

Approved Delbert L. Gross 2-7-91
Date

MINUTES OF THE HOUSE COMMITTEE ON COMMERCIAL & FINANCIAL INSTITUTIONS

The meeting was called to order by Delbert L. Gross at
Chairperson

3:30 ~~am~~/p.m. on January 31, 1991 in room 527-S of the Capitol.

All members were present except: Representatives Joan Adam, Carol Dawson, Herman Dillon, Mary Jane Johnson, Kenneth King, Phil Kline, Sam Roper and George Teagarden, Excused.

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

Conferees appearing before the committee: Grant Brooks, General Counsel, Kansas
Banking Department
Stanley Lind, Associated Financial Services

The Chairman called the meeting to order at 3:30 P.M. and announced the purpose of the meeting today was for the introduction of bills.

Grant Brooks, General Counsel, Kansas Banking Department, was the first person appearing before the committee, stating the State Banking Department requests the Committee amend four statutes and repeal one statute. One amendment is clean-up/clarification and the remainder are all substantive changes in the banking law. (See Attachment #1)

K.S.A. 9-909: Statute addresses rights and immunities of preferred stockholders.

It is requested the middle paragraph be deleted, as it begins with permissive language, but ends with mandatory language. Upon review of the content of this sentence, it is now obsolete because the General Corporation Code, at K.S.A. 17-6401, already permits a corporation to give preferred stock any type of rights the corporation desires. Due to this language being confusing in meaning and duplicates the General Corporation it should be deleted. (See Attachment #2)

Representative Shallenburger moved and Representative Long seconded that K.S.A. 9-909 be introduced as amended. The motion carried unanimously.

K.S.A. 9-1117: Statute addresses the requirement that bank directors and presidents purchase qualifying shares in order to hold such positions. This statute requires the purchase of \$500 par value of stock.

It is requested that K.S.A. 9-1117 be repealed as it is ineffective and a regulatory nightmare to enforce. (See Attachment #3)

It is further requested that K.S.A. 9-1118 be amended to remove the requirement of good faith ownership of qualifying shares. (See Attach #4)

Representative Shallenburger moved and Representative Minor seconded that K.S.A. 9-1117 and K.S.A. 9-1118 be combined and repeal K.S.A. 9-1117 and amend K.S.A. 9-1118. The motion carried unanimously.

K.S.A. 9-1101: It was requested to amend K.S.A. 9-1101. This is the general powers statute and it was discovered during the past year that many banks own stock in Kansas Bankers Surely Company. K.S.A. 9-1101 does not authorize state banks to hold such an equity investment. It is further requested to amend K.S.A. 9-1101 to authorize state banks to hold, as an asset, stock in a Kansas insurance company incorporated prior to 1910 which only provides insurance to financial institutions. (See Attachment #5)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON COMMERCIAL & FINANCIAL INSTITUTIONS,
room 527-S, Statehouse, at 3:30 ~~xx~~/p.m. on January 31, 1991

The purpose of this restrictive language is to ensure that this new power only codifies the status quo and does not allow state banks to purchase stock in any insurance company.

Representative Long moved and Representative Graeber seconded that K.S.A. 9-1101 be accepted as a committee bill. The motion carried unanimously.

K.S.A. 9-1111: The branch banking statute. This statute does not provide for the relocation of a branch bank. It is requested the Committee amend the state branching statute and include a specific provision authorizing a state bank that acquires another state bank through a P&A to operate the acquired bank's main office and branches as branches of the acquiring bank. (See Attachment #6)

Representative Long moved and Representative Graeber seconded that K.S.A. 9-1111 be accepted as a committee bill. The motion carried unanimously.

The Chairman introduced Stanley Lind, Associated Financial Services, stating Mr. Lind wished to have legislation introduced for persons having credit problems and having them repaired by a service for a fee.

After discussion it was questioned if it were legal for this type of service to be provided for a fee to help persons with credit problems. It was decided to hold off on this legislation until after this issue was clarified. (See Attachment #7)

The meeting was adjourned at 4:00 P.M.

Date: January 31, 1991

GUEST REGISTER

COMMERCIAL AND FINANCIAL INSTITUTIONS

NAME	ORGANIZATION	ADDRESS
LINDA McGill	CBA	TOPEKA
Mike Heitman	Ks. Banking Dept.	Topeka
SCOTT LOWRY	Ks. Banking Dept	TOPEKA
<i>[Signature]</i>	" " "	"
<i>[Signature]</i>	KBA	"
Chuck Stones	"	"

Testimony

Before

The House Committee on Commercial
and Financial Institutions

by Conferee:

Grant L.C. Brooks, General Counsel

Kansas Banking Department

The State Banking Department requests the Committee amend four statutes and repeal one statute this legislative session. One amendment is cleanup/clarification the remainder are all substantive changes in banking law.

First, K.S.A. 9-909: This statute addresses rights and immunities of preferred stockholders. However, the middle paragraph of this statute has a convoluted sentence that begins with permissive language, but ends with mandatory language.

