

Approved Clyde D. Graeber 2-2-89
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 ~~xx~~ p.m. on January 31, 1989 in room 527-S of the Capitol.

All members were present except: Representative Herman Dillon, Excused.

Committee staff present: Bill Wolff, Research Department
Bruce Kinzie, Revisor of Statutes
June Evans, Secretary

Conferees appearing before the committee: Bradley A. Bergman, Attorney, Johnson County Bank
J. Wesley St. Clair, The Southgate Bank and Trust
Robert E. Atteberry, Southgate Trust Company
H. Boone Porter, III, Attorney, Overland Park, KS.
Clifford W. Shinski, Reimer and Koger Associates,
Inc., Shawnee Mission, KS.
Grant Brooks, Kansas Banking Commission

The Chairman called the meeting to order at 3:30 P.M. and stated there would be continuation of hearing and discussion on HB 2004.

Representative Eckert moved and Representative Green seconded the motion that the minutes of the January 24 and 26 meetings be approved. There was no discussion and the motion carried.

Representative Sam Roper moved and Representative Jim Cates seconded that HB 2004 be moved out of Committee as drafted by the Interim Committee feeling that the Interim Committee had invested a lot of work on the bill after it was requested by the Bank Commissioner and the bill, as drafted, was acceptable by the Bank Commissioner and met his needs.

Representative Shallenburger made a substitute motion and Representative Schauf seconded that H. Boone Porter's draft be substituted and work from there.

The Chairman brought the Committee's attention to staff's memorandum. (Atch. 1)

The Chairman stated that HB 2004 was a response to the request by the Bank Commissioner. The Commissioner feels this meets the banking department's requirements and needs. The Chairman indicated he felt the Committee should retain HB 2004 and then amend in any desirable sections from Mr. Porter's draft. There are important sections in HB 2004 that are left out of Mr. Porter's amendment.

The Chairman asked for a vote on Representative Roper's motion. The Chair was in doubt and there was a call for a show of hands. The vote was: 6 Yeas and 7 Nays. The motion failed.

After further discussion the Chairman called for a vote on Representative Shallenburger's motion. The Chair was in doubt and there was a call for a show of hands. The vote was 6 Yeas and 7 Nays. The motion failed.

The Chairman stated this was a vital piece of legislation he felt very important and asked if the Committee felt a sub-committee should be appointed to study and possibly merge the two concepts and report back to the whole committee.

Representative Long moved and Representative Teagarden seconded that a sub-committee should be appointed to study HB 2004.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON Commercial and Financial Institutions
room 527-S, Statehouse, at 3:30 ~~am~~/p.m. on January 31, 1989

The Chairman appointed the sub-committee which is: Representative Long, Chairman, Representative King and Representative Teagarden. They will meet to discuss the issue on February 1, 1989 at 3:30 and bring a report back to the full Committee. The Chairman will advise the Committee when this report will be ready.

J. Wesley St. Clair, Robert E. Atteberry, Clifford W. Shinski, Bradley A. Bergman and H. Boone Porter all testified in support of H. Boone Porter's draft to replace HB 2004. (See Attachment No. 2).

Grant Brooks, Legal Counsel, Kansas Banking Commission, testified there are some problems with the draft by Mr. Porter in that it does not state what the powers of the Bank Commissioner are. It is the opinion of the Kansas Banking Commissioner that HB 2004 does a better job of addressing the common issues that need to be addressed and corrected. The provision does not address supervision, it only addresses "registration" of foreign trust companies located in states that would allow a Kansas trust company to operate in that state by following a similar statute. (See Attachment No. 3).

The Kansas Banking Department firmly believes HB 2004 is a viable legislative improvement that requires consideration.

It was announced that anyone would be welcome to attend the sub-committee meeting on Wednesday, February 1 to discuss this topic.

The meeting adjourned at 4:35 p.m.

Date: 1/31/89

GUEST REGISTER

COMMERCIAL AND FINANCIAL INSTITUTIONS

NAME	ORGANIZATION	ADDRESS
BRADLEY A. BERGMAN	Johnson County Bank NA The Kansas Trust Company	6940 MISSIONS RD PRAIRIE VILLAGE KS
J. WESLEY ST. CLAIR	THE SOUTHGATE BANK THE SOUTHGATE TRUST CO.	7600 STATELINE PRAIRIE VILLAGE, KS
ROBERT E. ATTEBERRY	THE SOUTHGATE TRUST CO.	" "
Clifford W. Shinski	The Investors Services Trust Company	8500 Shawnee Mission Parkway Merriam KS
Kathy Taylor	Kansas Bankers Assoc.	Topeka
Chyen Stonos	"	"
Harold Stover	"	"
Smalley	"	"
Ann Jones Hill	Brown Kovalchik & Fingersh Overland Pk, KS TRUST DIVISION	9401 Indian Creek Pkwy Suite 1100 O.P., KS 66210
DARY CRAFT	Kansas Bankers Assoc.	Topeka
JEFFREY SONNICH	KS LEAGUE OF SAVINGS	"

REVISED
MEMORANDUM

January 31, 1989

TO: House Committee on Commercial and Financial Institutions

FROM: Kansas Legislative Research Department

RE: Comparison of the Provisions of H.B. 2004 to Those Proposed
by H. Boone Porter, III

H.B. 2004

New Section 1: one existing trust company to be given bank charter upon meeting certain requirements.

New Section 2: lists powers and authorities of trust companies. Restates, in somewhat broader categories, powers and authorities for trust companies currently set out in K.S.A. 17-2002.

New Section 3: addresses the issue of trustee liability.

New Section 4: addresses the issue of trustee voting shares of stock.

New Section 5: pertains to names of trust companies.

Section 6. K.S.A. 1988 Supp. 9-701: definition section of the banking code which is amended to reflect the policy decision that trust companies will have no deposit taking authorities.

Porter Draft

New Section 14: one existing trust company to be given bank charter upon meeting certain requirements.

