Approved 3/25/92
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

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

9:13 a.m./~~p.m.~~ on Tuesday, March 24, 19 92 in room 529-S of the Capitol.

All ~~XX~~ members ~~were~~ present ~~except~~: Senators Bond, McClure, Moran, Parrish, Reilly, Salisbury, Strick, Ward, and Yost.

Committee staff present:

Fred Carman, Revisor
Bill Wolff, Research
June Kossover, Committee Secretary

Conferees appearing before the committee:

Richard Brock, State Insurance Department
Jerry Slaughter, Kansas Medical Society
Gary Sherrer, Bank IV
Kevin Glendenning, Bank Commissioner's Office
Dan Kolditz, Deputy Attorney General

The meeting was called to order by Chairman Bond at 9:13 a.m.

The Chairman opened committee discussion on **Sub. HB 2511**. Richard Brock, State Insurance Department, provided the committee a balloon containing amendments proposed by conferees in the hearing of March 23, except those requested by the Kansas Medical Society. (Attachment #1.) Mr. Brock reviewed and explained the amendments.

Jerry Slaughter, Kansas Medical Society, presented the amendments proposed by the KMS. (Attachment #2.) There being no further discussion, the Chairman declared the hearing and discussion on **Sub. HB 2511** closed.

Senator Parrish made a motion to move the Insurance Department amendments favorably with the further amendment to strike the words, "...of a minimum level," from Sec. 7, page 8. Senator Salisbury seconded the motion. The motion carried.

Senator Parrish made a motion to move the amendment on page 13 requested by the Kansas Medical Society favorably. Senator Salisbury seconded the motion. The motion carried.

Senator Salisbury moved to pass **Sub. HB 2511** favorably as amended. The motion was seconded by Senator Parrish. The motion carried.

The Chairman reopened the hearing on **HB 2133**, which was originally heard on March 19. Mr. Gary Sherrer, Bank IV, appeared before the committee to request the bill to be amended to amend K.S.A. 9-520, section (a), to add, "...after subtracting deposits acquired from Resolution Trust Corporation." (Attachment #3.) Mr. Sherrer explained that the amendment would allow banks to purchase failed savings and loan associations after the bank reaches the 12% of deposits cap. In response to Senator Ward's question, Dr. Wolff advised that the cap was comparable with other states at the time it was set and that the original cap was 9%, passed in 1985, and raised to 12% in 1990, and was designed to control the size of any one institution.

Kevin Glendenning, Kansas Bank Commissioner's office, appeared in opposition to the amendment. (Attachment #4.)
Mr. Pete McGill, Community Bankers Association, appeared before the committee to advise that the CBA had no prior knowledge of the proposed amendment and requested an opportunity to testify at a later date. The Chairman declared the hearing closed.

MINUTES OF THE **SENATE** COMMITTEE ON **FINANCIAL INSTITUTIONS AND INSURANCE**,

room **529-S**, Statehouse, at **9:13** a.m./~~p.m.~~ on **Tuesday, March 24**, 19**92**.

Chairman Bond reopened the hearing on **HB 2906**, which was heard on March 19. The Bank Commissioner's office had been requested to provide the federal language on which the bill was based. Kevin Glendenning, of the Bank Commissioner's office, provided the requested federal language to the committee. (Attachment #5.) Senator Salisbury made a motion to move **HB 2906** favorably. Senator Ward seconded the motion. The motion carried.

The Chairman opened the hearing on **HB 3033**, which would prohibit merchants from requiring personal identification information when consumers use their credit cards. Dan Kolditz, Deputy Attorney General, appeared before the committee to explain the bill. There being no questions and no further conferees, the hearing on **HB 3033** was closed. Senator Ward made a motion, seconded by Senator McClure, to move **HB 3033** favorably. The motion carried. The bill will be carried on the floor by Senator Ward. (Attachment #6)

Senator McClure made a motion, seconded by Senator Strick, to approve the minutes of the meeting of March 23, 1992 as submitted. The motion carried.

The committee adjourned at 9:56 a.m.

GUEST LIST

SENATE

COMMITTEE: FINANCIAL INSTITUTIONS AND INSURANCE DATE: March 24

NAME	ADDRESS	ORGANIZATION
Quel Wright	Topeka	Ks Credit Un Assn
GARY Robbins	Topeka	KS Opt Assn
Bill Sneed	"	NFIB
Kevin Glendening	Topeka	Banking Dept.
Joyce Grandon	topeka	Banking Dept
M. Hawver	"	Cap-Journal
SHERYL SANDERS	TOPEKA	KS AMI
Dick Brock	"	Ins Dept
Chuck Stones	"	KBA
LINDA McGILL	"	CBA
GARY SHERRER	WICHITA	FOURTH FINANCIAL CORP.
KEN ALEXANDER	TOPEKA	BANK IV TOPEKA
John Peterson	Topeka	4th Financial Corp
Roger Fransen	Topeka	Ks. Govt Consulting
JIM OLIVER	TOPEKA	PIAK
[illegible]	[illegible]	[illegible]
ALAN COBB	Wichita	Delta Dental

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 1991

Substitute for HOUSE BILL No. 2511

By Committee on Insurance

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AN ACT providing for the creation and operation of the Kansas uninsurable health insurance plan; ~~amending K.S.A. 79-4804 and repealing the existing section~~.

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

~~New~~ Section 1. This act shall be known and may be cited as the Kansas uninsurable health insurance plan act.

~~New~~ Sec. 2. As used in this act, unless the context otherwise requires, the following words and phrases shall have the meanings ascribed to them in this section:

(a) "Administering carrier" means the insurer or third-party administrator designated in section 4 of this act.

(b) "Association" means the Kansas health insurance association established in section 3 of this act.

(c) "Board" means the board of directors of the association.

(d) "Commissioner" means the commissioner of insurance.

(e) "Health insurance" means ~~any hospital and medical expense incurred policy, nonprofit health care service plan contract and health maintenance organization subscriber contract. The term does not include insurance arising out of the workers compensation act or similar law, automobile medical payment insurance or insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.~~

any hospital or medical expense policy, health, hospital or medical service corporation contract, and a plan provided by a municipal group-funded pool, or a health maintenance organization contract offered by an employer or any certificate issued under any such policies, contracts or plans. "Health insurance" does not include policies or certificates covering only accident, credit, dental, disability income, long-term care, hospital indemnity, medicare supplement, specified disease, vision care, coverage issued as a supplement to liability insurance, insurance arising out of a workers compensation or similar law, automobile medical-payment insurance, or insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(f) "Health maintenance organization" means any organization granted a certificate of authority under the provisions of the health maintenance organization act.

(g) "Insurance arrangement" means any plan, program, contract or any other arrangement under which one or more employers, unions or other organizations provide to their employees or members, either directly or indirectly through a group-funded pool, trust or third-party administrator, health care services or benefits other than through an insurer.

F&I 3/24/92 Attachment #1

(h) "Insurer" means any insurance company, fraternal benefit society, health maintenance organization and nonprofit hospital and medical service corporation authorized to transact health insurance business in this state.

(i) "Medicaid" means the medical assistance program operated by the state under title XIX of the federal social security act.

(j) "Medicare" means coverage under both parts A and B of title XVIII of the federal social security act, 42 USC 1395.

(k) "Member" means all insurers and insurance arrangements participating in the association.

(l) "Plan" means the Kansas uninsurable health insurance plan created pursuant to this act.

(m) "Plan of operation" means the plan to create and operate the Kansas uninsurable health insurance plan, including articles, bylaws and operating rules, adopted by the board pursuant to section 3 of this act.

~~New~~ Sec. 3. (a) There is hereby created a nonprofit legal entity to be known as the Kansas health insurance association. All insurers and insurance arrangements providing health care benefits in this state shall be members of the association. The association shall operate under a plan of operation established and approved under subsection (b) of this section and shall exercise its powers through a board of directors established under this section.

(b) (1) The board of directors of the association shall be selected by members of the association subject to the approval of the commissioner. To select the initial board of directors, and to initially organize the association, the commissioner shall give notice to all members in this state of the time and place of the organizational meeting. In determining voting rights at the organizational meeting, each member shall be entitled to one vote in person or by proxy. If the board of directors is not selected within 60 days after the organizational meeting, the commissioner shall appoint the initial board. In approving or selecting members of the board, the commissioner shall consider, among other things, whether all members are fairly represented. Members of the board may be reimbursed from the moneys of the plan for expenses incurred by them as members of the board of directors but shall not otherwise be compensated by the plan for their services.

