

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL AND COMMERCIAL INSTITUTIONS

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

3:30 ~~am~~ p.m. on February 18, 1992 in room 527-S of the Capitol.

All members were present except:

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

Conferees appearing before the committee: Representative Robin L. Jennison
Chuck L. Stones, Kansas Bankers Assn
Joyce L. Crandon, General Counsel,
State Banking Department

The Chairperson called the meeting to order at 3:30 P.M., and opened the hearing on HB 2969.

Representative Jennison testified in support of HB 2969 which allows a bank, with prior approval of the State Bank Commissioner and State Banking Board, to buy back their stock. (See Attachment #1).

Chuck Stones, Kansa Bankers Association, spoke in support of HB 2969 which would allow state chartered banks in Kansas to buy and own stock and hold as "treasury stock". Treasury stock is defined as previously issued stock of a corporation which has been reacquired by that corporation through purchase, gift, donation, etc. (See Attachment #2).

Joyce Crandon, General Counsel, State Banking Department, testified in opposition of HB 2969 stating if the treasury stock were "retired" there would be a reduction of capital and would probably be a conflict with K.S.A. 9-904. (See Attachment #3).

After discussion, the Chairperson closed the hearing on HB 2969.

The Chairperson opened the hearing on HB 2906.

Joyce Crandon, General Counsel, State Banking Department, testified in support of HB 2906 stating the federal law was changed to make the law clearer.

K.S.A. 9-2013 mirrors the federal banking code 18 U.S.C. 215. Kansas has had this statute unchanged since 1948. (See Attachment #4).

The Chairperson closed the hearing on HB 2906.

The Chairperson opened the hearing on HB 3033.

Dan Kolditz, Deputy Attorney General, Consumer Protection Division, Office of the Attorney General, testified in support of HB 3033. This bill would provide a safe-guard for Kansas consumers by prohibiting merchants who accept credit cards from requiring personal identification information when consumers use their credit cards.

There is no need for a merchant to require personal information such as a telephone number or automobile license plate number (See Attachment #5).

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON COMMERCIAL & FINANCIAL INSTITUTIONS,
room 527-S, Statehouse, at 3:30 ~~a.m.~~/p.m. on February 18, 1992

The Chairperson asked for final action on HB 2133.

Staff gave a briefing on HB 2133 stating the bill was held over from last year.

Representative Teagarden moved and Representative King seconded to amend HB 2133 changing the date from 1990 to 1991. The motion carried.

Representative King moved and Representative Minor seconded to move HB 2133 out favorably to the Consent Calendar. The motion carried.

The Chairperson asked for final action on HB 2134.

After discussion, Representative Shallenburger moved and Representative Graeber seconded to amend HB 2134 on page 2, lines 42 and 42 which were deleted, should be replaced with "90 days". The motion carried.

Representative Shallenburger moved and Representative Long seconded to amend HB 2134 changing the date from 1990 to 1991. The motion carried.

Representative King moved and Representative Long seconded to move HB 2134 out favorably and put on the Consent Calendar. The motion carried.

Representative Long moved and Representative Graeber seconded to approve the minutes of February 12 and 13, 1992.

Representative Shore requested a bill where a consumer has been in default for ten days for failure to make a required payment in a consumer credit transaction payable in instalments, a creditor may give the consumer the notice in writing and shall state: name, address and telephone number of the creditor to which payment is made, a brief description of the credit transaction, the consumer's right to cure the default, and the amount of payment and date by which payment must be made to cure the default.

Representative Long moved and Representative Graeber seconded to accept Representative Shore's request as a committee bill. The motion carried.

The Chairperson stated the next meeting would be February 25 to consider final action on bills previously heard and a hearing on Representative Shore's bill request.

The meeting adjourned at 4:35 P.M.

ROBIN L. JENNISON
REPRESENTATIVE, 117TH DISTRICT
HODGEMAN, NESS, LANE AND FINNEY COUNTIES
RR1, BOX 132
HEALY, KANSAS 67850



COMMITTEE ASSIGNMENTS
MEMBER: AGRICULTURE
EDUCATION
TRANSPORTATION

TOPEKA

HOUSE OF
REPRESENTATIVES

February 18, 1992

HOUSE COMMERCIAL AND
FINANCIAL INSTITUTIONS COMMITTEE HB 2969

Mister Chairman and Members of the Committee:

Thank you for this opportunity to testify on HB 2969. Over the last decade we have seen a lot of change in the banking industry regarding the size and number of our Kansas banks. Some of this change has been the natural chain of events, some due to difficult economic times, but a major factor has been our changing policy regarding the financial institutions of this state.