New Section 10: lists powers and authorities of trust companies. The language of this section, particularly in subsections (a) through (m), appears to reinstate the language currently contained in K.S.A. 17-2002. The language in subsection (n) deals with liquidation of a trust company, a subject not addressed in H.B. 2004; subsection (o) deals with contracting trustees, a new concept proposed by Mr. Porter in **New Section 11**; subsection (p) deals with converting a trust company to a state bank, a provision not provided in present law nor in H.B. 2004; subsection (q) deals with allowing trust companies to exercise other powers conferred upon trust companies by other laws of Kansas; and subsection (r) deals with rule and regulation authority of the Bank Commissioner, a provision of H.B. 2004 contained in subsection (j) of **New Section 2**

No corresponding section.

No corresponding section.

New Section 12: deals similarly with the naming of trust companies, but differs to the extent that a "foreign" trust company is included.

New Section 2: defines certain terms, including "trust company" and "trust company business," neither of which definitions address the taking of deposits. Further, **subsection (n) of New Section 10**

Atch #1

Section 7. K.S.A. 1988 Supp 9-901a: amends this section of the banking code which speaks to the capital requirements for banks to include a trust company and establishes \$250,000 as the minimum amount required to establish a trust company.

Section 8. K.S.A. 902: amends this section of the banking code which establishes the par value of capital stock of a bank to add the same requirement for trust companies. (See 17-2004.)

Section 9. K.S.A. 1988 Supp. 9-903: amends this section of the banking code which also addresses capital stock, how it is to be held; limitations on transfer of such stock to include trust companies. (See 17-2004.)

Section 10. K.S.A. 9-904: amends this section of the banking code which discusses the process for the reduction of capital stock for banks to include the same for trust companies. (See 17-2004.)

Section 11. K.S.A. 9-905: amends this section of the banking code which allows for the increase in capital stock of a bank to include trust companies. (See 17-2004.)

Section 12. K.S.A. 9-908: amends this section of the banking code which allows for the issuance of preferred stock to include trust companies. (See 17-2018.)

Section 13. K.S.A. 9-909: amends this section of the banking code which sets out the rights and responsibilities of preferred stock holders of banks to include trust companies. (See 17-2019.)

Section 14. K.S.A. 9-910: amends this section of the banking code which discusses how and from what resources dividends can be paid by a bank to include trust companies. (See 17-2010.)

limits the authority of trust companies vis a vis banks to exercising only the same "fiduciary" authorities.

New Section 5: also establishes the minimum capital requirement at \$250,000.

No corresponding section.

No corresponding section.

No corresponding section.

No corresponding section.

No corresponding section.

No corresponding section.

No corresponding section.

Section 15. K.S.A. 9-911: amends this section of the banking code dealing with the payment of dividends by banks to include trust companies. (See 17-2010.)

No corresponding section.

Section 16. K.S.A. 9-912: amends this section of the banking code concerning payment of loss and dividends from the surplus fund by banks to include trust companies. (See 17-2010.)

No corresponding section.

Section 17. K.S.A. 1988 Supp. 9-1102: amends this section of the banking code dealing with the holding of real estate by a bank to include trust companies. (See 17-2012.)

No corresponding section.

Section 18. K.S.A. 1988 Supp. 9-1114: amends this section of the banking code pertaining to control of a bank by the directors to include trust companies. (See 17-2008.)

No corresponding section.

Section 19. K.S.A. 9-1115: amends that section of the banking code concerning election of board officers to include trust companies. (See 17-2009.)

No corresponding section.

Section 20. K.S.A. 1988 Supp. 9-1116: amends this section of the banking code dealing with meetings of directors to include trust companies. (See 17-2009.)

No corresponding section.

Section 21. K.S.A. 9-1117: amends this section of the banking code which requires certain officers and directors to own stock to include trust companies. (See 17-2008.)

No corresponding section.

Section 22. K.S.A. 9-1118: amends this section of the banking code which requires oaths of office for bank directors to apply to trust company directors. (See 17-2009.)

No corresponding section.

Section 23. K.S.A. 9-1301: amends this section of the banking code to delete application of the insurance of deposits requirement from trust companies since such companies are not authorized to take deposits.

No corresponding section.

Section 24. K.S.A. 9-1301a: amends this section of the banking code to delete reference to an alternative insurer of

No corresponding section.

deposits for trust companies since such companies are not authorized to take deposits.

Section 25. K.S.A. 9-1302: amends this section of the banking code to delete reference to the FDIC being subrogated for any payment made on deposit of a trust company since such companies are not authorized to take deposits.

Section 26. K.S.A. 9-1304: amends this section of the banking code to delete trust companies from the provisions regarding liquidation because of inability to meet depositors' demands since trust companies are not authorized to take deposits.

Section 27. K.S.A. 9-1801: amends this section of the banking code regarding obtaining authority to transact business without approval to include trust companies.

Section 28. K.S.A. 9-1802: amends this section of the banking code to include trust companies in the requirement that applications be investigated.

Section 29. K.S.A. 9-2001: amends this section of the banking code to include trust companies in the penalties applicable to bankers who fail to comply with the law.

Section 30. K.S.A. 9-2002: amends this section of the banking code to include trust companies in certain penalties applicable to banks, officers, and directors.

Section 31. K.S.A. 9-2003: this section should be removed from the bill.

Section 32. K.S.A. 9-2004: this section of the banking code is amended to add trust companies to the penalty applicable for false swearing.

Section 33. K.S.A. 9-2006: this section should be removed from the bill.

Section 34. K.S.A. 9-2007: this section of the banking code is amended to add

No corresponding section.

No corresponding section.

New Section 9: requires obtaining a certificate of authority to commence a trust company business.

New Section 3: requires appointment of a committee to investigate an application for a trust company. **New Section 6** requires that expenses of the investigation be paid by the applicant.

New Section 17: subjects all trust companies to the supervision and examination of the bank commissioner. **New Section 18** subjects trust companies to the same penalties as are applicable to banks.

See **New Section 18.**

No corresponding section.

See **New Section 18.**

No corresponding section.

No corresponding section.

trust companies certain compliance with reports required by receivers.

Section 35. K.S.A. 9-2008: this section should be removed from the bill.

Section 36. K.S.A. 9-2009: this section of the banking code is amended to include trust companies in certain penalties applicable to banks.

Section 37. K.S.A. 9-2010: this section should be removed from the bill.

Section 38. K.S.A. 9-2011: this section of the banking code is amended to include trust companies in the prohibition of transacting trust business without authority.

Section 39. K.S.A. 9-2012: this section of the banking code is amended to include trust companies in the penalties applicable to banks for embezzlement.

