

Approved

 1-31-89

Date

MINUTES OF THE HOUSE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS.

The meeting was called to order by Representative Clyde D. Graeber at
Chairperson

3:30 ~~xxx~~ p.m. on January 24, 1989 in room 527-S of the Capitol.

All members were present except: Representative Lee Hamm, Excused, Representative Mary Jane Johnson, Excused and Representative Tim Shallenburger, Excused.

Committee staff present: Myrta Anderson, Research Department
Bruce Kinzie, Revisor of Statutes
June Evans, Secretary

Conferees appearing before the committee: Grant Brooks, General Counsel, Kansas
Banking Department
Boone Porter, Attorney, Overland Park, Kansas

The Chairman called the meeting to order at 3:30 P.M. and announced there would be a Hearing on HB 2004.

Grant Brooks, General Counsel for the Kansas Banking Department was the first to testify, stating the purpose behind the introduction of this Bill is basically what the Department calls the three (3) "C's." That is: Clarification, Clean-up, and Capital.

The last major revision of the trust company statutes was over 50 years ago. It is unclear exactly what powers a trust company can now exercise. HB 2004 clarifies and removes ambiguity from the present trust company statutes by revising trust company powers. HB 2004 sharpens the trust powers corporate fiduciaries currently have and eliminates any questions about a trust company's ability to accept deposits by clearly establishing that a trust company will take no "deposits."

HB 2004 embodies the intent and concept that the trust company statutes must be for a pure trust company: A company that is basically a corporate fiduciary and nothing else. If a company wants to engage in an activity that is tantamount to being in the general business of banking, then that company must convert into a state bank.

HB 2004 cuts through old language and preserves the powers a corporate fiduciary would commonly possess and removes any ambiguity that might allow a trust company to operate as a state bank, without first being chartered as such.

Clean-up: HB 2004 cleans up these statutes in two ways. First, it collapses the redundant trust company statutes into the Banking Code. This has been accomplished by including a reference to "trust company" in each appropriate statute in the Banking Code. Each statute will be amended to include a reference to trust company, and be cleaned up and modernized.

Capital: Under the present statutes, trust companies need less than half the capital required for banks, but yet they act in the same fiduciary capacities as banks. Trust companies are not required to have the total amount of required capital as soon as they are authorized to act as such, rather only 20% is required. Additionally, the statutes place a cap on how much capital a trust company can have. There is no logic behind the current statutes that arguably mandate a trust company be under capitalized. It has been at least thirty years since either capital structure statute has been revised.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS

room 527-S, Statehouse, at 3:30 ~~am~~/p.m. on January 24, 1989

HB 2004 corrects these problems by requiring a trust company provide the same minimum capital as a bank, that is \$250,000.00 and no longer will be based on population. The \$250,000.00 requirement is a flat minimum. Second, the million dollar limit on capital is removed. The entire amount of minimum capital must be in place before a trust company commences business.

In summary, HB 2004 clarifies that powers of a trust company. It cleans up the trust company statutes by folding them into the Banking Code and by modernizing language. This bill addresses the capital requirements of a trust company.

The Kansas Banking Department requests that HB 2004 be given strong consideration as clarification, clean-up and capital requirement are badly needed to change trust company statutes. (See Attachment No. 1).

The next conferee was Mr. Boone Porter, Attorney, Overland Park, Kansas, supporting a proposed amendment to HB 2004. (See Attachments No. 2 and 3).

Mr. Porter stated the primary purpose of HB 2004 is to modernize Kansas laws governing trust companies and consolidate those laws into K.S.A. Chapter 9. The secondary purpose of HB 2004 is to require all Kansas trust companies to be non-depository institutions and thereby divorce them from the commercial banking industry.

After discussion, the Chairman requested that staff and the Kansas Banking Department review HB 2004 and the amendment that Mr. Porter brought to the Committee and bring a report back to the Committee meeting on Tuesday, January 31 comparing the two items. After the report from the Kansas Banking Department and staff, the Committee will discuss the differences and possibly have final action on the Bill.

The Committee adjourned at 4:30 P.M.

