

Approved \_\_\_\_\_

Date

*Clyde Graeber* 2/9/89

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 ~~am~~ p.m. on February 2, 1989 in room 527-S of the Capitol.

All members were present except: Representative Lawrence Wilbert, Excused

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

Conferees appearing before the committee: None

Representative Cates moved and Representative Justice seconded the motion that the minutes of the January 31 meeting be approved. There was no discussion and the motion carried.

The Chairman called the meeting to order at 3:30 P.M. and thanked the members of the sub-committee on H.B. 2004, i.e., Representatives Long, King, and Teagarden for their efforts and work and asked Representative J. C. Long to give a report on what the sub-committee had resolved and recommended in regard H.B. 2004 and the Porter draft of the bill.

Representative Long reported that the sub-committee met on Wednesday afternoon and at noon February 2, to discuss H.B. 2004, then asked Bruce Kinzie of the Revisors Office to go over the balloon draft (See Attachment No. 1).

New Section 2 was incorporated from Mr. Porter's draft. (The effective date will have to come under this.)

3. Powers Section. The lead in language from Porter's draft was better than that adopted. Will use this language as a lead in.

3. (d) Mr. Porter's draft has the same general thought and the language is more concise. This was adopted.

3. (f) Mr. Porter's draft has the same general thought and the language is more concise. This was adopted.

3. (i. thru l). The powers in Mr. Porter's draft needed to be enumerated in the bill. This needed to be in the bill so these sections were added.

New Section 7. Contracting for trust services section. The Committee's concern had been addressed. The proposal states that trust companies must be incorporated within the state of Kansas.

The Commissioner must approve application. Notice filing (b) authority to disapprove but not approve.

(f) This is taking away approval language.

(g) May take away if not serving public.

(h) Include awarding but attorney fees.

Page 5. (s) Trust Company business definition needed to be included. The portion including foreign trust company was taken out.

The sub-committee began with H. B. 2004 and incorporated Mr. Porter's draft and it was felt these areas improved the bill.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS  
room 527, Statehouse, at 3:30 ~~am~~/p.m. on February 2, 1989.

Another problem was there are 26 other statute sections that need to be amended in Section 9 and brought all together. (Trust Companies need to be stricken in each section. Since trust companies may not accept deposits, this needs to be taken out. This is a technicality but there are a number of sections and this needs to be done.)

The Chairman stated he felt a substitute bill is needed as there are too many changes to easily explain bill on floor if it ultimately goes forward with approval.

Representative Shallenburger moved and Representative Cates seconded that staff should prepare a substitute bill and bring back to the committee for approval.

The Chairman stated staff will redraft the bill and when this is accomplished a meeting will be called for discussion and possible final action.

There is only one other bill in the committee as of this date which deals with credit unions and they are going to be out of town next week so there will not be a hearing on that bill until later. Staff is also looking at the request for a boat titling bill sought by the Kansas Independent Bankers and will prepare a report for the Committee.

The Chairman again thanked the sub-committee for their fine work on H.B. 2004 and the meeting adjourned at 4:00 P.M.

Date: Feb 2, 1989

GUEST REGISTER

COMMERCIAL AND FINANCIAL INSTITUTIONS

V

NAME	ORGANIZATION	ADDRESS
Carl McLaughlin	Columbian Trust	O.P. Ks
Chuck Stones	Ks Bankers Assn	Topeka
Kathy Taylor	"	"
Stan Stewart	City of El Dorado	
Gus Collins	City of El Dorado	El Dorado, Ks
Alan Steppat	Topeka	Pete McGill & Assoc.
Cate McNeil	Topeka	KIBSA
John Peterson	Topeka	Columbian Trust Company
Boone Porter	Brown, Kerachick & Fingersh	Overland Park, Ks
Grant C.C. Brooks	K.S. Banking Dept.	Topeka
Mike Heitman	✓	✓
W. Newton Male	✓	✓

# HOUSE BILL No. 2004

By Special Committee on Commercial and Financial Institutions

Re Proposal No. 9

12-22

16 AN ACT relating to trust companies; amending K.S.A. 9-902, 9-904,  
 17 9-905, 9-908, 9-909, 9-910, 9-911, 9-912, 9-1115, 9-1117, 9-1118,  
 18 9-1301, as amended by section 38 of chapter 356 of the 1988  
 19 Session Laws of Kansas, 9-1301a, as amended by section 39 of  
 20 chapter 356 of the 1988 Session Laws of Kansas, 9-1302, 9-1304,  
 21 9-1801, 9-1802, 9-2001, 9-2002, 9-2003, 9-2004, 9-2006, 9-2008,  
 22 9-2009, 9-2010, 9-2011, 9-2012 and 9-2016 and K.S.A. 1988 Supp.  
 23 9-701, 9-901a, 9-903, 9-1102, 9-1114, 9-1116, 9-2007 and 9-2014  
 24 and repealing the existing sections; also repealing K.S.A. 17-2001  
 5 through 17-2026.