Upon review of the content of this sentence, it is now obsolete because the General Corporation Code, at K.S.A. 17-6401, already permits a corporation to give preferred stock any type of rights the corporation desires.

Consequently, as this language is confusing in meaning and duplicates the General Corporation, it is best deleted.

Second, K.S.A. 9-1117: This statute addresses the requirement that bank directors and presidents purchase qualifying shares in order to hold such positions. This statute requires the purchase of \$500 par value of stock.

Presumably, the legislative reasoning is to ensure that a director or president that has a personal investment at stake in the corporation will be more vigilant in the performance of their responsibilities. However, in today's environment of increasing personal director accountability, including breach of fiduciary duty and environmental liability issues, making a

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director purchase \$500 par value of stock does not ensure a director will be any more vigilant in the performance of his job.

Beyond the ineffectiveness of this statute, it is a regulatory nightmare to enforce. This is especially true with problem banks. These banks are generally in need of a stronger board of directors. However, it is difficult enough for a problem bank to hire new directors because of new liability standards, let alone find a director that will also purchase \$500 par value of stock.

Another problem exists with buy-back agreements between the director and the institution. Most state banks in Kansas are closely held corporations. Therefore, most banks have buy-back agreements that routinely limit voting and dividend rights and give the bank first right of refusal. In fact, some agreements are so restrictive that they require this department's close scrutiny because of the requirements of K.S.A. 9-1118.

This is the third statute the State Banking Department requests the Committee amend. K.S.A. 9-1118 requires a director or president, upon oath, to state they own in "good faith" qualifying shares. This causes this department to routinely examine buy-back agreements because, depending upon how restrictive the agreement is, it may well violate K.S.A. 9-1118. The State Banking Department believes that this regulatory review is inefficient because the purpose to be accomplished by requiring qualifying shares, is accomplished by a person merely taking the responsibilities as a director or president of a bank. Therefore, because of the new accountability standards imposed upon bank directors and presidents, this department requests the Committee repeal K.S.A. 9-1117 and amend K.S.A. 9-1118 to remove the requirement of good faith ownership of qualifying shares.

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The third statute the State Banking Department requests the Committee amend is K.S.A. 9-1101; the general banking powers statute. During last year, as a result of a FDIC examination, it was discovered that many Kansas banks own stock in Kansas Bankers Surety Company. However, K.S.A. 9-1101 does not authorize state banks to hold such an equity investment. To completely understand this situation, some history is needed.

Kansas Bankers Surety provides all types of financial institution liability insurance policies to state banks. This company was incorporated in 1909 by a number of state banks. Also at that time, state banks could not own such stock. Therefore, the state banks formed trusts to hold the stock. The trustee was usually the bank's cashier. Over time the trustees died or moved on and the stock was apparently put in the name of the bank and was not listed as an asset of the respective bank. So, today the majority of the stockholders of Kansas Bankers Surety are state banks and a majority of the stock is reflected as a nonbook asset in those state banks.

It would serve no purpose to force state banks to divest themselves of this nonbook stock and would, in fact, harm Kansas Bankers Surety. Therefore, the State Banking Department requests the Committee amend K.S.A. 9-1101 to authorize state banks to hold, as an asset, stock in a Kansas insurance company incorporated prior to 1910 which only provides insurance to financial institutions. The purpose for this restrictive language is to ensure that this new power only codifies the status quo and does not allow state banks to purchase stock in any insurance company.

The final statute the State Banking Department requests the Committee amend is K.S.A. 9-1111; the branch banking statute. One problem this

department and the State Banking Board have with this statute is that it does not provide for the relocation of a branch bank. This department has been interpreting K.S.A. 9-1804 to include the relocation of a branch bank. However, the correct legislative intent of K.S.A. 9-1804 is the relocation of only the bank's corporate headquarters and not branch banks. Therefore, this department requests that K.S.A. 9-1111 be amended to specifically apply to the relocation of a branch bank as well as the establishment of a new branch bank.

Another problem the State Banking Board has with the branching statute is that it requires a hearing for every application that is filed to establish a branch. On some applications there is no opposition to the establishment of a branch and the requirement to hold a hearing is an inefficient use of the State Banking Board's time and resources. Therefore, the State Banking Board requested the State Banking Department to seek an amendment to K.S.A. 9-1111 that requires a hearing only when written objections are filed in response to the applicant publishing a notice of intent to establish the branch bank. This would permit the State Banking Board to approve new branch locations or mere branch relocations without a hearing when there is no objection to the establishment of the branch bank.

