Approved: March 13, 1995
Date

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Chairperson Bill Bryant at 3:30 p.m. on March 7, 1995 in Room 527S of the Capitol.

All members were present except: Representative Tom Sawyer, Excused
Representative Brenda Landwehr, Excused

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

Conferees appearing before the committee: Mr. William Grant, Office of State Bank Commissioner
Mr. Jim Maag, Kansas Bankers Association
Mrs. Sue Anderson, Community Bankers

Others attending: See attached list

Hearing on SB 204--Banking, federal Riegle-Neal interstate banking and branching act

Mr. William Grant, legal counsel for the Office of the State Bank Commissioner, reviewed each section of the bill which is necessary due to the recent passage of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Attachment 1). The first segment deals with interstate banking and takes effect September 29, 1995. The second segment relates to interstate branching and provides the states with some discretion regarding the implementation of those federal provisions. This means that Kansas banks will be available for acquisition by holding companies from any state in the country because the Douglas amendment which allowed Kansas to pass regional limited interstate banking statutes (leapfrogging bill) will cease. All discriminatory provisions must be eliminated. The bill would dispose of the discriminatory effects by subjecting both in-state and out-of-state holding companies to the same procedure for seeking approval to acquire Kansas banks and bring them under the auspices of the Office of the State Bank Commissioner. Foreign banks would be prohibited from purchasing or establishing banks in the state.

The committee discussed the future of community banking and what benefits, if any, would be derived for Kansas consumers. Proponents of the bill are state administrators and the comptroller. Mr. Grant recommended an amendment which would make Sections 1 through 10 effective September 29, 1995, and that the balance of the bill become effective upon publication in the Kansas Register.

Sue Anderson, Executive Director of the Community Bankers Association, stated that each state must take every avenue left available to establish reasonable parameters of the banking business conducted in Kansas (Attachment 2). Her association supports the guidelines as proposed by the Office of the State Banking Commissioner. An amendment was presented for Section 14 stating that any bank which enters into or terminates any agreement pursuant to that subsection should within 30 days of the effective date of the agreement or termination, notify in writing the Commissioner of details of the transaction.

Jim Maag, Kansas Bankers Association, endorsed the work of the task force which designed the proposed legislation.

Representative Donovan moved for the approval of the minutes of March 6. Representative Gilbert seconded the motion. The motion carried.

The meeting was adjourned at 4:45 p.m. The next meeting is scheduled for March 8, 1995.

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HOUSE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE GUEST LIST

DATE: 3-7-95

NAME	REPRESENTING
Chuck Stones	KBA
Kathy Taylor	"
Danielle Nee	KCUA
[illegible]	KS Governmental Consulting
Jennifer Chamberlain	KS Sec. of State
Judi Stork	OSBC
Bill Grant	✓
Frank D. Dunnich	OSBC
Sue Anderson	CBA
Alan Steppat	Pete McGill & Associates

BILL GRAVES
GOVERNOR

Frank D. Dunnick
Bank Commissioner

Judi M. Stork
Deputy Commissioner

Kevin C. Glendening
Assistant Deputy Commissioner

William D. Grant Jr.
General Counsel

Ruth E. Glover
Administrative Officer

OFFICE OF THE
STATE BANK COMMISSIONER

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

March 7, 1995

Mr. Chairman and Members of the Committee:

My name is William Grant, General Counsel to Commissioner Frank Dunnick and the Office of the State Bank Commissioner, and I am here to testify in support of the current proposed provisions of Senate Bill 204.

SB 204 is necessitated by Congress' recent passage of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Riegle-Neal). The bill amends the Kansas Bank Holding Company Act, K.S.A. 9-519 et seq. (KBHCA) and the Kansas Banking Code, K.S.A. 9-701 et seq.

Riegle-Neal was enacted September 29, 1994 and consists of two distinct segments. The first segment deals with interstate BANKING and takes effect September 29, 1995. The second segment relates to interstate BRANCHING and provides the states with some discretion regarding the implementation of those federal provisions. Without some state action to the contrary, the branching provisions of Riegle-Neal become effective June 1, 1997.

The amendments contained in Senate Bill 204 are designed to address the concerns prompted by the enactment of the interstate banking provisions of Riegle-Neal, which bring about nationwide interstate banking. "Nationwide interstate banking" means that Kansas banks will be available for acquisition by holding companies from any state in the country.

Until September, 1995 the Douglas Amendment allows the states to violate the interstate Commerce Clause of the United States Constitution by discriminating against out of state bank holding companies. The Douglas Amendment currently authorizes the states to keep out-of-state bank holding

Banking
Attachment 1
3-7-95

companies from acquiring banks within their borders. Kansas relied upon this authority to pass our regional limited interstate banking statutes. In September, 1995 our authority to continue discriminating against bank holding companies based upon their home state ceases. Consequently, in order to sustain oversight provided by the KBHCA, all discriminatory provisions must be eliminated. In general, SB 204 disposes of the discriminatory effects by subjecting both in-state and out-of-state holding companies to the same procedure for seeking approval to acquire Kansas banks.