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

27 New Section 1. Any trust company authorized to receive deposits  
 28 under K.S.A. 17-2025, prior to its repeal by this act, shall be issued  
 29 a certificate of authority by the state bank commissioner upon sur-  
 30 rendering such trust company's charter and complying with the pro-  
 31 visions of K.S.A. 9-804, and amendments thereto, and shall thereafter  
 32 be subject to all of the requirements, limitations and terms of the  
 33 banking code of Kansas.

34 New Sec. 2. ~~Any trust company is hereby authorized to exercise~~  
 35 ~~by its board of directors or duly authorized officers or agents, subject~~  
 36 ~~to law, all powers, including incidental powers, necessary to carry~~  
 37 ~~on the business of the trust company, and~~

38 (a) To receive for safekeeping personal property of every  
 39 description;

40 (b) to accept and execute any trust agreement and perform any  
 41 trustee duties as required by such trust agreement;

42 (c) to act as assignee, transfer agent, registrar or receiver;

43 (d) to accept and execute ~~any court ordered, directed or decreed~~  
 44 ~~trust agreements;~~

New Sec. 2. (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, upon the effective date of this act, shall be subject to and governed by the provisions of this act.

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, and amendments thereto, and may also exercise the following powers:

all trusts and to perform any fiduciary duties as may be committed or transferred to it by order, judgment or decree of any court of record of competent jurisdiction

Atch 1

45 (e) to act as agent or attorney in fact in any agreed upon capacity;

46 (f) ~~to be executor, administrator or testamentary trustee;~~

47 (g) to be a conservator for any minor, incapacitated person or  
48 trustee for any convict under the appointment of any court of com-  
49 petent jurisdiction;

50 (h) to loan money upon real estate, chattel, collateral or personal  
51 security; to execute and issue its notes, bonds or debentures payable  
52 at a future date, and to pledge any of its securities not in excess of  
53 105% of the amount of such notes, bonds or debentures thus issued,  
54 except that no holder of securities in excess of the amount provided  
55 herein shall acquire any title or claim to such excess; to buy and  
56 sell all kinds of government, state, county, municipal and corporation  
57 bonds, and all kinds of negotiable and nonnegotiable paper, secur-  
58 ities, and stocks except that:

59 (1) The total investment of any such trust company in bank stock  
60 shall at no time exceed ¼ its paid-in capital; and

61 (2) no trust company shall loan money upon or become the pur-  
62 chaser of its own stock, unless such purchase shall be necessary in  
63 the collection of, or to prevent loss upon, a debt previously con-  
64 tracted in good faith, whereupon the trust company may become  
65 the purchaser at public or private sale, but any stock so purchased  
66 shall be disposed of within six months after such purchase and shall  
67 not be included as a part of the assets of such company after the  
68 expiration of six months from the date of purchase;

69 (m) ~~(n)~~ to buy and sell foreign or domestic exchange, gold, silver,  
70 coin or bullion; and

71 (n) ~~(o)~~ pursuant to K.S.A. 9-1713, and amendments thereto, the state  
72 bank commissioner may adopt rules and regulations clarifying any  
73 of the above enumerated powers and duties extended to trust  
74 companies.

75 New Sec. 3.4 No executor, administrator, conservator or trustee  
76 holding trust company stock, and no person holding trust company  
77 stock as collateral security shall be personally subject to any liability  
78 as stockholders in such trust company, but the person pledging such  
79 stock shall be considered as holding same, and shall be liable as  
80 stockholder accordingly. Any executor, administrator, conservator or  
81 trustee holding trust company stock shall be liable in like manner

to act as executor or trustee under the last will and testament,  
or as administrator, with or without the will annexed to the  
letters of administration, of the estate of any deceased person

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

(j) 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, and amendments  
thereto, which liquidation may be effected in the manner provided  
in section 7 or otherwise;

(k) to act as either an originating trustee or as a  
contracting trustee pursuant to section 7;

(l) to exercise any other power expressly conferred upon  
trust companies by any other provision of the laws of this state;

Atch. 2

82 as the testator or intestate or the conservatee or person interested  
83 in such trust fund would have been if such person had been living  
84 and competent to act and hold the same stock in such person's own  
85 name.

86 New Sec. <sup>4</sup>~~4~~<sup>5</sup> Every executor, administrator, conservator or  
87 trustee holding shares of stock may vote as a shareholder and every  
88 person who shall pledge such person's stock, nevertheless, may rep-  
89 resent the same at all meetings and may vote accordingly as a  
90 shareholder.

91 New Sec. <sup>5</sup>~~5~~<sup>6</sup> No trust company shall take the name of any other  
92 trust company incorporated in the state of Kansas, or a name so  
93 near like another as to be easily confused with it. No trust company  
94 shall change its name until such name change has been submitted  
95 to and approved by the state banking board. The bank commissioner  
96 shall have power to refuse authority to any trust company violating  
97 this provision.

