Approved [signature] 2-15-90
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 ~~a.m.~~/p.m. on February 6, 1990 in room 527-S of the Capitol.

All members were present except: Representative Roper, Excused

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

Conferees appearing before the committee: Grant Brooks, General Counsel, Kansas Banking Department

The Chairman called the Committee meeting to order.

Final action was taken on HB 2633, an Act concerning savings and loan associations; relating to accounts thereof; amending K.S.A. 17-5401 and repealing the existing section.

Representative Cates moved and Representative King seconded that HB 2633 be moved out of Committee favorably. The motion carried unanimously.

The Chairman stated that no action would be taken on HB 2651 at this time.

Grant Brooks, General Counsel, Kansas Banking Department, testified that the Commissioner requests that eight (8) statutes be amended this year. One of the amendments is a clean-up/correction and the remainder are all substantive changes in the banking law. (See Attachments 1 & 2)

The first request was for the Transmission of Money Act, K.S.A. 9-508 to 513. The purpose of this act is to regulate all entities that engage in the business of transmitting money; usually by money orders.

The Act requires before any person starts a money order business, they must have a net worth of at least $100,000 and file a surety bond of a minimum of $50,000 with the Bank Commissioner.

The logic being if a money order company goes bankrupt, at least the Commissioner will have a surety bond to cover a majority, if not all, of the money orders issued in Kansas.

Twenty-five per-cent of all United States' households do not have checking accounts. A majority of them rely on money order companies to pay bills and for their savings. The majority of money order users are low income households; the ones who can least afford to lose money if the money order company becomes insolvent, and all the outstanding orders become worthless.

K.S.A. 9-511 exempts certain institutions from the surety bond and net worth requirements. This statute exempts financial institutions; banks, savings associations and credit unions, and also telegraph companies that wire money from one agent to another, for you to pick up. Only one telegraph company, Western Union, is operating under this exemption. Western Union has approximately 196 agents in Kansas engaged in "telegraphing money".

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON Commercial and Financial Institutions

room 527-S Statehouse, at 3:30 xx.m./p.m. on February 6, 19__.

Western Union, according to Reports in the Wall Street Journal, is basically insolvent, having an operating loss of $15 to $20 million last year. Western Union moves approximately $3 a year through its money transfer network. If Western Union were to go bankrupt, there would be Kansas citizens that would have money in transit that would be lost because there is no bond posted to cover the money transfers. It is requested that telegraph company exemption be removed from K.S.A. 9-511.

Representative Shallenburger moved and Representative King seconded that the Committee introduce K.S.A. 9-511 as a Committee Bill. The motion carried unanimously.

The next statute the Commissioner requested the Committee to change was K.S.A. 9-910, striking 'a careful estimate of the actual cash value of all its assets . . . and the present worth of all maturing papers shall be estimated at the usual discount rate of the bank' . . . and replacing with 'generally accepted accounting principles.

Representative Francisco moved and Representative Johnson seconded that the Committee introduce K.S.A. 9-510 as a Committee Bill. The motion carried unanimously.

The next statute was 9-1102 requesting that the following be deleted in paragraph (1) 'occupied by the bank or trust company. The trust company and the safe deposit company in which a bank or trust company owns stock shall be located at all times in the same city or township where the bank or trust company owning such stock is located, otherwise the bank or trust company shall dispose of such stock immediately' and replace with 'all or a part of which is occupied or to be occupied by the bank or trust company.'

Representative King moved and Representative Eckert seconded that 9-1102 be introduced as a Committee Bill. The motion carried unanimously.

The next statute the Commissioner requested the Committee review was K.S.A. 9-1104 which is the legal lending limit statute.

Last year this statute was amended to exclude limited partners from the lending limit calculations for limited partnerships. However, the language used to exclude limited partners was inadvertently left out of subsection 3 and 5.

It is requested the Committee consider correcting the amendments made last year, by adding the limited partner exclusion to sub-sections 3 and 5, and that the restrictions on loans to bank officers and employees be expanded by making sub-section (b) a part of sub-section (a). This would allow a bank officer or employee to borrow more than the 5% limit, provided they qualify for one of the exceptions listed in sub-section (a).

Representative King moved and Representative Francisco seconded the Committee introduce K.S.A. 9-1104 as a Committee Bill. The motion carried unanimously.

The next statute the Commissioner asked to be considered was K.S.A. 9-1112 which refers to unlawful transactions.

This is basically language clarification and clean-up. The same authority and restrictions exist. The language was modernized to allow for a simpler reading.

Representative King moved and Representative Francisco seconded that the Committee introduce K.S.A. 9-1112 as a Committee Bill. The motion carried unanimously.

K.S.A. 9-1712 is the confidentiality statute and the Commissioner requests the Committee to review it. The current statute does not do an adequate

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON Commercial and Financial Institutions,

room 527-Statehouse, at 3:30 a.m./p.m. on February 6, 19__.

job describing what is confidential information, whose is it and when can it be released.

Representative King moved and Representative Francisco seconded that K.S.A. 9-1712 be introduced as a Committee Bill. The motion carried unanimously.

The Commissioner requested the Committee review K.S.A. 9-1801, the emergency charter provisions. The sub-section (b) of this statute allows the Commissioner in emergency situations, to approve new bank charters upon the dissolution or insolvency of any bank or trust company. There is a need to broaden the authority of the Commissioner to allow investors/successful bidders on savings associations, in receivership, to apply for an emergency bank charter. Request in paragraph (b) that bank, trust company, national bank association, savings and loan association, savings bank or credit union be added after any and strike bank or trust company.

