

MINUTES OF THE Senate Committee on Financial Institutions and Insurance.

The meeting was called to order by Chairperson Dick Bond at 9:10 a.m. on January 11, 1995 in Room 529-S of the Capitol.

All members were present.

Committee staff present: Dr. William Wolff, Legislative Research Department
Fred Carman, Revisor of Statutes
June Kossover, Committee Secretary

Conferees appearing before the committee: Judi Stork, Kansas Bank Commissioner's Office
James Maag, Kansas Bankers Association

Others attending: See attached list

Chairman Bond welcomed back the returning committee members and introduced Senator Stan Clark, who replaces Senator Moran. The chairman announced that the committee is meeting today and tomorrow for the purpose of bill introductions. He also advised that the new federal law regarding interstate banking and branch banking will need to be studied carefully by the committee as it apparently will remove from the states authority over interstate banking.

Judi Stork, Kansas Bank Commissioner's Office, appeared before the committee to request introduction of the following legislation:

1. Revision to 74-3006 to add a provision to grant the Bank Board authority to recess for executive session. (Attachment #1.)
2. Two amendments to 9-1703 regarding the bank commissioner fee fund. (Attachment #2.)
3. An amendment to 9-701 to define "student bank" and make exception for student banks to the state charter requirements. (Attachment #3.)
4. Amendment to 9-1715 to allow the Bank Commissioner to issue an order to give state banks parity with national banks. (Attachment #4.)

Senator Praeger made a motion, seconded by Senator Steffes, to introduce the legislation requested by Ms. Stork. The motion carried.

James Maag, Kansas Bankers Association, appeared before the committee to request introduction of:

1. An amendment to 21-3734, to delete language to bring the statute into conformity with a recent Supreme Court decision. (Attachment #5.)
2. An amendment to 40-2222 to allow certain associations to qualify to self-insure their health coverage. (Attachment #6.)
3. An amendment to 60-726, relating to fees for garnishment and to clarify garnishment of funds held in joint tenancy. (Attachment #7.)

Following clarification of Mr. Carman's question relating to how this would affect payable on death accounts, Senator Lawrence made a motion to introduce the legislation requested by Mr. Maag. Senator Lee seconded the motion. The motion carried.

There being no further requests for introduction of legislation, the committee adjourned at 9:33 a.m. The next committee meeting is scheduled for Thursday, January 12.

74-3006. Meetings, quorum; access to records; advisory. The board shall meet once each month, on such dates as it shall agree and shall meet at such other times as the board may deem necessary or when called by the chairman of the board or any three members thereof. Six members of the board shall constitute a quorum, and a majority vote of the board shall be necessary to carry any question, and no action of said board shall be taken except in a formal meeting and after a favorable vote of a majority of the entire board. The members of the board during business hours shall have free access to all of the records in the office of the commissioner. The board shall act in an advisory capacity in all matters pertaining to the conduct and welfare of the banking department and the administration of the banking laws of this state except as herein otherwise specifically provided.

History: L. 1947, ch. 102, § 102; June 30.

(a)

The board, in accordance with K.S.A. 75-4319 and amendments thereto, may recess for a closed or executive meeting to discuss information deemed confidential by virtue of K.S.A. 9-1712 and amendments thereto.

Senate 7/1/91 1/11/95
Attachment #1

CHAPTER 33
SENATE BILL No. 757

AN ACT relating to the bank commissioner fee fund; abolishing the savings and loan fee fund; amending K.S.A. 17-5610, 17-5612 and 17-5701 and K.S.A. 1993 Supp. 9-1703 and 75-1313 and repealing the existing sections; also repealing K.S.A. 17-5609.