Section 1 of the bill amends K.S.A. 9-519 by adding five new definitions for use throughout the KBHCA. The terms "commissioner", "Kansas bank" and "Kansas bank holding company" have been added to allow clean-up throughout the balance of the bill. The use of the word "Kansas" with the terms "bank" and "bank holding company" refers to in-state institutions only. The generic terms "bank" or "holding company", when used alone, refer to both in-state and out-of-state institutions in those circumstances where the location of the institution is irrelevant.

The term "out-of-state bank holding company" was required in order to draft the one statutory proposal which continues to maintain a discriminatory effect. Section 12 (page 7, line 27) contains a proposed age requirement statute which will prevent an out-of-state holding company's acquisition of a Kansas bank unless the bank has existed for five years or more.

A definition of "foreign bank" was required in order to draft the proposed prohibition against foreign banks establishing branches in Kansas. See Section 11 (page 7, line 22).

Section 2 (page 3, line 13) contains no substantive change. It should be noted that Kansas has an independent state requirement that a majority of the directors of a state bank be residents of this state. Federal law contains a similar requirement for two-thirds of the directors of a national bank. Therefore, maintaining this requirement for bank holding companies is appropriate.

Section 3 (page 3, line 19) contains the proposed amendment of K.S.A. 9-532. This statute is the heart and soul of Kansas' limited interstate banking law. Subsection(a) currently provides the necessary grant of authority to regional out-of-state holding companies to enter Kansas by acquisition of a Kansas banking operation. Subsection (c) currently requires any out-of-state applicant to file an application for approval with the state banking board.

Subsections (a) and (c) have been combined in SB 204. The discriminatory language which limited the authority to enter Kansas to only those holding companies located in six nearby states has been removed. The result is a proposed statute which allows the acquisition of a Kansas operation by a holding company from any state, and which subjects the proposed applicant holding company to an application process whether the holding company is an in-state or out-of-state company. The application procedure contained in this bill, which is governed by K.S.A. 9-533 through 9-536, remains

substantially the same, however, this proposed amendment allows for approval by the commissioner. This change brings the approval procedure more closely in line with the "change of control" procedures (K.S.A. 9-1719 et seq.) which currently govern a Kansas holding company's acquisition of a Kansas state chartered bank.

Subsection (b) is obsolete for purposes of this section. The stricken provision's general meaning will remain intact within the KBHCA, by the addition of the definitions of "Kansas holding company" and "out of state bank holding company" in Section 1 of this bill.

The current subsection (d), was devised to protect the "regional" nature of the KBHCA by preventing "leapfrogging" by either an out-of-region bank holding company acquiring an in-region bank holding company and consequently gaining control of a Kansas bank, or by a bank holding company's out-of-region deposits increasing, by acquisition or growth, to the point when the holding company would be deemed to be an out-of-region holding company. This subsection is preempted by Riegle-Neal and therefore, should be repealed.

Section 4 (page 4, line 18) amends K.S.A. 9-533, which provides a list of items required to be submitted by an applicant holding company seeking to acquire a Kansas bank.

Currently, subsection (b) requires a bank holding company to provide a copy of each of their bank subsidiary's Community Reinvestment Act performance evaluations. This requirement has been amended to require copies of only the CRA evaluation reports in which a subsidiary received a rating of "needs to improve" or "substantial non-compliance". This amendment will constitute a reduction in mandated paperwork while allowing the department to obtain the necessary items on an "as needed" basis.

Subsection (c) currently requires the applicant holding company to supply statements of financial condition, capital conditions, etc. relating to the applicant and all the applicant's subsidiaries. While the proposed amendment maintains these requirements for the information regarding the applicant, a new subsection (e) has been drafted which more appropriately focuses on the type of subsidiary information needed to complete a review of the application. This suggested change is based upon this agency's experience with processing these types of applications.

New subsection (f) is simply a catch-all which would allow the commissioner to require any relevant information from the holding company.

Section 5 (page 5, line 9) amends K.S.A. 9-534, which provides the factors to be considered when evaluating a bank holding company's application for acquisition of a Kansas bank. The section contains only technical amendments with the exception of the addition of the new subsection (e). This new standard was found to be very common throughout other states' holding company acts and will allow the commissioner to consider the applicant holding company's financial condition and the impact that condition will have on the target Kansas bank. This subsection will provide additional protection against the infection of a Kansas bank by a suitor with financial difficulties.