(2) The board shall submit to the commissioner a plan of operation for the association and any amendments thereto necessary or suitable to assure the fair, reasonable and equitable administration of the plan. The plan of operation shall become effective upon approval in writing by the commissioner consistent with the date on

which the coverage under this act must be made available. The commissioner shall, after notice and hearing, approve the plan of operation if it is determined to be suitable to assure the fair, reasonable and equitable administration of the plan and provides for the sharing of association losses on an equitable proportionate basis among the members of the association. If the board fails to submit a suitable plan of operation within 180 days after its appointment, or at any time thereafter fails to submit suitable amendments to the plan of operation, the commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules and regulations as are necessary or advisable to effectuate the provisions of this section. Such rules and regulations shall continue in force until modified by the commissioner or superseded by a plan of operation submitted by the board and approved by the commissioner. The plan of operation shall, in addition to requirements enumerated elsewhere in this act:

(A) Establish procedures for the handling and accounting of assets and moneys of the plan;

(B) select an administering carrier in accordance with section 4 of this act;

(C) establish procedures for the collection of assessments from all members to provide for claims paid under the plan and for administrative expenses incurred or estimated to be incurred during the period for which the assessment is made. The level of payments shall be established by the board pursuant to section 5 of this act. Assessments shall be due and payable within 30 days of receipt of the assessment notice;

(D) establish appropriate cost control measures, including but not limited to, preadmission review, case management, utilization review and exclusions and limitations with respect to treatment and services under the plan; and

(E) develop and implement a program to publicize the existence of the plan, the eligibility requirements and procedures for enrollment and to maintain public awareness of the plan.

(c) The association shall have the general powers and authority enumerated by this subsection in accordance with the plan of operation approved by the commissioner under subsection (b). The association shall have the general powers and authority granted under the laws of this state to insurers licensed to transact the kind of health service or insurance included under section 7 of this act, and in addition thereto, the specific authority and duty to:

(1) Enter into contracts as are necessary or proper to carry out the provisions and purposes of this act, including the authority, with

the approval of the commissioner, to enter into contracts with similar plans of other states for the joint performance of common administrative functions, or with persons or other organizations for the performance of administrative functions;

(2) sue or be sued, including taking any legal actions necessary or proper for recovery of any assessments for, on behalf of, or against participating members;

(3) take such legal action as necessary to avoid the payment of improper claims against the association or the coverage provided by or through the plan;

(4) establish appropriate rates, rate schedules, rate adjustments, expense allowances, agents' referral fees, claim reserve formulas and any other actuarial function appropriate to the operation of the plan. During the first two years of operation of the plan, rates shall be established in an amount that is estimated by the board to cover all claims that may be made against the plan and the expenses of operating the plan. In following years, rates for coverage shall be reasonable in terms of the benefits provided, the risk experience and expenses of providing the coverage. Rates and rate schedules may be adjusted for appropriate risk factors such as age, sex and geographic location in claims costs and shall take into consideration appropriate risk factors in accordance with established actuarial and underwriting practices[, however particular health conditions or illnesses shall not constitute appropriate risk factors];

(5) assess members of the association in accordance with the provisions of section 5 of this act;

(6) design the policy of insurance to be offered by the plan which may cover only the expenses enumerated in subsection (b) of section 7, but with such limitations and optional benefit levels as the plan prescribes.

~~(6)~~ (7) issue policies of insurance in accordance with the requirements of this act; and

~~(7)~~ (8) appoint from among members appropriate legal, actuarial and other committees as necessary to provide technical assistance in the operation of the plan, policy and other contract design, and any other function within the authority of the association.

~~New~~ Sec. 4. (a) The board shall select an insurer or third-party administrator to administer the plan. The board shall evaluate bids submitted by interested parties based on criteria established by the board which shall include:

(1) The bidder's proven ability to handle individual accident and health insurance;

(2) the efficiency of the bidder's claim paying procedure;

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(3) an estimate of total charges for administering the plan; and

(4) the bidder's ability to administer the plan in a cost efficient manner.

(b) The administering carrier so selected shall serve for a period of three years subject to removal for cause. At least one year prior to the expiration of each three-year period of service, the board shall invite all interested parties, including the current administering carrier, to submit bids to serve as the administering carrier for the succeeding three-year period. Selection of the administering carrier for the succeeding period shall be made at least six months prior to the end of the current three-year period. The administering carrier shall be paid as provided in the plan of operation.

(c) The administering carrier shall perform all administrative, eligibility and administrative claims payment functions relating to the plan, including:

(1) Establishing a billing procedure for collection of premiums from insured persons. Billings shall be made on a periodic basis as determined by the board, which shall not be more frequent than a monthly billing;

(2) performing all necessary functions to assure timely payment of benefits to covered persons under the plan including making available information relating to the proper manner of submitting a claim for benefits to the plan, distributing forms upon which submission shall be made and evaluating the eligibility of each claim for payment under the plan;

(3) accepting payments of premiums from insured persons and transmitting such payments to the state treasurer for credit to the uninsurable health insurance plan fund established in section 10 of this act;

(4) submitting regular reports to the board regarding the operation of the plan. The frequency, content and form of the reports shall be as determined by the board;

(5) determining net written and earned premiums, the expense of administration, and the paid and incurred losses for each year and reporting such information to the board and the commissioner in a form and manner prescribed by the commissioner.

~~New~~ Sec. 5. (a) Following the close of each fiscal year, the administering carrier shall determine the net premiums, the plan expenses of administration and the incurred losses for the year. Any net loss of the plan determined after taking into account amounts transferred pursuant to subsection (h) of K.S.A. 79-4804, and amendments thereto, investment income and other appropriate gains and losses shall be assessed by the board to all members of the association

in proportion to their respective shares of total health insurance premiums received in this state during the calendar year coinciding with or ending during the fiscal year of the association or any other equitable basis as may be provided in the plan of operation. For health maintenance organization members and insurance arrangements, the proportionate share of losses shall be determined through application of an equitable formula based upon claims paid on the value of services provided. In sharing losses, the board may abate or defer in whole or in part the assessment of a member if, in the opinion of the board, payment of the assessment would endanger the ability of the member to fulfill its contractual obligations. Health insurance benefits paid by an insurance arrangement that are less than an amount determined by the board to justify the cost of collection shall not be considered for purposes of determining assessments. Net gains, if any, shall be held at interest to offset future losses or allocated to reduce future premiums.

(b) In addition to any assessment authorized by subsection (a) of this section, the board may assess the members of the association for any initial costs associated with developing and implementing the plan to the extent such costs exceed the funds transferred to the uninsurable health insurance plan fund pursuant to ~~subsection (h) of K.S.A. 79-4804,~~ [section 9] and amendments thereto. Such assessment shall be allocated among the members of the association in the manner prescribed by subsection (a) of this section or any other equitable formula established by the board. Assessments under this subsection shall not be subject to the credit against premium tax under subsection (c) of this section.

(c) Except as hereinafter provided, 80% of any assessment made against a member of the association pursuant to subsection (a) of this section may be claimed by such member as a credit against such member's premium or privilege tax liability imposed by K.S.A. 12-2624, 40-252 or 40-3213 ~~or K.S.A. 1990 Supp. 12-2624,~~ and amendments thereto, for the taxable year in which such assessment is paid. No credit shall be allowed with respect to any assessment made for net losses incurred during the first ~~two~~ [four] years of operation of the plan.

Sec. 6. (a) Except for those persons who meet the criteria set forth in subsection (b) of this section, any person who has been a resident of this state for at least six months prior to making application for coverage shall be eligible for plan coverage if such person is able to provide evidence satisfactory to the administering carrier that such person meets one of the following criteria:

(1) Such person has had health insurance coverage involuntarily

terminated for any reason other than nonpayment of premium;

(2) such person has applied for health insurance and been rejected by two carriers because of health conditions;

(3) such person has applied for health insurance and has been quoted a premium rate which:

(A) In the first two years of operation of the plan, is more than 150% of the premium rate available through the plan; or

(B) in succeeding years of operation of the plan, is in excess of the premium rate established for plan coverage in an amount set by the board; or

(4) such person has been accepted for health insurance subject to a permanent exclusion of a preexisting disease or medical condition.