Date: 1/24/89

GUEST REGISTER
COMMERCIAL AND FINANCIAL INSTITUTIONS

NAME	ORGANIZATION	ADDRESS
W. NEWTON MALE	KS. BANKING DEPT.	TOPEKA
Michael D. Heitman	✓ ✓ ✓	✓
<i>Grant Brooks</i>	" "	"
<i>H. Gene Duke</i>	Brown, Koralchik & Fingersh	Suite 1100 9401 Indian Creek Pkwy Overland Park, KS 66210
Kathy Taylor	Kansas Bankers Assn.	Topeka.
Rodger Swanson	" " "	"
<i>Dag U</i>	" ? s	"

TO: The House Committee on Commercial and Financial Institutions
FROM: The Kansas Banking Department
RE: REVISION OF TRUST COMPANY STATUTES: K.S.A. 17-2001 et. seq.
DATE: January 24, 1989

Chairman Graeber, and members of the Committee, my name is Grant Brooks. I'm General Counsel for the Kansas Banking Department. We were one of the proponents of this Bill, during its adoption by the Special Committee on Commercial and Financial Institutions.

The purpose behind the introduction of this Bill is basically what the Department calls the three (3) "C's." That is: Clarification, Clean-up, and Capital.

First, Clarification. The last major revision of the trust company statutes was over 50 years ago. However, over the years the trust company statutes have been substantially expanded to the point where it is now unclear exactly what powers a trust company can now exercise. For example, does a trust company possess the same powers as a state bank? Depending upon your interpretation of K.S.A. 17-2002, a trust company may operate just like a state bank; without first having to obtain the authority to accept demand deposits. In fact, the statutes, in their present form, are so obscure that the Banking Department has yet to ascertain exactly what, if any, type of deposits a trust company can legally accept.

House Bill (H.B.) 2004 clarifies and removes ambiguity from the present trust company statutes by revising trust company powers.

H.B. 2004, sharpens the trust powers corporate fiduciaries currently have and eliminates any questions about a trust company's ability to accept deposits by clearly establishing that a trust company will take no "deposits." "Deposits" is a term of art defined in K.S.A. 9-701, Subsections g through k.

H.B. 2004 embodies our intent and concept that the trust company statutes must be for a pure trust company: A company that is basically a corporate fiduciary and nothing else. If a company wants to engage in an activity that is tantamount to being in the general business of banking, then that company must convert into a state bank.

So to clarify the current statutes, H.B 2004 cuts through old language and preserves the powers a corporate fiduciary would commonly possess and removes any ambiguity that might allow a trust company to operate as a state bank, without

Atch = 1

first being chartered as such.

The second "C" that H.B. 2004 addresses stands for Clean-up. Over the years, numerous provisions of the Banking Code have been copied and placed in the trust company statutes contained in Chapter 17 of the Kansas Statutes. Also the trust company statutes have incorporated, by reference, the penalty provisions contained in the Banking Code. Additionally, many of the trust company statutes regarding the corporate administration are substantially identical to those in the Banking Code. For example, statutes concerning transfer of capital stock, liability of stock holders, right of a pledgor to vote stock, and statutes concerning the board of directors and their qualifications and surety bond coverage.

H.B. 2004 cleans up these statutes in two ways. First it collapses the redundant trust company statutes into the Banking Code. This is accomplished by including a reference to "trust company" in each appropriate statute in the Banking Code.

Second, the language in each statute, that will be amended to include a reference to trust company, will also be cleaned up and modernized. For example, in the penalty provisions of the Banking Code, not only has a reference to trust companies been added; but also, the language has been modernized to fit the classification system now used to delineate the different classes of misdemeanors and felonies.

Finally, the third "C" that H.B. 2004 addresses is Capital. Under the present statutes, trust companies need less than half the capital required for banks, but yet they act in the same fiduciary capacities as banks. Also, trust companies are not required to have the total amount of required capital as soon as they are authorized to act as such, rather only 20 percent is required. Additionally, the statutes place a cap on how much capital a trust company can have. There is no logic behind the current statutes that arguably mandate a trust company be under capitalized. It has been at least thirty years since either capital structure statute has been revised.

H.B. 2004 corrects these problems by requiring a trust company provide the same minimum capital as a bank, that is \$250,000 and no longer will it be based on population. The \$250,000 requirement is a flat minimum. Second, the million dollar limit on capital is removed.

Finally, the entire amount of minimum capital must be in place before a trust company commences business.

In summary, H.B. 2004 clarifies the powers of a trust company. It also cleans up the trust company statutes by folding them into the Banking Code and by modernizing language.

Finally, H.B. 2004 addresses the capital requirements of a trust company.

This Bill mandates a trust company have the same minimum capital requirements as other institutions that provide trust services.

H.B. 2004 is a viable piece of legislation that brings badly needed changes to the trust company statutes.

The Kansas Banking Department requests you give H.B. 2004 strong consideration.

Thank you for your time.

GLCB:dsl

STATEMENT OF H. BOONE PORTER, III BEFORE THE
HOUSE COMMERCIAL AND FINANCIAL INSTITUTIONS COMMITTEE

January 24, 1989

Good afternoon Mr. Chairman and members of the Committee. My name is Boone Porter and I am appearing this afternoon in support of a proposed amendment to H.B. 2004. A copy of the proposed amendment is attached to my prepared remarks.