Section 6 (page 5, line 31) amends K.S.A. 9-535. The present language found in subsections (a) and (b) currently exist to compliment the "regional" nature of the KBHCA, and consequently, both provisions will be preempted by Riegle-Neal. SB 204 retains the substance of the current subsection (c), which requires approval of an application that meets the standards set out in the previous section. The bill contains a new subsection (b) which will allow the applicant to appeal the commissioner's decision to the state banking board.

Section 7 (page 6, line 20) and Section 8 (page 6, line 24) contain no substantive changes. On line 26 of page 6 of SB 204 the phrase "located in a state or jurisdiction other than this state" has been removed. This is a classic example of the type of discriminatory statutory provision that will be preempted by the repeal of the Douglas Amendment in September , 1995. The language has been altered to apply to any bank holding company that owns a Kansas bank, regardless of the home state of the holding company.

Section 9 (page 6, line 33) of the bill amends K.S.A. 9-538. The current statute requires the filing of CRA evaluations by each Kansas bank which is owned by an out-of-state bank holding company. The amendment eliminates the discriminatory effect by requiring both in-state and out-of-state holding companies to file CRA evaluations on their Kansas banks. However, the scope of mandatory filings has been relaxed so that only those evaluation reports which assign a rating of "needs improvement" or "substantial non-compliance" must be submitted, unless others are requested by the commissioner.

Section 10 (page 7, line 13) represents only minor technical changes to K.S.A. 9-539.

New section 11 (page 7, line 22) is an express prohibition against the establishment of branches, agencies or offices in Kansas, by a bank from a foreign country. The enactment of Riegle-Neal necessitates the passage of this provision to insure that foreign banks are treated the same as domestic out-of-state banks. Currently, under federal law, a foreign bank which presently has a branch in another U.S. state is subjected to the same Douglas Amendment restrictions as a holding company located in the foreign bank's "home" state. In September of 1995, just as holding companies, foreign banks with locations in any state in the U.S. will be authorized to purchase banks in Kansas. These acquisitions will continue to be subject to any approval procedures or age requirements implemented as a result of this bill. However, without the passage of this section, a foreign bank which has not located an operation in the U.S., is authorized to establish a "de novo" banking operation, known as a federal branch, in Kansas, without regard to any state application or approval procedures.

This provision will also be important when the legislature makes future decisions regarding interstate branching, because without enactment of this provision, any decision to prohibit "de novo" interstate branching will apply only to domestic banks and not to foreign banking operations.

New section 12 (page 7, line 27) is proposed language designed to impose a minimum age requirement of five years on a Kansas bank which is an acquisition target of an out-of-state holding company. This is the only discriminatory provision of the KBHCA which will survive Congress' repeal of the Douglas Amendment and reimposition of the Constitutional constraints posed by the Commerce Clause.

Proposed subsection (a) contains a basic five year limitation. This is the maximum age restriction allowed by Riegle-Neal. Proposed subsection (b) mirrors the approach found in Riegle-Neal with regard to "Shell Banks". This subsection allows the acquisition of a new shell if the shell is created solely for the purpose of affecting the acquisition of a Kansas bank that meets the age requirements test. Proposed subsection (c) provides for an exception to the general rule in an emergency situation. It should be noted that the language used in this section was patterned after a Kansas statute that existed from 1985 until 1990.

Sections 13, 14, & 15 of SB 204 were developed to provide Kansas state chartered banks with the authority to engage in affiliate agency activities for the purpose of performing limited deposit and loan functions. These provisions are designed to provide the same agency authority to state banks that is granted to national banks by subsection 101(d) of Riegle-Neal. It is important to note this authority is limited to agency relationships among affiliated institutions.

In order to effectuate the implementation of this authority it is necessary to add a definition of "depository institution" to K.S.A. 9-701 (page 10, line 43), as well as to include a specific grant of authority in the state bank powers statute, K.S.A. 9-1101 (page 16, line 34). It is also necessary to amend the Kansas branching statute, K.S.A. 9-1111 (page 17, line 9), to insure the state banks' ability to utilize the agency services of one of its affiliates without the activity being considered branching.

An extremely important point to note is that the language used for this grant of authority purposefully mirrors the language in Riegle-Neal. Riegle-Neal's agency authority only extends to national banks. The definitive scope of the activities encompassed by this language is undeterminable at this time. There is no way to know what Congress intended and it is impossible to estimate what type of creative approach will be adopted by the OCC. Therefore, the agency language found in SB 204 which amends 9-1101 at page 16, line 34, is necessary to preserve parity for the state chartered banks in Kansas. Unless the language contained in this bill is adopted, there is a substantial risk that the national banks in Kansas will end up with a significant competitive advantage over the state banks.