(b) The following persons shall not be eligible for coverage under the plan:

(1) Any person who is eligible for medicare or medicaid benefits; a recipient of

(2) any person who has had coverage under the plan terminated less than 12 months prior to the date of the current application;

(3) any person who has received accumulated benefits from the plan equal to or in excess of the lifetime maximum benefits under the plan prescribed by section 8 of this act;

(4) any person having access to accident and health insurance through an employer-sponsored group or self-insured plan; or

(5) any person who is eligible for any other public or private program that provides or indemnifies for health services.

(c) Any person who ceases to meet the eligibility requirements of this section may be terminated at the end of a policy period.

~~New~~ Sec. 7. (a) The plan shall offer coverage to every eligible person pursuant to which such person's covered expenses shall be indemnified or reimbursed subject to the provisions of section 8 of this act.

(b) Except for those expenses set forth in subsection (c) of this section, expenses covered under the plan shall include expenses for:

(1) Services of persons licensed to practice medicine and surgery which are medically necessary for the diagnosis or treatment of injuries, illnesses or conditions~~, other than mental~~;

(2) services of advanced registered nurse practitioners who hold a certificate of qualification from the board of nursing to practice in an expanded role or physicians assistants acting under the direction of a responsible physician when such services are provided at the direction of a person licensed to practice medicine and surgery and meet the requirements of paragraph (b)(1) above;

(3) services of licensed dentists ~~issued certificates of qualifi-~~

~~eation by the board of dental examiners to practice oral surgery as a dental specialty~~ when such procedures would otherwise be performed by persons licensed to practice medicine and surgery;

(4) emergency care, surgery and treatment of acute episodes of illness or disease as defined in the plan and provided in a general hospital or ambulatory surgical center as such terms are defined in K.S.A. 65-425, and amendments thereto;

(5) medically necessary diagnostic laboratory and x-ray services ~~as limited by the plan; and~~

(6) drugs and controlled substances prescribed by a ~~physician~~ practitioner, as defined in subsection (t) of K.S.A. 65-1626 and amendments thereto. Coverage for outpatient prescriptions shall be subject to a mandatory 50% coinsurance provision, and coverage for prescriptions administered to inpatients shall be subject to a coinsurance provision as established in the plan.

(c) Expenses not covered under the plan shall include expenses for:

(1) Illness or injury due to an act of war;

(2) services rendered prior to the effective date of coverage under this plan for the person on whose behalf the expense is incurred;

(3) services for which no charge would be made in the absence of insurance or for which the insured bears no legal obligation to pay;

(4) (A) services or charges incurred by the insured which are otherwise covered by:

(i) Medicare, medicaid or state law or programs;

(ii) medical services provided for members of the United States armed forces and their dependents or for employees of such armed forces;

(iii) military service-connected disability benefits;

(iv) other benefit or entitlement programs provided for by the laws of the United States;

(v) workers compensation or similar programs addressing injuries, diseases, or conditions incurred in the course of employment covered by such programs;

(vi) benefits payable without regard to fault pursuant to any motor vehicle or other liability insurance policy or equivalent self-insurance.

(B) This exclusion shall not apply to services or charges which exceed the benefits payable under the applicable programs listed above and which are otherwise eligible for payment under this section.

(5) Services the provision of which is not within the scope of the license or certificate of the institution or individual rendering such

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; and

(7) subject to the approval of the commissioner, the board shall also review and recommend the inclusion of a minimum level of coverage for mental health services and such other primary and preventive health care services as the board determines would not materially impair affordability of the plan.

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service;

(6) that part of any charge for services or articles rendered or prescribed which exceeds the rate established by section 13 of this act for such services;

(7) services or articles not medically necessary;

(8) care which is primarily custodial or domiciliary in nature;

(9) cosmetic surgery unless provided as the result of an injury or medically necessary surgical procedure;

(10) eye surgery if corrective lenses would alleviate the problem;

(11) experimental services or supplies not generally recognized ~~by the appropriate medical board~~ as the normal mode of treatment for the illness or injury involved;

(12) service of a blood donor and any fee for failure of the insured to replace the first three pints of blood provided in each calendar year; and

(13) personal supplies or services provided by a health care facility or any other nonmedical or nonprescribed supply or service.

~~(d) The plan may contract for coverage within the scope of this act notwithstanding any mandated coverages otherwise required by state law. The provisions of K.S.A. 40-2,100 to 40-2,105, inclusive, 40-2,114, 40-2209 and K.S.A. 1990 Supp. 40-2229, 40-2230 and 40-2250, and amendments thereto, shall not be applicable with respect to any coverage provided by the plan.~~

(d) (1) Except as expressly provided for in this act, no law requiring the coverage or the offer of coverage of a health care service or benefit ~~and no law requiring the reimbursement, utilization, or consideration of a specific category of a licensed or certified health care practitioner~~ shall apply to the plan.

(2) Notwithstanding the provisions of any law requiring the reimbursement, utilization, or consideration of a specific category of a licensed or certified health care practitioner, a plan may incorporate provisions that will direct covered persons to the most appropriate lowest cost health care practitioner readily available.

~~New~~ Sec. 8. (a) Coverage under the plan shall be subject to both deductible and coinsurance provisions set by the board. The plan may offer applicants for coverage thereunder a choice of deductible and copayment options or combinations thereof. At least one option shall provide for a minimum annual deductible of $5,000. Coverage shall contain a coinsurance provision for each service covered by the plan, and such copayment requirement shall not be subject to a stop loss provision. However, such coverage may provide for a percentage or dollar amount of coinsurance reduction at specific thresholds of copayment expenditures by the insured.

(b) Coverage under the plan shall be subject to a maximum lifetime benefit of $500,000 per covered individual.

(c) In the first two years of operation of the plan, coverage thereunder shall exclude charges or expenses incurred during the first 12

months following the effective date of coverage as to any condition which manifested itself during the six-month period immediately prior to the application for coverage in such manner or would cause an ordinarily prudent person to seek diagnosis, care or treatment or for which medical advice, care or treatment was recommended or received in the six-month period immediately prior to the application for coverage. In succeeding years of operation of the plan, coverage of preexisting conditions thereunder may be excluded as determined by the board except that no such exclusion shall exceed 12 months.

(d) (1) Benefits otherwise payable under plan coverage shall be reduced by all amounts paid or payable through any other health insurance, or insurance arrangement, and by all hospital and medical expense benefits paid or payable under any workers compensation coverage, automobile medical payment or liability insurance whether provided on the basis of fault or nonfault, and by any hospital or medical benefits paid or payable under or provided pursuant to any state or federal law or program.

(2) The association shall have a cause of action against an eligible person for the recovery of the amount of benefits paid which are not covered expenses. Benefits due from the plan may be reduced or refused as a set-off against any amount recoverable under this section.

~~Sec. 9. K.S.A. 79-4804 is hereby amended to read as follows: 79-4804. (a) An amount equal to 60% of all moneys credited to the state gaming revenues fund shall be transferred and credited to the state economic development initiatives fund which is hereby created in the state treasury. Expenditures from the state economic development initiatives fund shall be made in accordance with appropriations acts for the financing of such programs supporting and enhancing the existing economic foundation of the state and fostering growth through the expansion of current, and the establishment and attraction of new, commercial and industrial enterprises as provided by this section and as may be authorized by law and not less than 1/2 of such money shall be distributed equally among the five congressional districts. On and after July 1, 1990, an amount equal to 90% of all moneys credited to the state gaming revenues fund shall be transferred and credited to the state economic development initiatives fund created by this section. Except as provided by subsection *subsections* (g) *and (h)*, all moneys credited to the state economic development initiatives fund shall be credited within the fund, as provided by law, to an account or accounts of the fund which are created by this~~

~~section.~~

~~(b) There is hereby created the Kansas capital formation account in the state economic development initiatives fund. All moneys credited to the Kansas capital formation account shall be used to provide, encourage and implement capital development and formation in Kansas.~~

~~(c) There is hereby created the Kansas economic development research and development account in the state economic development initiatives fund. All moneys credited to the Kansas economic development research and development account shall be used to promote, encourage and implement research and development programs and activities in Kansas and technical assistance funded through state educational institutions under the supervision and control of the state board of regents or other Kansas colleges and universities.~~

~~(d) There is hereby created the Kansas economic development endowment account in the state economic development initiatives fund. All moneys credited to the Kansas economic development endowment account shall be accumulated and invested as provided in this section to provide an ongoing source of funds which shall be used for economic development activities in Kansas, including but not limited to continuing appropriations or demand transfers for programs and projects which shall include, but are not limited to, specific community infrastructure projects in Kansas that stimulate economic growth.~~

