Approved 4/5/90
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

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

9:00 a.m./~~p.m.~~ on WEDNESDAY, MARCH 28, 1990 in room 529-S of the Capitol

All members were present ~~except~~:

Committee staff present:

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

Conferees appearing before the committee:

Newton Male, Kansas Banking Commissioner
Doug Mays, Kansas Securities Commissioner

Chairman Bond called the meeting to order at 9:12 a.m.

HB 2991 - Banks and banking: organizations.

Newton Male, Kansas Banking Commissioner, addressed the committee in support of the above-mentioned bill. He informed the committee that this bill would add language to allow the State Banking Commissioner to issue emergency state bank charters on an equal basis as the national bank regulator can offer national bank charters. (Attachment 1)

Discussion followed. A committee member clarified that this bill would permit a state bank, who is a successful bidder on an insolvent bank, to obtain an emergency charter. Mr. Male agreed and further stated that it would be necessary to go through an application process that involves the state banking board. He said that the Board would determine if there was need in the community and also if it would damage an existing bank. Another committee member inquired what would happen if the State Banking Board did not approve the charter. Mr. Male said that they would be forced to find a buyer or go to court. Another member asked how quick the Banking Board and Commissioner could act on request for a charter. Mr. Male responded by saying that they had gone through the entire approval process within two or three days but that the State Banking Board only meets once a month, therefore, their approval would take longer.

Senator Salisbury offered a motion to amend HB 2991. Senator Kerr seconded the motion. The amendments would (1) raise the total deposits from 9% to 12% and (2) permit charter purchases of banks chartered less than five years. (Attachment 2)

A brief discussion followed. One committee member asked why not put the entire interstate banking bill into this bill. Another member inquired of Mr. Male if this was an important bill to him. He said it was and that he would not want the amendments if it meant defeat for the bill.

The Chairman returned to the motion to amend the bill. The motion carried.

Senator Salisbury made a motion to pass the bill favorably as amended. Senator Moran seconded the motion. The motion carried.

HB 3017, HB 3018, HB 3019 - Securities.

Doug Mays, Securities Commissioner, appeared before the committee in behalf of these three bills. He informed the committee that HB 3017 would give the Commissioner the power to bar or suspend any person from association with a registered broker or investment advisor. (Attachment 3)

Mr. Mays explained to the committee that HB 3018 would designate securities fraud as a Class D felony and any other violations of the Kansas Securities Act as class E felonies. (Attachment 4)

HB 3019, as explained by Mr. Mays, would delete the requirement that 30 days notice be given to the Securities Commissioner prior to the issuance of securities in connection with an employee stock option plan. The bill would also increase from $50 to $100 the filing application fee for exemption of securities. Mr. Mays said this exemption applied only to church bonds. (Attachment 5)

There being no other conferees, Chairman Bond announced the hearings closed.

Senator Kerr made a motion to pass HB 3017 out of committee favorably. Senator Salisbury seconded the motion.

Senator Reilly offered an amended motion to move the effective date of the bill to its publication in the Kansas Register and to pass the bill out of committee with a favorable consideration. Senator Kerr seconded the motion. The motion carried.

Senator Kerr made a motion to pass HB 3018 out of committee favorably. Senator Parrish seconded the motion. The motion carried.

Senator Karr made a motion to amend HB 3019 by retaining the $50 filing fee in the original draft of the bill. Senator Reilly seconded the motion. The motion carried.

Senator Kerr made a motion to pass HB 3019 out of committee favorably as amended. Senator Karr seconded the motion. The motion passed.

Chairman Bond adjourned the meeting at 10:00 a.m.

GUEST LIST

COMMITTEE: FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE DATE: Wed. Mar 28, 1990

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
W. NEWTON MALE	JAYHAWK BLDG. TOPEKA, KS.	KS. BANKING DEPT.
M. Douglas Mays	Topeka	KS Securities Comm.
Ken Bahr	Topeka	4th Financial Corp.
Brad Smoot	"	4th Financial Corp
Chuck Stones	"	KBA
Jim Maag	"	"

Testimony

Before

The Senate Committee on Financial

Institutions and Insurance

by Conferee:

W. Newton Male, Bank Commissioner

Kansas Banking Department

HOUSE BILL 2991

This bill amends K.S.A. 9-1801 which concerns the organization of banks and the issuance of emergency charters.