I think our changing policy to allow first, multi bank holding companies, then interstate banking was a necessary step to keep Kansas competitive in an ever changing world. I do, however, have concerns that in an attempt to stay competitive in a world market, the survivability of our hometown banks are threatened. I am convinced that as surely as our hometown banks helped create a thriving rural Kansas, they are also necessary for its continued viability.

House Bill 2969 is not a cure all for the unit banks in this state, but it is a bill that makes sense. Quite simply, HB 2969 allows a bank, with prior approval of the State Bank Commissioner and State Banking Board, to buy back their stock.

It appears that there would be some advantage for a unit bank to have the authority and privilege to purchase some of its own shares to hold and at a later time to sell to investors.

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Hatched

Testimony on HB 2969
Rep. Robin L. Jennison
Page 2

As some unit banks in Kansas have acquired a considerable amount of stockholders' equity in the past several years and all of their stockholders are getting older and at some point in time will be deceased. At the time a bank stockholder is deceased, their heirs generally are anxious to convert the deceased bank stockholders stock to cash and settle the estate.

It appears that at this time the bank (if it had the authority) could make a market for this stock held in the estate, hold the stock and sell to other investors at a more convenient time. It would be reasonable for the State Bank Commissioner to give prior approval before the bank could purchase its own stock and there should be a limit as to the ratio of total stock that the bank could purchase and hold of its own stock.

As one that appreciates the advantages of a locally owned/locally controlled bank, HB 2969 offers the mechanism for a smoother more stable transfer of ownership.

There have been several concerns voiced by the Bank Commissioner's Office. The first concern is, do we have the authority to do this? Unless the 91 Federal Bank Act prohibits HB 2969, I think we do have the authority to implement the provisions of HB 2969.

The second concern is that the provisions of HB 2969 could impair the capitol stock of a bank. It is important to note that under the provisions of HB 2969, the State Banking Commissioner and the State Banking Board have the power to give a bank this flexibility. I would point out that there is precedent in this state for the Commissioner to provide greater operational flexibility to well managed, economically sound banks. (KSA 9-901b)

Mr. Chairman, again thank you for this opportunity. I'll stand for questions if there are any.

ROBIN L. JENNISON
REPRESENTATIVE, 117TH DISTRICT
HODGEMAN, NESS, LANE AND FINNEY COUNTIES
RR1, BOX 132
HEALY, KANSAS 67850



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: AGRICULTURE
EDUCATION
TRANSPORTATION

9-901b. Capital reduction; requirements.
(a) The state bank commissioner, with the prior approval of the state banking board, may establish minimum capital requirements for a bank which vary from capital requirements otherwise prescribed in K.S.A. 9-901a, and amendments thereto, whenever the commissioner determines that economic conditions necessitate such action to provide greater operational flexibility to well-managed, economically sound banks. A bank wanting to establish a minimum capital requirement under this section shall submit to the bank commissioner a written plan for restoring capital to the minimums required by K.S.A. 9-901a, and amendments thereto, in appropriate incremental amounts by no later than January 1, 1995. The establishment of capital requirements may be subject to such other conditions as the commissioner and board deem advisable. Such other conditions, including capital requirements, shall be established by special order which shall not be subject to the provisions of article 4 of chapter 77 of the Kansas Statutes Annotated, and amendments thereto.

(b) The provisions of this section shall expire on January 1, 1995.

History: L. 1986, ch. 54, § 1; L. 1988, ch. 58, § 1; March 3.

MISCELLANEOUS DATA

from Comparative Data Report Questionnaire

	(483) 1989	(479) 1990	(468) 1991
Number of demand deposit accounts of individuals, partnerships and corporations	1,141,068	878,408	875,735
Number of certificates of deposit	737,809	760,683	654,403
Number of savings accounts	686,382	674,610	198,248
Number of installment loans	312,867	290,394	330,197
Number of real estate loans	69,200	83,400	108,249
Number of agriculture loans	18,997	85,840	94,663
Number of Miscellaneous Loans			179,586
Number of Loan Officers			1,959
Number of NOW accounts	160,676	166,754	198,248
Number of Super NOW accounts	85,594	120,359	94,916
Number of money market savings accounts	175,591	189,602	205,546
Number of ATM's on premise	215	221	258
off premise	119	101	184

BANK HOLDING COMPANIES IN KANSAS

The following information was provided by the Federal Reserve Bank of Kansas City, and contains the number of one-bank holding companies in Kansas for the past seventeen years and the number of multi-bank holding companies in Kansas since the law was enacted July 1, 1985. (Percent is to total Kansas banks as of December 31.)

