Approved: March 15, 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 9, 1995 in Room 527S of the Capitol.

All members were present except: Representative Jene Vickery

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

Conferees appearing before the committee: Brad Bergman, Midwest Trust, Prairie Village
Eugene Allison, Topeka
Dr. Walter Langston, Louisburg
William Q. Martin, KS Bar Assoc, Smith Center
Austen Nothern, Topeka Bar Association
Daryl Craft, Guardian Trust
Randy Rush, KBA Trust Division
John Smith, Division of Credit Unions
Henry Dyhouse, US Central Credit Union
Danielle Noe, Kansas Credit Union Association

Others attending: See attached list

Hearing on SB 274--Removal of trustees and appointment of successors

Brad Bergman, Midwest Trust of Prairie Village, spoke in support of the bill which would expand the consumer's rights to choose their trust departments (Attachment 1). Banks and trust departments are being sold to larger and sometimes out-of-state banks and the original trustee no longer exists. Bank shareholders have the right to choose who they sell to and this would give beneficiaries the same opportunity. This bill would allow trust beneficiaries to change them with a judge's permission thus assuring the trust was not being moved for the wrong reasons. Mr. Bergman said an amendment forbidding such a change could be added if a discretionary distribution of the trust had been requested within a certain time period.

Committee members expressed concern that the original intent of the grantor might not be followed if such changes were possible. It remains unclear from the bill whether it applies only to corporate situations or if individuals acting as trustees could be replaced also. Bank inventories (including trust departments) are part of the purchase price when they are bought by other banks and would be considered as part of the future income of the bank. The limitation of excessive termination fees is also addressed in the bill. Excessive fees are described as 1 to 2% of the total trust for termination which is more than a year's fees for administration of the trust.

Affidavits from Charlotte A. McClenaghan and Donna Bosse Robertson requesting legislation which would allow theme to select their own trustee were entered into the record.

Eugene Allison, Topeka, described to the Committee the problems he has had with a bank regarding a non-marital trust (Attachment 2). Conflict of interest has been a problem. All other banking interests have been moved from the bank in question, but the bank refuses to allow the non-marital trust to move because no provisions were set out for naming a successor trustee. Most traditional forms used in establishing trusts do not contain a provision to remove the trustee or name a successor trustee.

Dr. Walter Langston of Louisburg reiterated a similar situation due to the use of the bank's will forms when the non-martial trust established by his wife was designed (Attachment 3). Changes in the trust department prompted Dr. Langston to move his other trust accounts but the bank will neither resign nor allow the removal of the trust to the current trustee of his other accounts. A 1% termination fee would be charged if such removal should occur.

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE, Room 527S-Statehouse, at 9:00 a.m. on March 9, 1995.

Bill Martin, General Counsel for the Smith County State Bank and Trust Company, Smith Center, Kansas, appeared on behalf of the Probate and Trust Section of the Kansas Bar Association (Attachment 4). The Bar Association is opposed to the provisions of the bill for the following reasons:

1. Current version of statute is effective to protect trust assets. Bill allows petitioning for removal of "bad" trustee.

2. Bill would weaken ability of grantor to control and safeguard trust assets. Would allow beneficiaries to shop for any trustee who will follow his or her desires and have the original trustee removed in case of "adverse" relationship.

3. Bill would override any express directions of the grantor as to required qualifications of the successor trustee.

4. Bill would alter centuries of trust law. Trust assets are not owned nor is it the property of beneficiary.

5. Grantor is free to provide liberal trustee removal provisions to the beneficiary by elective drafting of a "trust removal provision" at the time of establishment of trust by an attorney.

6. Bill is presented solely by a special interest group from Johnson County. Principals in a recently established trust company are attempting to have existing trust beneficiaries gain the power to remove an existing trustee and name this specific trust company as successor trustee.

Austin Nothern appeared on behalf of the Topeka Bar Association which does not favor the bill (Attachment 13). It is extremely important that trustees be independent of beneficiaries as they are selected to act by the grantor. The actions of the trustees may not always please the beneficiaries and this would be a shift of power to the beneficiary. There are occasions when banks with trust departments offer better loan rates, etc., when all banking business including trusts is brought under one roof. The following reasons were given for opposition:

1. It would erode the independence and integrity of the trustee.

2. The bill overrides and thwarts the grantor's intent.

3. The bill provides no effective representation for minor or residual beneficiaries.

Craig R. McKinney, Chairman of the Topeka Bar Association Probate Committee, submitted written testimony in opposition to the bill (Attachment 5).

Daryl V. Craft, President of the Guardian Trust Company, testified in opposition to the bill (Attachment 6). There is no problem with the portability issue but the disagreement is with limiting transfer or termination fees. It might act to establish a "target" fee which actually may be higher than what could or should otherwise be charged.

Randall Rush, President of the Kansas Banker's Association Trust Division, stated that the legislation would only affect irrevocable trusts (Attachment 7). Their opposition is based on the following reasons:

1. The term "adversely" is too broad and open to interpretation which may be contrary to the purposes and intent of the trust. Recommend using "affected to such a degree that the purpose and intent of the trust has been severely jeopardized."

2. Overrides the grant's written direction in the trust document which may require certain qualification of a successor trustee. Recommends court follow provisions in the trust specifying the identity or qualifications of a successor trustee.

3. The language limiting exit, transfer or termination fees may preclude a trustee from receiving legitimate and well earned fees. Recommend adding language which would entitle trustee to receive its normal and usual fees for the administration, management and estate settlement of the trust or other fiduciary account up to the date of the termination or transfer of the account in addition to the exit, transfer, or termination fees.

Hearing on SB 31--Credit unions, regulatory authority of administrator

John P. Smith, Division of Credit Unions, reviewed the proposed amendments to Kansas credit union laws and the regulatory authority of the Credit Union Administrator (Attachment 8). The bill would allow a corporate credit union to provide in its bylaws for a class or classes of associate members which would have all rights of membership in the corporate credit union except the right to vote.

Henry Dyhouse, U.S. Central Credit Union which is a state chartered corporate credit union located in Overland Park, appeared in support (Attachment 9). This is a $19 billion credit union comprised of out of state credit unions. Since corporate credit unions serve other credit unions and their affiliates, it is possible that the one member one vote rule could be distorted by a corporate credit union and its several affiliates by each having voting membership in the corporate central credit union. Authorization to create classes of nonvoting members with the approval of the state Administrator would prevent problems associated with disparate voting power.

Danielle Noe, Governmental Affairs Director for the Kansas Credit Union Association, stated their support of the bill which grants regulatory authority for the Credit Union Administrator (Attachment 10). The bill would also guarantee that procedures are followed during the rule making process. All credit unions would have the opportunity to make comments prior to the regulations taking effect.