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

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 Institutions Reform, Recovery and Enforcement Act of 1989, (FIRREA), state banks can bid on savings associations and operate them as branches. However, a holding company cannot create an additional new state bank, because the Commissioner does not have the power to issue an emergency charter upon the insolvency of savings associations. 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.

The amendments would add language to allow the State Bank Commissioner to issue emergency state bank charters on an equal basis as the national bank regulator (OCC) can offer national bank charters.

Attachment 1
FI&I
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Attachment 2
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Session of 1990

HOUSE BILL No. 2991

By Committee on Commercial and Financial Institutions

2-13

AN ACT relating to banks and banking; concerning the organization thereof; amending K.S.A. 1989 Supp. 9-1801 and repealing the existing section.

concerning bank holding companies;

9-520 and

(section) sections; also repealing K.S.A. 1989 Su

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

Section 1. K.S.A. 1989 Supp. 9-1801 is hereby amended to read as follows: 9-1801. (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, *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.

See Attached Amendment

Sec. 2. K.S.A. 1989 Supp. 9-1801 is hereby repealed.

(Sec. 2) Sec. 3

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

(See-3) Sec. 4.

Following line 42, by inserting the following: "Sec. 2. K.S.A. 1989 Supp. 9-520 is hereby amended to read as follows: 9-520. (a) Excluding shares held under the circumstances set out in paragraph (2) of subsection (a) of K.S.A. 1985 Supp. 9-519, no bank holding company or any subsidiary thereof shall directly or indirectly acquire ownership or control of, or power to vote, any of the voting shares of any bank domiciled in this state if, after such acquisition, all banks domiciled in this state, in which the bank holding company or any subsidiary thereof has ownership or control of, or power to vote, any voting shares, would have, in the aggregate, more than ~~9%~~ 12% of the total deposits of all banks in this state plus the total deposits, savings deposits, shares and other accounts in savings and loan associations, federal savings banks and building and loan associations in this state as determined by the state bank commissioner on the basis of the most recent reports to supervisory authorities which are available at the time of the acquisition.

(b) This section shall not prohibit a bank holding company or any subsidiary thereof from acquiring ownership or control of, or power to vote, any of the voting shares of any bank domiciled in this state if the state bank commissioner, in the case of a bank organized under the laws of this state, or the comptroller of the currency, in the case of a national banking association, determines that an emergency exists and that the acquisition is appropriate in order to protect the public interest against the failure or probable failure of the bank."

4-8

9-521. Same; ownership limitations; exceptions. (a) No bank holding company or any subsidiary thereof shall directly or indirectly acquire ownership or control of, or power to vote, more than 5% of any class of the voting shares of any bank domiciled in this state unless such bank, if chartered after January 1, 1985, has been in existence and actively engaged in business for five or more years.

(b) This section shall not prohibit a bank holding company or any subsidiary thereof from acquiring ownership or control of, or power to vote, more than 5% of the voting shares of any bank organized solely for the purpose of facilitating a merger of such bank with or into a bank domiciled in this state which has been in existence and actively engaged in business for five or more years, or a consolidation of such bank and one or more banks domiciled in this state which have been in existence and actively engaged in business for five or more years.

(REPEALED)

(c) This section shall not prohibit a bank holding company or any subsidiary thereof from acquiring ownership or control of, or power to vote, more than 5% of any class of the voting shares of any bank domiciled in this state if the state bank commissioner, in the case of a bank organized under the laws of this state, or the comptroller of the currency, in the case of a national banking association, determines that an emergency exists and that the acquisition is appropriate in order to protect the public interest against the failure or probable failure of the bank.

History: L. 1985, ch. 55, § 4; July 1.

I. **HB 3017 Summary:** An amendment to K.S.A. 17-1266(a) of the Kansas Securities Act to grant the Securities Commissioner the power to bar or suspend any person from association with any registered broker-dealer or investment advisor in Kansas.

II. **Fiscal Impact:** None

III. **Policy Implications/Background:**
The power to bar individuals from the securities industry in Kansas is necessitated for two reasons. First, we are finding with alarming frequency that individuals who have had their licenses revoked for violations of the Securities Act are immediately reentering the industry by assuming non-licensed positions within securities firms. This "back-door" approach allows them to circumvent the law and perform the same activities (including criminal behavior) for which their original registration was revoked. They generally represent themselves either as owners or executives with no managerial responsibilities, or as "independent" consultants who have contracted with the firm.