Another issue the State Banking Board struggles with, when approving branch banks, is the lack of a specific reference to the financial condition of the applicant bank in the list of criteria used to approve a branch bank. The State Banking Board desires that a specific reference to the applicant bank's financial history and condition is placed in the statute so they may legitimately examine the financial status of an applicant bank when deciding upon an application. It is obvious that the financial condition of a bank

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is a legitimate concern when a bank is embarking on a new venture and without a specific reference in this statute, the State Banking Board is reluctant to formally use that as a reason for denial. Instead, the State Banking Board uses the second criterion of the statute that addresses the usefulness and success of the proposed branch.

Another problem with the branching statute concerns only the State Bank Commissioner. When two state banks merge, the surviving bank may operate the acquired bank's branches as branches of the surviving bank. This is also true when the acquired bank is acquired via a purchase and assumption from a receiver. However, the statute has no provision authorizing a bank to operate an acquired bank and the bank's branches when the acquisition is by a normal purchase and assumption. The State Banking Department, as a departmental policy, has interpreted the merger statute to include P&As, provided the shell corporation surrender its certificate of authority to engage in the banking business. However, it is obviously more appropriate to amend the branching statute to specifically provide for this type of acquisition and in light of the trend in Kansas banks of corporate contraction, this type of acquisition shall become more common. Therefore, the State Banking Department requests the Committee amend the state branching statute to include a specific provision authorizing a state bank that acquires another state bank through a P&A to operate the acquired bank's main office and branches as branches of the acquiring bank.

THANK YOU FOR YOUR TIME AND CONSIDERATION.

GLCB:dsl

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9-909. Preferred stock; rights and immunities of holders of preferred stock. The holders of preferred stock shall not be liable for assessments to cover any impairment in the capital stock of a bank or trust company.

~~The holders of preferred stock may be entitled to receive cumulative dividends, shall have voting and conversion rights, and shall have control of management, as may be provided in the articles of incorporation and upon the written approval of the board. Such preferred stock shall be retired as provided in the articles of incorporation.~~

DELETE

No dividends shall be declared or paid on common stock until all cumulative dividends, if any, on the preferred stock shall have been paid, and if the bank or trust company is dissolved or placed in liquidation no payments shall be made to the holders of common stock until the holders of the preferred stock first shall have been paid in full for any sums due upon such preferred stock. (L. 1989, ch. 48.)

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~~9-1117. Qualifications of president and directors. No person shall be a member of the board of directors or a president within the meaning of sections 9-1114 and 9-1115, and amendments thereto, of any bank or trust company unless such person is the owner of record of common stock having a par value of not less than \$500 in such bank or trust company or in the parent corporation of such bank or trust company. Such stock may be transferred to and held in a trust if such trust is revocable by the member or president owning such stock, but the stock shall not be pledged, hypothecated or assigned in any other way. (L. 1989, ch. 48.)~~

REPEAL

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118. Oath of directors and president. Each director shall take and
cribe an oath that such director will administer the affairs of such bank
or trust company diligently and honestly and that such director will not
knowingly or willfully permit any of the laws relating to banks or trust
companies to be violated and ~~each director and the president of a bank or~~
~~trust company shall swear that such director or president is the owner in~~
~~good faith of shares of common stock having a par value of at least \$500 of~~
~~such bank or trust company or in the parent corporation of such bank or~~
~~trust company standing in such director's or president's name and that the~~
~~same has not been pledged or assigned, except as authorized by K.S.A. 9-~~
~~1117, and amendments thereto.~~ A copy of such oath shall be filed with the
commissioner. (L. 1989, ch. 48.)

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investments. Any bank hereby is authorized to exercise by its board of directors or duly authorized officers or agents, subject to law, all such powers, including incidental powers, as shall be necessary to carry on the business of banking, and:

(1) to receive deposits and to pay interest thereon at rates which need not be uniform. The state bank commissioner, with approval of the state banking board, may by regulations of general application fix maximum rates of interest to be paid on deposit accounts other than accounts for public moneys;

(2) to buy and sell exchange, gold, silver, foreign coin, bullion, commercial paper, bills of exchange, notes and bonds;

(3) to buy and sell bonds, securities, or other evidences of indebtedness of the United States of America or those fully guaranteed, directly or indirectly, by it, and general obligation bonds of the state of Kansas or any municipality or quasi-municipality thereof, and of other states, and of municipalities or quasi-municipalities in other states of the United States of America. No bank shall invest an amount in excess of 15% of its capital stock paid in and unimpaired and the unimpaired surplus fund of such bank in bonds, securities or other evidences of indebtedness of any municipality or quasi-municipality of any other state or states of the United States of America: (a) If and when the direct and overlapping indebtedness of such municipality or quasi-municipality is in excess of 10% of its assessed valuation, excluding therefrom all valuations on intangibles and homestead exemption valuation; (b) or if any bond, security, or evidence of indebtedness of any such municipality or quasi-municipality has been in default in the payment of principal or interest within 10 years prior to the time that any bank acquires any such bonds, security or evidence of indebtedness;

