Approved 1/17/90
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by SENATOR RICHARD L. BOND at
Chairperson

9:00 a.m. on WEDNESDAY, JANUARY 10, 1990 in room 529-S of the Capitol.

All members present

Senators Karr, Kerr, McClure, Moran, Parrish, Reilly, Salisbury and Yost.

Committee staff present:
Bill Edds, Revisors Office
Bill Wolff, Research Department
Louise Bobo, Committee Secretary

Conferees appearing before the committee:
Jim Turner, Kansas/Nebraska League of Savings Institutions
Cheryl Dillard, Kaiser Permanente

The meeting was called to order by Chairman Bond.

Jim Turner, President, Kansas-Nebraska League of Savings Institutions, appeared before the committee for the purpose of requesting that a bill be introduced relating to the acquisition of savings and loan associations on an interstate basis. (Attachment 1) Senator Reilly made the motion that this bill be allowed to be introduced. The motion was seconded by Senator Salisbury. The motion carried.

Cheryl Dillard, Kaiser Permanente, appeared before the committee requesting that, if the committee considered SB 396, it consider it in a ballooned version the changes proposed by the interim Judiciary Committee. Chairman Bond requested Staff to balloon SB 396 and the committee would schedule a hearing.

Bill Edds, Revisors Office, presented a bill, by request, to the committee concerning trust companies. (Attachment 2) Senator Karr made the motion to introduce the bill as requested with Senator Salisbury seconding the motion. The motion carried.

Chairman Bond informed the committee that a number of events had taken place since last session and that the committee will need to look at how federal law has impacted state law and the dual system of banking. Chairman Bond then introduced Bill Wolff of the Research Department who presented to the committee a summary of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and its implications for Kansas as well as the effect of recent Federal Court decisions. (Attachment 3)

The meeting was adjourned by Chairman Bond at 10:02 a.m.

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.

GUEST LIST

COMMITTEE: FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE DATE: Wed. Jan 10, 1990

| NAME (PLEASE PRINT) | ADDRESS | COMPANY/ORGANIZATION |
|---|---|---|
| JEFF SONNICH | TOPEKA | KS-NEB LEAGUE OF SAVINGS |
| Cheryl Dillard | Kansas City | Kaiser Permanente |
| John Peterson | Topeka | |
| Tom Bell | " | KHA |
| Kevin Kelly | OP | Sun |
| ALAN Steppat | Topeka | Pete McGill & Assoc. |
| SCOTT HESSELL | TOPEKA | Kansas Inc. |
| Jerel Wright | Topeka | KCUL |
| Chuck Stones | Topeka | KBA |
| JACK ROBERTS | TOPEKA | BC-BS |
| Jim Maag | " | KBA |
| Kathy Taylor | " | " |
| Jim Turner | Topeka | KNLSI |
| Brad Smoot | Topeka | Fourth Financial |
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Kansas-Nebraska League of Savings Institutions

James R. Turner, President

Suite 512
700 Kansas Avenue
Topeka, Kansas 66603
913/232-8215

January 10, 1990

TO: SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

FROM: JIM TURNER, KNLSI

RE: INTRODUCTION REQUEST

The enactment by Congress of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) resulted in numerous changes in the operations and structure of the savings and loan industry.

A major focus of FIRREA is the restoration and the acquisition of capital into the industry. This impacts the sale and purchase of thrift institutions. The attached bill would authorize the acquisition of savings and loan institutions on an interstate basis. We would request the Committee's consideration of introducing the proposal as a committee bill with referral back to the committee for future hearings.

James R. Turner, President
Kansas-Nebraska League of Savings Institutions

JRT:bw

Encl.

Attachment 1
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1/10/90

______ BILL NO. ______

AN ACT relating to savings and loan associations; acquisition of association in another state, when; acquisition of Kansas association by out-of-state association.

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

New Section 1. Subject to such prohibitions, limitations and conditions as the Kansas Savings and Loan Commissioner may by regulation prescribe, any state chartered savings and loan association having its home office in this state may acquire all or any part of the assets and liabilities of an association in a state other than Kansas if the law of that state permits such acquisition.

New Section 2. Subject to such prohibitions, limitations and conditions as the Kansas Savings and Loan Commissioner may by regulation prescribe, any state chartered savings and loan association having its home office in a state other than Kansas may acquire all or any part of the assets and liabilities of an association with its home office in the State of Kansas if the law of that state permits such acquisition.

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

9 RS 1790

SENATE BILL NO. ____

By Committee on Financial Institutions and Insurance

AN ACT concerning trust companies and contractual authority regarding the provision of trust services; amending K.S.A. 1989 Supp. 9-2107 and repealing the existing section.

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

Section 1. K.S.A. 1989 Supp. 9-2107 is hereby amended to read as follows: 9-2107. (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

Attachment 2
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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 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 of law, 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~~ contracting 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)~~ (g) 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.