By way of background, I am a resident of Prairie Village, Kansas and am a partner with the law firm Brown, Koralchik & Fingersh in Overland Park, Kansas. I am licensed in Kansas, Illinois and Wisconsin and concentrate my law practice in representing financial institutions such as banks, trust companies, investment advisors, and independent state agencies responsible for investing public monies.

More particularly, I helped organize and represent both The Southgate Trust Company in Prairie Village, Kansas and The Investors Services Trust Company in Merriam, Kansas. I also represent a major trust company in Missouri and have represented the organizers of trust companies in Wisconsin and Illinois. These combined experiences have made me acutely aware of certain shortcomings of Kansas trust company law.

The primary purpose of H.B. 2004 is to modernize Kansas laws governing trust companies, and to consolidate those laws into K.S.A. Ch. 9. A secondary purpose of H.B. 2004 is to require all Kansas trust companies to be non-depository institutions and thereby divorce them from the commercial banking industry.

H.B. 2004 is a good beginning to achieve these goals. The proposed amendment, however, will make stylistic and substantive changes to H.B. 2004 which will substantially improve the bill and will better enable it to get the job done.

Stylistically, the proposed amendment creates a new trust company code which would be organized as a new article in K.S.A. Ch. 9. The code consolidates all worthwhile provisions relating to trust companies currently found either in K.S.A. Ch. 17, Art. 20 or in K.S.A. Ch. 9. The code is organized in a deliberate manner to facilitate ease of reference by the trust company industry, its professional advisors and its state regulators.

Substantively, the proposed amendment makes certain changes to the bill which can be summarized as follows:

- Certain provisions of H.B. 2004 which are either archaic or of no relevance to non-depository trust companies are deleted.
- Other provisions of H.B. 2004 which are redundant and inconsistent with other well developed statutes such as the Corporation Code of 1972, the Uniform Commercial Code and the Bankruptcy Code of 1978 are deleted.
- The general powers of trust companies as non-depository institutions are expanded to make them competitive with those powers conferred upon competitors in neighboring states, such as Missouri.
- The supervisory powers of the State Banking Board and the State Bank Commissioner are updated and improved.

• Finally, certain informal regulatory practices employed in connection with various trust company applications are clarified and codified.

The general concepts embodied proposed amendment are not controversial and are designed only to strengthen H.B. 2004.

In this regard, I have previously discussed the proposed amendment with Bruce Kinzie of the Reviser of Statutes' Office, the Bank Commissioner, the Deputy Bank Commissioner and the General Counsel of the Banking Department, the members of the State Banking Board, the Kansas Bankers Association and with representatives of several Kansas trust companies. They have all been supportive of the general concepts, but naturally have reserved their final comments pending a detailed review of the text of the proposed amendment which I am submitting to you today.

In considering the proposed amendment it is important to focus on certain facts. The Financial Industry is of increasing importance to Kansas. While the trust company segment of that industry in Kansas is relatively small, it is growing. In May of 1986 there were 2 trust companies in this state. There are now 5 authorized Kansas trust companies. At the same time 2 new non-depository trust companies have been organized by non-banking financial companies in Kansas City, Missouri.

It is a virtual certainty that there will be a rapid increase in the number of de novo trust company organizations during the next few years.

To ensure the continued growth of this industry in Kansas to the benefit of Kansas consumers and our state's economy it is important that:

- state regulatory agencies have adequate statutory powers to supervise the industry; and
- Kansas trust companies have adequate corporate powers so that they can stay competitive.

These two points are especially important because 4 of the 5 authorized trust companies are located in Johnson County and must compete against Missouri trust companies in the greater Kansas City trust banking market. The remaining trust company in Topeka is owned by an insurance company and competes nationally.

Missouri has already modernized its trust company laws and quite frankly a Missouri non-depository trust company charter is currently a more valuable charter than its Kansas equivalent. We cannot let this state of affairs continue. Most new entrants to the trust banking market are non-bank financial institutions such as investment advisors, insurance companies, investment bankers, financial data processors and employee benefit plan consultants.

Unlike banks, these new entrants to the trust banking market are not restricted by state lines. They will closely examine the laws of several jurisdictions including federal law before selecting the law under which they will incorporate a trust company subsidiary. I know this first hand as a lawyer who

represents such clients and actively participates in such decision making.

I believe it is in the best interests of this state to enact H.B. 2004 as amended by the proposed amendment. Accordingly, I respectfully request that you give this proposed amendment favorable consideration.