(4) to make all types of loans, including loans on real estate, subject to the loan limitations contained in this act. Every real estate loan shall be secured by a mortgage or other instrument constituting a lien, or the full equivalent thereof, upon the real estate securing the loan, according to any lawful or well recognized practice, which is best suited to the transaction. The mortgage may secure future advances. The lien of such mortgage shall attach upon its execution and have priority from time of recording as to all advances made thereunder until such mortgage is released of record. The lien of such mortgage shall not exceed at any one time the maximum amount stated in the mortgage;

(5) to discount and negotiate bills of exchange, negotiable notes and notes not negotiable;

(6) to buy and sell investment securities which are evidences of indebtedness. The buying and selling of investment securities shall be limited to buying and selling without recourse marketable obligations evidencing indebtedness of any person, copartnership, association, corporation, or state

or federal agency, including revenue bonds issued pursuant to K.S.A. 76-6a15, and amendments thereto, or the state armory board in the form of bonds, notes or debentures or both, commonly known as investment securities, under such further definition of the term "investment securities" as prescribed by the board, but the total amount of such investment securities of any one obligor or maker held by such bank shall at no time exceed 10% of the capital stock paid in and unimpaired and the unimpaired surplus fund of such bank except that this limit shall not apply to obligations

state agency including any agency issuing revenue bonds pursuant to K.S.A. 76-6a15, and amendments thereto, or the state armory board, the total amount of such investment securities shall at no time exceed 25% of the capital stock paid in and unimpaired and the unimpaired surplus fund of such bank;

(7) to subscribe to, buy and own such stock of the federal national mortgage association as required by title 3, section 303 of the federal act known as the national housing act as amended by section 201 of public law No. 560, of the United States (68 Stat. 613-615), known as the housing act of 1954, or amendments thereto;

(8) to subscribe to, buy and own stock in one or more small business investment companies in Kansas as otherwise authorized by federal law, except that in no event shall any bank acquire shares in any small business investment company if, upon the making of that acquisition the aggregate amount of shares in small business investment companies then held by the bank would exceed 5% of its capital and surplus. Nothing in this act contained shall prohibit any bank from holding and disposing of such real estate and other property as it may acquire in the collection of its assets;

(9) to subscribe to, buy and own stock in any agricultural credit corporation or livestock loan company, or its affiliate, organized pursuant to the provisions of the laws of the United States providing for the information and registration of agricultural credit corporations and livestock loan companies, in an amount not exceeding either the undivided profits or 10% of the capital stock and surplus and undivided profits from such bank, whichever is greater;

(10) to become the owner or lessor of personal property acquired upon the specific request and for the use of a customer, and may incur such additional obligations as may be incident to becoming an owner or lessor of such property. Any bank which claims a credit against its privilege tax of any amount of ad valorem taxes on property acquired pursuant to this subsection shall not be designated as a depository for any state funds by the pooled money investment board. Lease transactions shall not result in obligations for the purpose of determining limitations or restrictions on the amount of loans. Lease payments on such transactions shall be considered rents and not interest;

(11) to subscribe to, buy and own stock in minbanc capital corporation, a company formed for the purpose of providing capital to minority-owned banks; no bank's investment in such stock shall exceed 2% of its capital and surplus;

(12) to buy, hold, and sell any type of investment securities not enumerated in this section with approval of the commissioner and upon such conditions and under such regulations as are prescribed by the state banking board;

(13) to act as escrow agent;

(14) to subscribe to, acquire, hold and dispose of stock of a corporation having as its purpose the acquisition, holding and disposition of loans secured by real estate mortgages, and to acquire, hold and dispose of the debentures and capital notes of such corporation. No bank's investment in such stock, debentures and capital notes shall exceed 2% of its capital stock, surplus and undivided profits and such investment shall be carried on the books of

(15) to purchase and sell securities and stock without recourse solely upon order, and for the account, of customers;

(16) to subscribe to, acquire, hold and dispose of any class of stock, debentures and capital notes of MABSCO agricultural services, inc. or any similar corporation having as its purpose the acquisition, holding and disposition of agricultural loans originated by Kansas banks. No bank's investment in such stock, debentures and capital notes shall exceed 2% of its capital stock, surplus and undivided profits. Such investment shall be carried on the books of the bank as directed by the commissioner;

(17) to buy, hold and sell mortgages, stock, obligations and other securities which are issued or guaranteed by the federal home loan mortgage corporation under sections 305 and 306 of the federal act known as the federal home loan mortgage corporation act (P.L. 91-351);

(18) to buy, hold and sell obligations or other instruments or securities, including stock, issued or guaranteed by the student loan marketing association created by (P.L. 92-318) of the United States;

(19) to engage in financial future contracts on United States government and agency securities subject to such rules and regulations as the state bank commissioner may prescribe pursuant to K.S.A. 9-1713, and amendments thereto, to promote safe and sound banking practices;

(20) to subscribe to, buy and own stock in a state or federally chartered bankers' bank or a one bank holding company which owns or controls such a bankers' bank, except no bank's investment in such stock shall exceed 10% of its capital stock, surplus and undivided profits;