New Sec. 7--Attached

98 Sec. <sup>6</sup>~~6~~<sup>7</sup> K.S.A. 1988 Supp. 9-701 is hereby amended to read as  
99 follows: 9-701. Unless otherwise clearly indicated by the context, the  
100 following words when used in this act, for the purposes of this act,  
101 shall have the meanings respectively ascribed to them in this section:

102 (a) "Bank" means a state bank incorporated under the laws of  
103 Kansas.

104 (b) "Trust company" means a trust company incorporated under  
105 the laws of Kansas *and which does not accept deposits*.

106 (c) "Board" means the Kansas state banking board.

107 (d) "Commissioner" means the Kansas state bank commissioner.

108 (e) "Insured bank" means a ~~trust company or~~ state bank whose  
109 deposits are insured through the federal deposit insurance corpo-  
110 ration or other governmental agency or by an insurer approved by  
111 the state commissioner of insurance for such purpose.

112 (f) "Item" means any check, note, order, or other instrument or  
113 memorandum providing for the payment of money, or upon which  
114 money may be collected.

115 (g) "Demand deposits" includes every deposit which is not a  
116 "time deposit," "savings deposit," or "negotiable order of withdrawal  
117 deposit," as defined in this section.

118 (h) "Time deposits" means "time certificates of deposit" and "time

Atch 1

156 of the United States government or any board, commission or agency  
157 thereof, and also shall mean all moneys coming into the custody of  
158 any officer of any municipal or quasi-municipal or public corporation,  
159 the state or any political subdivision thereof, pursuant to any pro-  
160 vision of law authorizing any such official to collect or receive the  
161 same.

162 (m) "Municipal corporation" means any city incorporated under  
163 the laws of Kansas.

164 (n) "Quasi-municipal corporation" means any county, township,  
165 school district, drainage district, or any other governmental subdivi-  
166 sion in the state of Kansas having authority to receive or hold  
167 moneys or funds.

168 (o) "Certificate of authority" means a statement signed and sealed  
169 by the commissioner evidencing the authority of a bank or trust  
170 company to transact a general business as such.

171 (p) "Transaction account" means a deposit or account on which  
172 the depositor or account holder is permitted to make withdrawals  
173 by negotiable or transferable instrument, payment orders of with-  
174 drawal, telephone transfers, or other similar device for the purpose  
175 of making payments or transfers to third persons or others.

176 (q) "Nonpersonal time deposit" means a time deposit, including  
177 a savings deposit that is not a transaction account, representing funds  
178 in which any beneficial interest is held by a depositor which is not  
179 a natural person.

180 (r) "Negotiable order of withdrawal deposit" means a deposit on  
181 which interest is paid and which is subject to withdrawal by the  
182 owner by negotiable or transferable instruments for the purpose of  
183 making transfers to third parties, and which consists solely of funds  
184 in which the entire beneficial interest is held by one or more in-  
185 dividuals, an organization which is operated primarily for religious,  
186 philanthropic, charitable, educational, fraternal or other similar pur-  
187 poses and which is not operated for profit, and with respect to  
188 deposits of public funds by an officer, employee or agent of the  
189 United States, any state, county, municipality or political subdivision  
190 thereof, the District of Columbia, the commonwealth of Puerto Rico,  
191 American Samoa, Guam, any territory or possession of the United  
192 States or any political subdivision thereof.

(s) "Trust company business" means engaging in, or holding out to the public as 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.

Sec. 7. (a) For purposes of this section, the following terms shall have the following meanings:

(1) "Contracting trustee" means any trust company, as defined in K.S.A. 9-701, and amendments thereto, which accepts or succeeds to any fiduciary responsibility in any manner hereinafter provided;

(2) "originating trustee" means 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" means 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 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 be provided otherwise in the agreement. No such agreement shall become effective unless notice thereof has been filed with the commissioner pursuant to subsection (f), and the commissioner has not disapproved the notice within 60 days thereafter.

(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

Atch 14



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 in K.S.A. 59-1709, and amendments thereto, or any other applicable statute, rule and 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 also may 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 also may enter into an agreement with a financial institution providing that the contracting trustee may maintain a trust service desk as authorized by subsection (d) in the offices of such financial institution and which provides such financial institution, on a disclosed basis to customer, may act 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) Notice to the commissioner of 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 consecutive weeks in the official newspaper of the city or county where the principal office of the originating trustee or financial institution is located.

(g) The commissioner may issue a notice disapproving any such application if the commissioner determines the agreement fails to meet a public need and does not serve the public interest. Notwithstanding any other provision of this section, no agreement authorized by this section shall become effective until the parties jointly file a certificate with the commissioner certifying that at least 60 days prior thereto, written notice of the substitution was sent by first class mail to each cofiduciary, 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 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, except that 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 subsection (f) 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, including the awarding of reasonable attorney fees. 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.