Thank you.

//HBP/HB2004

PROPOSED AMENDMENT TO H.B. BILL 2004
BY HOUSE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS

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

AN ACT to amend House Bill No. 2004 relating to trust companies.

New Section 1. Citation of Act. This Act shall be known as the "Kansas Trust Company Act of 1989."

New Section 2. Definitions. Unless otherwise clearly indicated by the context, the following terms, when used in this Act, shall have the meanings ascribed to them in this section:

- (a) "Act" shall mean the Kansas Trust Company Act of 1989.
- (b) "Board" shall mean the Kansas State Banking Board.
- (c) "Commissioner" shall mean the Kansas State Bank Commissioner or his delegatee.
- (d) "Foreign Trust Company" shall mean any trust company or bank with trust powers which is not incorporated under the laws of this state, or if a national banking association, does not maintain its principal place of business in this state. The term "Foreign Trust Company" shall not include, nor shall the privileges of Section 13 of this Act be available to, any trust company or bank with trust powers incorporated in any jurisdiction other than the United States of America, any state or territory thereof, or the District of Columbia.

(e) "Holding Company" shall mean any corporation, trust, general partnership, limited partnership, association or other entity which directly or indirectly owns or controls more than 50% of any class of securities issued by the trust company, or

which holds of any rights, options or warrants which upon exercise would, when aggregated with other securities owned by the holder, cause the holder to own more than 50% of any class of securities issued by the trust company. For purposes of this definition, the term "control" shall mean the sole or shared power to vote or cause the disposition of any securities issued by the trust company.

(f) "Organizers" shall mean those persons who file an application with the Board for approval to organize a trust company pursuant to this Act.

(g) "Person" shall mean any individual, corporation, trust, general partnership, limited partnership, association, governmental authority, or other entity.

(h) "Secretary of State" shall mean the Secretary of State of the State of Kansas.

(i) "Trust company" shall mean a trust company incorporated under the laws of this state.

(j) "Trust company business" shall mean engaging in, or holding out to the public as being willing to engage in, the business of acting as a fiduciary for hire, except that no accountant, attorney, credit union, insurance broker, insurance company, investment adviser, real estate broker or sales agent, savings and loan association, savings bank, securities broker or dealer, real estate title insurance company or real estate escrow company shall be deemed to be engaged in a trust company business with respect to fiduciary services customarily performed by them for compensation as a traditional incident to their regular business activities.

New Section 3. Applicability of Act.

(a) All trust companies incorporated after the effective date of this Act shall be organized and governed pursuant to this Act.

(b) All trust companies incorporated before the effective date of this Act shall, upon the effective date of this Act, be subject to and governed by the provisions of Section 10 through Section 21 of this Act, inclusive.

New Section 4. Organization of Trust Companies. Any five (5) or more persons, acting either on their own behalf or on behalf of a Holding Company, may organize a trust company in the following manner:

(a) The Organizers shall file with the Board a written application for approval to organize a trust company, which application shall be in the form promulgated by the Board pursuant to Section 7 of this Act.

(b) After receipt of an application for approval to organize a trust company, the Board shall appoint a committee of at least two (2) members to conduct a public hearing to investigate the following matters:

(1) the character and financial standing of the Organizers;

(2) the character, qualification, and experience of the proposed officers of the trust company;

(3) the economic feasibility of the Organizer's business plan and its compliance with applicable laws; and

(4) the public need which will be served by organization of the proposed trust company.

(c) The Board shall make a determination not later than one hundred and twenty (120) days after the filing of an application regarding the matters specified in Section 4(b) of this Act, and then shall either approve or disapprove the application in writing, specifying the basis of such approval or disapproval.

New Section 5. Minimum Capital; Capital Accounts. The minimum capital of a trust company organized under this Act shall be \$250,000, of which 60% shall be allocated to capital stock, 30% shall be allocated to surplus and 10% to undivided profits. The Board may require that the trust company have capital in excess of \$250,000 if the Board determines that the amount and character of the anticipated business of the trust company and the safety of its customers so requires. The Commissioner shall have the power to order a trust company to increase its capital if, after conducting an examination, he determines that the financial condition of the trust company or the safety of its customers so requires.

New Section 6. Expenses of Investigation. All expenses incurred by the members of the Board in conducting an investigation of an application to organize a trust company pursuant to Section 4 of this Act shall be paid by the Organizers; provided, however, the maximum amount of expenses for which the Organizers shall be liable under this Section shall not exceed \$1,000.

New Section 7. Form of Application; Rules and Regulations.