Section 40. K.S.A. 1988 Supp. 9-2014: this section of the banking code is amended to include trust company violations being reported.

Section 41. K.S.A. 9-2016: this section of the banking code is amended making it unlawful for both banks and trust companies to operate without a certificate from the Commissioner.

No corresponding section.

See New Section 18.

No corresponding section.

New Section 19: makes such transactions and advertisements unlawful and imposes a penalty for such actions.

See New Section 18.

See New Section 17.

See New Section 18.

The above summary covers all provisions contained in H.B. 2004; however, the draft submitted by Mr. Porter covers additional areas. The following columns set out those provisions.

New Section 1: names the act "Kansas Trust Company Act of 1989." This section names the Act and within that name sets out a new statutory section for all trust company statutes -- a new article in Chapter 9, the banking code.

New Section 2: defines the terms for the draft. See use of the defined term "Foreign Trust Company" in **New Section 15. Reciprocal Corporate Fiduciary Powers.**

New Section 3: defines the applicability of the new Act.

The thrust of H.B. 2004 was to insert trust company provisions found in Chapter 17, the general corporation code, into the relevant sections of the bank statutes throughout Chapter 9, the banking code. The provisions of Chapter 17, Article 20 would be repealed.

Section 6: definitions in banking code are not all relevant to trust companies.

No corresponding section. The net effect of the bill is the same as proposed in Porter's section.

New Section 4: outlines very specific steps in the organization, incorporation and approval for the operation of a trust company.

New Section 8: specifies the filing of articles of incorporation for a trust company with the Secretary of State and also the transmittal of copies of the articles to the Bank Commissioner.

New Section 11: defines terms used in authorizing a new activity for trust companies, the contract for trust services.

New Section 13: makes it clear that unless otherwise expressly provided by this Act or the banking statutes made applicable, all trust companies will be subject to the general corporation code.

New Section 15: allows foreign trust companies, defined as out-of-state trust companies, to transact business in Kansas with the approval of the Bank Commissioner. The language of the section is reciprocal so that Kansas trust companies would be authorized to transact business in other states reciprocal with Kansas. Prior to a foreign trust company doing business, it would need a certificate of reciprocity from the Bank Commissioner.

New Section 16: establishes criteria for the relocation of a trust company.

New Section 20: allows a trust company to convert its charter to a bank charter with the approval of the Bank Board.

CFI.mem/WGW/bd

K.S.A. 9-801 could be amended to include trust companies thereby picking up the 5-incorporator language; character and qualifications are addressed in proposed amended 9-1802.

No corresponding section.

Under present law and under the provisions of H.B. 2004, there is no authorization for such contracting trust services. **This a clear policy area for the Committee's consideration.**

K.S.A. 2016, being repealed by this bill, provided a similar nexus to the general corporation code.

There has been no specific statute on this point; however, apparently out-of-state trust companies have been doing business in Kansas by registering with the Secretary of State as foreign corporations under 17-7301 *et seq.* No notice was necessary to the Bank Commissioner for such approval.

K.S.A. 17-2015, being repealed by this bill, provided a similar requirement. K.S.A. 9-1804 in the banking code could be amended to include trust companies receiving approval to relocate.

No corresponding section exists in the bill and in current law.

Marked Revised Draft dated:
1 - 26 - 89
"A" = Deletion; "-" = Addition

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

Atch 2

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 20_a 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. Forms 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 nonnegotiable 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 as a fiduciary which 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;

(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. The Commissioner shall have authority to bring an action in any court of competent jurisdiction to obtain injunctive relief or the appointment of a conservator or a receiver if any trust company is operated in an unlawful manner. The Commissioner shall not be required to post a bond when seeking relief in any action brought under this section.

(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 a Trust Company or Using Word "Trust"; Penalties.

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

(b) 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 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 of 1947. [^] K.S.A. 9-1714; [^] 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.

New Section 22. Repealer. K.S.A. 17-2001 through K.S.A. 17-2026 is hereby repealed.

//HBP/XYZ/B-XYZ

1/26/89

EXECUTIVE SUMMARY OF ANALYSES

By

H. Boone Porter, III

The two accompanying section-by-section analyses digest the proposed amendment to H.B. 2004 and H.B. 2004. The analyses may be summarized as follows:

- The proposed amendment better accomplishes the legislative goal of consolidating trust company laws and transferring them to one place in the statute books. The proposed amendment will generally codify all such laws into a single article of K.S.A. Chapter 9. On the other hand, H.B. 2004 scatters statutory provisions governing trust companies throughout six different articles of K.S.A. Chapter 9.
- The proposed amendment better accomplishes the legislative goal of modernizing and streamlining trust company laws. The proposed amendment eliminates out-dated, irrelevant and redundant provisions currently found in Kansas' trust company laws. On the other hand, H.B. 2004 perpetuates out-moded statutory provisions whose continued application to trust companies conflicts both with sound regulatory policy and with other statutory provisions.
- The proposed amendment effectively achieves the legislative intent of making all Kansas trust companies non-

depository institutions. H.B. 2004 fails to achieve this result because of a drafting error. The text of H.B. 2004 is inconsistent with its stated objectives. While H.B. 2004 attempts to remove trust companies from commercial banking, it continues to regulate them as if they were commercial banks. In short, H.B. 2004 fails to recognize that a pure trust company business is very different from a commercial banking business and should be separately regulated.

- The proposed amendment is responsive to the market needs of trust customers and to the competitive requirements of non-depository trust companies. For example, it grants them the right to be "contracting trustees." This provision is based upon laws which have been successfully implemented in Wisconsin and Missouri when those states modernized their trust company laws. In contrast, H.B. 2004 deprives trust companies of existing corporate powers, thereby rendering them less able to serve their wholesale and retail customers to the detriment of the state as a whole.

- The proposed amendment enhances the State Banking Board's and the Commissioner's regulatory authority and fills "gaps" in existing trust company regulation. Specifically, the proposed amendment increases the statutory criteria applicants must prove to obtain certain regulatory approvals; confers the State Banking Board with rule-making authority; confers the Bank Commissioner with authority to

obtain injunctive and other equitable relief to enforce his supervisory orders; creates a means to monitor foreign trust company activity in Kansas; and creates a means by which trust companies can convert into banks. In comparison, H.B. 2004 does not achieve any of these results.

