by the acquiring person for the proposed bank acquisition addresses the credit needs of the local community for that particular proposed bank acquisition.

New Sec. 5. A notice of a proposed bank acquisition filed pursuant to section 6 shall contain the following information:

(a) The identity, personal history, business background and experience of each person by whom or on whose behalf the acquisition is to be made, including such person's material business activities and affiliations during the past five years

and a description of any material pending legal or administrative proceedings in which the person is a party and any criminal indictment or conviction of such person by a state or federal court;

(b) a statement of the assets and liabilities of each person by whom or on whose behalf the acquisition is to be made, as of the end of the fiscal year for each of the five fiscal years immediately preceding the date of the notice, together with related statements of income and source and application of funds for each of the fiscal years then concluded, all prepared in accordance with generally accepted accounting principles consistently applied, and an interim statement of the assets and liabilities for each such person, together with related statements of income and source and application of funds, as of a date not more than 90 days prior to the date of the filing of the notice;

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

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

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

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

(g) copies of all invitations or tenders or advertisements

making a tender offer to stockholders for purchase of their stock to be used in connection with the proposed acquisition;

(h) the information required in section 4; and

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

New Sec. 6. (a) The commissioner shall be given at least 60 days' prior written notice of any proposed bank acquisition. If the commissioner does not issue a notice disapproving the proposed acquisition within that time or extend the period during which a disapproval may issue for another 30 days, the proposed acquisition shall stand approved. The period for disapproval may be further extended only if the commissioner determines that any acquiring party has not furnished all the information required under section 5 or that in the commissioner's judgment any material information submitted is substantially inaccurate. An acquisition may be made prior to expiration of the disapproval period if the commissioner issues written notice of the commissioner's intent not to disapprove the action.

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

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

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

New Sec. 7. The commissioner may disapprove any proposed acquisition if:

(a) The proposed acquisition of control would result in a

monopoly or would be in furtherance of any combination or conspiracy to monopolize or attempt to monopolize the business of banking in any part of this state;

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

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

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

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

(f) the record of performance in banks now controlled by an acquiring person, shows that such banks are not meeting the credit needs of their respective local communities; or

(g) the proposed community reinvestment act statement for the proposed bank acquisition required in section 4, does not satisfactorily address the credit needs of the local community for that particular proposed bank acquisition.

New Sec. 8. From and after July 1, 1984, a company may have direct or indirect ownership or control of two or more banks or bank holding companies, subject to the limitation provided for in section 9.

New Sec. 9. From and after July 1, 1984, it shall be unlawful for a bank holding company to acquire direct or indirect ownership or control of any financial institution insured by the

federal deposit insurance corporation (FDIC), federal savings and loan insurance corporation (FSLIC), and national credit union administration (NCUA) and located in this state if such acquisition results in the bank holding company having direct or indirect ownership or control of banks located in this state, the total deposits of which at the time of such acquisition exceed 11% of the aggregate deposits of all financial institutions insured by the federal deposit insurance corporation (FDIC), federal savings and loan insurance corporation (FSLIC) and national credit union administration (NCUA) as determined by the state bank commissioner on the basis of the most recent reports of such institutions in Kansas to their supervisory authorities which are available at the time of the proposed acquisition.

New Sec. 10. The board of directors of each bank acquired by a bank holding company shall have not less than a majority of the total membership of the board of directors of the bank from the local area in which the bank is located.

New Sec. 11. The limitation provided for in section 9 shall not apply in the following circumstances:

(a) Control of a bank by reason of ownership or control of shares acquired by a bank or by a bank holding company in good faith in a fiduciary capacity, except where such shares are held for the benefit of the shareholders of such bank or such bank holding company;

(b) control of a bank by reason of ownership or control of shares acquired by a bank or by a bank holding company in the regular course of securing or collecting a debt previously contracted in good faith. The deposits of the acquired bank shall not be included in computing the appropriate deposit limitation set forth in section 9 for a period of five years from the date of acquisition; or

(c) the acquisition of direct or indirect ownership or control of a bank or bank holding company at the request of or in connection with the exercise of regulatory authority by the state bank commissioner, the state banking board, the comptroller of the currency, the federal deposit insurance corporation or the

board of governors of the federal reserve system for the purpose of preventing imminent failure of the bank or to protect the depositors thereof as determined by such authority in its sole discretion. The deposits of the acquired bank shall not be included in computing the appropriate deposit limitation as set forth in section 9 for a period of five years from the date of acquisition. The regulatory authority shall give acquisition priority to qualified purchasers or bidders whose total deposit control at the time of acquisition does not exceed the appropriate deposit limitation as set forth in section 9.

New Sec. 12. A bank for which the application for charter was filed, received or granted by the appropriate authorizing agency after July 1, 1984, shall not be acquired by a bank holding company which controls or would control more than one bank for a period of five years.

New Sec. 13. A bank holding company shall not apply for or obtain a de novo charter.

New Sec. 14. A national bank in this state or a bank holding company seeking to acquire a state bank or national bank in this state, or a nonbanking company that submits an application for approval of such acquisition to the board of governors of the federal reserve system pursuant to the provisions of sections 1841 et seq. of title 12 of the United States Code Annotated shall also submit a copy of such application to the state banking board.

New Sec. 15. The district court shall have jurisdiction to determine all questions of compliance with the provisions of this act. The decision of the district court shall be appealable in the same manner as in other civil cases.

New Sec. 16. Each bank holding company which directly or indirectly owns, controls or has power to vote 25% or more of the voting shares of one or more banks shall furnish a copy of the annual report of the operations of the bank holding company which is submitted to the federal reserve bank for each fiscal year to the state bank commissioner.

New Sec. 17. Any company which intentionally and willfully

violates any provision of sections 3 to 16, inclusive, upon conviction, shall be fined not less than \$500 nor more than \$5,000 for each day during which the violation continues. Any individual who intentionally and willfully participates in a violation of any provision of sections 3 to 16, inclusive, upon conviction, shall be fined not more than \$10,000 or imprisoned not more than one year, or both such fine and imprisonment.

Sec. 18. 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) "Nonissuer" 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. 19. K.S.A. 9-504, 9-505, 9-505a, 9-505b, 9-505c and 17-1252 are hereby repealed.

Sec. 20. This act shall take effect and be in force from and after its publication in the statute book.