Sec. 2. K.S.A. 1989 Supp. 9-2107 is hereby repealed.

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

# MEMORANDUM

**Kansas Legislative Research Department**

Room 545-N -- Statehouse
Topeka, Kansas 66612-1586
(913) 296-3181

January 9, 1990

To: Senate Committee on Financial Institutions and Insurance

From: William G. Wolff

Re: I. Financial Institutions Reform, Recovery and Enforcement Act of 1989, A Summary with Implications for Kansas

II. Intrastate Branch Banking in Kansas

## I. FINANCIAL INSTITUTIONS REFORM, RECOVERY AND ENFORCEMENT ACT OF 1989

### Introduction

The Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) was enacted into law on August 9, 1989. The nearly 400-page public law, while addressing numerous issues, confronts two problems in particular: (1) it brings solvent savings and loan associations (thrifts) up to "bank-like" standards; and (2) it appropriates money and establishes agencies to dispose of insolvent institutions. The imposition of new standards upon solvent thrifts will have an influence on Kansas thrifts and upon all such institutions throughout the country. Of more immediate concern, however, are the repercussions of FIRREA on banks and banking in Kansas. The immediacy of the issue arises from the fact that FIRREA encourages banks and bank holding companies to acquire the failing thrifts and permits the acquisition of healthy associations as well. Existing Kansas law relating to intrastate branching and the lack of a statute specifically allowing interstate banking may "preclude or inhibit" resolution of thrifts held in Resolution Trust Corporation (RTC) receivership and, therefore, are subject to federal preemption.

### FIRREA Summary

Briefly, under prior regulatory structure, the Federal Home Loan Bank Board (FHLBB) was the chief supervisory agency of all thrifts. Insurance of deposits in thrifts was provided by the Federal Savings and Loan Insurance Corporation (FSLIC), a part of the FHLBB. Both the supervisory and insurance activities of thrifts were carried out by the FHLBB. FIRREA abolished the FHLBB and the FSLIC. The Office of Thrift Supervision (OTS), a bureau within the Department of Treasury and headed by the Director of the Office of Thrift Supervision (DOTS), was created to charter federal thrifts and to handle the supervision and examination of state and federal chartered associations. The responsibility for insuring the deposits of thrifts was transferred to

Attachment 3
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the Federal Deposit Insurance Corporation (FDIC), the insurance agency for banks. The insurance funds for banks and thrifts were not combined by FIRREA; rather, there now exists under the FDIC a Bank Insurance Fund (BIF) and a Savings Association Insurance Fund (SAIF).

For thrifts that had failed prior to January 1, 1989, and were in receivership with the FSLIC, FIRREA created the FSLIC Resolution Fund and charged the Fund with liquidating or selling any thrifts in receivership and managing and selling the assets it acquires from the FSLIC or from seized thrifts. All thrifts that were insolvent on January 1, 1989, but not yet placed by the FSLIC in receivership, were placed in the possession of the RTC. Approximately 280 thrifts currently are in receivership, of which 14 are located in Kansas. The RTC also will take possession of any thrifts that become insolvent and are put into receivership within three years of the date of enactment of FIRREA. The Corporation will manage and dispose of the assets of thrifts in its possession.

In addition to acquisitions, FIRREA allows for the optional conversion of an S&L acquired by a bank holding company through a merger of the two institutions. The amendments to the Federal Deposit Insurance Act allow the merger or consolidation of assets and liabilities or the transfer of them to a subsidiary bank. However, several conditions must be met to make the conversion through merger, including that the transaction be subject to state statutory prohibitions against interstate acquisitions.

**Federal Bank Structure Law**

In general, federal law requires national banks and bank holding companies to abide by the branching laws of the state in which the bank is chartered. On the subject of intrastate branching, the 1927 McFadden Act (12 USC 36(c)), provides, in pertinent part, that:

> A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches . . . at any point within the State in which such association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks.

Additionally, regarding the issue of interstate banking, the Douglas Amendment (Section 3(d)) of the Bank Holding Company Act, states, in pertinent part, that:

> Notwithstanding any other provision of this section, no application shall be approved under this section which will permit any bank holding company or any subsidiary thereof to acquire, directly or indirectly, any voting shares of, interest in, or all or substantially all of the assets of any additional bank located outside of the State in which the operations of such bank holding company's banking subsidiaries were principally conducted . . . unless the acquisition of such shares or assets of a State bank by an out-of-State bank holding company is specifically authorized by the statute laws of the State in which such bank is located, by language to that effect and not merely by implication.