(a) The Board shall promulgate forms of application for authority to organize a trust company under Section 4 of this Act or to relocate the principal offices of a trust company under Section 16 of this Act within ninety (90) days following the effective date of this Act. The Board may from time to time amend or alter such form of application.

(b) The Board shall have authority to adopt rules and regulations regarding procedures governing the filing of applications and the conduct of investigations under Sections 4 and 16 of this Act.

New Section 8. Filing Articles of Incorporation.

(a) The Organizers may incorporate the trust company any time after their application to organize a trust company has been approved by the Board pursuant to Section 4(c) of this Act. To incorporate trust company, the Organizers shall first submit the trust company's articles of incorporation in triplicate copies to the Commissioner. At least one (1) such copy of the articles of incorporation must bear original signatures. If the Commissioner determines that the articles of incorporation are consistent with the provisions of this Act, the Commissioner shall endorse the articles of incorporation, "Approved," and shall then cause the articles of incorporation to be filed with the Secretary of State. After filing an originally executed copy of the Articles of Incorporation, the Secretary of State shall return two (2) copies of the articles of incorporation bearing file stamps to

the Commissioner. The Commissioner shall file one (1) copy with the Kansas Department of Banking and return one copy to the Organizers for recordation pursuant to K.S.A. 17-6001(a).

(b) After its articles of incorporation have been filed, but prior to the Commissioner's issuance to it of a certificate of authority to commence, a trust company business, a trust company may take such corporate action and exercise any corporate powers, other than those enumerated in Section 10 of this Act, which the directors and stockholders deem necessary or advisable to prepare the trust company for the Commissioner's examination pursuant to Section 9 of this Act.

New Section 9. Certificate of Authority to Commence a Trust Company Business. No trust company incorporated under this Act shall exercise any fiduciary powers conferred by Section 10 of this Act until the Commissioner, after conducting an examination, has first determined that the trust company is in compliance with the provisions of this Act. Upon making such determination, the Commissioner shall issue to the trust company a certificate of authority to commence a trust company business.

New Section 10. Powers of Trust Companies. A trust company may exercise all powers necessary or incidental to carrying on a trust company business including, without limitation, all powers conferred upon a business corporation by the Kansas Corporation Code of 1972, as amended, and may also exercise the following powers:

(a) To receive money in trust for investment in real or personal property of every kind and nature and to reinvest the proceeds thereof;

(b) To receive for safekeeping personal property of every kind and nature;

(c) To own and operate a general safety-deposit business;

(d) To accept and execute any trust and to perform any duties as trustee as may be lawfully committed to them by any person;

(e) To act as a guardian, custodian or committee for any minor or incapacitated person, or to act as trustee of any convict pursuant to an appointment of any court of competent jurisdiction;

(f) To act as a receiver, conservator or assignee;

(g) To act as stock transfer agent, stock registrar or as a paying or exchange agent;

(h) To accept and execute all trusts and to perform all other fiduciary duties as may be committed or transferred to it by order, judgment or decree of any court of record of competent jurisdiction;

(i) To act as agent or attorney-in-fact for any person in any capacity;

(j) To act as executor or trustee under the last will and testament, or as administrator, with or without the will annexed, of the estate of any deceased person;

(k) To loan money upon real estate, chattel, collateral or personal security;

(l) To buy and sell all kinds of governmental, state, county and municipal and corporation bonds, and all kinds of negotiable and non-negotiable promissory notes, commercial paper, securities and stocks;

(m) To buy and sell foreign or domestic exchange, gold, silver, coin or bullion;

(n) To act in any fiduciary capacity and to perform any act a Kansas state bank may perform under any provision of the banking laws of this state, including, without limitation, acting as a successor fiduciary to any bank upon liquidation of its trust department through the transfer of its fiduciary assets pursuant to K.S.A. 9-1604, which liquidation may be effected in the manner provided in Section 11 of this Act or otherwise;

*and act
as a fiduciary*

(o) To act as either an "originating trustee" or as a "Contracting Trustee" pursuant to Section 11 of this Act;

(p) To convert to a Kansas state bank pursuant to Section 21 of this Act; and

(q) To exercise any other power expressly conferred upon trust companies by any other provision of the laws of this state.

(r) The Commissioner may adopt rules and regulations pursuant to K.S.A. 9-1713 with respect to the exercise of the above enumerated powers.

New Section 11. Certain Transfers of Fiduciary Responsibilities; Trust Service Offices.

(a) For purposes of this section, the following terms shall have the following meanings:

(1) "Contracting Trustee" shall mean any trust company which accepts or succeeds to any fiduciary responsibility in any manner hereinafter provided.