Representative King moved and Representative Francisco seconded that K.S.A. 9-1801 be introduced as a Committee Bill. The motion carried unanimously.

The Commissioner's last request is for review of K.S.A. 9-1602: the Commissioner discretion in granting trust authority to a bank. This statute has no provision for the revocation of trust authority. Therefore, the Commissioner would have to go to court to stop a bank from operating a trust department in an unsafe and unsound manner. It is requested the Committee adopt the proposed changes to K.S.A. 9-1602, to provide the Commissioner with the authority to ensure that monies held in trust, in Kansas banks, are adequately protected.

Representative King moved and Representative Francisco seconded that K.S.A. 9-1602 be introduced as a Committee Bill. The motion carried unanimously.

The meeting adjourned at 4:30 P.M.

Date: 2/6/90

GUEST REGISTER

COMMERCIAL AND FINANCIAL INSTITUTIONS

NAME	ORGANIZATION	ADDRESS
Stan Lind	Ks. Assn. of Financial Services	K.C. Ks.
Alan Steppat	KIBA - McGill & Associates	Topeka
Jeff Sonnich	KNLSI	Topeka
Grant Brooks	Kansas Banking Dept	Topeka
[illegible]	Kansas Banking Dept.	Topeka
Greg Winkler	KS Credit Union League	Topeka
Brad Smoot	Fourth Financial Corp	"

Testimony

Before

The House Committee on Commercial

and Financial Institutions

by Conferee:

Grant L.C. Brooks, General Counsel

Kansas Banking Department

The Commissioner would like the Committee to amend eight (8) statutes this year. One amendment is cleanup/correction, the remainder are all substantive changes in banking law.

First, the Transmission of Money Act, K.S.A. 9-508 to 513.

The purpose of this act is to regulate all entities that engage in the business of transmitting money; usually by money orders.

The act requires before any person starts a money order business, they must have a net worth of at least $100,000 and file a surety bond of a minimum of $50,000 with the Bank Commissioner.

The logic being if a money order company goes bankrupt, at least the Commissioner will have a surety bond to cover a majority, if not all, of the money orders issued in Kansas.

It is amazing to realize that 25 percent of all United States' households do not have checking accounts. Instead, a majority of them rely on money order companies to pay bills and for their savings. Unfortunately, the majority of money order users are low income households; the ones who can least afford to lose money if the money order company becomes insolvent, and all the outstanding orders become worthless.

K.S.A. 9-511 exempts certain institutions from the surety bond and net worth requirements. This statute exempts financial institutions: banks, savings associations and credit unions, and also telegraph companies that wire money from one agent to another, for you to pickup.

There is only one telegraph company, Western Union, that is operating under this exemption. Western Union has approximately, 196 agents in Kansas engaged in "telegraphing money."

Western Union is basically insolvent. Please review the article from The Wall Street Journal. They had an operating loss of $15 to $20 million dollars last year. Western Union moves approximately $3 billion dollars a year through its money transfer network. It takes about 15 minutes to 2 hours for a wire transfer.

Atch #1

If Western Union went bankrupt, there would be Kansas citizens that would have money in transit that would be lost because there is no bond posted to cover the money transfers.

Therefore, the Commissioner requests the Committee consider striking the telegraph company exemption from K.S.A. 9-511.

The second statute the Commissioner requests the Committee change K.S.A. 9-910. This statute describes the parameters within which a bank can declare dividends.

This language never anticipated bond depreciation in a bank's investment portfolio. Although the bonds will be held to their maturity, if valued at market rate, substantial depreciation would exist in the bond portfolio and prohibit a bank from declaring dividends because the recognized depreciation would consume all of the undivided profits.

Therefore, the Commissioner requests the Committee consider striking the language requiring banks to recognize depreciation for dividend purposes and substitute language that any dividends must be in accordance with G.A.A.P.

The third statute the Commissioner requests the Committee amend is K.S.A. 9-1102.

This statute places restrictions on a bank holding real estate and stock in certain corporations. The statute prohibits a bank from owning stock in a trust company outside the city where the bank is located.

Prior to the change in the trust company statutes, the restrictions were to prohibit a state bank from expanding its deposit taking ability through owning deposit taking trust companies state wide. Thus, indirect statewide branching for state banks.

However, since trust companies can no longer take deposits the restriction has lost its purpose and now stands as an impediment against expansion. It makes no sense to now geographically limit a bank's ownership in a trust company.

The new language to K.S.A. 9-1102, expands and clarifies when a bank can own stock in a corporation organized to hold real estate. The old language required the real estate corporation to own the land <u>occupied</u> by the bank <u>before</u> the bank could own any stock in the real estate corporation.

The proposed language expands, the authority by allowing a bank to own stock in the corporation which owns real estate that shall be occupied by the bank. The proposed language is less restrictive because it clarifies that the bank need not occupy all of the land the real estate corporation owns.

Therefore, the Commissioner requests the Committee consider striking the geographical limitation on ownership of trust companies and consider adopting the new langauge concerning bank ownership of real estate holding corporations.

The fourth statute the Commissioner requests the Committee review is K.S.A. 9-1104: the legal lending limit statute.

Last year this statute was amended to exclude limited partners from the lending limit calculations for limited partnerships. However, the language used to exclude limited partners was inadvertently left out of subsections 3 and 5.

Additionally, the banking department has reviewed the applicability of subsection (b): the lending limit to bank officers and employees. It seems appropriate that the exemptions that apply to other loans should also apply to loans to bank officers and employees. For example, this would allow a bank officer to exceed the 5 percent limitation on loans secured by a C.D. and loans guaranteed by federal agencies and all the other exemptions contained in subsection (a) of 9-1104.