~~(e) Except as provided in subsection (f), the pooled money investment board may invest and reinvest moneys credited to the state economic development initiatives fund in obligations of the United States of America or obligations the principal and interest of which are guaranteed by the United States of America or in interest-bearing time deposits in any commercial bank located in Kansas, or, if the board determines that it is impossible to deposit such moneys in such time deposits, in repurchase agreements of less than 30 days' duration with a Kansas bank or with a primary government securities dealer which reports to the market reports division of the federal reserve bank of New York for direct obligations of, or obligations that are insured as to principal and interest by, the United States government or any agency thereof. All moneys received as interest earned by the investment of the moneys credited to the state economic development initiatives fund shall be deposited in the state treasury and credited to the Kansas ec-~~

~~onomie development endowment account of such fund.~~

~~(f) Moneys credited to the Kansas economie development endowment account of the state economie development initiatives fund may be invested in government guaranteed loans and debentures as provided by law in addition to the investments authorized by subsection (e) or in lieu of such investments. All moneys received as interest earned by the investment under this subsection of the moneys credited to the Kansas economie development endowment account shall be deposited in the state treasury and credited to the Kansas economie development endowment account of the state economie development initiatives fund.~~

~~(g) In each fiscal year beginning on and after July 1, 1990, the director of accounts and reports shall make transfers in equal amounts on July 15 and January 15 which in the aggregate equal $2,000,000 from the state economie development initiatives fund to the state water plan fund created by K.S.A. 82a-951. No other moneys credited to the state economie development initiatives fund shall be used for: (1) Water-related projects or programs, or related technical assistance; or (2) any other projects or programs, or related technical assistance, which meet one or more of the long-range goals, objectives and considerations set forth in the state water resource planning act.~~

~~*(h) On July 15, 1991, and July 15, 1992, the director of accounts and reports shall make transfers of $1,000,000 each from the state economic development initiatives fund to the uninsurable health insurance plan fund created by section 10 of this act.*~~

~~Sec. 9. On July 15, 1992, and July 15, 1993, the director of accounts and reports shall transfer $1,000,000 from the state general fund to the uninsurable health insurance plan fund to assist in financing the commencement of operations of the plan. The total of the amounts transferred from the state general fund shall be reimbursed to the state general fund from the uninsurable health insurance plan fund over the period of 10 fiscal years after fiscal year 1994 in accordance with the provisions of appropriations acts.~~

[Sec. 9. Upon request of the commissioner to provide for amounts that may be required to assist in financing the commencement of operations of the plan, the pooled money investment board shall loan to the uninsurable health insurance plan fund not to exceed $500,000 on July 15, 1992, July 15, 1993, July 15, 1994, and July 15, 1995. The total of the amounts so loaned shall be repaid

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from the uninsurable health insurance plan fund over the period of 10 fiscal years after fiscal year 1994 in accordance with appropriation acts. Amounts loaned under this section shall not bear interest.]

~~New~~ Sec. 10. There is hereby created in the state treasury a fund to be known and designated as the uninsurable health insurance plan fund. ~~All premium payments transmitted by the administering insurer and all moneys from assessments made pursuant to section 5 of this act and deposited by the commissioner shall be credited by the state treasurer to the uninsurable health insurance plan fund. All moneys credited to the uninsurable health insurance plan fund shall be used to pay claims and expenses of the operation of the plan.~~ All expenditures from the uninsurable health insurance plan fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the commissioner or a person or persons designated by the commissioner.

~~New~~ Sec. 11. (a) Not later than July 1, ~~1992~~ 1993, and July 1 of each succeeding year, the board shall submit an audited financial report for the plan for the preceding calendar year to the commissioner in a form provided or prescribed by the commissioner.

(b) The financial status of the plan shall be subject to examination by the commissioner or the commissioner's designee. Such examination shall be conducted at least once every three years beginning January 1, ~~1994~~ 1995. The commissioner shall transmit a copy of the results of such examination to the legislature by February 1 of the year following the year in which the examination is conducted.

~~New~~ Sec. 12. The association or a member insurer thereof shall provide every applicant for health coverage under the provisions of this act with a form for making a declaration directing the withholding or withdrawal of life-sustaining procedures in a terminal condition in substantial conformance with subsection (c) of K.S.A. 65-28,103, and amendments thereto. If such applicant elects to execute such declaration the applicant shall submit a copy of such declaration to the association or member insurer thereof, and such copy shall be retained and made a part of the applicant's permanent records.

~~New~~ Sec. 13. Unless otherwise specified by the plan, as a prerequisite for payment from the plan, each provider of health services to persons covered under the plan shall enter into a provider agreement with the association under which reimbursement for services provided shall be at the rates the state reimburses such providers for services rendered under medicaid pursuant to rules and regulations of the secretary of social and rehabilitation services. Providers

Periodically, the plan shall compare the premiums earned to the losses and expenses sustained by the plan. If there is any excess of losses and expenses over premiums earned, an amount determined by the commissioner to be necessary to fund such excess losses and expenses shall be transferred from the uninsurable health insurance plan fund to the plan to pay claims and expenses resulting from its operation. If there is any surplus of premiums earned over losses and expenses, such surplus shall be transferred to the uninsurable health insurance plan fund from the plan.

Delete

1-13

shall not charge persons covered under the plan with the exception of authorized deductible and co-pay requirements and noncovered services if the recipient has been informed in advance of the noncoverage.

~~Sec. 14. K.S.A. 79-4804 is hereby repealed.~~

Sec. ~~15~~ 14. This act shall take effect and be in force from and after its publication in the ~~Kansas register~~ statute book.

41-1

from the uninsurable health insurance plan fund over the period of 10 fiscal years after fiscal year 1994 in accordance with appropriation acts. Amounts loaned under this section shall not bear interest.]

~~New~~ Sec. 10. There is hereby created in the state treasury a fund to be known and designated as the uninsurable health insurance plan fund. All premium payments transmitted by the administering insurer and all moneys from assessments made pursuant to section 5 of this act and deposited by the commissioner shall be credited by the state treasurer to the uninsurable health insurance plan fund. All moneys credited to the uninsurable health insurance plan fund shall be used to pay claims and expenses of the operation of the plan. All expenditures from the uninsurable health insurance plan fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the commissioner or a person or persons designated by the commissioner.

~~New~~ Sec. 11. (a) Not later than July 1, ~~1992~~ 1993, and July 1 of each succeeding year, the board shall submit an audited financial report for the plan for the preceding calendar year to the commissioner in a form provided or prescribed by the commissioner.

(b) The financial status of the plan shall be subject to examination by the commissioner or the commissioner's designee. Such examination shall be conducted at least once every three years beginning January 1, ~~1994~~ 1995. The commissioner shall transmit a copy of the results of such examination to the legislature by February 1 of the year following the year in which the examination is conducted.

~~New~~ Sec. 12. The association or a member insurer thereof shall provide every applicant for health coverage under the provisions of this act with a form for making a declaration directing the withholding or withdrawal of life-sustaining procedures in a terminal condition in substantial conformance with subsection (c) of K.S.A. 65-28,103, and amendments thereto. If such applicant elects to execute such declaration the applicant shall submit a copy of such declaration to the association or member insurer thereof, and such copy shall be retained and made a part of the applicant's permanent records.

~~New~~ Sec. 13. Unless otherwise specified by the plan, as a prerequisite for payment from the plan, each provider of health services to persons covered under the plan shall enter into a provider agreement with the association under which reimbursement for services provided shall be at the rates established by the board. ~~the state reimburses such providers for services rendered under medicaid pursuant to rules and regulations of the secretary of social and rehabilitation services.~~ Providers

KMS
KANSAS MEDICAL SOCIETY
623 SW 10th Ave. • Topeka, Kansas 66612 • (913) 235-2383

Jerry Slaughter
Executive Director

F I-H 3/24/92
Attachment #2

terminated for any reason other than nonpayment of premium;

(2) such person has applied for health insurance and been rejected by two carriers because of health conditions;

~~(3) such person has applied for health insurance and has been quoted a premium rate which:~~

~~(A) In the first two years of operation of the plan, is more than 150% of the premium rate available through the plan; or~~

~~(B) in succeeding years of operation of the plan, is in excess of the premium rate established for plan coverage in an amount set by the board; or~~

which is comparable to coverage offered through the plan

(4) such person has been accepted for health insurance subject to a permanent exclusion of a preexisting disease or medical condition.