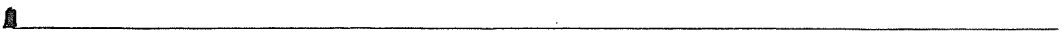
(21) subject to such rules and regulations as the state bank commissioner may adopt pursuant to K.S.A. 9-1713, and amendments thereto, to promote safe and sound banking practices, upon recorded prior approval by the board of directors of the initial investment in a specific company and pursuant to an investment policy approved by the board of directors which specifically provides for such investments to buy, hold and sell shares of an open-end investment company registered with the federal securities and exchange commission under the federal investment company act of 1940 and the

federal securities act of 1933 and of a privately offered company sponsored by an affiliated commercial bank, the shares of which are purchased and sold at par and the assets of which consist solely of securities which may be purchased by the bank for its own account. Such shares may be purchased without limit if the assets of the company consist solely of and are limited to obligations that are eligible for purchase by the bank without limit. If the assets of the company include securities which may be purchased by the bank subject to limitation, such shares may be purchased subject to the limitation applicable to purchase by the bank of such securities;

(22) subject to the prior approval of the state bank commissioner and the state banking board and subject to such rules and regulations as are adopted by the state bank commissioner pursuant to K.S.A. 9-1713, and amendments thereto, to promote safe and sound banking practices, a bank may establish a subsidiary which engages in the following securities activities: (a) buying and distributing stocks, bonds, debentures, notes, mutual funds and other securities, (b) issuing and underwriting municipal bonds, (c) organizing, sponsoring and operating mutual funds, (d) acting as a securities

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(23) to subscribe to, acquire, hold and dispose of stock of any class of the general agricultural mortgage corporation, a corporation having as its purpose the acquisition, holding and disposition of loans secured by agricultural real estate mortgages. No bank's investment in such corporation shall exceed 5% of its capital stock, surplus and undivided profits and such investment shall be carried on the books of the bank as directed by the commissioner. (L. 1988, ch. 62.)



(24) to subscribe to, buy, and own stock in an insurance company incorporated prior to 1910, under the laws of Kansas, with corporate headquarters in this state, which only provides insurance to financial institutions. The investment in such stock shall not exceed 2% of the bank's capital stock, surplus and undivided profits.

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an existing branch bank.

9-1111. Branch banking; transactions by remote service units authorized; conditions and restrictions; "remote service unit" defined. The general business of every bank shall be transacted at the place of business specified in its certificate of authority and at one or more branch banks established

and operated as provided in this section. It shall be unlawful for any bank to establish and operate any branch bank except as hereinafter provided.

(a) For the purposes of this section, the term "branch bank" means any office, agency or other place of business located within this state, other than the place of business specified in the bank's certificate of authority, at which deposits are received, or checks paid, or money lent;

(b) after first applying for and obtaining the approval of the state banking board, one or more branch banks may be established and operated anywhere within this state by a bank incorporated under the laws of this state;

(c) an application to establish and operate a branch bank shall be in such form and contain such information as the rules and regulations of the state bank commissioner, adopted pursuant to K.S.A. 9-1713, and amendments thereto, shall provide;

(d) the application shall include estimates of the annual income and expenses of the proposed branch bank, the annual volume of business to be transacted by it, the nature of the banking business to be conducted at the proposed branch bank, the primary geographical area to be served by it and the personnel and office facilities to be provided at the proposed branch bank;

(e) the application shall include the name selected for the proposed branch bank. The name selected for the proposed branch bank shall not be the name of any other bank or branch bank doing business in the same city or town nor shall the name selected be required to contain the name of the applicant bank. If the name selected for the proposed bank does not contain the name of the applicant bank, the branch bank shall provide in the public lobby of such branch bank, a public notice that it is a branch bank of the applicant bank;

(g) ~~On~~ upon receipt of an application meeting the above requirements, within 60 days after receipt of the application the state banking board shall hold a hearing in the county in which the applicant bank seeks to establish and operate a branch bank. Notice of the time, date and place of such hearing shall be published in a newspaper of general circulation in such county by the bank seeking to establish and operate the branch bank not less than 10 days and not more than 30 days prior to the date of the hearing and proof of publication shall be filed with the commissioner. Not less than 10 days or more than 30 days prior to the date of the hearing, the commissioner shall give notice of the time, date and place of such hearing by registered or certified mail to all banks and national banking associations having their principal places of business or branch banks in the county wherein the applicant bank seeks to locate a branch bank. At the hearing, all interested persons shall be allowed to present written and oral evidence to the board in support of or in opposition to the application. Upon completion of a transcript of the testimony given at the hearing, the transcript shall be filed in the office of the commissioner and copies shall be furnished to the members of the state banking board not less than 14 days prior to the meeting of the board at which the application will be considered;