The Committee discussed the possibility of this bill serving a particular interest group and questioned if the bill would really be in the best interest of all the people served. The option of removing Section 4 of the bill was discussed and it was determined that if the law met with opposition, it could be amended out next year. John Smith, Credit Union Administrator, reminded the Committee that all Kansas credit union corporations do not have to exercise the option of having members who do not have the one member one vote rule.

Representative Merritt moved to report the bill adversely and later withdrew his motion.

Representative Smith moved to report the bill favorably. Motion was seconded by Representative Landwehr. Motion carried.

Hearing on SB 32--Requiring background checks for employees of state department of credit unions

John P. Smith, Division of Credit Unions, stated that the amendment would assist in ensuring that future employees of the credit union department have not been convicted of crimes that would render them unsuitable for employment in a position requiring physical presence in a credit union where cash and negotiable items are available (Attachment 8).

Representative Donovan moved to report the bill favorably. The motion was seconded by Representative Merritt. Motion carried.

Hearing on SB 33--Payment to share accounts by nonmembers

John P. Smith, Division of Credit Unions, explained that this amendment would provide authority for the administrator to promulgate rules and regulations to allow credit unions that have been designated as low income credit unions to accept payments to share accounts by non-members (Attachment 8). Two such credit unions are being developed in Kansas, one in Coffeyville and one in the Wichita area.

Danielle Noe, Kansas Credit Union Association, presented written testimony only (Attachment 11).

Written testimony was presented by Randy Hershey, Community Development Credit Union of Sedgwick County (Attachment 12).

Representative Sawyer moved to report the bill favorably. The motion was seconded by Representative Smith. Motion carried.

The meeting adjourned at 5:15 p.m. The next meeting is scheduled for March 13, 1995.

HOUSE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE GUEST LIST

DATE: 3/9/95

NAME	REPRESENTING
Kathy Taylor	KS Bankers
Brad Bergman	Midwest Trust
Mark Allison	Midwest Trust
Eugene Allison	Myself
Walt Langston	myself
Chuck Stones	KBA
John Peterson	Fourth Financial
Jim Maag	KBA
Nadia esquivel	tom sawyer
Virgielle Noe	KCUA & KCCU
George Barbee	Barbee & Associates.
Austin Nathem	Topeka Bar Assoc
Roger Hayzlett	FFC
William O. Martin J.	KANSAS BAR ASSOCIATION
Carol A Gale	The Guardian TRUST Company
Randy Rush	KBA Trust Division
Dean Hutsons	KBA Trust Division
John P. Lonsid	KS STATE Dept credit unions
Henry M. Dykhouse	U.S. Central Credit Union

March 9, 1995

Statement In Support Of Senate Bill 274

My name is Brad Bergman. I am President of Midwest Trust Company. I am speaking in support of SB274 to expand the rights of consumers to choose their trust department.

The last couple of years have brought tremendous changes in the banking market. Of the ten largest trust department in Johnson County five years ago, I believe every one has had a substantial change of ownership. We face the prospect of even more changes in the future. Often the acquiring entity has a different attitude about trust departments or customer service in general.

We believe the beneficiaries of trusts should be able to choose their trustees just as shareholders get to choose who to sell to (thus determining who will be trustee). We are not wanting to promote trust beneficiaries jumping around but if their bank has changed and the original trustee no longer exists why not let them change with a judge's permission. I believe the judge can protect the trust in circumstances where someone wants to move for the wrong reasons. Also, it's important to limit fees for people who move their trusts. A Shawnee County judge has ruled that excessive termination fees are improper for transferring a trust to a successor and this bill will limit these as well.

This bill is good for Kansas consumers particularity older Kansas who utilize trust services most. They can choose "hometown" trust departments with people they know as a comfort to them in a time of tremendous change.

Thank you,

Bradley A. Bergman

Financial Inst & Ins
Attachment 1
3-9-95

AFFIDAVIT

My name is Charlotte A. McClenaghan and I have lived in Kansas nearly all my life. I am giving this affidavit to support legislation to make it easier to change trustees.

My husband and I operated our business together and built up our assets over our nearly fifty years of marriage. We set up two trusts for each of us at Overland Park State Bank. Pete subsequently died on December 9, 1992. Overland Park State Bank was acquired in 1993. I have moved my trusts to another institution but have not been able to move one of my husband's trusts. Furthermore, I am faced with the prospect of up to 1% in transfer fees to move it. My two children support my desire to move, and my attorney and accountant and investment advisor concur.

Please give me the opportunity to make decisions in the best interest of my family. The bank we named as trustee no longer exists. We know what is best for us and Pete and I never discussed requirements for successor trustees when we set up our trusts. We thought the bank would stay unchanged while we needed it. Let me choose our own trust department now.

Charlotte A. McClenaghan

The foregoing instrument was acknowledged before me this 7th day of March, 1995 by Charlotte A. McClenaghan.

NOTARY PUBLIC STATE OF KANSAS
MARILYN WEHR
My Appt. Exp. 10/8/96

Notary Public

1-2

AFFIDAVIT

STATE OF KANSAS,
SS:
ATCHISON COUNTY,

Before me, the undersigned, on this day personally appeared DONNA BOSSE ROBERTSON, who is known to me, and whose name is subscribed to the annexed or foregoing instrument in her respective capacity, and being by me first duly sworn, said DONNA BOSSE ROBERTSON declared to me in my presence that said instrument, willingly made and executed as DONNA BOSSE ROBERTSON'S free and voluntary act and deed for the purposes herein expressed:

My name is Donna Bosse Robertson. I am a resident of Atchison, Kansas, and have been a resident of Kansas ally my life.

My late husband, Frank K. Bosse created trusts for the benefit of our three children and also one for me. The trusts were set up at Exchange National Bank in Atchison, Kansas, and were subsequently moved to Kansas Trust Company. Kansas Trust Company was then wholly owned by MidAmerican Bancorporation of Lawrence, Kansas, and was acquired by Mercantile Bancorporation of St. Louis, Missouri in 1993. My children and I have asked the trustee to resign so our family can move the accounts. Because my husband's trust has no provision to remove the trustee, we have been unable to transfer the account to a trustee of our choice because the current trustee, who was not originally selected by my late husband, refuses to resign. There is a provision to appoint a successor trustee should the current trustee resign or refuse to fulfil their duties.

Please give me and my children the ability to do what we think is in the best interest of our family. We no longer know the trust

officer or the bank that is handling our trusts and feel that we should have the right to select our own trustee.

Thank you for your consideration of this important matter.

Donna Bosse Robertson
DONNA BOSSE ROBERTSON

STATE OF KANSAS,)
) ss.
COUNTY OF ATCHISON)

The foregoing instrument was subscribed and sworn before me this 8th day of March, 1995, by DONNA BOSSE ROBERTSON.