(b) The following persons shall not be eligible for coverage under the plan:

(1) Any person who is eligible for medicare or medicaid benefits;

(2) any person who has had coverage under the plan terminated less than 12 months prior to the date of the current application;

(3) any person who has received accumulated benefits from the plan equal to or in excess of the lifetime maximum benefits under the plan prescribed by section 8 of this act;

(4) any person having access to accident and health insurance through an employer-sponsored group or self-insured plan; or

(5) any person who is eligible for any other public or private program that provides or indemnifies for health services.

(c) Any person who ceases to meet the eligibility requirements of this section may be terminated at the end of a policy period.

~~New~~ Sec. 7. (a) The plan shall offer coverage to every eligible person pursuant to which such person's covered expenses shall be indemnified or reimbursed subject to the provisions of section 8 of this act.

(b) Except for those expenses set forth in subsection (c) of this section, expenses covered under the plan shall include expenses for:

(1) Services of persons licensed to practice medicine and surgery which are medically necessary for the diagnosis or treatment of injuries, illnesses or conditions~~, other than mental~~;

(2) services of advanced registered nurse practitioners who hold a certificate of qualification from the board of nursing to practice in an expanded role or physicians assistants acting under the direction of a responsible physician when such services are provided at the direction of a person licensed to practice medicine and surgery and meet the requirements of paragraph (b)(1) above;

(3) services of licensed dentists ~~issued certificates of qualifi-~~

Testimony Before the Senate Financial Institutions and Insurance Committee

March 24, 1992

Presented by Gary Sherrer, Senior Vice President

Fourth Financial Corporation

Chairman Bond and members of the committee:

My name is Gary Sherrer and I appear here today on behalf of Fourth Financial Corporation. Fourth Financial Corporation is the parent company of BANK IV, Kansas with 67 locations in 28 Kansas communities. Fourth Financial Corporation is publicly traded and today is owned by nearly 5,000 shareholders, the overwhelming majority of whom are Kansans.

The language and philosophy of 9-520 was drafted in 1983 with final passage in 1985. You will note that the legislative decision was to not prohibit savings and loan purchases after a bank reached the 12% limit. You will also note that after reaching the 12% limit, there is not a prohibition on the purchase of a bank or savings and loan if that bank or savings and loan has failed or is failing. It is critical to understand that the legislature in passage of this law did not intend for savings and loan purchases to be prohibited after reaching the deposit cap, nor the purchase of banks if they were failing to be prohibited once the cap was reached. What the legislature could not have anticipated, as

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Attachment #3

of us did, was that there would be a financial crisis in the second half of the 80's in this regarding the savings and loan industry. When this bill was passed, no one realized the impact the Resolution Trust Corporation (RTC) would have on the financial structure of Kansas banks. In a period of 18 months, BANK IV purchased deposits of $1.2 billion from failed savings and loan institutions throughout Kansas. The process was difficult and finding qualified buyers was not always easy. An example is the People's Heritage sale which the RTC had to take to bid on 3 separate occasions. We are preparing to announce a purchase of a failed S & L branch in which we were the only bidder. By having Kansas banks strong enough to participate in the bidding, the transition was effective, stability restored, and the people of Kansas well served.

Unfortunately, because this historically unique situation did occur, the acquisitions by BANK IV rapidly moved us toward the deposit limit. The situation now exists that with planned acquisitions and potential purchases, we anticipate to be successful, we will be in a difficult position on July 1st when Interstate Banking takes effect. While large banking organizations from the other states are bidding to purchase Kansas banks, the state's largest banking organization will be precluded from participating in those acquisition efforts. Already, Commerce and United Missouri have each announced 3 purchases. Fourth Financial Corporation is a Kansas domiciled corporation. We prefer doing business in Kansas, for we know the state and have found our success here. It doesn't seem in the best interests

ınsas to have a public policy that says even though your corporation was prepared, capab d proactive in the resolution of the financial crisis of Kansas savings and loans, because you bought them before you reached the 12% limit, they will be counted against you. They will eliminate your ability to continue expansion with the purchase of Kansas banks. What public policy sense does it make that a financial institution could go to 12% and then begin to purchase a billion dollars of failed savings and loan deposits and the law will permit that, but one who participated prior to reaching the cap, would not have the same opportunities.

That is why today I would propose to you an amendment to 9-520. The amendment would add after the word "aggregate", the words "AFTER SUBTRACTING DEPOSITS ACQUIRED FROM THE RESOLUTION TRUST CORPORATION". I believe this amendment has several advantages. It is not vague, it clearly is directed at one unique situation, the Resolution Trust Corporation. It doesn't open any other window of opportunity for any expansion of deposit growth and it does not address the 12% in any attempt to raise it. It does not allow any other purchase to be included. It is simply a straight forward acknowledgement that consistent with the philosophy of the legislation, there was no way to anticipate the Resolution Trust Corporation and its impact and removes that factor from the law.

We realize that there will be some who ask "isn't this just benefiting one corporation". Our answer is two fold. First, there is nothing unique in this legislature about legislation that resolves a

ific problem for a corporation. Many examples come to mind, for instance, an out-c ce corporation (Mobil Oil) was given special legislation to assist them in doing credit card processing in Kansas. It has always been good public policy to address unique and one-of-a-kind situations with legislation when prior legislation, passed for whatever good reasons, could not have anticipated those needs. Our second response to special legislation benefit for Fourth Financial Corporation is that as a Kansas Corporation, we believe the state will benefit if we are allowed the chance to grow, to continue to build our base and to strengthen our ability to complete with out-of-state banks as interstate banking continues to expand throughout the nation. The greater and larger success of our Corporation is also reflected in greater contributions of taxes to the State of Kansas.

We believe the issue is clear. We believe that the legislature never intended for a bank to be penalized when it purchased failing savings and loans. It is clear that if a bank grew its deposits to the 12% cap, and then began to make the same purchases we have made, that would be legal. We believe that there is no rationale for treating the same two situations so differently. We provided new stability, new competition, and expanded services with our RTC purchases, We don't understand why that should become a negative factor for a Kansas based corporation and limit its ability to grow in service to the State and its people.

To reject this amendment, is to establish a situation on July 1st in which this state's largest

banking institution will not be allowed to compete with out of state banking institutions for the purchase of Kansas banks. We sincerely question the value of public policy that limits Kansas corporations in relation to their competitors from other states. This amendment is straightforward, it's clear and we believe justified.

We know we risk public criticism and that unfortunately, you will be subjected to the same tired cliches that have been offered up as road blocks to any modernization of Kansas banking laws. Those arguments did not stand up to the facts once the legislation had been passed and they will not be able to stand up again should you accept this amendment. If Kansas bank laws had not been modernized there would not have been an effective structure available to meet the needs of failing Savings and Loans.

We certainly do not apologize for wanting to serve Kansans in their banking needs. We will match our commitment--our involvement--our contributions of money and human resources to the communities we serve with any of the financial institutions in those communities and certainly we will match them against those who come to you in opposition to this amendment. We simply want the opportunity to better serve this state, our customers and the Kansas banking industry. We are committed to be a Kansas-based premier regional banking corporation and we ask your assistance with the adoption of our proposed amendment.

To those who ask about our timing on this request, I would explain that there were a number of factors that came together to create the urgency for quick action. First, the realization that a number of proposed acquisitions were going to come to fruition, which would move us to the 12% cap limit. Secondly, a corporate decision to go to the market place and raise funds, in this case $100 million, that would assist us in our acquisition strategy. Contrary to rumors, it is our corporate philosophy to be an acquirer, not acquired, and the obtaining of $100 million of new equity is a clear signal of the truth of our intentions (incidentally this is an import of $100 million of capital). As you are aware, the SEC has some rather stringent rules about what activities one can be involved in during the process of going to the market. During that rather lengthy process, it was inappropriate for us to bring these issues to a public forum. Finally, it was clear realization that with the coming of interstate banking in July, our cap limit would be reached in 1992 and for us to be an active participant in the building of a stronger Kansas banking system, we would need legislative remedy of an unfair situation prior to the 1993 legislative session.

Banking is the only provider of financial services that has a legislative limit on growth. In addition, the total deposits have been shrinking. The total deposit number has gone from $39.5 at 12/89 to $36.2 billion as of 9/91. 12% doesn't mean what it used to!

We are limited in our ability to grow and serve Kansas by a legislative deposit limit, the total deposit number has been shrinking and our Resolution Trust Corporation purchases have removed our opportunity to compete with out of state banks in the acquisition of Kansas banks.

We urge your adoption of this amendment and are grateful for the time you have provided in which to discuss this critical issue.