Therefore, the Commissioner requests the Committee consider correcting the amendments made last year, by adding the limited partner exclusion to subsections 3 and 5, and that the restrictions on loans to bank officers and employees be expanded by making subsection (b) a part of subsection (a). This would allow a bank officer or employee to borrow more than the 5 percent limit, provided they qualify for one of the exceptions listed in subsection (a).

The fifth statute the Commissioner requests the Committee review is K.S.A. 9-1112: unlawful transactions.

This is basically language clarification and cleanup. The same authority and restrictions exist. The language was modernized to allow for a simplier reading.

One change was made, the department wanted to codify policy by explicitly stating that the requirement a bank must dispose of property which it acquired in the collection of debts, be conditioned on the fact a commercially reasonable sale must be possible.

If such a sale is not possible, then the Commissioner, as presently empowered, can authorize the bank carry such property as a book asset for a longer period.

The Commissioner requests the Committee consider the cleanup of K.S.A. 9-1112 and the codification of the department's policy.

The sixth statute the Commissioner requests the Committee review is K.S.A. 9-1712: the confidentiality statute.

The current statute does not do an adequate job describing what is confidential information, whose is it and when can it be released.

The present statute does not explicitly state who owns the confidential information contained and generated by the Commissioner's office.

Also, the statute does not define what "information" is and is oddly restrictive. It prohibits the Commissioner from disclosing information, but does not prevent the state bank from disclosing information; especially the reports of examination.

Finally, the statutes mandate information is confidential; but, provides no penalty for those who violate its provisions.

The proposed language corrects all these deficiencies. The new language provides that all confidential information is the property of the state of Kansas and can not be subject to disclosure, except with the Commissioner's approval. The proposed language defines information to be all inclusive.

Finally, the proposed language provides a penalty for those who violate this statute.

Therefore, the Commissioner requests the Committee review K.S.A. 9-1712 and adopt all the proposed changes to correct the deficiencies present in that statute.

The seventh statute the Commissioner requests the Committee review is K.S.A. 9-1801; the emergency charter provisions.

Subsection (b) of this statute allows the Commissioner, in emergency situations, to approve new bank charters upon the dissolution or insolvency of any bank or trust company.

However, no one expected the large number of savings associations failures when this law was passed. There now is a need to broaden the authority of the Commissioner to allow investors/successful bidders on savings associations, in receivership, to apply for an emergency bank charter.

Under the Financial Institution Reform, Recovery and Enforcement Act of 1989, (FIRREA), state banks can bid on savings associations and operate them as branches. However, a holding company can not create an additional new state bank, because the Commissioner does not have the power to issue an emergency charter upon the insolvency of a savings association. Conversely, the Office of the Comptroller of the Currency (OCC) does have the power to issue emergency national bank charters for a successor to any financial institution.

Therefore, the Commissioner requests the Committee review the proposed amendments to K.S.A. 9-1801 so that the state bank regulator can offer state bank charters on an equal basis as the national bank regulator can offer national bank charters.

The eighth statute the Commissioner requests the Committee review is K.S.A. 9-1602: the Commissioner's discretion in granting trust authority to a bank.

This statute has no provision for the revocation of trust authority. Arguably, the Commissioner would have to go to court to stop a bank from operating a trust department in an unsafe and unsound manner.

The proposed language requires the Commissioner must find the bank is failing to adhere to sound fiduciary practices before the Commissioner can revoke the trust authority.

Since last year, this department has had two full-time trust examiners, both are attorneys. Scheduled trust department examinations have discovered a number of poorly managed trust departments. This has raised the concern that perhaps we will need, someday, to revoke trust powers for a bank that is clearly not performing their fiduciary duties as required by law.

Therefore, the Commissioner requests the Committee adopt the proposed changes to K.S.A. 9-1602, to provide the Commissioner with the authority to ensure that monies held in trust, in Kansas banks, are adequately protected.

THANK YOU FOR YOUR TIME AND CONSIDERATION.

GLCB:dsl

S.O.S.

Western Union, Saved By a Junk-Bond Deal, Needs Rescuing Again

Interest of 19¼% and a Plunge In Telex Business Batter Investor Bennett LeBow

Those Pesky Fax Machines

By JANET GUYON
Staff Reporter of THE WALL STREET JOURNAL

UPPER SADDLE RIVER, N.J.—It was Christmas Eve, 1987, but at Western Union Corp. there was little cheer.

The petition was drafted, employee mailgrams readied, and a press release written. Western Union was about to file under Chapter 11 of the federal bankruptcy laws.

At the eleventh hour, the venerable communications firm got a reprieve. Balking bondholders finally accepted a complex refinancing plan that put New York investor Bennett S. LeBow, a client of Drexel Burnham Lambert, in control. "Life was breathed back into the patient," recalls one Western Union executive.

For a while, anyway. Less than two years later, the company whose name once meant American innovation is again gasping for air. Mr. LeBow's plan of salvation, sponsored by Drexel, has backfired. And for the fourth time in as many years, Western Union is begging creditors: Keep us alive a little bit longer.