Deana Kneer
NOTARY PUBLIC

NOTARY PUBLIC - State of Kansas
DEANA KNEER
My Appt. Exp. 10-18-98

March 9, 1995

Statement In Support Of Senate Bill 274

My name is Eugene Allison. I have lived in Kansas all my life and so did my wife, Virginia. We had a lifelong banking relationship with the First National Bank of Topeka. In 1968, my wife executed a will, and I consented, naming the bank as trustee of a non-marital trust. Our attorney told us this was good tax planning.

My wife, Virginia, died in 1974 and a non-marital trust for the benefit of my sons and I was created with the bank as trustee. Not long thereafter, we had to threaten to sue the bank for breach of fiduciary duty due to a conflict of interest. Although that matter was subsequently settled, all the other family business was moved. Then, several years later, the bank was sold and our relationship with it continued to deteriorate.

Virginia and I never dreamed that the bank would be sold and we never discussed a successor trustee with our attorney. Her will did not contain any provision for removing a trustee or naming a new one. And to this day, the bank has consistently refused to allow the non-marital trust to move. Give my sons and I the opportunity to pick our successor trustee just as the shareholders did when they decided to sell to a big out of town organization. It's only fair!

Thank you.

Eugene Allison

House FI&D
Attachment 2
3-9-95

March 9, 1995

Statement In Support Of Senate Bill 274

My name is Dr. C. Walter Langston. I have lived in Kansas throughout my adult life and I built my business, Langston Labs, Inc., which became Pace Laboratories, over many years. And when I sold it, I placed $600,000 in my wife's name for estate planning purposes. We executed wills naming a bank in the Kansas City area as trustee. My wife contracted cancer and died in 1989. Under her will, $600,000 was placed into a non-marital trust at the bank. Changes in the trust department prompted me in 1994 to move my other trust accounts, but I cannot get the bank to resign or allow me to move the non-marital trust to the current trustee of my other accounts. Furthermore, the bank will take a 1% termination fee (almost $6,000) if I transfer. My wife and I did not discuss qualifications of successor trustee's with our attorney, but instead just used the bank's will forms.

My daughters and I are the only beneficiaries and we feel it's crazy not to be able to change trustees, and this bill would let us decide what's best for our family. Please give Kansans, particularly older Kansans, freedom of choice. With all these bank mergers going on, we can decide which trust department is best for us.

Thank you

Dr. C. Walter Langston

Senate Fin.
Attachment 3
3-9-95

KANSAS BAR ASSOCIATION

1200 SW Harrison St.
P.O. Box 1037
Topeka, Kansas 66601-1037
Telephone (913) 234-5696
FAX (913) 234-3813

TESTIMONY OF WILLIAM Q. MARTIN, JR.

General Counsel

The Smith County State Bank & Trust Company
136 S. Main
Smith Center, Kansas 66967
(913) 282-6682

March 9, 1995
3:30 p.m.

To: *House Committee on Financial Institutions and Insurance*
Rep. Bill Bryant, Chair

Re: Senate Bill 274

Good afternoon:

My name is Bill Martin. I am General Counsel for The Smith County State Bank & Trust Company, Smith Center, Kansas. I currently serve as President-Elect of the Executive Committee of the Real Estate, Probate and Trust Section of the Kansas Bar Association and my appearance today is at the request and on behalf of the Kansas Bar Association.

The following divisions of the Kansas Bar Association have reviewed the proposed legislation and taken a position against Senate Bill 274: The Board of Governors of the Kansas Bar Association, the Legislative Committee of the Kansas Bar Association and the Executive Committee of the Real Estate, Probate and Trust Section of the Kansas Bar Association.

I handle tax and legal matters that affect trusts and wills for which The Smith County State Bank & Trust Company serves in a fiduciary capacity. In my position, I also direct, review and administer assets and investments held by The Smith County State Bank & Trust Company as a trustee or other fiduciary position.

Senate Bill 274 proposes legislation that would substantially amend the provisions of K.S.A. 58-2412.

The current language of K.S.A. 58-2412 provides the court the discretion to remove a trustee if there has been:

(a) a violation of trust, or
(b) the insolvency of the trustee, or any surety, or
(c) "for other cause".

House F I & I
Attachment 4
3-9-95

The terms of Senate Bill 274 would drastically alter the scope of this statue by granting any beneficiary the power to Petition the court requesting that a trustee be removed and another trustee be appointed in the event there would be a change of control of the corporate trustee; furthermore, in the event the court would remove the trustee and appoint a successor trustee, any limitation provided by the trust grantor as to the qualifications of the successor trustee, would be void and of no effect.

The Kansas Bar Association is opposed to the provisions of Senate Bill 274 for the following reasons:

1. **Current version of statute is effective to protect trust assets.** K.S.A. 58-2412 allows any interested person to petition the court to remove a "bad" trustee. The language which allows the court to remove a trustee for "cause" is broad enough to assure the trust assets are protected in the manner envisioned by the trust grantor.

2. **Bill would weaken ability of grantor to control and safeguard trust assets.** The terms of Senate Bill 274 would allow beneficiaries to shop for any trustee in the event an "adverse" relationship could be shown to exist between the existing trustee and the beneficiary and any change of control of the trustee would exist. From a practical standpoint, there always is an "adverse" relationship between the trustee and any beneficiary; that is, the trustee has a duty to follow the directives and intent of the grantor as stated in the document, while the beneficiary wants access to the income or principal of the trust estate. The proposed legislation would provide the trust beneficiary with the ability to find a trustee who will follow his or her desires and have the original trustee removed under the guise of the relationship being "adversely affected."

3. **Bill would override any express directions of the grantor as to required qualifications of the successor trustee.** The bill contains language that would allow the court to appoint any successor trustee even if that proposed successor trustee would not meet any of the stated requirements in the trust instrument as to the identity of that successor trustee. It is often the desire of the trust grantor (often after counsel from the trust scrivener) to assure any trustee has "deep pockets" so the trust assets are protected in the event of a loss in the value of trust assets due to malfeasance or misfeasance on the part of the trustee. Therefore, trust instruments sometimes contain a requirement that any successor trustee have a certain number of full time trust officers, a certain amount of trust assets under management, or a threshold amount of capital.

4. **Bill would alter centuries of trust law.** The intent and desires of the trust grantor has been paramount in public policy considerations as to how the trust instrument should be construed. The trust assets are not "owned" or the "property" of the trust beneficiary, rather the trustee is charged with the legal duty to safeguard the trust assets as directed by the grantor with the trustee to provide for the beneficiary as the terms of the instrument may provide. Granting the beneficiary the power to alter the trustee would change this crucial element of trust law which has existed for centuries since trust development under English common law.