Year	Total # of KS Banks	Number of One-Bank Holding Companies		Number of Multi-Bank Holding Companies (Banks Involved)
1973	611	117	(19.3%)	
1974	612	128	(20.9%)	
1975	614	151	(24.6%)	
1976	614	173	(28.2%)	
1977	615	194	(31.5%)	
1978	615	231	(37.6%)	
1979	616	250	(40.6%)	
1980	619	292	(45.6%)	
1981	618	331	(53.6%)	
1982	619	383	(62.0%)	
1983	623	405	(64.9%)	
1984	629	457	(72.5%)	
1985	624	416	(66.8%)	27 (75)
1986	610	434	(70.9%)	41 (103)
1987	599	379	(62.6%)	44 (114) (18.8%)
1988	588	362	(61.7%)	44 (120) (20.4%)
1989	573	334	(58.4%)	41 (112) (19.6%)
1990	554	341	(61.5%)	44 (124) (22.4%)

341
124
465

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The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

February 18, 1992

TO: House Committee on Commercial and Financial Institutions
RE: HB 2969 - Bank investment powers

Mr. Chairman and Members of the Committee:


Thank you for the opportunity to present these written comments concerning **HB 2969** which would allow state-chartered banks in Kansas to buy and own stock and hold as "treasury stock" "Treasury stock" is defined as previously issued stock of a corporation which has been reacquired by that corporation through purchase, gift, donation, etc.

The ability for a bank to make such an acquisition would allow the bank to eliminate the necessity of forming a bank holding company in some instances. Presently a unit bank has the authority to form a holding company and purchase its own holding company stock. If a bank were allowed that same privilege it could avoid the additional expenses associated with a holding company relating to accounting, income tax returns, and additional regulatory examinations.

Kansas bankers have pointed out that in many small, rural banks where the stock is not widely held it often creates a problem when a stockholder dies and there is little, if any, market for the stock. The heirs are generally anxious to convert the stock to cash and settle the estate. If the bank had the authority to make a market for this stock, i.e., purchase it as treasury stock, they could purchase and hold the stock and resell it at a later date.

The bill provides that the Bank Commissioner and the State Banking Board must approve any such treasury stock purchase. The committee might also want to consider imposing a reasonable limit as to the percentage of the outstanding stock which could be purchased and held as treasury stock.

We appreciate the committee's consideration of this issue which is of importance to many community banks in Kansas.


James S. Maag
Senior Vice President

CFI
2-18-92

Atch #2



TESTIMONY

of

JOYCE H. CRANDON, GENERAL COUNSEL

OFFICE OF THE STATE BANK COMMISSIONER

on

HOUSE BILL 2969
HOUSE BILL 2906

HOUSE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS

My name is Joyce Crandon. I am General Counsel for the Office of the State Bank Commissioner. I am here to oppose the House Bill 2969 amending K.S.A. 9-1101 to read "... may buy and own such banks own stock and hold as treasury stock."

"Treasury stock is: stock which has been issued as fully paid to stockholders and subsequently reacquired by the corporation to be used by it in furtherance of its corporate purposes ..."

If the treasury stock were "retired" there would be a reduction of capital stock and would probably be a conflict with K.S.A. 9-904.

K.S.A. 9-904 addresses reduction of capital stock.

Section 303 subsection 24 of the new Federal Deposit Insurance Reform Act provides that "an insured State bank may not engage as principal in any activity impermissible for a national bank, unless the FDIC determines that the activity would not pose a significant risk to the insurance fund and the bank is in compliance with applicable capital standards."

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The 12 U.S.C. 83 prohibits a national bank to own its own stock. The FDI reform act further states "Insured State banks that hold prohibited equity investments must divest as quickly as prudently possible ..."

In Deitrick v. Greaney, 309 U.S. 190 the United States Supreme Court has ruled (1940):

"The obvious purpose of prohibiting the purchase by a bank of its own stock is to prevent the impairment of its capital resources and the consequent injury to its creditors in the event of insolvency."

In researching and sheppardizing this case, it has been followed in hundreds of federal court and state court cases.

K.S.A. 9-906 and 9-907 outline the statutory procedure the Office of the State Bank Commissioner must follow when a bank's capital stock is impaired.

For your perusal those statutes are outlined in the Capital Call letter attached to my written testimony.

Are there any questions?

TESTIMONY

of

JOYCE H. CRANDON, GENERAL COUNSEL

OFFICE OF THE STATE BANK COMMISSIONER

on

HOUSE BILL 2906

HOUSE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS

I am Joyce Crandon, General Counsel of the Office of the State Bank Commissioner, I am here in support of House Bill 2906.