(f) The application shall include an affidavit of publication for Notice that applicant bank intends to file an application to establish a branch bank or relocate an existing branch bank. The Notice shall be published in a newspaper of general circulation in the county where the applicant bank proposes to locate the branch bank. The Notice shall be in the form prescribed by the State Banking board and at a minimum shall contain: The name and address of the applicant bank, the location of the proposed branch, a solicitation for written comments concerning the proposed branch, be submitted to the State Banking board, and provide for a comment period of not less than ten days prior to the Board's final consideration of the application

or relocate an existing branch bank
or to relocate an existing branch bank

(g) Upon receipt of an application meeting the above requirements, and one written objection to the application, the State Banking board shall, within 60 days after receipt of the application, hold

affidavit

(g) the state banking board shall approve or disapprove the application, for consideration of the application and the evidence received at the hearing ~~at the next regular meeting of the board held after each member has furnished a transcript of the hearing.~~ If the board finds, on the basis of the application and the evidence received at the hearing, that:

gathered during its investigation

- (1) There is or will be at the time the branch bank is opened the need for the same in the community to be served by it;
- (2) there is a reasonable probability of usefulness and success of the proposed branch bank; and

(3) the proposed branch bank can be established without undue injury to properly conducted existing banks and national banking associations, the application shall be granted, otherwise, the application shall be denied;

(4)

(3) The applicant bank's financial history and condition is sound; and

(h) any final action of the board approving or disapproving an application shall be subject to review in accordance with the act for judicial review and civil enforcement of agency actions upon the petition of any adversely affected or aggrieved person who appeared and offered evidence at the hearing upon the application;

(i) any branch bank lawfully established and operating on the effective date of this act may continue to be operated by the bank then operating branch bank and by any successor bank;

branch banks which have been established and are being maintained by a bank at the time of its merger into or consolidation with another bank or at the time its assets are purchased and its liabilities are assumed by another bank ~~from a receiver in liquidation of the bank~~ may continue to be operated by the surviving, resulting or purchasing and assuming bank. The surviving, resulting or purchasing and assuming bank, with approval of the state bank commissioner, may establish and operate a branch bank or banks at the site or sites of the merged, constituent or liquidated bank or banks;

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(k) any state bank or national banking association having its principal office and main banking house in this state may provide and engage in banking transactions by means of remote service units wherever located, which remote service units shall not be considered to be branch banks authorized herein. Any banking transaction effected by use of a remote service unit shall be deemed to be transacted at a bank and not at a remote service unit;

(l) as a condition to the operation and use of any remote service unit in this state, a state bank or national banking association, each hereinafter referred to as a bank, which desires to operate or enable its customers to use a remote service unit must agree that such remote service unit will be available for use by customers of any other bank or banks upon the request of such bank or banks to share its use and the agreement of such bank or banks to share all costs, including a reasonable return on capital expenditures incurred in connection with its development, installation and operation. The owner of the remote service unit, whether a bank or any other person, shall make the remote service unit available for use by other banks and their customers on a nondiscriminatory basis, conditioned upon

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payment of a reasonable proportion of all costs, including a reasonable return on capital expenditures incurred in connection with the development, installation and operation of the remote service unit. Notwithstanding the foregoing provisions of this subsection, a remote service unit located on the property owned or leased by the bank where the principal place of business of a bank, or an attached auxiliary teller facility or branch bank of a bank, is located need not be made available for use by any other bank or banks or customers of any other bank or banks;

(m) for purposes of this section, "remote service unit" means an electronic information processing device, including associated equipment, structures and systems, through or by means of which information relating to financial services rendered to the public is stored and transmitted, whether instantaneously or otherwise, to a bank and which, for activation and account access, is dependent upon the use of a machine-readable instrument in the possession and control of the holder of an account with a bank. The term shall include "online" computer terminals and "offline" automated cash dispensing machines and automated teller machines, but shall not include computer terminals or automated teller machines or automated cash dispensing machines using systems in which account numbers are not machine read and verified. Withdrawals by means of "offline" systems shall not exceed per transaction and shall be restricted to individual not corporate or commercial accounts. (L. 1990, ch. 58.)

AN ACT relating to the regulation of credit services organizations: providing penalties.

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

Section 1. Definitions. As used in this act,

a) "Buyer" means an individual who is solicited to purchase or who purchases the services of a credit services organization.

b) "Consumer reporting agency" has the meaning assigned by Section 603(f), Fair Credit Reporting Act (15 U.S.C. Section 1681a(f)).

c) "Extension of credit" means the right to defer payment of debt or to incur debt and defer its payment offered or granted primarily for personal, family, or household purposes.