(2) "Originating Trustee" shall mean any trust company, bank, national banking association, savings and loan

association, or savings bank which has trust powers and its principal place of business in this state and which places or transfers any fiduciary responsibility to a Contracting Trustee in the manner hereinafter provided.

(3) "Financial Institution" shall mean any trust company, bank, national banking association, savings and loan association or savings bank which has its principal place of business in this state but which does not have trust powers.

(b) Any Contracting Trustee and any Originating Trustee, with the Commissioner's approval, may enter into an agreement whereby the Contracting Trustee, without any further authorization of any kind, succeed to and be substituted for the Originating Trustee as to all fiduciary powers, rights, duties, privileges and liabilities with respect to all accounts for which the Originating Trustee serves in any fiduciary capacity, except as may otherwise be provided in the agreement.

(c) Unless the agreement expressly provides otherwise, upon the effective date of the substitution:

(1) the Contracting Trustee shall be deemed to be named as the fiduciary in all writings, including, without limitation, trust agreements, wills, and court orders, which pertain to the affected fiduciary accounts;

(2) the Originating Trustee shall be absolved from all fiduciary duties and obligations arising under such writings and shall discontinue the exercise of any fiduciary duties with respect to such writings, except that the Originating Trustee shall not be absolved or discharged from any duty to account

arising under K.S.A. 59-1709 or any other applicable statute, regulation or court order, nor shall the Originating Trustee be absolved from any breach of fiduciary duty or obligation occurring prior to the effective date of the agreement.

(d) The agreement may also authorize the Contracting Trustee:

(1) to establish and maintain a trust service office at any office of the Originating Trustee at which the Contracting Trustee may conduct any trust company business and any business incidental thereto and which the Contracting Trustee may otherwise conduct at its principal place of business; and

(2) to engage the Originating Trustee as the agent of the Contracting Trustee, on a disclosed basis to customers, for the purposes of providing administrative, advertising and safekeeping services incident to the fiduciary services provided by the Contracting Trustee.

(e) Any Originating Trustee may also enter into an agreement with a Financial Institution providing that the Contracting Trustee may maintain a trust service desk as authorized by Section 11(c)(1) of this Act in the offices of such Financial Institution and which provides such Financial Institution may act, on a disclosed basis to customers, as the agent of Contracting Trustee for purposes of providing administrative services and advertising incident to the fiduciary services to be performed by the Contracting Trustee.

(f) Applications for the Commissioner's approval for any agreement authorized by this section shall be accompanied by certified copies of the following documents:

- (1) the agreement;
- (2) the written action taken by the board of directors of the Originating Trustee or Financial Institution approving the agreement;
- (3) any other required regulatory approvals; and
- (4) an affidavit of publication of a notice of filing of application in a form prescribed by the Commissioner on the same day for two (2) consecutive weeks in the official newspaper of the city or township where the principal office of the Originating Trustee or Financial Institution is located.

(g) The Commissioner shall approve any such application if he determines the agreement meets a public need and serves the public interest. Notwithstanding the Commissioner's approval, no agreement authorized by Section 11(b) of this Act shall become effective until the parties thereto jointly file a certificate with the Commissioner certifying that at least sixty (60) days prior thereto, written notice of the substitution was sent by first class mail to each co-fiduciary, each surviving settlor of a trust, each ward of a guardianship, each person who has sole or shared power to remove the Originating Trustee as fiduciary, and each adult beneficiary currently receiving or entitled to receive a distribution of principal or income from a fiduciary account affected by the agreement to each such person's current address as shown in the Originating Trustee's records. An unintentional failure to give such notice shall not impair the validity or effect of any such agreement; however, intentional failure to give such notice shall render the agreement null and void as to the party not receiving the notice of substitution.

(h) Any party entitled to receive a notice under Section 11(f) of this Act may file a petition in the court having jurisdiction over the fiduciary relationship, or if none, in the district court in the county where the Originating Trustee has its principal office, seeking to remove any Contracting Trustee substituted or about to be substituted as a fiduciary pursuant to this section. Unless the Contracting Trustee files a written consent to its removal or a written declination to act subsequent to the filing of the petition, the court, upon notice and hearing, shall determine the best interests of the petitioner and all other parties concerned and shall fashion such relief as it deems appropriate in the circumstances. The right to file a petition under this subsection shall be in addition to any other rights to remove fiduciary provided by any other statute or regulation or by the writing creating the fiduciary relationship.