5. **Grantor is free to provide liberal trustee removal provisions to the beneficiary by elective drafting.** In the event a trust grantor is concerned about the need to allow the beneficiary to remove a trustee for certain reasons, any trust document may be drafted to provide for a "trustee removal provision" that would accomplish the goal of this legislation. However, if the grantor did not provide such removal language, or directed any successor trustee meet certain standard of identity, then the express and stated intent of the grantor should be upheld and respected.

6. **Bill is presented solely by a Special Interest Group.** This proposed legislation has been drafted and presented for passage by principals in a trust company of recent origin for the sole purpose of attempting to have existing trust beneficiaries gain the power to remove an existing trustee and name this specific trust company as successor trustee. The Kansas Bar Association submits that it is not good public policy to enact such legislation that could affect many trusts and which would be specifically tailored to benefit a limited special interest group.

On behalf of the Kansas Bar Association, I am opposed to the enactment of Senate Bill 274.

Thank you.

William Q. Martin, Jr.

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SUITE 517
TOPEKA, KANSAS 66603-3823

E. GENE McKINNEY
CRAIG R. McKINNEY

TELEPHONE (913) 233-1321
FAX (913) 233-6850

March 8, 1995

The Honorable Bill Bryant
300 S.W. 10th Street, Room 112S
Topeka, Kansas 66612-1504

Re: Successor Trustee Bill, S.B. 274

Dear Representative Bryant:

I am writing this letter as Chairman of the Topeka Bar Association Probate Committee and on behalf of that committee.

On December 8, 1994, our committee met, and all members present unanimously opposed the above bill as it was explained to them by member, Nancy Goodall.

Very truly yours,

Craig R. McKinney

CRM/tbc

House Jud.
Attachment 5
3-9-95

THE
GUARDIAN
TRUST
COMPANY · 707 Quincy, Suite 200 - P.O. Box 2127 - Topeka, Kansas 66601

TESTIMONY AGAINST SENATE BILL 274

from Daryl V. Craft, President
The Guardian Trust Company

Ladies and gentlemen, my name is Daryl Craft. I am the co-founder and President of The Guardian Trust Company, here in Topeka. My credentials include nine years on the board of directors of the Kansas Bankers Association Trust Division, including one year as President and my current position as regulator liaison; and my recent election as the national legislation director for the Association of Independent Trust Companies.

Today I am here to testify in opposition to Senate Bill 274. While I generally favor the "portability" issue for trust accounts which this bill addresses, I have serious concerns regarding Section (d). This section attempts to place limits on transfer or termination fees. Instead, I believe that in many cases it will act to establish a "target" fee which actually may be higher than what could or should otherwise be charged.

The taking of fees by a trustee is currently regulated by statute, case law and common law. That a trustee may not enrich itself unreasonably at the expense of a trust beneficiary is a fact of law so accepted as to be incontrovertible. "Once such fiduciary relationship is established, the duties of utmost fidelity and good faith apply to the fiduciary", Henderson V. Hassur, 225 Kan. 678 (1979). "One of these duties would be to only seek reasonable compensation", Achenbach v. Baker, 154 Kan. 252 (1941).

Hause F I & D
Attachment 6
3-9-95

Asset Management and Trust Services

(913) 234-8822 - Fax (913) 234-2217

Perhaps the most outrageous case of trustee abuse regarding transfer fees, ever reported in Kansas, took place several years ago in Topeka. In ruling on the case in 1993, Shawnee County District Court Judge Franklin R. Theis found no need for new legislation. Rather, he concluded that existing statutes and case law were more than adequate to determine whether or not a transfer or termination fee was reasonable, and to provide relief to trust beneficiaries when the taking of such a fee was deemed unreasonable.

In his opinion, he concluded that "time and expense would be the underlying consideration" to calculate a transfer fee. "(I)f a fee were to be charged it would be substantially founded on a time and expense to be incurred basis." "Undoubtedly, entry into a trust or agency account relationship with a fiduciary institution where a high exit fee is permitted or could be threatened would discourage the termination of such trusts or agency accounts or their move to other institutions." "To wholly fail to consider the time and effort needed to transfer such trusts or agency accounts in the face of the text of the authority cited for their assessment without notice or accounting was itself so recklessly self interested as to warrant full sanction of the conduct." "The correct, fair, just and reasonable fees for the services performed by defendant for each agency account or trust is reflected by multiplying the hours necessary to make such transfer times the average hourly rate."

The substance of Judge Theis' opinion is that there must be a reasonable basis for transfer fees taken. That basis must be able to be quantified, and one measurement would be hours worked times an hourly rate. The language in Senate Bill 274, Section (d) does away with any relationship between the work required to complete the transfer and the fee charged. Instead, it codifies a percentage fee for transfers, something which our courts have been moving away from.

Let me give you a specific example of the potential inequity the proposed Section (d) might create. Please refer to the Addendum for the various fact situations.

Trust A - to transfer the stock would take five letters plus certified postage and mail insurance. The certificates would require two letters to be written. A check would be written to close the money market account. Assume administrative time 2-4 hours.

Total time to transfer: 5-8 hours * $50/hr (administrative/ clerical blend) = $250/400
Compare with three month fee of $400

Trust B - to transfer stock would require either one letter, one phone call or 5-10 minutes at a computer terminal. The certificates would require two letters to be written. A check would close the money market account. Assume administrative time 2-4 hours.

Total time to transfer: 3-5 hours * $50/hr = $150/250
Compare with three month fee of $400

Trust C - to transfer stock would require either one letter, one phone call or 5-10 minutes at a computer terminal. The certificates would require two letters to be written. A check would close the money market account. Assume administrative time 2-4 hours.

Total time to transfer: 3-5 hours * $50/hr = $150/250
Compare with three month fee of $1,000

Trust D - to transfer stock would require either one letter, one phone call or 15-20 minutes at a computer terminal. The certificates would require four letters to be written. A check would close the money market account. Assume administrative time 2-4 hours.

Total time to transfer: 4-6 hours * $50/hr = $200/300
Compare with three month fee of $1,813

Trust E - to transfer stock would require 20 letters plus certified postage and mail insurance. The certificates would require 6 letters to be written. A review would be completed of real estate files, real estate insurance, leases, and perhaps an onsite inspection. A deed would be prepared and recorded. Change of beneficiary forms might need to be filed for the insurance policies, requiring at least three letters. A check would close the money market account. Assume administrative time 2-4 hours.

Total time to transfer: 18-25 hours * $50/hr = $900/1,250
Compare with three month fee of $1,813

You can see that the work involved to transfer a trust can vary between trusts of the same size. You will also note that a larger trust does not necessarily need more time to be transferred, or certainly not more time in proportion to the trust size. Also, the types of assets held, and how they are held, can affect dramatically the time needed to complete a transfer.

Section (d) of Senate Bill 274 would change the method by which Kansas courts have determined that trust transfer fees should be calculated. Adoption of this section would do away with the reasonableness standard that currently governs these transactions. Sufficient remedies currently exist for any beneficiary who feels he or she has been overcharged.