Effective Dates: The Senate F.I. & I. committee requested this agency provide recommendations regarding the appropriate effective dates of the specific sections of this bill. The recommendation submitted was for sections 1 through 10, which are the proposed amendments to the KBHCA, become effective September 29, 1995 to coincide with the enactment of the interstate banking provisions of Riegle-Neal. It was also recommended the balance of the bill become effective upon publication

in the Kansas Register. It is the position of this agency that it was the intention of the Senate committee to adopt these recommended dates, however the dates were inadvertently switched, so sections 1 through 10 are scheduled to become effective upon publication and the remainder of the bill to become effective on September 29, 1995. This in effect would implement nationwide interstate banking in Kansas this spring while postponing the age limitation and other provisions of the bill until September. It is requested that this committee adopt the original recommendation of the department by amending the bill to reverse the effective dates.

Community Bankers Association of Kansas

Testimony before the House
Committee on Financial Institutions and Insurance
Tuesday, March 7, 1995
Subject: Senate Bill 204

Thank you Mr. Chairman and members of the Committee for the opportunity to appear on the subject of Senate Bill 204.

My name is Sue Anderson and I am Executive Director of the Community Bankers Association of Kansas. Three of our members are currently serving on Bank Commissioner Dunnick's Task Force on Interstate Banking.

While serving on the Task Force, our representatives have had the opportunity to offer input into the elements comprising the bill before you. It is our firm belief that each state must take every avenue left available to us to establish reasonable parameters of the banking business that will be conducted in our State. The Reigle-Neal Interstate Banking and Branching Efficiency Act of 1994 clearly leaves certain options left to state legislatures to decide. To that regard, we urge you to establish state powers.

The Banking Department has done a good job of identifying the issues in which the State does have the power to establish guidelines in order to be prepared for the commencement of nationwide banking by September 1995.

Along with the guidelines and requiements established by SB 204, we believe the state will want to be aware of what financial entities are doing business in the state and under what circumstances.

House FI&I
Attachment 2
March 7, 1995

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We have particular concern regarding the agent relationship defined in the Reigle-Neal Interstate Banking law, since this type of affiliation may be very attractive until such time as the legislature decides how Kansas will treat the issue of interstate branching. It is therefore important to add some guidelines into the statute to establish a notification process.

We therefore submit an amendment to Senate Bill 204 which will require notification to the Bank Commissioner within 30 days of the establishment or termination of an agent relationship between bank holding companies and state chartered subsidiaries.

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missioner;

(vi) the cash surrender value of life insurance policies purchased for the sole purpose of providing deferred compensation and benefit plans, in the aggregate from all companies, cannot at any time exceed 25% of the bank's capital stock, surplus, undivided profits, loan loss reserve, capital notes and debentures and reserve for contingency, unless the bank has obtained the prior approval of the state bank commissioner; and

(vii) the present value of the projected cash flow from the policy must not substantially exceed the present value of the projected cost of the deferred compensation or benefit program liabilities;

(26) to make loans to the bank's stockholders or the stockholders of the bank's controlling bank holding company on the security of the shares of the bank or shares of the bank's controlling bank holding company, with the limitation that this may occur only if the bank would have extended credit to such stockholder on exactly the same terms without the shares pledged as collateral, and provided the shares pledged are not a director's qualifying shares per K.S.A. 9-1117, and amendments thereto; ~~and~~

(27) to make investments in and loans to community development corporations (CDCs) and community development projects (CD projects) as defined in K.S.A. 9-701 and amendments thereto, subject to the limitations prescribed by the comptroller of the currency as interpreted by rules and regulations which shall be adopted by the state bank commissioner as provided by K.S.A. 9-1713 and amendments thereto~~.~~; *and*

(28) subject to such rules and regulations as the state bank commissioner may adopt pursuant to K.S.A. 9-1713 and amendments thereto to promote safe and sound banking practices, to act as an agent and receive deposits, renew time deposits, close loans, service loans, and receive payments on loans and other obligations for any company which is a subsidiary, as defined in subsection (d) of K.S.A. 9-519 and amendments thereto of the bank holding company which owns the bank. Nothing in this subsection shall authorize a bank to conduct activities as an agent which the bank or the subsidiary would be prohibited from conducting as a principle under any applicable federal or state law.

Any bank which enters or terminates any agreement pursuant to this subsection shall within 30 days of the effective date of the agreement or termination provide written notification to the commissioner which details all parties involved and services to be performed or terminated.

Sec. 15. K.S.A. 1994 Supp. 9-1111 is hereby amended to read as follows: 9-1111. The general business of every bank shall be transacted at the place of business specified in its certificate of authority and at one or more branch banks established and operated as provided in this section. Except for the establishment or operation of a trust branch bank or the relocation of an existing trust branch bank pursuant to K.S.A. 1994 Supp 9-1135 *and amendments thereto*, it shall be unlawful for any bank to establish and operate any branch bank or relocate an existing branch bank except as hereinafter provided. *Notwithstanding the provisions of*