New Section 12. Names of Trust Companies. All trust companies organized under this Act shall have names which commence with the word, "The," and end with the words, "Trust Company." No trust company incorporated under the laws of this state and no Foreign Trust Company authorized to do business in this state pursuant to Section 15 of this Act shall use a name which is so similar to the name of another trust company already authorized to do business in Kansas under this Act as to be easily confused with it. The Commissioner shall not issue a certificate pursuant to either Section 9 or Section 15 of this Act to any trust company which violates the provisions of this Section.

New Section 13. Applicability of Kansas Corporation Code of 1972. Unless otherwise expressly provided by this Act or the banking laws of this state, all trust companies governed by this Act shall be subject to and governed by the provisions of the Kansas Corporation Code of 1972, as amended.

New Section 14. Certain Trust Companies to be Deemed Banks. Any trust company authorized to receive deposits under K.S.A. 17-2025, prior to its repeal by this Act, shall be issued a certificate of authority to engage in a banking business by the Commissioner upon any such trust company's compliance with the provisions of K.S.A. 9-804 and the surrender of its certificate of authority to engage in a trust company business to the Commissioner, and shall thereafter be subject to all of the requirements, limitations and terms of the banking code of Kansas.

New Section 15. Reciprocal Corporate Fiduciary Powers.

(a) Notwithstanding any provision of any other law of this state, a Foreign Trust Company may with the prior approval of the Commissioner act in this state in any fiduciary capacity authorized by Section 10 of this Act in this state, provided that:

(1) The Foreign Trust Company is authorized to act in such fiduciary capacity or capacities under the laws of the jurisdiction where it is incorporated, or, if the Foreign Trust Company is a national banking association, in the jurisdiction where it has its principal place of business;

(2) Any bank or trust company organized under the laws of this state, or any national banking association having its principal place of business in this state, may act in such fiduciary capacity in that jurisdiction without further showing or qualification, other than that it is authorized to act in such fiduciary capacity in this state and is in compliance with any law of that jurisdiction concerning service of process upon it; and

(3) The Foreign Trust Company has first filed with the Secretary of State an application to engage in business in this state as a foreign corporation pursuant to K.S.A. 17-7301.

(b) Notwithstanding any other provision of law to the contrary, any Foreign Trust Company authorized to act in a fiduciary capacity in this state pursuant to this section may so act either alone or with one or more co-fiduciaries who are residents of this states and, subject to the provisions of Section 12 of this Act, may use its corporate name in connection with such activity in this state, and be appointed to act in such fiduciary capacity by any court of competent jurisdiction. This section shall not be construed to make unlawful any activity in this state by either a Foreign Trust Company or a bank which is not incorporated under the laws of this state which would be lawful in the absence of this section.

(c) Prior to the time when any Foreign Trust Company exercises its authority under this section, the Foreign Trust Company shall file with the Commissioner a written application for a certificate of reciprocity. The application shall state:

(1) The correct corporate name of the Foreign Trust Company;

(2) The name of the state under the laws of which it is incorporated, or if the Foreign Trust Company is a national banking association shall state that fact;

(3) The address of its principal business office;

(4) The fiduciary capacity or capacities in which it desires to act in this state;

(5) That it is authorized to act in a similar fiduciary capacity or capacities in the state in which it is incorporated, or, if it is a national banking association, in which it has its principal place of business; and

(6) That the Foreign Trust Company has filed with the Secretary of State an application to engage in business in this state as a foreign corporation pursuant to K.S.A. 17-7301.

(d) The application shall be verified by an officer of the Foreign Trust Company, and shall have attached to it such certificates of public officials and copies of documents certified by public officials as may be necessary to show that the Foreign Trust Company is authorized to act in the state in which it is incorporated, or if it is a national banking association, in the state in which it has its principal place of business, in a fiduciary capacity or capacities similar to those in which it desires to act in this state.

(e) If the Foreign Trust Company is one which may act in the fiduciary capacity or capacities as provided in this section, the Commissioner shall issue to the foregoing trust company a

certificate of reciprocity, and shall file a duplicate thereof together with the application and accompanying documents with the Department of Banking. The certificate of reciprocity shall certify that the Foreign Trust Company is eligible to act in this state pursuant to this section and shall recite the fiduciary capacity or capacities in which the Foreign Trust Company is eligible so to act.

(f) A certificate of reciprocity issued to any Foreign Trust Company shall remain in effect until the Foreign Trust Company shall cease to be entitled to act in this state in the fiduciary capacity or capacities covered by the certificate. If at any time the Foreign Trust Company shall cease to be entitled to act in this state in the fiduciary capacity or capacities covered by the certificate it shall so notify the Commissioner who shall revoke the certificate and given written notice of the revocation to the Foreign Trust Company. The Commissioner may also revoke a certificate of reciprocity upon giving written notice of the revocation, if he independently determines that the Foreign Trust Company is no longer entitled to act in this state in the fiduciary capacity or capacities covered in the certificate. No revocation of any certificate of reciprocity shall affect the right of the Foreign Trust Company to continue to act in this state in specific matters as to which it has previously begun to act in a fiduciary capacity pursuant to the certificate.