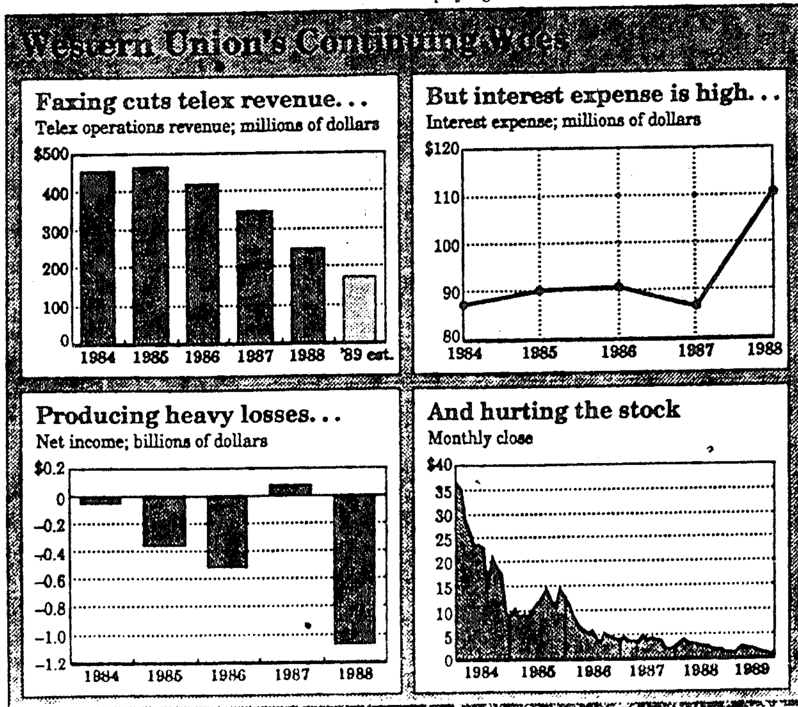
Bennett S. LeBow

Western Union now has a negative net worth of $766 million. Including pension liabilities, it has $1 billion of long-term debt—but cash flow of only $70 million. Its telex business is in a breathtaking decline, devastated by facsimile. A company that some Wall Streeters thought a takeover candidate at $30 a share 5½ years ago closed on the Big Board yesterday at $1.

The bane of Western Union just now is a $500 million junk-bond offering that Drexel underwrote as part of the plan that gave control to Brooke Partners, which is 65% owned by Mr. LeBow and partner William Weksel. Its interest is adjustable, and in June it leapt to 19¼%.

Time for a Change

"Look, the company has got to be restructured," says Mr. LeBow, sitting in the massive boardroom at his Manhattan-based management company, LeBow, Weksel & Co. This summer the 51-year-old financier proposed swapping the bonds for notes, and rearranging things so the money-transfer business could be used as collateral for bank loans. Then came the turmoil in the junk-bond market. That "is going to make us rethink that transaction," says Mr. LeBow. "But we can't keep paying 19¼ interest."



Western Union's chief financial officer, Stewart Paperin, is more emphatic. If the company can't refinance the bonds and lower its interest payments, he says, "we'll be in nuclear meltdown."

The Western Union story is about a company that played ostrich while technological and regulatory changes fundamentally altered its business. Its current predicament suggests how even the sharpest financial minds—those of Mr. LeBow and his Drexel partners—can stumble in the face of a revolution in technology. The question now is, can these turnaround/takeover specialists—having seen Western Union from the inside—revise their strategies, persuade their creditors, and ultimately get the company back on its feet?

Hanging Up

Western Union's troubles grew out of a parochial mind-set that dates back 113 years. Then a high-tech giant sending messages by Morse code, the company turned down rights to the telephone, telling Alexander Graham Bell that sending voice over wire would never replace telegraph, particularly for business communication. Mr. Bell instead sold his rights to the predecessor company of American Telephone & Telegraph Co.

AT&T went on to become the biggest corporation in the world, before the 1984 Bell System break-up. Western Union, through the mid-1970s, managed under protective regulation to carve out a profitable niche sending written messages by wire through its telex network and through another, similar business called TWX, acquired from AT&T in the mid-1970s.

Then, management seemingly panicked. Responding to competition stirred by new technology and deregulation of the telecommunications industry, Western Union embarked on a series of diversions. But unable to decide where to place its bets, it tried everything: cellular-phone manufacturing, satellite launching, airplane phone service, electronic mail, long-distance telephone. To pay for its gambles, the company took on debt, layering on 10 issues of bonds and nine of preferred stock by 1986.

"We made some fundamental mistakes," says Theodore Kheel, the New York labor lawyer, who was a director until Mr. LeBow took over. "We went into a number of tangential acquisitions instead of thinking how to be a competitor in the communications business. Then we fell too far behind the communications leaders and didn't have access to the funds to catch up."

Since 1984, the company has never been far from crisis. That year, banks pulled their credit lines, and the company had three different chairmen in six months. Soon, it was trying to sell itself, hiring Drexel to help. When that didn't work, it proposed a recapitalization, but preferred shareholders wouldn't have it. While the banks held off for fear of forcing the company into bankruptcy proceedings, Drexel banker Paul Levy kept trying to find someone to put in some money.

Atch #2

Gary Winnick, a former Drexel senior vice president, agreed to do so. A plan was devised that would give him control. But Mr. Winnick had trouble finding operating management. Enter Mr. LeBow, then a little-known turnaround artist, who had earlier spurned Drexel's entreaties. This time, where every other big deal maker saw a tar baby, Mr. LeBow thought he saw opportunity.

He had been buying companies, such as cigarette maker Liggett Group Inc., that were in declining markets but could be combined with competitors to generate high cash flow. Was telex such a business? Both Mr. LeBow and an associate, former Bunker Ramo Corp. president Robert Amman, thought telex was ripe for consolidation. Mr. LeBow already had an option to buy ITT Corp.'s telex business for about $144.5 million.