Section 2. Credit Services Organization.

a) A credit services organization is a person who with respect to the extension of credit by others and in return for the payment of money or other valuable consideration, provides, or represents that the person can or will provide, any of the following services:

- 1) improving a buyer's credit record, history, or rating;
- 2) obtaining an extension of credit for a buyer; or
- 3) providing advice or assistance to a buyer with regard to Subdivision (1) or (2) of this subsection.

b) The following are exempt from this Act:

- 1) a person authorized to make loans or extension of credit under the law of this state or the United States who is subject to regulation and supervision by this state or the United States, or

a lender approved by the United States secretary of housing and urban development for participation in a mortgage insurance program under the National Housing Act (12 U.S.C. Section 1701 et seq.);

2) a bank or savings and loan association whose deposit or accounts are eligible for insurance by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, or a subsidiary of such a bank or savings and loan association;

3) a credit union doing business in this state;

4) a nonprofit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986;

5) a person licensed as a real estate broker or salesperson under the Real Estate Brokers' and Salespersons' License Act;

6) a person licensed to practice law in this state acting within the course and scope of the person's practice as an attorney;

7) a broker-dealer registered with the Securities and Exchange Commission or the Commodity Future Trading Commission acting within the course and scope of that regulation;

8) a consumer reporting agency; and

9) a person whose primary business is making loans secured by liens on real property.

Section 3. Prohibited Conduct. A credit services organization, a salesperson, agent, or representative of a credit services organization, or an independent contractor who sells or attempts to sell the services of a credit services organization may not:

a) charge a buyer or receive from a buyer money or other valuable consideration before completing performance of all services the credit services organization has agreed to perform for the buyer, unless the credit services organization has obtained in accordance with Section 4 of this act a surety bond in the amount required by Section 4(e) issued by a surety company authorized to do business in this state or established and maintained a surety account at a federally insured bank or savings and loan association located in this state in which the amount required by Section 4(e) is held in trust as required by Section 4(c);

b) charge a buyer or receive from a buyer money or other valuable consideration solely for referral of the buyer to a retail seller who will or may extend credit to the buyer if the credit that is or will be extended to the buyer is substantially the same as that available to the general public;

c) make or use a false or misleading representation in the offer or sale of the services of a credit services organization, including:

(i) guaranteeing to "erase bad credit" or words to that effect unless the representation clearly discloses that this can be done only if the credit history is inaccurate or obsolete; and

(ii) guaranteeing an extension of credit regardless of the person's previous credit problem or credit history unless the representation clearly discloses the eligibility requirements for obtaining an extension of credit;

d) engage, directly or indirectly, in a fraudulent or deceptive act, practice, or course of business in connection with

the offer or sale of the services of a credit services organization;

e) make, or advise a buyer to make a statement with respect to a buyer's credit worthiness, credit standing, or credit capacity that is false or misleading or that should be known by the exercise of reasonable care to be false or misleading, to a consumer reporting agency or to a person who has extended credit to a buyer or to whom a buyer is applying for an extension of credit;

f) advertise or cause to be advertised, in any manner whatsoever, the services of a credit services organization without filing a registration statement with the Consumer Credit Commissioner, unless otherwise provided by this chapter.

Section 4. Bond; Surety Account.

a) This section applies to a credit services organization required by Section 3(a) of this act to obtain a surety bond or establish a surety account.

b) If a bond is obtained, a copy of it shall be filed with the Consumer Credit Commissioner. If a surety account is established, notification of the depository, the Trustee, and the account number shall be filed with the Consumer Credit Commissioner.

c) The bond or surety account required must be in favor of the state for the benefit of any person who is damaged by any violation of this act. The bond or surety account must also be in favor of any person damaged by such a violation.

d) Any person claiming against the bond or surety account for a violation of this act may maintain an action at law against

the credit services organization and against the surety or trustee. The surety or trustee shall be liable only for damages awarded under Section 9(a) of this act and not the punitive damages permitted under that section. The aggregate liability of the surety or trustee to all persons damaged by a credit services organization's violation of this act may not exceed the amount of the surety account or bond.

e) The bond or the surety account shall be in the amount of \$25,000.

f) A depository holding money in a surety account under this act may not convey money in the account to the credit services organization that established the account or a representative of the credit services organization unless the credit services organization or representative presents a statement issued by the Consumer Credit Commissioner indicating that Section 5(f) of this act has been satisfied in relation to the account. The Consumer Credit Commissioner may conduct investigations and require submission of information as necessary to enforce this subsection.

Section 5. Registration.

a) A credit services organization shall file a registration statement with the Consumer Credit Commissioner before conducting business in this state. The registration statement must contain:

1) the name and address of the credit services organization; and

2) the name and address of any person who directly or indirectly owns or controls 10 percent or more of the outstanding shares of stock in the credit services organization.

b) The registration statement must also contain either:

1) a full and complete disclosure of any litigation or unresolved complaint filed with a governmental authority of this state relating to the operation of the credit services organization; or

2) a notarized statement that states that there has been no litigation or unresolved complaint filed with a governmental authority of this state relating to the operation of the credit services organization.

c) The credit services organization shall update the statement not later than the 90th day after the date on which a change in the information required in the statement occurs.

d) Each credit services organization registering under this section shall maintain a copy of the registration statement in the files of the credit services organization. The credit services organization shall allow a buyer to inspect the registration statement on request.

e) The Consumer Credit Commissioner may charge each credit services organization that files a registration statement with the Consumer Credit Commissioner a reasonable fee not to exceed \$100.00 to cover the cost of filing. The Consumer Credit Commissioner may not require a credit services organization to provide information other than that provided in the registration statement.

f) The bond or surety account shall be maintained until two years after the date that the credit services organization ceases operations.