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

Section 1. K.S.A. 1993 Supp. 9-1703 is hereby amended to read as follows: 9-1703. (a) The expense of every regular examination, together with the expense of administering the banking and savings and loan laws, including salaries, travel expenses, supplies and equipment, shall be paid by the banks and savings and loan associations of the state, and for this purpose the bank commissioner shall, prior to the beginning of each fiscal year, make an estimate of the expenses to be incurred by the department during such fiscal year. From this total amount the commissioner shall deduct the estimated amount of the anticipated annual income to the fund from all sources other than bank and savings and loan association assessments. The commissioner shall allocate and assess the remainder to the banks and savings and loan associations in the state on the basis of their total assets, as reflected in the last preceding report called for by the commissioner under the provisions of K.S.A. 9-1704 and amendments thereto or K.S.A. 17-5610 and amendments thereto, except that the annual assessment will not be less than \$1,000 for any bank or savings and loan association.

(b) The expense of every regular trust examination, together with the expense of administering trust laws, including salaries, travel expenses, supplies and equipment, shall be paid by the trust companies and trust departments of banks of this state, and for this purpose, the bank commissioner, prior to the beginning of each fiscal year, shall make an estimate of the trust expenses to be incurred by the department during such fiscal year. The commissioner shall allocate and assess the trust departments and trust companies in the state on the basis of their total fiduciary assets, as reflected in the last preceding year-end report filed with the commissioner, except that the annual assessment will not be less than \$1,000 for any active trust department or trust company. A trust department or a trust company which has no fiduciary assets, as reflected in the last preceding year-end report filed with the commissioner, may be granted inactive status by the commissioner and the annual assessment shall not be more than \$100 for an inactive trust department or trust company.

(c) A statement of each assessment made under the provisions of subsection (a) or (b) shall be sent by the commissioner to each bank, savings and loan association, trust department and trust company on or before July 1. One-half the amount so assessed to each bank, savings and loan association, trust department or trust company shall be paid by it to the bank commissioner on or before July 15 and the remainder shall be paid on or before January 15 of the next year. Any expenses incurred or services performed on account of any bank, trust department or trust company or other corporation which are outside of the normal expense of an examination required under the provisions of K.S.A. 9-1701, and amendments thereto or K.S.A. 17-5612 and amendments thereto, shall be charged to and paid by the corporation for whom they were incurred or performed. The commissioner may impose a penalty upon any bank, savings and loan association, trust department or trust company which fails

March 31

Federal Deposit Insurance Corporation

Section 7, Federal Deposit Insurance Act, 12 USC 1817

December 31

pursuant to K.S.A. 9-1704;

or the next business day thereafter

If a bank, savings and loan association or trust company exists as a corporate entity with the Secretary of State's office as of the close of business on June 30, and is authorized by the Office of the State Bank Commissioner to conduct banking, savings and loan, or trust business, one-half of the amount so assessed will be due and payable on or before July 15. If a bank savings and loan association or trust company exists as a corporate entity with the Secretary of States' office as of close of business on December 31, and is authorized to conduct banking, savings and loan, or trust business, the remaining one-half of the amount assessed will be due and payable on or before January 15.

Senate 7/19/95
Attachment # 2

to pay its annual assessment. The penalty shall be assessed in the amount of \$50 for each day the assessment is not paid. The counting for such penalty will begin February 1 or August 1.

The bank commissioner shall remit all moneys received by or for such commissioner from such examination fees to the state treasurer at least monthly. Upon receipt of each remittance, the state treasurer shall deposit the entire amount in the treasury. Twenty percent of each deposit shall be credited to the state general fund and the balance shall be credited to the bank commissioner fee fund. All expenditures from the bank commissioner fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the bank commissioner or by a person or persons designated by the commissioner.

(d) As used in this section, "savings and loan association" means a Kansas state-chartered savings and loan association.

e) In the event a bank, savings and loan association or trust company is merged into, consolidated with, or the assets and liabilities of which are purchased and assumed by another bank, savings and loan association, or trust company, between the preceding March 31, for banks and savings and loan associations, or the preceding December 31, for trust companies, and July 1, the surviving or acquiring bank, savings and loan association or trust company is obligated to pay the assessment on the assets merged, consolidated or assumed for the fiscal year commencing July 1.