"We felt we could buy two telex companies, put them together and make it a very profitable business," says Mr. Amman, now Western Union's president. "We would use the cash to build other businesses" that had greater growth prospects, such as money-transfer and electronic mail.

Robert Amman

Mr. LeBow, through borrowings of Brooke Partners, put up a minimum amount of cash—$25 million—for a 63% controlling equity stake that, once Western Union returns to profitability, gives him rights to 79.4 million newly issued common shares. To satisfy Mr. Winnick and his partners, Mr. LeBow granted the Winnick group options on nine million of his Western Union shares for 25 cents a share—which is about the same price Mr. LeBow paid for his stake in the company's common equity. Western Union also paid the Winnick group $8.1 million in fees and expenses.

Proxy Fight

Then came six arduous months of negotiating with bondholders, banks and preferred stockholders for repayment of debt at a discount and a swapping of securities. One dissident stockholder launched a proxy fight, which was settled only when Mr. LeBow's group agreed to put him on the board. To get 70% of the bondholders to exchange, Western Union agreed to pay them a one-time cash sweetener of $20 million.

By the time the company had sweetened the pot for various constituencies, its annual carrying costs in interest and dividends had risen to $148 million, up $44 million from the original LeBow plan of May 1987.

And more danger lay ahead. The plan included a $500 million junk-bond offering to pay off the banks and buy ITT's business. But to sell the bonds to its clients, Drexel insisted the terms provide that interest could be reset twice by investment bankers. For its work in 1987, Drexel collected $25 million in fees and underwriting commissions.

Mr. LeBow planned to oust current management once he got control, but, to gain the cooperation of Western Union's three top officers, he agreed to employment contracts totaling $850,000 in annual salaries. All three have since left, but are still drawing their pay. Robert Leventhal, the former chairman, is currently dean of the business school at the University of Washington in Seattle. He is in the second year of a five-year, $400,000-a-year consulting contract.

Mr. Amman and Mr. LeBow figured that costs saved by combining the telex businesses of Western Union and ITT would generate an extra $100 million in cash a year. Unwanted assets, such as satellite and long-distance businesses, would be sold, cutting operating losses as well as overhead.

But, just as the telephone had blind-sided Western Union 100 years ago, facsimile machines blind-sided Mr. LeBow. Customers who routinely used telex began converting to fax in droves as fax machine prices plunged and the number of them in use reached "critical mass." Telex revenue, which had been declining 6% a year, started dropping at a 35%-to-40% rate. Western Union's total revenue of $875.9 million last year fell 14% from 1987 and was some $100 million less than originally anticipated.

In addition, the telex debacle forced Western Union to write off $80 million in good will associated with the ITT telex purchase. A new Western Union telex network built only nine years ago was junked, pushing total write-offs last year to over $1 billion.

"In my career, I have never seen a market of this size decline at such rates," says Peter S. Anderson, who was hired as senior vice president of Western Union's business-services division seven months ago. "Everybody was surprised that the rate of decline kept increasing." (In April, Western Union told investors it expected telex revenue to plunge to $172 million in 1989 from $250 million last year, but now it calls the April projection "optimistic.")

Thus Mr. LeBow hasn't been able to achieve the hoped-for cash-flow boost, despite replacing 75% of management, firing and retiring 2,800 employees, selling most of Western Union's telecommunications assets and cutting $134 million in annual operating costs. Last November, the company put up its first distress signal: Directors omitted preferred dividend payments—on securities issued just a year earlier.

Interest Rises

By June, the sorry state of the business caused interest on the junk bonds to be reset to 19¼% from 16½%, increasing the company's annual interest payments by $13.8 million. Terms required interest be reset to give them a market value of 101% of their principal amount. After the reset, the bonds held at a price of 92 to 93, but they started plunging soon afterwards, weakening with the rest of the junk market this fall. Yesterday they closed at 62½.

Mr. LeBow has continued tinkering with the package of notes he hopes to swap for the junk bonds. But if it isn't attractive enough and bondholders won't exchange, Western Union will be forced to start repurchasing the bonds in $100 million chunks sometime next year. So, "if this current exchange doesn't go through, clearly there will have to be a son-of-exchange offer," says Mr. Paperin.

And now, the company says it is looking at alternatives to an exchange offer because of the turmoil in the junk-bond market and the long time the Securities and Exchange Commission has taken to review its proposed swap.

Mr. LeBow and his group say Western Union isn't close to a bankruptcy filing. At the moment, Brooke Partners' investment in Western Union's preferred shares and some junk bonds is worth less than it cost ($46 million), and Mr. LeBow concedes that "those were dumb investments." But he says he never expected a quick payout.

"I don't think Western Union is distressed, though people disagree with that," Mr. LeBow declares. "Obviously we are disappointed about the decline in telex, but everything else, including the management team, is working well."

Cash on Hand

The company expects to end the year with $70 million in cash, although net fixed charges of $95 million this year will exceed operating cash flow by $15 million to $20 million. Mr. Anderson says he expects the decline in telex revenue to be made up by revenue from the electronic mail service, called EasyLink, and other business services by the third quarter of next year, with operating earnings in his division hitting bottom in this year's third quarter.

Meantime, Mr. Amman has a new destiny for Western Union: financial services for the 25% of U.S. households that don't have checking accounts. The company currently moves about $3 billion a year through its money-transfer network, mostly from poor and lower-middle-class neighborhoods. Despite the financial distresses of the past five years, people still entrust the company with their cash, says Mr. Amman, although those money transfers aren't insured. Western Union recently bought National Payments Network, which collects bills for utilities from people who pay in person.