THANK YOU

3-8

is or becomes a bank holding company by virtue of this act, is held by trustees; or

(D) which, by virtue of acquisition of ownership or control of, or the power to vote the voting shares of, a bank or another company, becomes a bank holding company under this act.

(2) Notwithstanding paragraph (1), no company:

(A) Shall be deemed to be a bank holding company by virtue of its ownership or control of shares acquired by it in connection with its underwriting of securities if such shares are held only for such period of time as will permit the sale thereof on a reasonable basis;

(B) formed for the sole purpose of participating in a proxy solicitation shall be deemed to be a bank holding company by virtue of its control of voting rights of shares acquired in the course of such solicitation;

(C) shall be deemed to be a bank holding company by virtue of its ownership or control of shares acquired in securing or collecting a debt previously contracted in good faith, provided such shares are disposed of within a period of two years from the date on which such shares could have been disposed of by such company;

(D) owning or controlling voting shares of a bank shall be deemed to be a bank holding company by virtue of its ownership or control of shares held in a fiduciary capacity except where such shares are held for the benefit of such company or its shareholders.

(b) "Company" means any corporation, trust, limited partnership, association or similar organization including a bank but shall not include any corporation the majority of the shares of which are owned by the United States or by any state, or include any individual or partnership.

(c) "Bank" means an insured bank as defined in section 3(h) of the federal deposit insurance act, 12 U.S.C. 1813(h), except the term shall not include a national bank which engages only in credit card operations, does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others, does not accept any savings or time deposits of less than $100,000, accepts deposits only from corporations which own 51% or more of the voting shares of the bank holding company or its parent corporation of which the bank engaging only in credit card operations is a subsidiary, maintains only one office that accepts deposits, and does not engage in the business of making commercial loans.

(d) "Subsidiary" with respect to a specified bank holding company means:

(1) Any company more than 5% of the voting shares of which, excluding shares owned by the United States or by any company wholly owned by the United States, is directly or indirectly owned or controlled by such bank holding company or is held by it with power to vote;

(2) any company the election of a majority of the directors of which is controlled in any manner by such bank holding company; or

(3) any company more than 5% of the voting shares of which is held by trustees for the benefit of such bank holding company or its shareholders.

History: L. 1985, ch. 55, § 2; L. 1991, ch. 45, § 1; L. 1991, ch. 46, § 1; July 1.

Attorney General's Opinions:

KPERS; investment of funds in banking institutions; banking institution defined. 87-84.

Definition of Bankers' bank. 89-79.

9-520. Same; ownership limitations; exceptions. (a) Excluding shares held under the circumstances set out in paragraph (2) of subsection (a) of K.S.A. 9-519, and amendments thereto, 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 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.

after subtracting deposits acquired from Resolution Trust Corporation

(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

HOUSE BILL 2906 "Corruptly" influence

This definition helps to define the parameters of the law making it workable, without creating such a broad catch-all phrase subject to vast differences in interpretation.

HOUSE BILL 2133 Preferred Stock

An amendment to exclude deposits acquired through the RTC from the cap level established by statute.

Negative aspects:

Allowing Fourth Financial Corp. (Bank IV) unlimited access to acquire deposits from RTC would hamper our ability to monitor the growth and relative control over deposits exercised by that group. The cap would no longer represent an accurate measure of that control since any RTC deposits would be excluded from the calculation. The proposed amendment would, in effect, eliminate any cap level. For example, while the stated cap is 12%, with unlimited access to RTC deposits, their effective control of deposits in Kansas could conceivable be double that percentage. If the intent of the legislature is to allow a single entity to have the potential to control such a large portion of the state's deposits, then it would seem prudent to clearly define what that higher level should be. While the Banking Department does not necessarily support an increase in the cap level, we are strongly opposed to any measure which dilutes its purpose, that being to ensure deposits are diversely held, thereby contributing to the overall safety of those deposits. In effect, the cap prevents " all the eggs from being in one basket ".

In our experience, most bank or thrift liquidations carried out by the RTC in Kansas have had several interested bidders, indicating that in most instances there is, in fact, some market for those deposits. Excluding those deposits acquired from the RTC from the 12% cap level could potentially have the effect of simply allowing any large financial concern, such as Fourth Financial Corp., to "out gun" any other potential local bidders. That scenario would in all likelihood make it even more difficult for a community to maintain some local involvement and input on the financial services offered there. The potential impact of interstate banking on this proposal is also unknown.

We believe the interest of the people of Kansas is best served by maintaining diversity in control of the deposit base. This proposed amendment would appear to erode that diversity, and we urge the committee to reject it. That concludes my comments and I will be happy to stand for questions. Thank you.

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Attachment #4

In 1990, the cap rate was raised from 9% to 12% at the request of Fourth Financial Corp. This request was made as a result of their deposit level nearing the limitation. Now additional request made? Is there any limit????

If this committee intends to pursue this amendment, our office suggests several areas receive careful review. As Fourth financial Corp. is requesting this amendment and should have ready access to pertinent data regarding their past acquisitions of Kansas deposits, we recommend the committee request the following information:

1) The dollar volume of deposits acquired from the RTC during the past two years, and how many separate locations are represented by this figure

2) From these locations, how many represented the purchase of physical assets in the community vs. simple acquisition of the deposits with no physical presences remaining in the community.

3) Of the physical locations acquired, how many continue to operate and serve their community today.

4) In what number of these acquisitions was FF the only bidder.

nated para., substituted "financial institution"
lank, bank for cooperatives, production credit
agricultural credit association, Federal land
tered under section 4.26 of the Farm Credit
nancial Assistance Corporation, the Federal
, the Federal Farm Credit Banks Funding
erative Bank, or other institution subject to
tion examiner" for "land bank, Federal land
t to examination by a farm credit examiner",
bstituted "insured financial institutions" for
posit Insurance Corporation, by the Office of
sing Finance Board" for "or by the Federal

designated para., substituted "System, or the
sits of which", inserted "or which is a branch
re defined in paragraphs (1) and (3) of section
1978), or which is an organization operating
Federal Reserve Act," and "branch, agency,
ted para., substituted "System or insured" for
r agencies of foreign banks (as such terms are
1(b) of the International Banking Act of 1978),
section 25(a) of the Federal Reserve Act,".

AL REGULATIONS

EFERENCES

e the appendix entitled "Sentencing Guidelines for

CH GUIDE

§ 8:1473.
nt and Stabilization §§ 27:199, 232.

and White Collar Crimes (2d Ed), Ch. 21,

nk examiner

miner of member banks of the Federal Reserve
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or agencies of foreign banks (as such terms are
(b) of the International Banking Act of 1978 [12
tions operating under section 25 or section 25(a)
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ll business investment companies, accepts a loan
orporation, association or organization examined
rewith, shall be fined not more than $5,000 or
h; and may be fined a further sum equal to the
nall be disqualified from holding office as such

Title IX, Subtitle F, § 962(a)(2), 103 Stat. 502;
btitle I, § 2597(c), 104 Stat. 4909.)

Y LAWS AND DIRECTIVES

eferred to in this section, appears as 12 USCS
Reserve Act appears as 12 USCS §§ 611-631.

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- NEW -

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As to sentencing guidelines for this section, see the appendix entitled "Sentencing Guidelines for U.S. Courts" at the end of Title 18.

RESEARCH GUIDE

Federal Procedure L Ed:
4A Fed Proc L Ed, Banking and Financing § 8:1532.
10A Fed Proc L Ed, Economic Development and Stabilization § 27:199.

Texts:
Bailey and Rothblatt, Defending Business and White Collar Crimes (2d Ed), Ch. 21, Bribery.

INTERPRETIVE NOTES AND DECISIONS

2. Construction
18 USCS § 213 on its face does not prohibit person from accepting loan from bank not examined by him. United States v Napier (1988, CA9 Mont) 861 F2d 547.

6. Evidence
Evidence was insufficient to convict former overseer of bank examinations of violating 18 USCS § 213 by accepting loan from bank examined by him, where there was no evidence that he had examined any bank let alone one connected with receipt of loan. United States v Napier (1988, CA9 Mont) 861 F2d 547.

§ 214. Offer for procurement of Federal Reserve bank loan and discount of commercial paper

CROSS REFERENCES

As to sentencing guidelines for this section, see the appendix entitled "Sentencing Guidelines for U.S. Courts" at the end of Title 18.