I strongly urge you to delete Section (d) from Senate Bill 274!

Addendum

Trust A

$100,000
5 stocks (certificate form)
2 certificates of deposit
1 money market account
quarterly fee $400

Trust B

$100,000
5 stocks (book entry form)
2 certificates of deposit
1 money market account
quarterly fee $400

Trust C

$500,000
5 stocks (book entry form)
2 certificates of deposit
1 money market account
quarterly fee $1,000

Trust D

$1,000,000
10 stocks (book entry form)
4 certificates of deposit
1 money market account
quarterly fee $1,813

Trust E

$1,000,000
20 stocks (certificate form)
6 certificates of deposit
2 parcels real estate
1 money market account
3 insurance policies
quarterly fee $1,813

TESTIMONY OF RANDALL B. RUSH
President

THE KANSAS BANKER'S ASSOCIATION TRUST DIVISION
800 S.W. Jackson
Topeka, KS 66612

March 9, 1995

TO: House Committee on Financial Institutions and Insurance
Bill Bryant, Chair

RE: Senate Bill No. 274

Good Afternoon:

My name is Randy Rush. I am currently Executive Vice President and Senior Trust Officer for The Smith County State Bank & Trust Company, Smith Center, Kansas. My appearance today is as President of the Kansas Banker's Association Trust Division and at the request and on behalf of the Kansas Bankers Association Trust Division.

Senate Bill 274 proposes legislation to provide for the appointment of a successor trustee when the trustee's relationship with the beneficiaries has adversely been affected by a transfer of control, change of management or transfer of the principal office location of a corporate trustee. In addition, the language of the bill overrides a settlor's direction of qualifications regarding the identity of a newly appointed successor trustee and sets a limit on an exit, transfer, or termination fee for the transfer to a successor fiduciary.

Background:

It is important to understand the type of trusts Senate Bill 274 will affect. This bill will apply only to those trusts that are irrevocable. Revocable living trusts are not affected since the grantor or settlor is still living and they may add to, change, modify or terminate a trust as long as they have the capacity to do so. This means that they have the ability to change their present trustee. Trusts most commonly become irrevocable at the time of the death of the grantor or settlor of the trust.

The KBA Trust Division is opposed to Senate Bill 274. More specifically we oppose the bill for the following reasons:

1) The term "adversely" is too broad and open to interpretation which may produce a result that is contrary to the purposes and intent of the trust.
2) Senate Bill 274 completely overrides the grantor's written direction in their trust document which may require certain qualifications of a successor trustee. This language is not necessary or needed in the bill and goes against the express wishes of the grantor.
3) The language limiting the exit, transfer or termination fees may preclude a trustee from receiving legitimate and well earned fees.

Attachment 1
3-9-95

Broad Language

The Trust Division is concerned about the broad language which defines the cause for removal as an "adverse relationship." This language may lead to the removal of an otherwise qualified trustee. As mentioned previously, this legislation deals only with trusts that are irrevocable. It is important to understand that the grantor (often the parents) could have given their property (not the property of the beneficiaries) outright to the beneficiaries but for some reason or reasons chose not to. Instead, the parents chose to have the property managed by a trustee subject to their directions contained in the trust document. The very nature of these trusts can cause the relationship with the trustee to be "adversarial". The trustee is directed to carrying out the duties given it by the grantor whereas these actions may not be to the beneficiaries liking.

Consequently, this language should not be used to justify the cause for removal of a trustee. The Trust Division recommends that the language in (c)(3) read as follows:

> (3) the proper administration of the trust and the trustee's relationship with the beneficiaries ~~have~~ *has* been ~~adversely~~ affected *to such a degree that the purpose and intent of the trust has been severely jeopardized* by a transfer of control, change of trust management or transfer of the principal office location for the delivery of trustee services of a corporate trustee.

Successor Trustee Qualifications

The appointment of a successor trustee *"regardless of the existence of any limitation in the trust instrument regarding the identity or qualifications of a successor trustee"* should not be included in this bill. Striking this language from the bill still allows the court to remove a trustee and appoint a successor trustee who has the qualifications desired by the grantor. The purpose of this language appears to be entirely special interest. The intent is to allow trust companies who otherwise would not qualify as a trustee for certain new trusts, to now qualify by overriding the grantor's desires for successor trustee qualifications.

The Trust Division thinks this portion of the bill in unnecessary and should be stricken from the bill. However, if a form of this language needs to be included, we would suggest the following language:

. . . regardless of the absence of any provision in the trust instrument for removal of trustee or appointment of successor trustee ~~or the existence of any limitation in the trust instrument regarding the identity or qualifications of a successor trustee.~~ *The court, in making such appointment, shall follow any provisions in the trust instrument specifying the identity or qualifications of a successor trustee, unless the Court deems such provisions to be unreasonable.* For this purpose, . . .

Exit, Transfer or Termination Fees

The intent of this section is to limit the fees trustees can charge for the transfer of assets a specific amount determined by the statute. The language is vague and may preclude a trustee from receiving legitimate and reasonable fees for their services. There are trust settlement fees and other proper fees that maybe defined as termination fees.

The Trust Division would recommend the following changes to the bill:

Exit, transfer or termination fees for the transfer to a successor fiduciary or distribution to beneficiaries, made under this section, shall not exceed three months' regular trustee's fees plus costs, or other reasonable fees as approved by the court. *In addition to the exit, transfer or termination fees provided for under this section, the trustee shall be entitled to receive its normal and usual fees for the administration, management and estate settlement of the trust or other fiduciary account up to the date of the termination or transfer of the account.*

SEC 2. K.S.A. 59-1704

The language adding trust beneficiaries in Sec. 2 is confusing and difficult to understand. Generally, a trust beneficiary of an irrevocable trust does not have legal ownership of any personal property that can be embezzled or converted. Trusts are written with non-alienation clauses and spendthrift provisions that are used to ensure that trust beneficiaries cannot assign, borrow or pledge trust property. Once again, the language of the bill may not achieve the desired result.

KANSAS JUDICIAL COUNCIL

At the present time, the Kansas Judicial Council is in the process of a comprehensive review of all trust statutes and is working to rewrite the trust statutes into one section much like the probate code section. Rather than pass Senate Bill 274 that contains vague and broad language, produces undesirable results and is of special interest origin, The Kansas Bankers Association Trust Division recommends that this bill <u>not</u> be passed but should be forwarded on to the Kansas Judicial Council for review, study and modification as necessary to support its work in the overhaul of Kansas trust statutes..

On behalf of the Kansas Bankers Association Trust Division, I am <u>opposed</u> to the enactment of Senate Bill 274.

Thank you.