Western Union isn't the only one to think of these opportunities, of course. It is up against AT&T, MCI Communications Corp. and US Sprint Communications Co. in electronic mail, and must compete with American Express in money transfer. And Western Union in the past, under different management, has sketched itself a new destiny only to be outdone by sudden changes in technology and competition.

Still, Mr. LeBow professes great faith in Western Union. Turning it around, he says, will just take a bit longer, perhaps until 1993. "If telex had held to our original assumptions," says Mr. Amman, "the turnaround of this company would have been a slam dunk. But the game only runs out when you run out of money."

9-511. Same; inapplicability of act to certain businesses and activities. This act shall not apply to banks, trust companies, building and loan associations, savings and loan associations, or credit unions organized under the laws of and subject to the supervision of this state or the United States, to the government of the United States and its agencies, ~~or to the receipt of money by an incorporated telegraph company at any office or agency thereof for immediate transmission by telegraph~~; also this act shall not apply to the distribution, transmission or payment of money as a part of the lawful practice of law, bookkeeping, accounting or real estate sales or brokerage or as an incidental and necessary part of any lawful business activity.

History: L. 1967, ch. 73, § 4; July 1.

[illegible]-010. Dividends from capital stock prohibited. No bank during the **time it shall continue** in banking business, shall permit to be withdrawn **in the form of** dividends, any portion of its capital stock. The current **dividends** of any bank shall be paid from its undivided profits after **deducting** therefrom its losses, to be ascertained by ~~a careful estimate of the actual cash value of all its assets~~ generally accepted accounting principles at the time of making such dividend~~, and the present worth of all maturing paper shall be estimated at the usual discount rate of the bank~~: *Provided*, That any bank may reduce its capital stock as in this act otherwise stated. (L. 1947, ch. 102.)

9-1102. Holding of real estate. (a) Any bank or trust company may own, purchase, lease, hold, encumber or convey real property and certain personal property subject to the following:

(1) Own suitable building, furniture and fixtures, stock in a single trust company organized under the laws of the state of Kansas, and stock in a safe deposit company organized under the laws of the state of Kansas, and stock in a corporation organized under the laws of this state owning real estate ~~occupied by the bank or trust company. The trust company and the safe deposit company in which a bank or trust company owns stock shall be located at all times in the same city or township where the bank or trust company owning such stock is located, otherwise the bank or trust company shall dispose of such stock immediately~~ all or a part of which is occupied or to be occupied by the bank or trust company.;

(2) purchase, hold, encumber and convey real estate or lease, as lessor or lessee, any building or buildings. Any real estate not necessary for the bank's or trust company's accommodation in the transaction of its business shall be disposed of by the bank or trust company not later than seven years after its acquisition unless the state bank commissioner authorizes the bank or trust company to retain such real estate for a period not to exceed an additional two years;

(3) a bank's or trust company's total investment or ownership at all times in any one or more of the following shall not exceed ½ of its unimpaired capital stock, surplus, undivided profits and capital notes and debentures, and any such excess shall be removed from the bank's or trust company's books unless approval is granted by the state bank commissioner:

(A) The book value of real estate plus all encumbrances thereon;

(B) the book value of furniture and fixtures;

(C) the book value of stock in a safe deposit company;

(D) the book value of stock in a trust company; or

(E) the book value of stock in a corporation organized under the laws of this state owning real estate occupied by the bank or trust company and advances to such corporation acquired or made after July 1, 1973. Except that any real estate not necessary for the accommodation of the bank's or trust company business shall be disposed of according to paragraph (2).

(b) Any bank or trust company may acquire real estate in satisfaction of any debts due it and may purchase real estate in satisfaction of any debts due it, and may purchase real estate at judicial sales, but no bank or trust company shall bid at any judicial sale a larger amount than is necessary to protect its debts and costs. No real estate, except for agricultural land, as defined in K.S.A. 17-5903, and amendments thereto, acquired in the satisfaction of debts or upon judicial sales shall be carried as a book asset of the bank or trust company for more than five years. At the termination of the five years such real estate shall be charged off. No agricultural land, as defined in K.S.A. 17-5903, and amendments thereto, acquired in satisfaction of debts or upon judicial sales shall be carried as a book asset of the bank or trust company for more than 10 years. At the termination of the 10 years such agricultural land shall be charged off. The commissioner may grant an extension for an additional four years, or any portion thereof, if in the commissioner's judgment it will be to the advantage of the bank or trust company to carry the real estate or agricultural land as an asset for such extended period.

History: L. 1947, ch. 102, § 31; L. 1971, ch. 32, § 2; L. 1973, ch. 45, § 2; L. 1975, ch. 44, § 13; L. 1977, ch. 46, § 1; L. 1986, ch. 56, § 1; L. 1987, ch. 54, § 6; L. 1988, ch. 61, § 2; L. 1989, ch. 48, § 25; July 1.

CHAPTER 49

Senate Bill No. 251

AN ACT relating to banks and banking; concerning limitations on liabilities to banks with respect to limited partnerships and limited partners under a limited partnership agreement; amending K.S.A. 1988 Supp. 9-1104 and repealing the existing section.