Senate H&I 1/1/95
2-2

9-701. I nterpretations. Unless otherwise clearly indicated by the context, the following words when used in this act, for the purposes of this act, shall have the meanings respectively ascribed to them in this section:

(a) "Bank" means a state bank incorporated under the laws of Kansas.

(b) "Trust company" means a trust company incorporated under the laws of Kansas and which does not accept deposits.

(c) "Board" means the Kansas state banking board.

(d) "Commissioner" means the Kansas state bank commissioner.

(e) "Executive officer" means the chairperson of the board, the president, each vice president, the cashier, the secretary and the treasurer of a bank, unless such officer is excluded by resolution of the board of directors or by the bylaws of the bank or bank holding company from participation, other than in the capacity of a director, in major policymaking functions of the bank or bank holding company, and the officer does not actually participate in major policymaking functions of the bank or bank holding company.

(f) "Insured bank" means a state bank whose deposits are insured through the federal deposit insurance corporation, or other governmental agency or by an insurer approved by the state commissioner of insurance for such purpose.

(g) "Item" means any check, note, order, or other instrument or memorandum providing for the payment of money, or upon which money may be collected.

(h) "Demand deposits" includes every deposit which is not a "time deposit," "savings deposit" or "negotiable order of withdrawal deposit" as defined in this section.

(i) "Time deposits" means "time certificates of deposit" and "time deposits, open account" as defined in this section.

(j) "Time certificate of deposit" means a deposit evidenced by a negotiable or nonnegotiable instrument which provides on its face that the amount of such deposit is payable, upon presentation and surrender of the instrument, to bearer or to any specified person or to such person's order:

(1) On a certain date, specified in the instrument, not less than seven days after the date of the deposit; or

(2) at the expiration of a certain specified time not less than seven days after the date of the instrument; or

(3) upon notice in writing which is actually required to be given not less than seven days before the date of repayment.

(k) "Time deposit, open account" means a deposit, other than a "time certificate of deposit," with respect to which there is in force a written contract with the depositor that neither the whole nor any part of such deposit may be withdrawn, by check or otherwise, prior to the date of maturity, which shall be not less than seven days after the date of the deposit, or prior to the expiration of the period of notice which must be given by the depositor in writing not less than seven days in advance of withdrawal.

Senate 4141 1/11/95
Attachment #3

(l) "Savings deposit" means a deposit: (1) Which consists of funds deposited to the credit of or in which the entire beneficial interest is held by one or more individuals, or of a corporation, association or other organization operated primarily for religious, philanthropic, charitable, educational, fraternal or other similar purposes and not operated for profit; or that consists of funds deposited to the credit of or in which the entire beneficial interest is held by the United States, any state of the United States or any county, municipality or political subdivision thereof, or that consists of funds deposited to the credit of, or in which any beneficial interest is held by a corporation, partnership, association or other organization not qualifying above; and (2) with respect to which the depositor is not required by the deposit contract but may at any time be required by the bank to give notice in writing of an intended withdrawal not less than seven days before such withdrawal is made and which is not payable on a specified date or at the expiration of a specified time after the date of deposit.

(m) "Public moneys" means all moneys coming into the custody of the United States government or any board, commission or agency thereof, and also shall mean all moneys coming into the custody of any officer of any municipal or quasi-municipal or public corporation, the state or any political subdivision thereof, pursuant to any provision of law authorizing any such official to collect or receive the same.

(n) "Municipal corporation" means any city incorporated under the laws of Kansas.

(o) "Quasi-municipal corporation" means any county, township, school district, drainage district, or any other governmental subdivision in the state of Kansas having authority to receive or hold moneys or funds.

(p) "Certificate of authority" means a statement signed and sealed by the commissioner evidencing the authority of a bank or trust company to transact a general business as such.

(q) "Transaction account" means a deposit or account on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone transfers, or other similar device for the purpose of making payments or transfers to third persons or others.