Beginning in 1982, however, with the passage of the Garn-St. Germain Depository Institutions Act, bank holding companies were authorized to acquire failed or failing financial institutions with some regard for state boundary lines, i.e., the Act created a priority structure in which institutions of like charter within the same geographic area could be merged and, failing such a merger, institutions of unlike charter within the same geographic area could be merged and, failing that, institutions of unlike charter in different geographic areas could be merged. Since that date, a number of such acquisition have been approved by the Federal Reserve Board.

FIRREA makes it clear that a bank or bank holding company may acquire any savings and loan association, failed, failing, or healthy and the Act places no limitation on acquisitions of thrifts to those states in which the bank or holding company may own a bank. FIRREA encourages such activities and an amendment to the Bank Holding Company Act adds a new subsection providing that the Federal Reserve Board "may approve an application by any bank holding company . . . to acquire any savings association in accordance with the requirements and limitations of this section." The Federal Reserve Board, the regulator of bank holding companies, has modified its rule and regulation (Regulation Y) to add savings institution operation as a permissible nonbanking activity if the savings institution only engages in taking deposits, lending, and other activities permissible for a bank holding company.

In that regard, the Federal Reserve Board explained in its summary statement associated with the adoption of the amendment to Regulation Y (CFR, September 8, 1989), that:

> Concern regarding the erosion of interstate banking restrictions has also been reduced by the significant increase in state initiatives permitting interstate banking. In this regard, twenty-two states already authorize bank acquisitions on a nationwide basis, and an additional eight states will permit nationwide entry by January 1, 1991. In addition, a total of forty-six states and the District of Columbia have enacted some type of interstate banking statutes . . . .
>
> The Board did seek comment on an option to permit the acquisition of savings associations by bank holding companies only in those states where the holding company could operate a bank . . . the Board has not adopted this option.

In a footnote to the Federal Reserve Board summary, Iowa, Kansas, Montana and North Dakota were identified as not having authorized any form of interstate banking.

**Kansas "Bank" Structure Law**

**Intrastate Branching – Banks.** K.S.A. 9-1111 establishes the principle that the business of banking shall be done at the place of business specified in the bank charter and that it is unlawful to establish and operate branches except as specifically provided. The statute proceeds to permit banks to have three or four branches within the geographic boundary of the unit of government specified in the charter, e.g., city, township. In addition to those facilities, any bank may establish a branch bank: at the site of a Kansas bank which was merged into or consolidated with the branching

bank, provided the merged bank had been in existence for five or more years; at the site of a Kansas bank the assets of which were purchased and the liabilities were assumed by the branching bank from a receiver in liquidation of the bank; and in any city located in the same county in which the branching bank is located, if that city does not have a main bank chartered within its corporate limits. Clearly, the statute allows intrastate branching mainly by merger, consolidation or purchase and assumption of assets and liabilities. There is no statutory authorization for de novo chartering of a branch bank.

**Intrastate Branching -- Thrifts.** K.S.A. 17-5102 defines the terms "branch office" and "home office" and makes it clear that any business that may be transacted at the home office may be transacted at any branch office of the thrift. Further, K.S.A. 17-5225, et seq., establishes the application and approval process for creating a branch office. While not explicitly stated, because hearings on applications are to be in the county wherein the branch will be located, it is clear that thrifts have statewide de novo branching authority under Kansas Law.

**Interstate Branching -- Banks.** Kansas statutes do not permit Kansas banks to branch outside of the state nor are out-of-state banks authorized to do business in Kansas.

**Interstate Branching -- Thrifts.** In 1987, the Kansas Legislature allowed state chartered thrifts to branch outside of the state in the same manner that federally chartered associations were allowed to branch interstate. At the time, interstate branching for federal thrifts was confined to interstate transactions involving the acquisition of a failed or failing thrift. The authority to branch interstate was further limited to states whose laws were reciprocal to Kansas.

**Implications of FIRREA**

1. FIRREA makes it possible for a bank holding company to acquire a thrift through an interstate transaction. Because FIRREA makes the operation of a thrift a permitted nonbanking activity, the prohibition contained in Kansas law against interstate branching does not apply. Therefore, an out-of-state bank holding company may acquire and operate a thrift in Kansas. The acquired thrift cannot be merged with or converted into a branch bank of the acquiring institution, however, because such a conversion would be interstate branching not specifically allowed by Kansas law. But the acquiring bank holding company could re-charter the institution as a savings bank and run it in tandem with the holding company.

Because Kansas does not allow interstate banking, it is possible that prospective out-of-state banks and bank holding companies with resources to acquire a thrift in Kansas will not want to make the investment since the acquired institution would have to be operated as a thrift during the five-year moratorium imposed on conversions by FIRREA. However, the thrift acquired by the bank or bank holding company retains its right to branch as provided by the law of the state in which it is chartered. Such branching authority may be an incentive to acquisition.