§ 215. Receipt of commissions or gifts for procuring loans

(a) Whoever—

(1) corruptly gives, offers, or promises anything of value to any person, with intent to influence or reward an officer, director, employee, agent, or attorney of a financial institution in connection with any business or transaction of such institution; or

(2) as an officer, director, employee, agent, or attorney of a financial institution, corruptly solicits or demands for the benefit of any person, or corruptly accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business or transaction of such institution;

shall be fined not more than $1,000,000 or three times the value of the thing given, offered, promised, solicited, demanded, accepted, or agreed to be accepted, whichever is greater, or imprisoned not more than 30 years, or both, but if the value of the thing given, offered, promised, solicited, demanded, accepted, or agreed to be accepted does not exceed $100, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(b) [Transferred]

(c) This section shall not apply to bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business.

(d) Federal agencies with responsibility for regulating a financial institution shall jointly establish such guidelines as are appropriate to assist an officer, director, employee, agent, or attorney of a financial institution to comply with this section. Such agencies shall make such guidelines available to the public.

(As amended Oct. 12, 1984, P. L. 98-473, Title II, Ch XI, Part F, § 1107(a), 98 Stat. 2145; Aug. 4, 1986, P. L. 99-370, § 2, 100 Stat. 779; Aug. 9, 1989, P. L. 101-73, Title IX, Subtitle F, §§ 961(a), 962(e)(1), 103 Stat. 499, 503; Nov. 29, 1990, P. L. 101-647, Title XXV, Subtitle A, § 2504(a), 104 Stat. 4861.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:
1984. Act Oct. 12, 1984 substituted this section for one which read:
"Whoever, being an officer, diretor, employee, agent, or attorney of any bank, the deposits of which are insured by the Federal Deposit Insurance Corporation, of a Federal intermediate credit bank, or of a National Agricultural Credit Corporation, except as provided by law, stipulates for or receives or consents or agrees to receive any fee,

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commission, gift, or thing of value, from any person, firm, or corporation, for procuring or endeavoring to procure for such person, firm, or corporation, or for any other person, firm, or corporation, from any such bank or corporation, any loan or extension or renewal of loan or substitution of security, or the purchase or discount or acceptance of any paper, note, draft, check, or bill of exchange by any such bank or corporation, shall be fined not more than $5,000 or imprisoned not more than one year or both.".

1986. Act Aug. 4, 1986 (effective 30 days after enactment on 8/4/86, as provided by § 3 of such Act, which appears as a note to this section) substituted this section for one which read:

"(a) Whoever, being an officer, director, employee, agent, or attorney of any financial institution, bank holding company, or savings and loan holding company, except as provided by law, directly or indirectly, asks, demands, exacts, solicits, seeks, accepts, receives or agrees to receive anything of value, for himself or for any other person or entity, other than such financial institution, from any person or entity for or in connection with any transaction or business of such financial institution; or

"(b) Whoever, except as provided by law, directly or indirectly, gives, offers, or promises anything of value to any officer, director, employee, agent, or attorney of any financial institution, bank holding company, or savings and loan holding company, or offers or promises any such officer, director, employee, agent, or attorney to give anything of value to any person or entity, other than such financial institution, for or in connection with any transaction or business of such financial institution, shall be fined not more than $5,000 or three times the value of anything offered, asked, given, received, or agreed to be given or received, whichever is greater, or imprisoned not more than five years, or both; but if the value of anything offered, asked, given, received, or agreed to be given or received does not exceed $100, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

"(c) As used in this section—

"(1) 'financial institution' means—

"(A) any bank the deposits of which are insured by the Federal Deposit Insurance Corporation;

"(B) any member, as defined in section 2 of the Federal Home Loan Bank Act, as amended, of the Federal Home Loan Bank System and any Federal Home Loan Bank;

"(C) any institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation;

"(D) any credit union the accounts of which are insured by the Administrator of the National Credit Union Administration;

"(E) any Federal land bank, Federal land bank association, Federal intermediate credit bank, production credit association, bank for cooperatives; and

"(F) a small business investment company, as defined in section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662); and

"(2) 'bank holding company' or 'savings and loan holding company' means any person, corporation, partnership, business trust, association or similar organization which controls a financial institution in such a manner as to be a bank holding company or a savings and loan holding company under the Bank Holding Company Act Amendments of 1956 (12 U.S.C. 1841) or the Savings and Loan Holding Company Amendments of 1967 (12 U.S.C. 1730a.

"(d) This section shall not apply to the payment by a financial institution of the usual salary or director's fee paid to an officer, director, employee, agent, or attorney thereof, or to a reasonable fee paid by such financial institution to such officer, director, employee, agent, or attorney for services rendered to such financial institution.".

1989. Act Aug. 9, 1989, in subsec. (a), in the concluding matter, substituted "$1,000,000" for "$5,000" and "20" for "five".

Such Act further transferred subsec. (b) to the end of Chapter 1 and redesignated such subsection as 18 USCS § 20.

1990. Act Nov. 29, 1990, in subsec. (a), in the concluding matter, substituted "30" for "20".

Other provisions:

Effective date of Act Aug. 4, 1986. Act Aug. 4, 1986, P. L. 99-370, § 3, 100 Stat. 780, provides: "This Act and the amendments made by this Act [amending this section and adding this note and 18 USCS § 201 note] shall take effect 30 days after the date of the enactment of this Act [enacted Aug. 4, 1986].".

CROSS REFERENCES

As to sentencing guidelines for this section, see the appendix entitled "Sentencing Guidelines for U.S. Courts" at the end of Title 18.

RESEARCH GUIDE

Federal Procedure L Ed:

4 Fed Proc L Ed, Banking and Financing §§ 8:113, 834, 852.

4A Fed Proc L Ed, Banking and Fina

Forms:

3A Am Jur Legal Forms 2d, Banks §

Annotations:

Construction and application of 18 US by bank officer for procurring loans. 3

Texts:

Bailey and Rothblatt, Defending Bus Bribery.

INTERPRETIVE

5.5. Civil liability

1. Purpose

Although 18 USCS § 215 is designed prim to protect depositers from dissipation of dep through unwise lending practices, statute also tects public in general. Hometowne Builders, v Atlantic Nat. Bank (1979, ED Va) 477 F S 717.

2. Construction

Loan officer's constitutional vagueness/o breadth challenge to 18 USCS § 215 must despite Congress's 1986 amendment of statute narrow and more precisely define prohibited c duct, because person of ordinary intellige would reasonably understand that accepting commissions for procurement of loans while ac as loan officer of federally insured financial insti tion is conduct prohibited by § 215. United Sta v Humble (1989, ED La) 714 F Supp 794.

Alleged agent of bank was not improperly in enced under 18 USCS § 215.1where evidence agency is party's past support of bank by bring in customers seeking loans, because party is n agent of bank within meaning of statute. Marri Bros. v Gage (1989, ND Tex) 717 F Supp 458.

3. Relationship with other statutes

18 USCS § 215 is not lesser included offense § 656. United States v Twiford (1979, CA10 Co 600 F2d 1339, 51 ALR Fed 413.

18 USCS § 656 is not lesser included offense 18 USCS § 215, since, giver of bribe in violation § 215 need have no connection with bank whe officer is bribed, whereas § 656 requires proof th person who misapplied funds was connected wi bank. United States v McElroy (1990, CA2 V 910 F2d 1016.

Acts of commercial bribery in violation of USCS § 215 are "unlawful activities" within mean ing of Travel Act, 18 USCS § 1952. United Stat v Michael (1978, DC NJ) 456 F Supp 335, aff without op (CA3 NJ) 605 F2d 1198, cert den 44 US 1032, 62 L Ed 2d 667, 100 S Ct 702.

5.5. Civil liability

Borrowers can bring action against bank official seeking to hold them civilly liable for violating 18 USCS § 215 since statute is designed to protect not only depositers but also public in general; in such action, question of whether contributions made to bank allegedly for procuring loans were bribery or extortion is one for jury; claim for punitive damages was permissible in civil action. Hometowne Builders, Inc. v Atlantic Nat. Bank (1979, ED Va) 477 F Supp 717.