//HBP/XYZ/SA-XYZ
1/31/89

SECTION-BY-SECTION ANALYSIS
OF
PROPOSED AMENDMENT TO H. B. 2004

By
H. Boone Porter, III

New Section 1. Citation of Act. This section is new. The proposed amendment will codify all trust company laws into a separate article of K.S.A. Ch. 9. This drafting technique is intended to prevent ambiguities which will otherwise result if the commercial banking law statutes are amended across-the-board to include the phrase, "and trust companies" after the term "bank" in each place where the term "bank" is appears.

New Section 2. Definitions. This section is new and is designed for convenience of reference. Two definitions are of particular significant.

- The term "foreign trust company" is new. It refers to trust companies incorporated in other states. This term expressly excludes so-called "off-shore" trust companies, which historically are vehicles for all sorts of fraudulent transactions. The importance of this exclusion is that such "off-shore" trust companies cannot be licensed to do business in Kansas.

- The term "trust company business" is new. It makes clear that certain regulated professionals and businesses which traditionally perform certain fiduciary duties for compensation as an incident to the services they normally provide are not subject to regulation as "trust

companies." This definition eliminates the concern Representative Long had with potential regulatory scope of H.B. 2004.

New Section 3. Applicability of Act. This section is new. It makes clear that all trust companies now or hereafter incorporated under Kansas law are subject to the act and must be non-depository institutions. Deposit-taking is no longer included in a trust company's corporate powers. H.B. 2004, which has no equivalent provision, fails to achieve this objective through a drafting flaw. Section 1 of H.B. 2004 makes surrender of the existing depository trust company charter a voluntary act by its holder. If that charter is not surrendered, the sole deposit-taking trust company can continue to accept deposits free from regulation under H.B. 2004. Section 6(f) of H.B. 2004 defines the term "trust companies" to mean non-depository institutions. However, it is a descriptive provision which has no operative effect. In short, the result of §§1 and 6(b) of H.B. 2004 is to exclude deposit-taking trust companies from statutory regulation, the exact opposite result of H.B. 2004's stated objective! New Section 3 of the Proposed Amendment prevents this unintended result. Also see the discussion under New Section 14 below.

New Section 4. Organization of Trust Companies. This section restates the present K.S.A. 17-2023. New Section 4(b)(3) adds new statutory requirements which organizers must establish to obtain a trust company charter, and was drafted in response to

the Commissioner's concern over the so-called "Andover Church Bond" application. Specifically, organizers must establish that their business plan is economically feasible and that it complies with all applicable state and federal laws. This provision will clarify the State Banking Board's statutory authority to disapprove questionable applications. New Section 4 requires organizers to affirmatively establish the legality of their business plans as a means of preventing improper uses of de novo trust companies. This requirement is legally preferable to the regulatory practice of imposing artificially high capital requirements in hopes that the organizers will withdraw their application.

New Section 5 . Minimum Capital; Capital Accounts. This section restates existing K.S.A. 17-2021. New Section 5 adopts H.B. 2004's minimum capital requirement of \$250,000, which is a realistic minimum amount organizers of trust companies can expect to invest in a de novo trust company. However, New Section 5 also adds a provision to clarify the Commissioner's authority to order a trust company to increase its capital if its financial condition or the safety of its customers so requires. See also New Section 17 which enables the Commissioner to obtain judicial relief to enforce his administrative orders.

New Section 6. Expenses of Investigation. This section restates existing K.S.A. 17-2024.

New Section 7. Forms of Application; Rules and Regulations. This section fills a "gap" in the present regulatory structure. The State Banking Board currently lacks

statutorily conferred rule-making authority either to: (a) promulgate forms of applications to organize or relocate trust companies, or (b) adopt procedural rules governing the investigation and processing of such applications. Consequently, the procedures governing public hearings widely varies in each case. New Section 7 expressly confers rule-making authority on the State Banking Board. Its regulations may be simple and flexible, but their adoption will ensure a degree of procedural uniformity and fairness in the processing of applications. Equally important, New Section 7 recognizes that the State Banking Board, rather than the Department of Banking, is the appropriate agency to promulgate such rules because it is the agency to which the applications are addressed.

New Section 8. Filing Articles of Incorporation. This section is new and gives a statutory basis to an existing informal administrative practice. It clarifies that trust companies may file their articles of incorporation, but may not engage in a "trust company business," until they have been examined and certified by the Commissioner pursuant to New Section 9.

New Section 9. Certificate of Authority to Commence a Trust Company Business. This section is new. It fills a "gap" in the present regulatory structure, and gives a statutory basis to an existing informal administrative practice. The section makes clear that a certificate of authority to commence a "trust company business" will not be issued except after completion of a pre-opening examination by the Commssioner.

New Section 10. Powers of Trust Companies. This section restates 17-2002. Specifically, it takes away trust companies' power to accept deposits, and in return, expands trust companies' fiduciary powers. Generally, it incorporates the provisions of H.B. 2004 and K.S.A. 17-2002, as shown in the chart comparing their respective subsections set forth below:

<u>Proposed Amendment</u>		<u>H.B. 2004</u>		<u>K.S.A. 17-2002</u>
(a)	=	----	=	(a), clause #1
(b)	=	§2(a)	=	(a), clause #5
(c)	=	§17(a)(1)	=	(a), clause #8
(d)	=	§2(b)	=	(b), clause #1
(e)	=	§2(g)	=	(e), clause #2
(f)	=	§2(c)	=	(b), clause #2
(g)	=	§2(c)	=	(d), clause #3
(h)	=	§2(d)*	=	(c)
(i)	=	§2(e)	=	(d), clauses ##1 and 2
(j)	=	§2(f)**	=	(e), clause #1
(k)	=	§2(h)***	=	(h), clause #1
(l)	=	§2(h), clause #3	=	(h), clause #3
(m)	=	§2(i)	=	(i)
(n)	=	---- +	=	---- +
(o)	=	----	=	----
(p)	=	---- ++	=	---- ++
(q)	=	---- +++	=	---- +++
(r)	=	§2(j)	=	----

NOTES

*§2(d) of H.B. 2004 uses inartful language. For example, courts don't "order" agreements. New Section 10(h) embodies the same concept using the proper legal verbage currently found in K.S.A. 17-2002(c).