Second, we have had a number of cases in which we have issued an order to revoke an agent licensed to conduct business in Kansas but residing in another state (there are approximately 25,000 such agents). In many cases, the agent simply withdraws his registration through the Central Registration Depository (CRD) system. This, since one cannot revoke a license that no longer exists, often negates the original proceeding and frustrates the administrative process. In most cases, the agent's record goes unblemished, allowing him to continue, unabated, his activities in other states. In addition, technically, since no final sanction was ever taken against the agent, he may at some future date successfully reapply to Kansas for registration.

A number of state (including Oklahoma), the U.S. Securities and Exchange Commission, and the National Association of Securities Dealers (NASD), have this power and have found it a valuable tool for removing the "bad apples" from the securities industry.

IV. **Impact on Other State Agencies:** None anticipated.

Attachment 3
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3/28/90

I. **HB 3018 Summary:** An amendment to K.S.A. 17-1267(a) designating the level of felony for violations of the Kansas Securities Act. Specifically, this amendment would make violations of the anti-fraud provisions of the Act, i.e., securities fraud, a class D felony and any other violations of the act class E felonies.

II. **Fiscal Impact:** None

III. **Policy Implications/Background:**
Presently, violations of the Kansas Securities Act are unclassified felonies, punishable by a fine of up to $5,000 or imprisonment of up to three years, or both, for each violation. The classification of these crimes is necessary for two reasons.

First, this office has experienced some difficulty with this issue during criminal trials. Defense attorneys have repeatedly entered motions that charges be dismissed because the statute does not specifically classify a violation of the Act as a felony. Fortunately, each judge has ruled that, based on case law and the severity of the punishment outlined in the statute, violations of the Act are, indeed, felonious.

While the state has prevailed to date, the process of arguing this point has taken nearly half a day of court time per case. In addition, while this office feels that we are on solid legal ground, one can never be certain that every court will rule in our favor.

Second, by classifying securities fraud as a D felony, it will differentiate it from all other violations of the Act, acknowledging the extreme seriousness of the crime. Securities fraud, as a type of theft, has devastating effects on the lives of innocent Kansans. Individuals who perpetrate these crimes generally prey upon middle-income retirees, in many cases wiping out the "nest-egg" that they have spent their lives accumulating. The effects of this crime are manifested in human terms through lost security and severely diminished lifestyle for the victims, and, economically, by the removal of significant funds from legitimate Kansas enterprises and an overall diminishing of confidence in our capital markets.

Other violations of the Securities Act are presently equivalent to Class E felonies. It is the recommendation of this office that they be statutorily classified as such.

IV. **Impact on Other State Agencies:** None anticipated. Since first time offenders are presumed to receive probation, the classification of Securities Fraud should not result in any additional incarcerations.

Attachment 4
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I. **HB 3019 Summary:** An amendment to K.S.A. 17-1261(j) of the Kansas Securities Act deleting the 30-day notice filing requirement now mandated as a condition of exemption from registration by employee stock option plans.

II. **Fiscal Impact:** None

III. **Policy Implications/Background:**
Approximately one year ago, a problem was brought to this office's attention by a Wichita law firm that represents a number of business clients. Under the Act, K.S.A. 17-1261(j), securities issued in connection with an employee stock option plan are exempt from registration. The conditions of the exemption require a notice filing 30 days prior to inception of the plan. The problem is that it is common for many small businesses to commence such plans on a small scale and seek legal advice concerning securities and tax consequences after the fact. In such circumstances, it appears there is no way such a business can comply with the literal conditions of the exemption. No curative procedures are provided for failure to file 30 days in advance of the plan's inception. This had been a recurring problem addressed by staff on numerous occasions. This office has taken a lenient view in interpreting the conditions of the exemption, but the literal wording of the exemption still causes all parties concern.

The filing requirements are simply notice filings and do not further any significant enforcement activity or policy under the Act. Many states have eliminated the filing requirement, and the new proposed Uniform State Act proposes to eliminate the requirement in much the same language as used in the proposed amendment. This amendment would eliminate some unnecessary bureaucratic "red tape" and would allow the exemption to function in a more rational manner.

IV. **Impact on Other State Agencies:** None anticipated.

Attachment 5
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3/28/90