7. Receipt

Violation of predecessor to 18 USCS § 215 occurs where bank officer receives bonus for pro-

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person, firm, or corporation, for procuring or
or corporation, or for any other person, firm,
oration, any loan or extension or renewal of
ıase or discount or acceptance of any paper,
such bank or corporation, shall be fined not
ın one year or both.".

er enactment on 8/4/86, as provided by § 3 of
ection) substituted this section for one which

mployee, agent, or attorney of any financial
ings and loan holding company, except as
ks, demands, exacts, solicits, seeks, accepts,
alue, for himself or for any other person or
from any person or entity for or in connection
ncial institution; or
lirectly or indirectly, gives, offers, or promises
employee, agent, or attorney of any financial
ings and loan holding company, or offers or
e, agent, or attorney to give anything of value
ncial institution, for or in connection with any
titution, shall be fined not more than $5,000 or
sked, given, received, or agreed to be given or
d not more than five years, or both; but if the
ived, or agreed to be given or received does not
1,000 or imprisoned not more than one year, or

h are insured by the Federal Deposit Insurance

tion 2 of the Federal Home Loan Bank Act, as
an Bank System and any Federal Home Loan

f which are insured by the Federal Savings and

s of which are insured by the Administrator of
tration;
ral land bank association, Federal intermediate
iation, bank for cooperatives; and
company, as defined in section 103 of the Small
5 U.S.C. 662); and
gs and loan holding company' means any person,
ust, association or similar organization which
a manner as to be a bank holding company or a
nder the Bank Holding Company Act Amend-
ne Savings and Loan Holding Company Amend-

payment by a financial institution of the usual
director, employee, agent, or attorney thereof, or
ial institution to such officer, director, employee,
such financial institution.".

n the concluding matter, substituted "$1,000,000"

) to the end of Chapter 1 and redesignated such

), in the concluding matter, substituted "30" for

t Aug. 4, 1986, P. L. 99-370, § 3, 100 Stat. 780,
nts made by this Act [amending this section and
ote] shall take effect 30 days after the date of the
1986].".

S REFERENCES

, see the appendix entitled "Sentencing Guidelines for

EARCH GUIDE

ng §§ 8:113, 834, 852.

BRIBERY

4A Fed Proc L Ed, Banking and Financing §§ 8:1472, 1473, 1493, 1544, 1545, 1554.

Forms:

3A Am Jur Legal Forms 2d, Banks § 38:253.

Annotations:

Construction and application of 18 USCS § 215, punishing receipt of commissions or gifts by bank officer for procurring loans. 39 ALR Fed 704.

Texts:

Bailey and Rothblatt, Defending Business and White Collar Crimes (2d Ed), Ch. 21, Bribery.

INTERPRETIVE NOTES AND DECISIONS

5.5. Civil liability

1. Purpose

Although 18 USCS § 215 is designed primarily to protect depositers from dissipation of deposits through unwise lending practices, statute also protects public in general. Hometowne Builders, Inc. v Atlantic Nat. Bank (1979, ED Va) 477 F Supp 717.

2. Construction

Loan officer's constitutional vagueness/overbreadth challenge to 18 USCS § 215 must fail, despite Congress's 1986 amendment of statute to narrow and more precisely define prohibited conduct, because person of ordinary intelligence would reasonably understand that accepting case commissions for procurement of loans while acting as loan officer of federally insured financial institution is conduct prohibited by § 215. United States v Humble (1989, ED La) 714 F Supp 794.

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7. Receipt

Violation of predecessor to 18 USCS § 215 occurs where bank officer receives bonus for procuring loan and has interest in borrower's business venture. Fleishhacker v Blum (1940, CA9 Cal) 109 F2d 543, cert den 311 US 665, 85 L Ed 427, 61 S Ct 23, reh den 311 US 726, 85 L Ed 473, 61 S Ct 130.

9. Institution granting loan

18 USCS § 215 extends to officers of originating bank who accept fees for procuring loans from participating banks, since purpose of statute is to protect banks as well as borrowers. United States v Jumper (1988, CA5) 838 F2d 755.

11. Knowledge

Bribe-giver may be prosecuted for aiding and abetting bank officer's violation of 18 USCS § 215. United States v Michael (1978, DC NJ) 456 F Supp 335, affd without op (CA3 NJ) 605 F2d 1198, cert den 444 US 1032, 62 L Ed 2d 667, 100 S Ct 702.

12. Aiding and abetting

Offeror of bribe to bank officer may be prosecuted for aiding and abetting violation of 18 USCS § 215. United States v Michael (1978, DC NJ) 456 F Supp 335, affd without op (CA3 NJ) 605 F2d 1198, cert den 444 US 1032, 62 L Ed 2d 667, 100 S Ct 702.

14. Indictment or information, generally

Complaint charging violation of 18 USCS § 215 is sufficient which alleges manipulation of loans and collateral, loan transactions in excess of permissible limits, and receipt of fees by defendant for such manipulation. Spalitta v National American Bank (1971, CA5 La) 444 F2d 291, cert den 404 US 883, 30 L Ed 2d 164, 92 S Ct 212.

19. Conduct of counsel

Prosecution's repeated comparisons of conspiracy to impede United States in collection of taxes, missaply bank funds, and receive loan kickbacks to armed bank robbery does not require reversal of conviction. United States v Kapnison (1984, CA10 NM) 743 F2d 1450, 16 Fed Rules Evid Serv 990, cert den 471 US 1015, 85 L Ed 2d 299, 105 S Ct 2017.

22. Consequences of conviction

It was not plain error for judge to depart upward from Guideline § 2B4.1 based on assistant district attorney's abuse of position in attempting to solicit sexual favors in violation of 18 USCS § 215 and sentencing him to 18 months imprisonment, even though appropriate sentencing range under Guideline adjustment § 3B1.3 was 2 to 8 months, since sentence fell below statutory maximum of 20 years and could be reinstated on remand given reasonable explanation, and policies underlying plain error doctrine applied. United States v Brunson (1990, CA5 La) 915 F2d 942.

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INTERPRETIVE NOTES AND DECISIONS

Offense under 18 USCS § 214 is stated in information which charged that defendant had made offer to Member of Congress that, in consideration of Congressman's use of influence to procure federal postmastership for defendant, defendant would contribute money to Republican party. United States v Shirey (1959) 359 US 255, 3 L Ed 2d 789, 79 S Ct 746.

§ 215. Receipt of commissions or gifts for procuring loans

Whoever, being an officer, director, employee, agent, or attorney of any bank, the deposits of which are insured by the Federal Deposit Insurance Corporation, of a Federal intermediate credit bank, or of a National Agricultural Credit Corporation, except as provided by law, stipulates for or receives or consents or agrees to receive any fee, commission, gift, or thing of value, from any person, firm, or corporation, for procuring or endeavoring to procure for such person, firm, or corporation, or for any other person, firm, or corporation, from any such bank or corporation, any loan or extension or renewal of loan or substitution of security, or the purchase or discount or acceptance of any paper, note, draft, check, or bill of exchange by any such bank or corporation, shall be fined not more than $5,000 or imprisoned not more than one year or both.

(June 25, 1948, ch 645, § 1, 62 Stat. 695; Sept. 21, 1950, ch 967, § 4, 64 Stat. 894; Oct. 23, 1962, P. L. 87-849, § 1(d), 76 Stat. 1125.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

This section is based on Act Dec. 23, 1913, ch 6, § 22, first sentence of second paragraph, 38 Stat. 272; July 17, 1916, ch 245, Title II, § 211 (e), as added Mar. 4, 1923, ch 252, Title I, § 2, 42 Stat. 1460; June 21, 1917, c. 32, § 11, 40 Stat. 240; Sept. 26, 1918, c. 177, § 5, part (22(c)), 40 Stat. 970; Mar. 4, 1923, c. 252, Title II, § 216 (e), 42 Stat. 1472 (former 12 U.S.C. §§ 595, 1125, and 1315).

The punishment provisions of the three sections were identical, and all other provisions thereof were similar, except that former 12 U.S.C. § 595, relating to officers, directors, employees, or attorneys of member banks of the Federal Reserve System, did not include the terms "agent" and "acceptance" and did not include the phrase "or extension or renewal of loan or substitution of security." Words "shall be deemed guilty of a misdemeanor" were omitted because of definition of misdemeanor in 18 USCS § 1. Words "and upon conviction" and "and shall upon conviction thereof" were omitted as surplusage because punishment cannot be imposed until after conviction.

Verbal changes were made for style purposes.

Explanatory notes:

The section formerly designated 18 USCS § 215 was redesignated 18 USCS § 211 by § 1(b) of Act Oct. 23, 1962.

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STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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Testimony of
Deputy Attorney General Dan Kolditz
Senate Financial Institutions and Insurance
RE: House Bill 3033
March 24, 1992

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.

FI+I 3/24/92
Attachment #6

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.