Randall B. Rush

Kansas State Department of Credit Unions

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March 9, 1995

Statement submitted by John P. Smith, Administrator, Kansas State Department of Credit Unions, to the House Financial Institutions and Insurance Committee in support of Senate Bills 31, 32 and 33.

Senate Bill 31

1. The amendment to K.S.A. 17-2204a is a "clean up" item by correcting the referral of K.S.A. 17-2204a(7) to K.S.A. 17-2204a(g). The referral to K.S.A. 17-2204a(7) is incorrect and refers to a statute that was changed from (7) to (g) during the 1992 recodification of credit union statutes. The amendment will correct the oversight and provide the correct referral.

2. The amendments to K.S.A. 17-2206 and 17-2211 will provide the administrator authority to promulgate rules and regulations to clarify reporting requirements and plans and programs concerning the safety and soundness of credit unions as may be required by the state credit union department. During 1993 and 1994, the credit union administrator formed a quality improvement team of credit union leaders to review Kansas credit union statutes and the National Credit Union Administration's rules that apply to federally insured state chartered credit unions to determine if adoption of regulations could improve the supervision of Kansas credit unions. Following this review, the quality improvement team requested that the credit union administrator request from the Kansas legislature, regulatory authority for K.S.A. 17-2206 and K.S.A. 17-2211. Adoption of rules and regulations by the administrator will **not** impose additional regulatory burden upon credit unions but will provide the express statutory basis for the state credit union department to promulgate enforceable regulations in such areas as requirements for disaster recovery plans and their implementation and establishing and clarifying audit requirements. The Administrator will use the Kansas Administrative Regulations to develop and implement regulations if Senate Bill 31 is approved.

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hcomtest

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Statement submitted by John P. Smith, Administrator, Kansas State Department of Credit Unions, to the House Financial Institutions and Insurance Committee in support of Senate Bills 31, 32 and 33.

Senate Bill 31(continued)

3. The amendment to K.S.A. 17-2214 will permit a corporate credit union, subject to the positive control of the administrator, to establish one or more classes of non-voting members. This change would allow a corporate credit union to directly provide services to related corporate entities without creating a block of votes in the corporate credit union.

Senate Bill 32

This addition to the credit unions statutes provides authority for a security background check prior to employment of the credit union department employees. The amendment will assist in ensuring that future employees of the credit union department have not been convicted of crimes that would render them unsuitable for employment in a position requiring physical presence in a credit union where cash and negotiable items are available. Language for the amendment was provided by the attorney general's office.

Senate Bill 33

This amendment will add section (o) to K.S.A.17-2204(6) to provide authority for the administrator to promulgate rules and regulations to allow credit unions that have been designated as low income credit unions to accept payments to share accounts by non-members. The revised language incorporates specific wording defining the areas in which the administrator may adopt rules and regulations for low-income credit unions accepting payments to shares from non-members.

Senate Bill 33(continued)

These are:

- the maximum level of non-member shares,
- the use of such shares, and
- the term of such accounts and other requirements to address safety and soundness issues.

The revised language also includes a provision that "non-member account holders do not have the same rights and privileges as members."

The amendment to K.S.A. 17-2231 adds a definition of low income credit union.

> *Low-income credit union means a credit union with a field of membership in which more than one-half earn less than 80% of the national median household income; or the credit union may document that more than 50% of its members make less than 80% of the national average wage.*

Existing state statutes does not allow for payment to shares by non-members or provide authority for the administrator to promulgate rules and regulations governing low income credit unions. Providing for non-member payment to shares and adoption of specific rules and regulations for this type of activity is basic to the success of establishing and maintaining low income credit unions in low wealth and under served communities.

Statement submitted by John P. Smith, Administrator, Kansas State Department of Credit Unions, to the House Financial Institutions and Insurance Committee in support of Senate Bills 31, 32 and 33.

Senate Bill 33(continued)

A non-member share would allow an entity not within the defined field of membership (i.e. banks, non-profit organizations, etc.) to make payments to shares. Non-member shares would be allowed to only those credit unions that receive low income designation.

TESTIMONY ON SB31

AN ACT RELATING TO CREDIT UNIONS

Presented to the

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

March 9, 1995

by

U.S. CENTRAL CREDIT UNION

Mr. Chairman, members of the Committee:

I am Henry Dyhouse, Associate General Counsel of U.S. Central Credit Union.

U.S. Central Credit Union is pleased to testify in support of SB31 which would permit a Kansas Chartered corporate credit union, with the approval of the Kansas Credit Union Administrator, to establish a class of non-voting members. U.S. Central is a Kansas Chartered Corporate Credit Union located in Overland Park, Kansas.

A corporate credit union is a credit union whose primary members are other credit unions. A corporate credit union may also have other credit union related organizations as members. These other organizations include credit union leagues, league service corporations and other credit union service organizations.

U.S. Central is a unique corporate credit union. While other corporate credit unions' primary members are natural person credit unions, U.S. Central's primary members are the other 42 corporate credit unions. U.S. Central's other members include state credit union leagues as well as various national level credit union support organizations and international cooperative financial institutions.

Because of limited resources, or the taxable nature of support businesses, credit unions and their service organizations often find it necessary to pool resources or to establish subsidiary organizations as the structural mechanism for providing services to themselves or other credit unions.

These subsidiary organizations usually prefer to obtain financial services from a corporate credit union. However, where the parent organization is already a member of a corporate, admitting a subsidiary or affiliate which is owned or controlled by a member raises the possibility of one member having more voting power than another member.

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SB31 would allow corporate credit unions to directly serve these types of credit union support organizations without affecting the voting control of the entire membership. We believe that SB31 preserves the democratic control of the corporate credit union and that by requiring approval of the Administrator before a corporate credit union could establish a class of associate members, appropriate flexibility and positive regulatory control is provided to govern the application in the future of non-voting membership status. Accordingly, we support this bill.

Thank you, Mr. Chairman. I would respond to questions at your direction.

Testimony on SB 31
AN ACT concerning credit unions
Presented to the
HOUSE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE
March 9, 1995
by the
KANSAS CREDIT UNION ASSOCIATION

Mr. Chairman and members of the Committee:

I am Danielle Noe, and I am the Governmental Affairs Director for the Kansas Credit Union Association. Our Association represents 166 member credit unions who serve almost 600,000 members.

We are here today in support of SB31 granting additional regulatory authority for the Credit Union Administrator.

We support this bill for two primary reasons. First, this bill would not substantially increase the regulatory burden on credit unions. This bill does not grant a broad based regulatory authority. Instead, it would simply allow the administrator to promulgate rule and regulations relating to information that is currently required.

Second, this bill would guarantee that procedures are followed during the rule making process. Not only would existing requirements become more clear, but it would also mean that all credit unions would have the opportunity to make comments prior to the regulations taking effect. Currently the administrator must use "department policy" and "bulletins" to notify credit unions what types of reports and information will be needed by the department.