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

Section 1. K.S.A. 1988 Supp. 9-1104 is hereby amended to read as follows: 9-1104. (a) The total liability to any bank of any person, copartnership, association or corporation, including in the liability of a copartnership or association the greatest of the individual liabilities of the respective members thereof *other than limited partners who, under the limited partnership agreement, are not liable for the debts or actions of the limited partnership*, and, *except as provided herein for the liability of a limited partner*, including in the liability of a member of a copartnership or association the liability of the copartnership or association, shall not at any time exceed 15% of the amount of the capital stock paid in and unimpaired and the unimpaired surplus fund of such bank;. *If under the limited partnership agreement a limited partner is not liable for the debts or actions of the partnership, the liability of the limited partnership shall not be included in the liability of the limited partner. These limitations on total liability to any bank are* subject to the following:

(1) So long as the obligation of a drawer, endorser or guarantor remains secondary, it shall not be included within the meaning of the term liability; but the discount of bills of exchange, whether or not accepted by the drawee, drawn in good faith against actual existing values, loans upon produce in transit, loans upon bonded warehouse receipts issued to the borrower by some other person, firm or corporation as collateral security, the discount of commercial or business paper actually owned by the person negotiating the same, loans secured by not less than a like amount of treasury bills, certificates of indebtedness, or bonds or notes of the United States of America or instrumentalities or agencies thereof, or those fully guaranteed by them, or general obligation bonds or notes of the state of Kansas, or of any municipality or quasi-municipality thereof, or of other states of the United States, or of any municipality or quasi-municipality thereof, shall be exempt from any limitation;

(2) the whole or that portion of any loan which is secured or covered by a guaranty, or by a commitment or an agreement to take over or to purchase, made by any federal reserve bank, or by the United States of America, or any department, bureau, board, com-

mission, agency or establishment of the United States of America, including any corporation wholly owned, directly or indirectly by the United States, shall be exempt from any limitation if such guaranty, agreement or commitment must be performed by the payment of cash or its equivalent within 60 days after demand;

(3) the total liability in the form of notes or drafts to any bank of any person, copartnership, association or corporation, including in the liability of a copartnership or association the greatest of the individual liabilities of the respective members thereof and including in the liability of a member of a copartnership or association the liability of the copartnership or association, may equal but not exceed 25% of the amount of the capital stock paid in and unimpaired and the unimpaired surplus fund of such bank provided such liability is secured by shipping documents or instruments transferring or securing title covering readily marketable nonperishable grains, seeds or livestock or giving a lien on readily marketable nonperishable grains, seeds or livestock having a market value at all times of not less than 115% of the amount by which such total liability exceeds 15% of the amount of the capital stock paid in and unimpaired and the unimpaired surplus fund of such bank, which market value in the case of livestock is supported by written appraisal of an officer of the bank or an independent professional appraiser made not more than six months previously, and which grains and seeds are adequately insured;

"*other than limited partners who, under the limited partnership agreement, are not liable for the debts or actions of the limited partnership*, and, *except as provided [illegible]rein for the liability of a limited partner*,"

(4) the discount of bills of exchange drawn against or issued against a consignee or purchaser for materials or commodities previously sold and shipped, and which materials or commodities, or the proceeds thereof, are in the possession, control or custody of the purchaser or consignee shall be considered as the discount of bills of exchange drawn in good faith and against actual existing values, without the necessity of the acceptance of a draft or the necessity of a lien on the materials or commodities, or their proceeds; but such bills shall be subject to a limitation of 15% of such capital stock and unimpaired surplus fund for and upon each purchaser or consignee;

(5) the total liability in the form of notes or drafts to any bank of any person, copartnership, association or corporation, including in the liability of a copartnership or association the greatest of the individual liabilities of the respective members thereof and including in the liability of a member of a copartnership or association the liability of the copartnership or association, may exceed limitations otherwise imposed by this section by 10% of the amount of the

"*other than limited partners who, under the limited partnership agreement, are not liable for the debts or actions of the limited partnership*, and, *except as provided herein for the liability of a limited partner*,"

capital stock paid in and unimpaired and the unimpaired surplus fund of such bank provided that such total liability is secured as to payment by first lien or liens upon real estate in fee simple, to the extent of the value thereof, having an appraised value of not less than twice the amount by which such total liability exceeds limitations otherwise imposed by this section, and where such excess liability is secured by lien instrument under the terms of which any installment payments are sufficient to amortize the entire principal amount of such excess liability within a period of not more than 20 years;

(6) the limitations of this section shall not apply to time deposits which are considered to be loans to the extent such time deposits are insured by: (A) The federal deposit insurance corporation or its successors; or (B) the federal savings and loan insurance corporation or its successors.

The legality of a loan hereunder shall be determined as of the date the loan is made.

The whole or that portion of any loan which is secured as to payment by a time deposit of the borrower in the bank in an amount equal to 115% of the amount of the indebtedness shall be exempt from any limitation under this subsection (a).

(b) The liability of any active officer or employee of any bank shall not exceed 5% of the amount of its paid-in and unimpaired capital stock and unimpaired surplus fund. Any loan made to any officer first must be approved by the board of directors and entered upon their minutes where the total liability of the officer to the bank, including the loan made, will exceed $10,000.

(c) For purposes of this section, the term "unimpaired surplus fund" includes all capital accounts (other than capital stock) derived from either paid-in capital funds or retained earnings, not subject to known charges, and which are considered interchangeable by resolution of the bank's board of directors. The state bank commissioner, with approval of the state banking board, may further define the term "unimpaired surplus fund" by regulation, and the provisions of article 4 of chapter 77, of the Kansas Statutes Annotated shall not be applicable to such regulation or regulations.

(d) The commissioner may order any excess loan reduced to the legal limit, and after 60 days from the receipt of the commissioner's order no bank shall carry the excess of such loan and a failure to comply with any order made hereunder shall be grounds for the hearing provided in K.S.A. 9-1805, and amendments thereto.

Sec. 2. K.S.A. 1988 Supp. 9-1104 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 4, 1989.