264

**New Section 10(j) restores certain provisions currently found in K.S.A. 17-2002(d), but which have been dropped by H.B. 2004. These provisions eliminate confusion regarding an executor's authority act if the will is not attached to the letters of administration.

***Clause #2 of §2(h) of H.B. 2004 perpetuates outdated language currently found in K.S.A. 17-2004(h). Such language could be interpreted as giving statutory sanction to potentially abusive situations such as the "Andover Church Bond" proposal. Accordingly, New Section 10(j) of the proposed amendment does not include such language.

+New Section 10(n) is designed to do two things:

- First, it makes clear that if any provision of state law confers upon banks fiduciary powers which are not described in New Section 10, those powers are also conferred upon trust companies.
- Second, it fills a "gap" in the present statutory structure by providing a mechanical procedure for effecting voluntary liquidations of bank trust departments in an administrative by convenient and cost effective manner. Absent New Sections 10(n) and 11, voluntarily liquidations of trust departments will almost always require costly and complex judicial proceedings. H.B. 2004 does not address this issue.

++New Section 10(p) provides the mechanical procedure by which trust companies can convert into Kansas state banks. The conversion procedure is discussed further under New Section 20. H.B. 2004 is silent on this issue.

+++New Section 10(q) confirms that trust companies will continue to have any power not itemized in New Section 10 but which is currently conferred upon them by other statutes, including, without limitation, K.S.A. 9-1609. K.S.A. 9-1609 is the Kansas adoption of the Uniform Common Trust Fund Act. The powers conferred by such statutes were cross-referenced, rather than restated in New Section 10, because it was deemed inappropriate to make any revisions to a Uniform Statute.

New Section 11. Certain Transfers of Fiduciary Responsibilities; Trust Services Offices. This section is new and represents the sole new fiduciary power granted to trust companies. It is modeled upon Wisconsin Statutes §223.07, and Missouri Revised Statutes §361.116.

- The Wisconsin Statute was adopted in 1977 at the urging of the Wisconsin Bank Commissioner.
- The Missouri Statute was adopted in 1983 at the request of the Missouri Bankers Association.

Both the Wisconsin and Missouri statutes have functioned well, a fact affirmed by both Kirk Dean, the Wisconsin Deputy Bank Commissioner, and Irven Friedhoff, General Counsel to the Missouri Commissioner of Finance. I have suggested that Grant Brooks, General Counsel to the Kansas Department of Banking, contact the Missouri Division of Finance and the Wisconsin Department of Banking to independently ascertain that those agencies have had positive experiences with their respective statutes. H.B. 2004 has no equivalent provision.

New Section 12. Names of Trust Companies. This section restates K.S.A. 17-2017 to ensure foreign trust companies qualifying to do business in Kansas are not placed in unknowing violation of law because their names don't begin with the word "The" and end with the words "Trust Company."

New Section 13. Applicability of Kansas Corporation Code of 1972. This section restates K.S.A. 17-2016 in a manner to ensure its conformity with current requirements and practices under the Corporation Code of 1972, which was enacted subsequent to K.S.A. 17-2016.

New Section 14. Certain Trust Companies to be Deemed Banks. This section tracks §1 of H.B. 2004, but makes clear that the certificate to be issued upon surrender of the trust company charter is a certificate to engage in a banking business. H.B. 2004 is unclear on this point. New Section 14 of the proposed amendment, like §1 of H.B. 2004, makes the surrender of the trust charter voluntary. However, New Sections 3 and 10 of the proposed amendment also make clear that failure to surrender the

trust charter will deprive such a trust company of its ability to accept deposits. H.B. 2004 fails to achieve this result because of the defects in the definition of a trust company found in §6(b) of H.B. 2004. Accordingly, H.B. 2004 will inadvertently allow such trust companies to "opt-out" of all statutory regulation!

New Section 15. Reciprocal Corporate Fiduciary Powers. This section is new. Currently, all foreign corporate fiduciaries may accept and execute trusts in Kansas merely by filing with the Secretary of State an application to qualify as a foreign corporation under K.S.A. 17-7301. No filings are made with the Banking Department. New section 15 fills this "gap" in the present regulatory structure. It will require such foreign corporate fiduciaries to obtain approval from the Bank Commissioner before they can accept and execute trusts in Kansas. This procedure will better enable the Department of Banking to exercise its supervisory function. The ministerial function of acting as agent for service of process on foreign corporate fiduciaries is left with the Secretary of State. The text of this section is based upon Missouri Revised Statutes §362.600, and requires that Kansas banks have reciprocal privileges in the jurisdiction in which the applicant maintains its principal place of business.

New Section 16. Relocation of Principal Place of Business. This section restates K.S.A. 17-2015. It strengthens the authority of the State Banking Board by enlarging the statutory requirements which a trust company must satisfy before

it can relocate. Specifically, this Section will require the trust company to show it is in good financial condition; it must give satisfactory reasons for wishing to relocate; it must demonstrate that the community it is leaving will retain adequate trust services; and it must show that the relocation will serve the public need in the community where the trust company seeks to move. H.B. 2004 is silent on this point.

New Section 17. Supervision and Examination. This section cross-references specific sections in Chapter 9, Article 17 governing the supervision and examination of trust companies. The Commissioner is given standing to seek injunctive relief or the appointment of either a conservator or a receiver if a trust company is being operated illegally. The Commissioner need not post a bond to secure such relief. See discussion under New Section 21 for further explanation.

New Section 18. Penalties. This section cross-references specific sections in Chapter 9, Article 18 governing penalties to which trust companies, their directors, officers and employees will be subject. See discussion under New Section 21 for further explanation.

New Section 19. Unlawfully Acting as a Trust Company or Using Word "Trust"; Penalties. This section restates K.S.A. 17-2017. H.B. 2004 is silent on the issue of the use of the word "Trust" in the business names of entities which are neither trust companies nor banks with trust powers.

New Section 20. Conversion of a Trust Company to a Bank. This section is new and provides a mechanical means by which a

trust company, which was organized as a non-depository institution, may become a Kansas state bank. To so convert, the trust company must meet all the requirements of K.S.A. 9-1801 and K.S.A. 9-1802. Accordingly, there will be no advantage to first organizing a trust company and then converting it, rather than applying to organize a bank directly. H.B. 2004 is silent on this issue.