K.S.A. 9-2013 mirrors the Federal Banking Code 18 U.S.C. § 215. Kansas has had this statute unchanged since 1948.

In 1990 the federal law was changed to make the law more clear. House Bill 2906 mirrors the federal law and is intended to update and clarify Kansas laws.

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(4) in the last sentence of section 8(q) by striking "upon" and inserting "with respect to".

(f) TRANSITION TO NEW ASSESSMENT SYSTEM.—To carry out the amendments made by this section, the Corporation may promulgate regulations governing the transition from the assessment system in effect on the date of enactment of this Act to the assessment system required under the amendments made by this section.

(g) EFFECTIVE DATE OF AMENDMENTS.—The amendments made by this section shall become effective on the earlier of—

(1) 180 days after the date on which final regulations promulgated in accordance with subsection (c) become effective; or

(2) January 1, 1994.

[§ 2203]

SEC. 303 RESTRICTIONS ON INSURED STATE BANK ACTIVITIES.

(a) IN GENERAL.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting after section 23 the following new section:

“SEC. 24. ACTIVITIES OF INSURED STATE BANKS.

“(a) IN GENERAL.—After the end of the 1-year period beginning on the date of the enactment of the Federal Deposit Insurance Corporation Improvement Act of 1991, an insured State bank may not engage as principal in any type of activity that is not permissible for a national bank unless—

“(1) the Corporation has determined that the activity would pose no significant risk to the appropriate deposit insurance fund; and

“(2) the State bank is, and continues to be, in compliance with applicable capital standards prescribed by the appropriate Federal banking agency.

“(b) INSURANCE UNDERWRITING.—

“(1) IN GENERAL.—Notwithstanding subsection (a), an insured State bank may not engage in insurance underwriting except to the extent that activity is permissible for national banks.

“(2) EXCEPTION FOR CERTAIN FEDERALLY REINSURED CROP INSURANCE.—Notwithstanding any other provisions of law, an insured State bank or any of its subsidiaries that provided insurance on or before September 30, 1991, which was reinsured in whole or in part by the Federal Crop Insurance Corporation may continue to provide such insurance.”

“(c) EQUITY INVESTMENTS BY INSURED STATE BANKS.—

“(1) IN GENERAL.—An insured State bank may not, directly or indirectly, acquire or retain any equity investment of a type that is not permissible for a national bank.

“(2) EXCEPTION FOR CERTAIN SUBSIDIARIES.—Paragraph (1) shall not prohibit an insured State bank from acquiring or retaining an equity investment in a subsidiary of which the insured State bank is a majority owner.

“(3) EXCEPTION FOR QUALIFIED HOUSING PROJECTS.—

“(A) EXCEPTION.—Notwithstanding any other provision of this subsection, an insured State bank may invest as a limited partner in a partnership, the sole purpose of which is direct or indirect investment in the acquisition, rehabilitation, or new construction of a qualified housing project.

“(B) LIMITATION.—The aggregate of the investments of any insured State bank pursuant to this paragraph shall not exceed 2 percent of the total assets of the bank.

“(C) QUALIFIED HOUSING PROJECT DEFINED.—As used in this paragraph—

“(i) QUALIFIED HOUSING PROJECT.—The term ‘qualified housing project’ means residential real estate that is intended to primarily benefit lower income people throughout the period of the investment.

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STATE OF KANSAS



Frank D. Dunnick
Bank Commissioner

Judi M. Stork
Deputy Commissioner

Kevin C. Glendening
Assistant Deputy Commissioner

Grant L. C. Brooks
General Counsel

Barbara R. DeHaven
Administrative Officer

OFFICE OF

BANKING DEPARTMENT
TOPEKA

September 5, 1991

Via Certified Mail

Board of Directors

[REDACTED]

Members of the Board:

The results of the [REDACTED] examination of your bank disclose the following:

Common Equity Capital	\$	980,000
Less: Items Classified Loss		566,000
Less: Disallowed Intangibles		43,000
Less: Liability Not Shown on Bank's Books		<u>10,000</u>
Subtotal		361,000
Less: Amount needed for Loan Loss Reserve		<u>375,000</u>
Total Equity Capital	(\$	14,000)

The examination determined the need for a \$800,000 to 850,000 balance in the loan loss reserve to adequately reflect the loss potential in the loan portfolio. The above analysis displays the necessary provision to the loan loss reserve to achieve an \$825,000 reserve balance, after the recognition of identified losses in the loan category. The recognition of the \$566,000 Loss and the funding of the loss reserve renders an equity capital deficiency of (\$14,000). Therefore, based upon these findings, and a capital stock account of \$960,000, a capital injection of \$974,000 is required to restore your capital stock account.