9-1112. Unlawful transactions. ~~Except as specifically authorized, no~~ bank shall use its moneys, directly or indirectly by buying and selling tangible property as a business. No bank shall invest any of its funds in the stock of any other bank or corporation, except as provided in this act. No bank shall purchase any instrument, contract, security or other asset from any of its executive or managing officers or employees or from the bank's parent company or a subsidiary of the bank's parent company, except upon approval of the commissioner. No bank shall sell or give any of its assets to any executive or managing officer or employee or to the bank's parent company or a subsidiary of the bank's parent company, except upon approval of the commissioner. Approval of the commissioner need not be obtained for an assignment of third-party loans and security for the payment thereof to or from a subsidiary of the bank's parent company.

No bank shall make any loan or discount on the security of its own shares of stock, or the shares of stock of the bank's parent company or subsidiary of the bank's parent company, nor acquire any of such shares (unless the same is necessary to prevent loss upon a debt previously contracted in good faith) in which event such stock must be disposed of within six months at public or private sale. After the expiration of six months no such stock shall be carried as a book asset. Any bank may hold and sell any kind of property coming into its ownership in the collection of debts, but such property which is not a legal investment for banks shall be disposed of as soon as possible. No personal property so acquired, except legal investments, shall be carried as a book asset after the expiration of six months from the date it is acquired unless the commissioner shall authorize a bank to carry such property as a book asset for a longer period of time. (L. 1955, ch. 61.)

a. No bank shall buy, sell or trade tangible property as a business or invest in the stock of another bank or corporation, except as specifically authorized.

b. No bank shall sell, give or purchase any instrument, contract, security or other asset to or from any employee or from the bank's parent company or a subsidiary of the bank's parent company without prior approval of the commissioner. Approval of the commissioner need not be obtained for an assignment of third party loans and security for the payment thereof to or from a subsidiary of the bank's parent company.

c. No bank shall acquire or make a loan on its own shares of stock, or the stock of the bank's parent company or a subsidiary of the bank's parent company except, as provided in (d).

d. A bank may hold or sell any property coming into its ownership in the collection of debts. All such property except legal investments, shall be sold within six (6) months of acquisition; provided, a commercially reasonable sale can occur.

e. If a commercially reasonable sale cannot occur within six (6) months, the bank shall not carry such property as a book asset; except, the commissioner may authorize a bank to carry such property as a book asset for a longer period.

9-1712. Examination records of commissioner confidential. ~~All information which the commissioner shall gather or record in making an investigation and examination of any bank or trust company shall be confidential information, and shall not be disclosed by the commissioner or any assistant, or examiner, or employee thereof, except to the attorney general when in the opinion of the commissioner the same should be disclosed, and except as otherwise provided in this act. No original report or document in the possession of the department may be removed from the office of the banking department, except as provided by K.S.A. 9-1301 *et seq.*, and amendments thereto.~~ (L. 1987, ch. 54.)

a. All information the commissioner creates or procures in making an investigation or examination of a state bank or trust company shall be confidential information.

b. All confidential information shall be the property of the state of Kansas and shall not be subject to disclosure except, upon the written approval of the commissioner.

c. No original document may be removed from the Office of the State Bank Commissioner except as provided by K.S.A. 9-1301 et. seq. and amendments thereto.

d. Information means, but is not limited to, all documents, oral and written communication and all electronic data.

e. Any person who violates this section, upon conviction shall be guilty of a Class C Misdemeanor.

9-1801. Application for incorporation or for certificate of authority to be filed with the board; acceptance and approval of application for incorporation and authority to do business by commissioner, when. (a) No bank or trust company hereafter shall be organized or incorporated under the laws of this state, nor

shall any such institution transact either a banking business or a trust company business in this state, until the application for its incorporation and application for authority to do business has been submitted to and approved by the board. The board shall approve or disapprove the organization and establishment of any such institution in the city or town in which the same is sought to be located. The form for making any such application shall be prescribed by the board and any application made to the board shall contain such information as it shall require. The board shall not approve any such application until it first investigates and examines such application and the applicants.

(b) If upon the dissolution or insolvency of any ~~bank or trust company~~ bank, trust company, national bank association, savings and loan association, savings bank or credit union under the laws of the state of Kansas, it is the opinion of the commissioner that by reason of the loss of services in the community, an emergency exists which may result in serious inconvenience or losses to the depositors or the public interest in the community, the commissioner may accept and approve an application for incorporation and application for authority to do business from applicants for the organization and establishment of a successor bank or trust company, subject to confirmation and subsequent approval by the board. Upon approval of an application for the organization and establishment of any such successor bank or trust company, the commissioner shall no later than the next regular meeting of the board submit such application to the board for its confirmation and approval.

History: L. 1947, ch. 102, § 103; L. 1977, ch. 45, § 3; L. 1980, ch. 49, § 1; L. 1989, ch.

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9-1602. **Discretionary with commissioner.** The commissioner may grant or reject in his or her discretion the application of any bank to acquire trust authority; and in so doing the commissioner shall take into consideration the amount of capital and surplus of such bank, the needs of the community to be served, and any other facts and circumstances that the commissioner shall deem proper. (L. 1947, ch. 102.)

(a) The commissioner has the discretion to grant or reject the application of any bank to acquire trust authority; the commissioner shall take into consideration the amount of capital and surplus of such bank, the needs of the community to be served, and any other facts and circumstances that the commissioner shall deem proper.

(b) The commissioner may revoke trust authority for any bank upon finding a failure to adhere to sound fiduciary practices.

(c) Each bank subject to revocation of trust authority shall be afforded the right to a hearing pursuant to the administrative procedure act and amendments thereto.

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