New Section 21. Amendment to Kansas Banking Code. This section is new. It makes clear that certain provisions of the Kansas Banking Code of 1947 will no longer apply to Kansas trust companies, all of which will be non-depository institutions. The specific provisions so amended and the reason for their amendment are as follows:

- K.S.A. 9-1714. New Section 17 renders this provision unnecessary. The change is necessary to prevent any conflicts with the Bankruptcy Code of 1978. The Bankruptcy Code preempts state law and is applicable to non-depository trust companies.

- K.S.A. 9-1901 through K.S.A. 9-1718 apply to insolvency. These provisions predate, and have been superceded by, the Bankruptcy Code of 1978. Although the Bankruptcy Code does not apply to banks, it does apply to non-depository trust companies.

° K.S.A. 9-2003. This section requires banks to file certain statements with the Commissioner before they accept deposits. It is inapplicable to non-depository trust companies. H.B. 2004 also amends this section, but it is unclear what is meant by the term "trust business" as used in §31 of H.B. 2004. That section of H.B. 2004 could be interpreted to imply that trust companies could accept demand deposits.

° K.S.A. 9-2005 through K.S.A. 9-2008 and K.S.A. 9-2010. These sections deal with deposit-taking and insolvency and have no relevance to non-depository trust companies qualified to obtain relief under the Bankruptcy Code of 1978.

° K.S.A. 9-2015. This section only applies to deposit-taking banks.

New Section 22. Repealer. This section repeals all trust company provisions currently found in K.S.A. Ch. 17, Article 20.

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1/31/89

SECTION BY SECTION ANALYSIS OF H.B. 2004

By

H. Boone Porter, III

New Section 1. This section is similar to New Section 14 of the proposed amendment, but lacks the precision of language found in New Section 14.

New Section 2. This section is analogous to New Section 10 of the proposed amendment. A subsection-by-subsection comparison between New Section 10 of the proposed amendment, §2 of H.B. 2004, and K.S.A. 17-2002 is found in the analysis accompanying the proposed amendment. The major differences are as follows

- §2 of H.B. 2004 does not include an equivalent power to that found in New Sections 10(0) and 11 (the "contracting trustee" provision).
- §2 of H.B. 2004 does not include by reference powers conferred upon trust companies by other statutes, e.g., K.S.A. 9-1609.
- §2 of H.B. 2004 uses inartful language and retains certain outdated provisions.

New Section 3. This section is unnecessary because it is redundant with provisions of the Corporation Code of 1972 (e.g. K.S.A. 7-6412(d)) and with Articles 8 and 9 of the Uniform Commercial Code (e.g. K.S.A. 84-9-201 and UCC §8-301). This

section has been deleted in the proposed amendment, which relies upon the better known provisions of the Corporation Code of 1972 and the Uniform Commercial Code.

New Section 4. This section is unnecessary because it is redundant with provisions of the Corporation Code of 1972 (K.S.A. 17-6502) and the Uniform Commercial Code (K.S.A. 84-9-201). More importantly, it may inadvertently overrule bargained-for-rights contained in agreements between concerned parties. For example, pledge and other security agreements designate the party who is entitled to vote encumbered stock and the circumstances under which that power may be exercised.

New Section 5. This section is analogous to New Section 12 of the proposed amendment, but does not utilize technically precise language as does New Section 12 of the proposed amendment.

Section 6. This section amends the general definitional section of the Banking Code of 1947, and is roughly analogous to New Section 2 of the proposed amendment. However, §6 of H.B. 2004 is inartful. For example, the definition of the term "trust company" is obviously intended to be an operative provision which prohibits trust companies from deposit-taking. Unfortunately, a definition cannot legally function in this manner under existing rules of statutory construction. As a consequence, the sole deposit-taking trust company can "opt-out" of statutory regulations. Furthermore, §6 of H.B. 2004 does not define the term "trust company business" that term is used in §38 of H.B. 2004. On the other hand, New Section 2 of the proposed amendment

clearly defines the term "trust company," clearly defines the term "trust company business," contains operative provisions which effectively remove trust companies from the deposit-taking business, and contains provisions which specifically exclude various fiduciaries-for-hire from inadvertent regulation as "trust companies."

Section 7. This section is analogous to New Section 5 of the proposed amendment. However, §7 of H.B. 2004 does not give the Commissioner supervisory authority to order post-incorporation capital increases. In comparison, New Section 5 of the proposed amendment gives the Commissioner express authority to order capital increases, and sets a statutory standard for the exercise of such discretionary authority.

Section 8. This section deals with required par values of trust company stock. It does not serve a valid regulatory purpose with respect to trust companies. It is deleted from the proposed amendment.

Section 9. This section deals with stock transfers. This section does not serve a valid regulatory purpose with respect to trust companies. Indeed, it may interfere with certain well-established compensation systems in the money-management industry. It will, therefore, place non-depository trust companies at a competitive disadvantage in attracting and retaining personnel vis-a-vis non-bank competitors. This section is also redundant with various provisions of the federal Change-in-Bank Control Act of 1978, the Kansas Change-in-Bank Control Act (K.S.A. 9-1720 through K.S.A. 9-1723), and the Bank Holding

Company Act of 1956. Those statutes require reporting and prior regulatory approvals of significant ownership changes in bank stock. It is deleted from the proposed amendment.

Section 10. This section deals with capital reduction. It creates unnecessary regulation for non-depository trust companies and conflicts with provisions of the Corporation Code of 1972. (See K.S.A. 17-6604). It is deleted from the proposed amendment.

Section 11. This section states the obvious proposition that a trust company's capital may be increased. See K.S.A. 17-6401. This section is unnecessary, and is deleted in the proposed amendment.

Section 12. This section requires regulatory approval for issuances of preferred stock. It is appropriate to regulate the issuances of preferred stock by banks because of the leverage inherent to deposit-taking. However, this type of regulation makes no sense when applied to non-depository trust companies. It is deleted in the proposed amendment.

Section 13. This section deals with limitation of stockholder liability and the payment of dividends. Part of this section is outdated and redundant with the Corporation Code of 1972. Stock in Kansas corporations (including banks and trust companies) is automatically non-assessable unless their articles of incorporation expressly provide. See K.S.A. 17-6002(b)(6). This section is deleted in the proposed amendment.