We believe that the limited rule and regulation authority in SB31 would strengthen the safety and soundness requirements for Kansas Credit Unions.

Thank you, Mr. Chairman for allowing our association to testify.

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Testimony on SB 33

AN ACT concerning credit unions

Presented to the

HOUSE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

March 9, 1995

by the

KANSAS CREDIT UNION ASSOCIATION

Mr. Chairman and members of the Committee:

I am Danielle Noe, and I am the Governmental Affairs Director for the Kansas Credit Union Association. Our Association represents 166 member credit unions who serve the needs of almost 600,000 members.

We are here today in support of SB 33. This bill would allow a limited number of state chartered credit unions the same opportunities that federally chartered low income credit unions already have.

SB 33 would allow credit unions serving the needs of low income areas to accept nonmember accounts. In order to qualify as a low income credit union, more than one half of the credit union's field of membership must have incomes below 80% of the national median income. Due to the fact that Kansas Credit Unions are federally insured, the credit union would also have to be designated as low income by the National Credit Union Administration (NCUA).

Currently, all federally chartered credit unions who have a low income designation can hold nonmember accounts. In addition to federally chartered low income credit unions, there are approximately 14 other states that have statutes providing for low income

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credit unions.

Potential sources for nonmember accounts include: Banks, Churches, Nonprofit Organizations, Foundations, the Community Development Revolving Loan Program, other Credit Unions, etc.

It is important to note, that nonmember account holders have no ownership interest in the credit union. This means that the nonmember may not be on the board of directors, may not serve on any of the committees, may not vote at annual meetings and cannot influence policy in any way.

The ability to accept nonmember deposits would allow low income credit unions to build an adequate asset base from which to operate and serve their members. In states with laws similar to SB 33, credit unions designated as low income have been able to use those accounts as a base from which to build the credit union; such credit unions historically have not had to rely on those funds once the credit union became established within the community.

Those members who would be served by a low income credit union often have high need for loans or other credit, however, they tend to be cash poor. The average share account balance for a low income credit union member is about one half of that of a regular credit union member.

The importance of having a low income designated credit union reaches beyond simply serving an under served area's financial needs. Credit unions involve the members in the decision making process of the credit union through the boards of directors, credit committees and supervisory committees. The officials serving on the board and the committees are elected by the members and serve in a volunteer capacity. This unique

structure makes credit unions true financial cooperatives.

Today, in Kansas there is one credit union which has received a low income designation from NCUA. This Coffeyville credit union serves about 450 members and has approximately $300,000.00 in assets. Because of this credit union, many members of that community are receiving financial services which were not previously available. This credit union is in the process of applying to the Community Development Revolving Loan Program (CDRLP). Currently, in order to accept funds from the CDRLP, the credit union will have to request a special order be granted by the administrator under the "wild card" provision in the statutes.

Additionally, there is a group in Wichita, who is in the process of forming a low-income (or Community Development) credit union to serve the northeast section of the city. This group is interested in obtaining a state charter for their credit union. However, in order to obtain the benefit of becoming a low-income credit union, they will also have to request that a special order be granted by the Administrator under the "wild card" provisions in the statutes.

The "wild card" provision in the Credit Union Act authorizes our state regulator to issue special orders to allow state chartered credit unions the ability to engage in any activity which federally chartered credit unions can engage in. However, we believe it would be more prudent to include this provision in the statutes. We feel that having specific requirements in the statutes as well as rules and regulations will clarify the credit unions' powers and duties as a low income credit union.

Thank you, Mr. Chairman for allowing our association to testify.

"Low-Income" Credit Union Fact Sheet

What is a "low-income" credit union?

This is a credit union with a special low-income designation by either the National Credit Union Administration (NCUA) or a state credit union regulator. In order to receive the designation, more than one-half of the membership must earn less than 80% of the national median income. (The current national median income is $31,600, which means that more than 50% of the members earn less than $25,300.) A low-income credit union may accept non-member accounts from any other source.

What are non-member accounts?

Non-member accounts are essentially deposits from any individual or entity not within a credit union's approved field of membership. These sources may include the Community Development Revolving Loan Program, banks and other credit unions, churches, foundations, non-profit organizations, and others. The sources of these funds have no ownership interest in the credit union. (This means they cannot serve on the board, vote at an annual meeting, or influence policy in any way.)

Why are low-income credit unions allowed to accept non-member accounts?

Although credit unions typically are allowed to serve only members, low-income credit unions may accept non-member deposits for two primary reasons. These accounts are used to provide loanable funds to members, or for reinvestment purposes to increase earnings.

Credit unions serving in low-wealth communities have greater difficulty building an adequate asset base from which to operate. The greatest demand on these credit unions is for loans to members, yet they are unable to provide these loans without an adequate asset base.

Credit unions in low-wealth communities many times have higher operational costs than their peers. Non-member accounts can become an economical source of funds to generate income, which is the **only** way a credit union can build capital.

Is their a limit on these non-member deposits?

Each credit union regulator (either NCUA or state) can set a maximum limit on these funds. NCUA currently allows the greater of $1.5 million or 20 percent of total shares.

What regulatory responsibilities are imposed on the credit union?

A credit union must put into place a specific business plan outlining the term, usage, and amounts of these non-member accounts. The credit union's regulator will also monitor these situations during their annual examination.

Is there any insurance coverage on these accounts?

As long as NCUA has approved the low-income credit union designation, non-member deposits are insured up to $100,000 per account, just like a member's account.

How prevalent are these non-member accounts in low-income credit unions?

Fourteen states have laws which currently provide for low-income designated credit unions. Twenty-seven states allow some form of non-member accounts. Less than 40% of low-income credit unions currently hold any non-member deposits. These accounts amount to only 15% of their total assets.

Are there any low-income credit unions designated in Kansas?

There is currently only one, Three-C Credit Union in Coffeyville. Three-C Credit Union serves a predominantly minority field of membership within a five-mile radius of Coffeyville. The community itself has a household and per capita income that falls significantly below county, state, and national median income levels.

A potential second low-income credit union is preparing to file a charter to serve the northeast area of the city of Wichita. A credit union serving this area would also meet the definition to receive a low-income designation.

Testimony on SB 33
AN ACT concerning credit unions
March 9, 1995

My name is Randy Hershey, and I serve as chairman of the steering committee for the proposed Community Development Credit Union of Sedgwick County. I appreciate the opportunity to voice my support for the content of Senate Bill 33.

There are two options when chartering a credit union, either a state or a federal charter. It has been the consensus of our group to apply for a state charter, the primary reason for this being the support and assistance we have received from the state department of credit unions. Our credit union will be chartered to serve low-income individuals throughout Sedgwick County. Community minded volunteers together with Inter-Faith Ministries, the Kansas Credit Union Association and several ministers in the targeted start up area have been very instumental in gathering signatures of support and developing a business plan for the proposed low-income credit union.