Pursuant to the requirements of K.S.A. 9-906, you are hereby formally notified to restore capital stock. Accordingly, it is the duty of the directorate, within fifteen (15) days of the bank receiving this notice on your behalf, to levy a \$974,000 assessment on the common stock to be paid within ninety (90) days from the receipt of the Commissioner's Notice of Impairment. Furthermore, the directorate should be aware that correction of the bank's impairment status, as required by K.S.A. 9-906, does not alleviate additional minimum capital requirements imposed by K.S.A. 9-901a and other regulatory agencies. In this regard, the board must develop a plan to provide for the ultimate restoration of capital to statutory and regulatory minimums.

September 5, 1991

Page 2

Interim operating profits or losses and other gains or losses incurred during the assessment period may influence the actual amount necessary to restore the capital stock account. Procedurally, therefore, you will determine the actual necessary capital injection on the assessment due date, adjusting your initial assessment, if necessary, for interim profits or losses.

In order to provide each stockholder with sufficient information, the assessment notice shall include:

1. The dollar amount of the assessment as it pertains to the individual stockholder expressed on a dollar per share basis and an amount due from the individual stockholder,
2. the date, time, and place said assessment is due and payable,
3. a statement indicating the final assessment will be affected by interim operating profits or losses and, therefore, is subject to change, and
4. a statement clarifying that this assessment pertains only to the restoration of capital stock, and that additional capital contributions may be necessary to achieve compliance with other statutory and regulatory minimum capital requirements,
5. a description of your plans to remedy any delinquency resulting from non-payment of the stock assessment. K.S.A. 9-907 establishes sale options available to the board of directors. The description of your plans shall include:
 - a. the type of sale selected by the board (public or private) and
 - b. the date, time, and place of sale which must be not later than thirty (30) days following the expiration of the due date stipulated within the assessment letter.

If, following the assessment due date, you determine that certain stockholders are delinquent, you should then proceed with a public or private sale of this stock to be held no later than thirty (30) days following the expiration of the assessment due date. A public sale requires a notice of publication three (3) weeks prior to the sale. A private sale would include all stockholders and any other interested individuals the board desires to invite.

Any bid received at either a public or private sale must be for an amount, at a minimum, equal to the amount due upon the stock being purchased. If, as a part of a private sale, a bid received from a nonstockholder does not exceed a bid received from a stockholder, preference is given to the stockholder bid.

- more -

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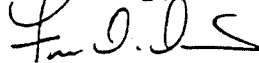
[REDACTED]
September 5, 1991
Page three

If no purchaser can be found for the stock pursuant to the public or private sale, then the stock is forfeited to the bank to be disposed of within six (6) months thereafter as the board of directors shall determine.

As stated previously, the assessment is predicated upon the funding of an adequate loan loss reserve. An analysis of the loan portfolio, including an individual assessment of the loss exposure in classified loans, may reveal factual information which would result in a loss reserve which differs from that established by examiners. If you have conducted such an analysis and wish our consideration of your findings, please notify this department immediately.

In furtherance of this Order, we request that you provide this office with a copy of the assessment notice sent to the subject bank's stockholders as well as future up-dates as enumerated herein.

Sincerely,



Frank D. Dunnick
State Bank Commissioner

FDD:GEC:jr

cc: [REDACTED]

FDIC
Federal Reserve Bank of Kansas City
File: (P, C, S)



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

Testimony of
Deputy Attorney General Dan Kolditz
House Commercial and Financial Institutions
RE: House Bill 3033
February 18, 1992

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

On behalf of Attorney General Bob Stephan and his Consumer Protection Advisory Council I ask for your support of House Bill 3033. This bill would provide a safe-guard for Kansas consumers by prohibiting merchants who accept credit cards from requiring personal identification information when consumers use their credit cards.

There is no need for a merchant to require personal information such as a telephone number or automobile license plate number. It is a nuisance to the consumer to provide such information and is not needed for the merchant to get reimbursed by the bank card company.

Currently, six states have similar legislation. In 1990, you passed a bill at our request which limited the use of credit card numbers when a person wrote a personal check. This bill is parallel to that bill in that it has no effect on a merchant getting their money and avoids the potential for consumer fraud.

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Credit cards are invaluable to a consumer but there is no need for private information that is totally unnecessary to be written on the credit card form. This information might fall into disreputable hands and be used for solicitations or other unapproved uses.

I ask for your support for this consumer-friendly bill.
Thank you.