Sections 14, 15 and 16. These sections deal with the payment of dividends. They are redundant with K.S.A. 17-6420 and K.S.A. 17-6424, and are inappropriate for non-depository trust companies. They are deleted from the proposed amendment.

Section 17. This section limits the general powers of trust companies. Specifically, it takes away from trust companies the power to own property which power is presently conferred on them by K.S.A. 17-2016 and K.S.A. 17-6102(4). The provisions of this section make no sense at all when applied to non-depository trust companies. This section also contains drafting flaws: it provides trust companies may engage in deposit-taking, but if they do they cannot hold stock in a building corporation or safety-deposit company. This is inconsistent with H.B. 2004's stated purpose. For all of these reasons, this section is deleted from the proposed amendment.

Section 18. This provision deals with directors' responsibilities. It is redundant with K.S.A. 17-6301, and is therefore, unnecessary. Furthermore, it contains regulation which is appropriate for banks but which is totally inappropriate for trust companies. It is deleted in the proposed amendment.

Section 19. This provision deals with the election of officers. It is redundant with K.S.A. 17-6302, and is, therefore, unnecessary. While the bonding requirement found in K.S.A. 9-1115 is appropriate, it would be best imposed upon trust companies either as a condition of obtaining a certificate of authority or pursuant to rules promulgated under K.S.A. 9-1713.

Section 20. This provision requires at least quarterly meetings of the directors and the hiring of an auditor. A trust company's board of directors should probably meet monthly to insure proper management of all trust accounts. Although no analogous provision is in the proposed amendment, inclusion of

this section in the proposed amendment would not be objectionable.

Section 21. This provision requires directors to own qualifying shares. It is an outdated concept. It is unlikely a director will or will not do a good job based upon a \$500 investment in qualifying shares. Such shares are often subject to buy-sell agreements, thereby removing the director from any real economic risk to the director, even when the buy-sell agreement conforms to the requirements of recent Kansas Attorney General Opinions. It is deleted from the proposed amendment.

Section 22. This section contains the director's oath. The oath merely recites duties which are automatically imposed upon directors by operation of law. The oath has dramatic effect, but its continued need as a regulatory tool is questionable. It is deleted from the proposed amendment.

Sections 23, 24, 25 and 26. These provisions are not objectionable and should be incorporated into the proposed amendment.

Sections 27 and 28. These sections involve applying for authority to organize a trust company and are comparable to New Sections 4 and 9 of the proposed amendment.

Sections 29 and 30. These sections have been incorporated into the proposed amendment.

Section 31. This section is derived from regulatory statutes which predate the Banking Code of 1947. It is of no practical value whatever. It implies that individuals or partnerships may engage in either the commercial banking or trust

company businesses. In this respect, it conflicts with other existing statutory sections which require such activities to be conducted exclusively by corporations. See K.S.A. 17-2017, K.S.A. 9-701(a) and K.S.A. 9-1801(a). The provision requiring a financial statement to be filed prior to commencing business is unnecessary. Trust companies cannot begin trust company operations until they have been examined. It is deleted from the proposed amendment.

Sections 32, 33, 34 and 35. These sections deal with accepting deposits and certifying checks after a bank is insolvent, and are irrelevant to non-depository trust companies. They are deleted from the proposed amendment.

Section 36. This section is incorporated into the proposed amendment.

Section 37. This section makes it a crime to accept deposits while insolvent. It is irrelevant to non-depository trust companies which can never accept deposits. It is deleted from the proposed amendment.

Sections 38, 39, 40 and 41. These sections are not objectionable, and can be included into the proposed amendment.

Section 42. A repealer section.

Section 43. Effective date section.

//HBP/XYZ/BA-XYZ3
1/31/89

Reimer and Koger Associates, Inc.

INVESTMENT COUNSELORS

January 27, 1989

Honorable Clyde D. Graeber
Chairman, Commercial and Financial
Institutions Committee
House of Representatives
State Capital
Topeka, Kansas 66612

RE: Amendment to House Bill 2004

Dear Representative Graeber:

I am writing to urge you to support the proposed Amendment to House Bill 2004 by the House Committee on Commercial and Financial Institutions, and to encourage your continued efforts in updating the trust banking laws of the State of Kansas.

I have been involved in the trust and investment industry for nearly 19 years, much of which was spent with the First National Bank of Topeka (now Bank IV of Topeka). During that time I have worked with numerous individuals, corporations, foundations and public entities in a number of fiduciary capacities. I have continuously worked with the Kansas Public Employees' Retirement System since late in 1970, assisting them with their custodial banking needs, and more recently as a principal of one of their investment advisors.

I feel strongly that, based upon my experience and involvement in understanding and complying with both state and national banking and securities laws, the proposed amendment to H. B. 2004 specifically provides sorely needed updates and clarifications in a number of areas pertaining to trust companies and fiduciary responsibilities.

As an experienced trust officer, and a principal organizer of a new non-depository trust company located in Johnson County, I feel it most important that Kansas financial institutions have as favorable a regulatory environment in which to compete as institutions in other states -- most notably the State of Missouri.

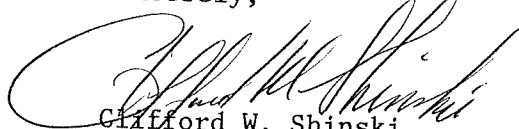
I am confident that the increasing demand for trust and investment services will provide an exciting, growing, and continuously changing environment in which to compete during the next decade

and that the skills, technology and focus required to excel in this industry may be found and developed within the State of Kansas to the degree that they might be in any of the money centers of our country.

Your support of the proposed amendment would be a significant step towards providing the citizens of Kansas an environment in which they may obtain the complex trust services that will be crucial in developing, managing and retaining capital within our State in the ensuing years.

Thank you for your attention to this matter.

Sincerely,



Clifford W. Shinski
Managing Director

CWS:lp

Reimer and Koger Associates, Inc.

Atch 2nd

To: House Committee on Commercial and Financial Institutions

From: Kansas Banking Department

Date: January 31, 1989

Re: Comparison of Porter Amendment to House Bill 2004

Introduction

The Banking Department would like to point out to the Committee that this bill was not manufactured by the Banking Department. H.B. 2004 is the product of the combined effort of the Banking Department, the private industry, Kansas Bankers Association, and the Special Interim Committee on Commercial and Financial Institutions. At the time, the Special Committee adopted this bill, the private industry raised no objections to this bill and, all looked upon this proposed legislation favorably.