We feel it would be most beneficial to the credit union and the people it will serve to have an agency closer to home regulate and provide assistance. We believe a greater responsiveness and understanding of the area we are serving would be provided from the state administrative level rather than from the federal level. Of course, it is also our state that has the most to gain from our success.

Low-income credit unions have historically had a difficult time providing loans and other financial services because the financial stress of the areas and individuals they serve provides a membership with a high need for loans and very little initial savings. **Nonmember payment to shares**, in some cases, becomes the only way a credit union can operate and provide the needed financial services to it's members. Low-income areas that rely on pawn shops and check-cashing centers for financial services must be convinced that the credit union is a stable part of the community. **Non-member payment to shares** will allow the credit union the foundation to support its operations, provide education to its volunteer board and committee members, as well as put money back into the community in the form of loans soon after it's doors open.

For-profit financial institutions also can and have benefitted by helping low-income credit union's with non-member payment to shares by receiving CRA credits in return.

The goal of a community development or low-income credit union is to create genuine opportunities for low income area citizens to participate in the economic mainstream of the greater community. A healthy credit union can impliment and foster community self help financial access that will keep more low to moderate income communities' wealth under their own control, increase it's value, and mobilize it in service to their own development.

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A community development credit union's mission is generally to make smaller loans with longer payback periods, while providing more personalized financial planning and advice, with an emphasis on savings programs. These are often the kind of financial services low-income people need the most to advance there economic outlook. These services, however, are not profitable enough for profit institutions to undertake, so often they don't. They also have difficulty granting lower income people loans based on that person's character rather than their credit history, which most people in that income bracket have little or none of, and have small prospect of gaining.

Lending on character is how we came to create a middle class in this country, and it is the only way most low-income people can come by reasonable extended credit. The whole basis for a low-income credit union is to extend credit based in part on a person's reputation and character rather than strictly on rigid financial standards.

Any desire for a better life must be given the essential conditions for such desires to become realized. A sick man desires to be well but cannot become so if he has to live in the street with no access to a doctor or medicine. For the economically unhealthy who desire a better and more secure life and are willing to work for it there still must be access to a doctor that will treat them--that is a lending institution--and there still needs to be the availability of medicine--which in this case is loan capital. A community development credit union is the doctor that has the proper speciality to treat this particular patient--low-income working people. However, the doctor's advice and prescription can only be followed if the medicine is available.

It seems reasonable enough that this state would want to do everything it possibly could to generate economic development within it's decaying communities, whether they be urban or rural, particularly when it can be done with no state funds being called on.

Your support of this legislation will give hard working low-income people an opportunity to have a financial institution that is more suited and more than willing to meet their financial needs and desires for a better future.

Thank you, Mr. Chairman, for allowing this testimony to be submitted.

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March 9, 1995

The Honorable Bill Bryant
Kansas State Capitol
300 SW Tenth Street, Room 112S
Topeka, KS 66612-1504

Re: *Successor Trustee Bill, SB 274*

Dear Representative Bryant and Members of the FI&I Committee:

I am appearing on behalf of the Probate Committee of the Topeka Bar Association, which voted unanimously to oppose SB 274. Briefly, our reasons for opposition to the Bill are:

1. It would erode the independence and integrity of the trustee. It is extremely important that a trustee exercise independent judgment and control, free from threats, coercion or unwarranted influence of a beneficiary. The trustee, standing in the place of the creator of the trust, must make independent decisions concerning discretionary distributions, investment policy, loans to beneficiaries, and sometimes the voting of the stock in closely held corporations. If the standards for removal and replacement of a trustee are loosened, this gives the beneficiary additional power and influence over the trustee, thereby weakening the trustee's independent position. Even though a court ruling is required for removal and replacement, the reasons which would justify the court's action are considerably less than under current law.

Historically, the removal of a trustee has been viewed as a drastic action. The grounds for removal are that the trustee has violated or attempted to violate the terms of the trust or is becoming insolvent. Our Kansas court stated in Jennings v. Murdock, 220 Kan. 182 (1976):

> "the removal of a trustee is a drastic action which should be taken only when the estate is actually endangered and intervention is necessary to save trust property. Further, this is especially true where the trustee is named by the settlor."

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SB 274 would radically change this standard by permitting removal of a trustee when "the proper administration of the trust and the trustee's relationship with the beneficiaries have been adversely affected. . ." This vague standard will permit removal in almost any case since an adverse relationship between the trustee and its beneficiaries is relatively common, and the term "proper administration" is a vague and subjective term. The elimination of any meaningful standards for removal of a trustee will have the practical affect of placing the removal in the hands of the beneficiaries. Few trustees will be willing to incur the time, expense, and ordeal of a court trial in order to resist the efforts of beneficiaries to remove them. The result will be the voluntary resignation of the trustee at the request of the beneficiary. Indeed, this is the practical intent of the Bill.

2. The Bill overrides and thwarts the grantor's intent. The grantor who establishes a trust normally gives careful and deliberate consideration to the selection of the trustee. There are many considerations involved in determining whether the trustee should be an individual or an institution and the peculiar qualifications which the trustee should possess. Trustee qualifications are the perogative of the grantor, not the beneficiary. Yet SB 274 states that qualifications or limitations of the trustee which are contained in the trust instrument itself are to be disregarded and ignored. This would mean, for example, that an institutional trustee could be replaced by an individual trustee. Under the Bill, the court is encouraged to appoint a successor trustee desired by the beneficiary, regardless of what the grantor may have intended. This change would override the grantor's intent and seriously erode the purpose of trust planning.

3. The Bill provides no effective representation for minor or residual beneficiaries. Many trusts are of the so-called "generation-skipping" type in which the first generation, usually a parent, receives income for life and the next generation, i.e., grandchildren, may receive the principal after the death of their parents. In addition to tax savings, these arrangements may be designed to conserve and protect assets for subsequent generations. The interest of the future generation (residual beneficiaries) is sometimes adverse to that of the current generation. Issues of

discretionary principal invasion and investment policy will affect these beneficiaries differently. Yet, SB 274 provides that for trustee removal purposes, the current generation of beneficiaries can represent the future beneficiaries so long as they are the ancestors of the future beneficiaries. This means that those residual or future beneficiaries effectively have no say whatsoever on the question of trustee removal and replacement. The independence, identity, and qualifications of the trustee are critical to the preservation of the rights and interests of future beneficiaries.

In conclusion, the provisions of SB 274 would result in a major change in Kansas trust law which could significantly impair the utility and purpose of trusts. We urge your Committee to report SB 274 adversely.

Yours very truly,

Austin Nothern

Austin Nothern
COFFMAN, DeFRIES & NOTHERN
A Professional Association

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