2. FIRREA makes it possible for a bank domiciled in Kansas to acquire a thrift domiciled in this state and, upon acquisition, to convert the

thrift into a branch of the acquiring bank. In this regard, FIRREA preempts state laws which place limits on branching, restrict the number of branches in certain geographical locations, and make no provision for cross-institutional purchase.

Within nine days of the enactment of FIRREA, Kansas laws on intrastate branching were preempted when, on August 18, 1989, Bank IV Coffeyville assumed First Federal Savings and Loan Association, including its branch in Caney. About one month later, Garden National Bank in Garden City acquired Colonial Savings in Liberal and its branch in Garden City.

### Summary

Enactment of FIRREA and its ongoing implementation demonstrate that the federal government has reclaimed primacy over the formation, operation, and supervision of the thrift industry, and for that matter, the banking industry as well. A revamped Federal Deposit Insurance Corporation, a new Office of Thrift Supervision, and the Resolution Trust Corporation have unprecedented authority to carry out their missions as defined in the Act. The opening phrase amending Section 13(k) of the Federal Deposit Insurance Act, "Notwithstanding any provision of state law," underscores the intention of the federal government to tolerate no state imposed impediments to carrying out the purposes of FIRREA. Further, on September 26, 1989, the Resolution Trust Corporation determined that "severe financial conditions threaten the stability of a significant number of savings associations or of savings associations possessing significant financial resources," and upon making that determination, tapped the preemption authority FIRREA requires the Corporation to find.

Kansas statutes conflict with the federal Act, and since federal preemptions of Kansas statutes have already occurred, the policy decision to change Kansas bank structure laws is before the Legislature for resolution.

## II. INTRASTATE BRANCH BANKING IN KANSAS

### Background

In February, 1987, the U.S. Court of Appeals for the Fifth Circuit, upheld an order of the Comptroller of the Currency allowing a Mississippi national bank to open a branch more than 100 miles from the banks main office, an action which was prohibited by Mississippi statutes for state banks in that state. At issue was the McFadden Act which, as noted above, allows national banks to establish branches wherever "State banks" may do so provided that branching is authorized by "statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication . . . ." That federal Act states that:

> The words "State bank," "State banks," "bank," or "banks," as used in this section, shall be held to include trust companies, savings banks, or other such corporations or institutions carrying on the banking business under the authority of State laws.

The court concluded that Congress intended to include within the definitions any corporation or institution carrying on banking business, regardless of the title a state gave the institution. Thus, in the Mississippi case, the Court affirmed the Comptroller's order and the legal interpretation behind it: that national banks may only branch as freely as state banks within the same state; that Mississippi savings and loan associations may branch outside their home cities; that Mississippi savings and loan associations offer many of the same products and services as commercial banks; that Mississippi savings and loan associations were "state banks" for McFadden Act purposes; therefore, national banks in Mississippi could branch as freely as Mississippi savings and loan associations.

On appeal to the U.S. Supreme Court, the Court denied certiorari and the decision of the Fifth Circuit Court of Appeals was upheld. The precedent established in the Mississippi case has been used by the Comptroller in Texas, Florida, Missouri, Tennessee, Louisiana, Wisconsin, and Kansas.

**The Kansas Case**

On August 10, 1988, Peoples National Bank and Trust Company, Ottawa, Kansas requested of the Comptroller of the Currency approval to establish a branch bank near the intersection of U.S. 69 Highway and 199th Street in Johnson County, Kansas. Peoples National Bank's main office is located within the City of Ottawa, in Franklin County. Because the proposed branch was in a township and not in a city, Peoples National Bank and Trust Company was prohibited by Kansas law from operating such a branch bank.

Upon receipt of Peoples' application for the branch bank, the Comptroller of the Currency applied the legal interpretation affirmed by the Fifth Circuit Court of Appeals, finding that savings and loan associations could branch statewide in Kansas, that Kansas savings and loan associations are authorized by state law to carry on the business of banking, i.e., take deposits, pay checks, and make loans; therefore, a national bank in Kansas may branch to the same extent and subject to the same conditions imposed on savings and loan associations under Kansas. Peoples National Bank and Trust Company's application was approved on March 30, 1989.

In response to the State Bank Commissioner's request of the Attorney General to review the authority of a national bank to establish a branch in the same manner as state chartered savings and loan associations, the Attorney General stated: "It is my opinion that the Stilwell branch of the Peoples National Bank and Trust Company of Ottawa, Kansas is not an illegal branch."

**Implications for Kansas**

Based upon the Comptroller of the Currency's order, all national banks in Kansas can branch intrastate in the same manner as savings and loan associations, e.g., de novo, statewide. Since Kansas law prohibits such branching for state chartered banks, they are at a competitive disadvantage with the national banks. This inequality in structure laws between national banks and state banks, places before the Legislature the policy decision whether to allow de novo intrastate branch banking for state chartered banks.

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