(g) A Foreign Trust Company acting in a fiduciary capacity in this state pursuant to the provisions of this section shall be

deemed to be engaged in business in this state, but the Foreign Trust Company shall not establish or maintain in this state a place of business, branch office, or agency for the conduct in this state of business as a fiduciary if a trust company organized under this Act is so prohibited by law from doing so in the jurisdiction where the Foreign Trust Company is incorporated, or if a national banking association, by the laws of the jurisdiction where it maintains its principal place of business

New Section 16. Relocation of Principal Place of Business. A trust company may not move its principal place of business from one city or township to another except as follows:

(a) The trust company shall file with the Board a written application for approval to relocate its principal place of business;

(b) After receipt of an application for approval to relocate a principal office of a trust company accompanied by a non-refundable \$1,000 filing, the Board shall appoint a committee of at least two (2) members to conduct a public hearing to investigate the following matters:

- (1) the financial condition of the trust company;
- (2) the trust company's business reasons for seeking to relocate its principal offices;
- (3) the availability of adequate trust services in the city or township from which the trust company will relocate if the relocation is approved; and

(4) the public need, which will be served by the relocation of the trust company.

(c) The Board shall make a determination within one hundred and twenty (120) days after the filing of the application regarding the matters specified in Section 16(b) of this Act, and then shall either approve or disapprove the application in writing, specifying the basics of such approval or disapproval.

New Section 17. Supervision and Examination. (a) All trust companies shall be subject to the supervision of the Commissioner and otherwise regulated as provided in K.S.A. 9-1701 through K.S.A. 9-1709, inclusive; K.S.A. 9-1711 through K.S.A. 9-1713, inclusive; K.S.A. 9-1715; K.S.A. 9-1716; K.S.A. 9-1718 through 9-1723, inclusive; and 9-2014.

(b) All trust companies shall be subject to the supervision of the Board as provided in K.S.A. 9-1805.

New Section 18. Penalties. All trust companies, together with their directors, officers and employees, shall be, to the same extent as are banks, their directors, officers and employees, subject to the provisions of K.S.A. 9-2001, K.S.A. 9-2002; K.S.A. 9-2004; K.S.A. 9-2009; K.S.A. 9-2011; K.S.A. 9-2012; K.S.A. 9-2013; K.S.A. 9-2016 through K.S.A. 9-2018 inclusive.

New Section 19. Unlawfully Acting as Trust Company or Using Word "Trust"; Penalties. It shall be unlawful for any person to engage in the business of a trust company as defined in this Act within this state without complying with all of the provisions of this Act. No person engaged in business in this state other than

persons authorized by this Act or a bank authorized under the banking laws of this state shall be organized with, or advertise its business by the use of, or use, the word "trust" as part of its name.

Any person who shall violate any provision of this section, whether acting on his own behalf or as an agent of any other person, shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined in a sum not less than three hundred dollars (\$300) nor more than one thousand dollars (\$1,000), or by imprisonment in the county jail not less than thirty (30) days nor more than one (1) year, or by both such fine and imprisonment; each day that any provisions of this section shall be violated shall be a separate and distinct offense, and upon conviction thereof punishable as such under the provisions of this section.

New Section 20. Conversion of a Trust Company to a Bank.
Any trust company may, with the approval of the Board convert to a Kansas state bank in the following manner:

(a) The board of directors of the trust company shall approve a resolution authorizing the conversion and recommending its adoption to the stockholders.

(b) If the stockholders adopt the resolution, the directors shall cause an application to be filed with the Board as is otherwise provided by K.S.A. 9-801; provided, however, that the trust company may in lieu of capitalizing the bank with cash may assign to the bank the net assets of the trust company at such value as shall be determined by the Commissioner after conducting

an examination of the trust company.

New Section 21. Amendments to Kansas Banking Code. K.S.A. 9-1710; K.S.A. 9-1714; K.S.A. 9-1717; K.S.A. 9-1901 through K.S.A. 9-1918, inclusive; K.S.A. 9-2003; K.S.A. 9-2005 through K.S.A. 9-2008, inclusive; K.S.A. 9-2010; K.S.A. 9-2015 shall be deemed amended to delete therefrom the terms "trust company" and "trust companies" and to delete trust companies from inclusive in the definition of the term "bank", as used therein.

//HBP/XYZ
B-XYZ