Section 6. Disclosure Statement.

a) Before executing a contract or agreement with a buyer or receiving money or other valuable consideration, a credit services organization shall provide the buyer with a statement in writing, containing:

1) a complete and detailed description of the services to be performed by the credit services organization for the buyer and the total cost of the services;

2) a statement explaining the buyer's right of proceed against the bond or surety account required by Section 3 of this act;

3) the name and address of the surety company that issued the bond, or the name and address of the depository and the trustee, and the account number of the surety account;

4) a complete and accurate statement of the buyer's right to review any file on the buyer maintained by a consumer reporting agency, as provided by the Fair Credit Reporting Act. (15 U.S.C. Sec. 11681 et seq.);

5) a statement that the buyer's file is available for review at no charge on request made to the consumer reporting agency within 30 days after the date of receipt of notice that credit has been denied, and that the buyer's file is available for a minimal charge at any other time;

6) a complete and accurate statement of the buyer's right to dispute directly with the consumer reporting agency the completeness or accuracy of any item contained in a file on the buyer maintained by that consumer reporting agency;

7) a statement that accurate information cannot be permanently removed from the files of a consumer reporting agency;

8) a complete and accurate statement of when consumer information becomes obsolete, and of when consumer reporting agencies are prevented from issuing reports containing obsolete information; and

9) a complete and accurate statement of the availability of nonprofit credit counseling services.

b) The credit services organization shall maintain on file, for a period of two years after the date the statement is provided, an exact copy of the statement, signed by the buyer, acknowledging receipt of the statement.

Section 7. Form and Terms of Contract.

a) Each contract between the buyer and a credit services organization for the purchase of the services of the credit services organization must be in writing, dated signed by the buyer, and must include:

1) A statement in type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written materials so as to be conspicuous, in immediate proximity to the space reserved for the signature of the buyer, as follows: "You, the buyer, may cancel this contract at any time before midnight of the third day after the date of the transaction. See the attached notice of cancellation from for an explanation of this right.";

2) the terms and conditions of payment, including the total of all payments to be made by the buyer, whether to the credit services organization or to another person;

3) a full and detailed description of the services to be performed by the credit services organization for the buyer, including all guarantees and a promises of full or partial refunds, and the estimated length of time, not to exceed 180 days, for performing the services; and

4) the address of the credit services organization's principal place of business and the name and address of its agent in the state authorized to receive service or process.

b) The contract must have attached two easily detachable copies of a notice of cancellation. The notice must be in boldfaced type and in the following form:

"Notice of Cancellation

You may cancel this contract, without any penalty or obligation, within three days after the date the contract is signed.

If you cancel, any payment made by you under this contract will be returned within 10 days after the date of receipt by the seller of your cancellation.

To cancel this contract, mail or deliver a signed dated copy of this cancellation notice, or other written notice to:

(name of seller) (address of seller) (place of business) not later than midnight (date) I hereby cancel this transaction.

(date)

(purchaser's signature)"

c) The credit services organization shall give to the buyer a copy of the completed contract and all other documents the credit

services organization requires the buyer to sign at the time they are signed.

d) The breach by a credit services organization of a contract under this act, or of any obligation arising from a contract under this act, is a violation of this act.

Section 8. Waiver.

a) A credit services organization may not attempt to cause a buyer to waive a right under this act.

b) A waiver by a buyer or any part of this act is void.

Section 9. Action for Damages.

a) A buyer injured by a violation of this act may bring any action for recovery of damages. The damages awarded may not be less than the amount paid by the buyer to the credit services organization, plus reasonable attorney's fees and court costs.

b) The buyer may also be awarded punitive damages.

Section 10. Injunction. The attorney general or a buyer may bring an action in a district court to enjoin a violation of this act.

Section 11. Deceptive Trade Practice. A violation of this act is a deceptive act or practice under the Kansas Consumer Protection Act.

Section 12. Statute of Limitations. An action may not be brought under Section 9 or 11 of this act after two years after the date of the execution of the contract for services to which the action relates.

Section 13. Criminal Penalty. A person who violates this act commits an offense. An offense under this act is a Class B misdemeanor.

Section 14. Burden of Proving Exemption. In an action under this act the burden of proving an exemption under Section 2 of this act is the person claiming the exemption.

Section 15. Remedies Cumulative. The remedies provided by this act are in addition to other remedies provided by the Kansas Consumer Protection Act.

Section 16. Effective Date. This act shall take effect and be in force from and after its publication in the statute book.