Section one: Citation of Act

This is unnecessary. Any future citation of this legislation will be to the specific statute number.

Section two: Definitions

All necessary definitions are contained in H.B. 2004 § 6; K.S.A. 9-701. It is up to the discretion of the Committee whether H.B. 2004 addresses foreign trust companies. Presently, foreign trust companies do not pose a regulatory problem. However, adoption of this language, would pose regulatory concerns concerning the exact nature of supervisory powers.

Section three: Applicability of Act

This is not needed. H.B. 2004 applies to all trust companies.

Section four: Organization of Trust Companies

This is unnecessary. H.B. 2004 § 27 and 28 cover the same topics. There are no expanded investigation powers for the State Banking Board. Additionally, the amount of time the Board has to make a determination on a charter application is already addressed in our rules and regulations: K.A.R. 17-16-1 through 17-16-9.

Section five: Minimum Capital

This is no different from H.B. 2004, § 7, K.S.A. 9-901a.

Section six: Expenses of Investigation

This section is unnecessary. K.S.A. 9-1803 already covers investigation costs. Infact, K.S.A. 9-1803 allows for more reimbursement than \$1,000.

Section seven: Forms of Application, Rules and Regulations

This section is unnecessary. H.B. 2004 § 7 addresses the same issues.

Atch #3

Section eight: Filing Articles of Incorporation

This section is too detailed and unnecessary. It "locks" the regulator into a detailed "dance" that must be performed by the Banking Department and the Secretary of State. The administrative procedure for filing and approving Articles should not be codified. It is best addressed in rules and regulations. What happens if the Secretary of State or Banking Department, to better serve the public, desires to change administrative procedures?

Section nine: Certificate of Authority

This section is unnecessary. H.B. 2004 § 31 addresses all the issues.

Section ten: Powers of Trust Companies

H.B. 2004 § 2 addresses all the powers listed in this section. However, this proposal provides the additional powers of a successor trustee, originating trustee, contracting trustee, and the power to convert to a Kansas state bank.

Section eleven: Transfer of Fiduciary Responsibilities

This section addresses a new concept. It is up to the discretion of the Committee whether to include this concept in H.B. 2004. It does not pose a regulatory problem and it would be better addressed by the industry. However, subsection (g) mandates the Commissioner approve the transfer of fiduciary duties. The commissioner would request that if this concept is adopted, the approval process be exempted from the Kansas Tort Claims Act under K.S.A. 75-6104 so that no liability, however remote, could be attributed to the review process mandated in this proposal.

Section twelve: Names of Trust Companies

This section is the same language as the present old statute. H.B. 2004 § 5 contains modern and broad language; a definitely better section.

Section thirteen: Applicability of Kansas Corporation Code

This section is redundant. It recites a common rule of statutory construction. This section is not needed.

Section fourteen: Certain Trust Companies Deemed Banks

This section is equivalent to H.B. 2004, Section one.

Section fifteen: Reciprocal Corporate Fiduciary Powers

An equivalent provision is not in H.B. 2004. whether this concept is incorporated into H.B. 2004 is within the discretion of the Committee. However, a foreign corporation already must register with the Secretary of State. Adoption of this language will pose foreseeable problems. For example, to what extent can the Banking Department legally regulate foreign trust companies? Additionally, how efficiently can we regulate Kansas trust companies with offices in foreign states.

Atch 3'

Section seventeen: Supervision and Examination

This section is unnecessary. Supervision and examination requirements are contained in Article 17 of Chapter 9.

Section eighteen: Penalties

H.B. 2004 § 29 - § 41 addresses the same issues. In fact, the penalty sections are a prime example of how H.B. 2004 consolidates the trust company statutes into Chapter nine.

Section nineteen: Unlawfully acting as Trust Company

This topic is completely addressed in H.B. 2004 § 41.

Section twenty: Conversion of a Trust Company to a Bank

H.B. 2004 does not address this issue. The Banking Department has some concerns over allowing a trust company to capitalize a bank with the net assets of the trust company, instead of cash.

Conclusion

So, in conclusion, the proposed amendment to H.B. 2004 has only two substantive proposals. Every other problem or issue addressed in the proposed amendments; are adequately addressed in H.B. 2004 and in my opinion, H.B. 2004 does a better job of addressing the common issues that are addressed in the proposed amendments.

First, one inadvertent house cleaning issue must be addressed. The proposed amendment has a section addressing the change of location of a trust company. H.B. 2004 was supposed to include K.S.A. 9-1804 which is the change of location statute for banks. A reference to "trust company" was to be, and should be included in K.S.A. 9-1804.

Second, the substantive differences.

One is the issue of allowing a Corporate Fiduciary to contract away certain Fiduciary Responsibilities. The area of concern for this department is the provision that mandates the Commissioner must approve the transfer contract. The concern is the potential for liability on the Commissioner for approving a transfer of Fiduciary Responsibilities. It is up to the Committee's discretion whether or not to amend H.B. 2004 to include this provision. However, if it is included, the Banking Department would request that the mandated approval process be removed or, that statute be added to the exceptions contained in the Kansas Tort Claims Act. Again, whether the Committee adopts this concept is a clear policy issue, left to your sound discretion.

The other substantive difference is the Reciprocal Corporate Fiduciary Powers. This provision will provide foreseeable problems in the future. For example, to what extent can the Commissioner legally regulate a foreign trust company without interfering with interstate commerce? Additionally, the problem of regulating Kansas trust companies with offices in foreign states will exist.

Atch 3²

The provision does not address supervision, rather it only addresses "registration" of foreign trust companies located in states that would allow a Kansas trust company to operate in that state by following a similar statute. There are already registration requirements for foreign corporations with the Secretary of State. This proposed amendment seems to create more bureaucracy without addressing what type of substantive powers go along with it. Again, this proposed amendment is a clear policy issue, and up to the sound discretion of the Committee. However, the Kansas Banking Department firmly believes H.B. 2004 is a viable legislative improvement that requires your sincere consideration,

Thank you for your time.

GCB:dsl

Atch 3³