(r) "Nonpersonal time deposit" means a time deposit, including a savings deposit that is not a transaction account, representing funds in which any beneficial interest is held by a depositor which is not a natural person.

Senate 7/1/95 4/11/95

(s) "Negotiable order of withdrawal deposit" means a deposit on which interest is paid and which is subject to withdrawal by the owner by negotiable or transferable instruments for the purpose of making transfers to third parties, and which consists solely of funds which the entire beneficial interest is held by one or more individuals, an organization which is operated primarily for religious, philanthropic, charitable, educational, fraternal or other similar purposes and which is not operated for profit, and with respect to deposits of public funds by an officer, employee or agent of the United States, any state, county, municipality or political subdivision thereof, the District of Columbia, the commonwealth of Puerto Rico, American Samoa, Guam, any territory or possession of the United States or any political subdivision thereof.

(t) "Trust company business" means engaging in, or holding out to the public as willing to engage in, the business of acting as a fiduciary for hire, except that no accountant, attorney, credit union, insurance broker, insurance company, investment adviser, real estate broker or sales agent, savings and loan association, savings bank, securities broker or dealer, real estate title insurance company or real estate escrow company shall be deemed to be engaged in a trust company business with respect to fiduciary services customarily performed by them for compensation as a traditional incident to their regular business activities.

History: L. 1947, ch. 102, § 1; L. 1970, ch. 61, § 1; L. 1975, ch. 45, § 1; L. 1976, ch. 54, § 1; L. 1981, ch. 49, § 1; L. 1983, ch. 46, § 1; L. 1987, ch. 54, § 1; L. 1989, ch. 48, § 1; L. 1993, ch. 31, § 1; July 1.

(u) "Student bank" means any non-profit program offered by a high school accredited by the state board of education, where deposits are received, checks are paid, or money is lent for limited in-school purposes.

Senate 414 1/1/95

9-702. Banking defined. Any individual, firm or corporation, except a national bank, who shall receive money on deposit, whether on certificates or subject to check, or any individual, firm or corporation, except railroad, transoceanic steamship, air transport, telegraph or Morris plan companies, or building and savings and loan associations, or national banks, or express companies engaged in an international financial and travel business or credit unions, which shall receive money for which it issues its check, draft, bill of exchange, or other evidence of indebtedness for which it charges a fee, shall be considered as doing a banking business, and shall be amendable to all the provisions of this act: *Provided*, That promissory notes issued for money received on deposit shall be held to be certificates of deposit for the purposes of this act.

History: L. 1947, ch. 102, § 2; L. 1972, ch. 57, § 5; July 1.

or student bank

or student banks

Senate 7141 1/11/95

(Entire language of current K.S.A. 9-1715 to be repealed and replaced with the following new language.)

9-1715:

New subsection(a): The commissioner shall have the power to authorize any or all state banks or trust companies to engage in any activity in which such banks or trust companies could engage were they operating as national banks at the time such authority is granted, including but without limitation because of enumeration the power to do any act, and own, possess and carry as assets, property of such character including stocks, bonds or other debentures which, at the time authority is granted, is authorized under federal laws and regulations to be done by national banks notwithstanding any restriction elsewhere contained in the statutes of the state of Kansas. This power shall be in addition to any and all other powers granted to the commissioner.

New subsection (b): The commissioner shall exercise the power granted in subsection(a) by the issuance of a special order if the commissioner deems it reasonably required to preserve and protect the welfare of a particular institution, or if the commissioner deems it reasonably required to preserve the welfare of all state banks or trust companies and to promote competitive equality of state and national banks. Such special order shall provide for the effective date thereof and upon and after such date shall be in full force and effect until amended or revoked by the commissioner. Promptly following issuance, the commissioner shall cause a copy of each special order to be mailed to all state banks and trust companies.

New subsection (c): The commissioner, at the time of issuing any special order pursuant to this section, shall submit a written report to the president and the minority leader of the senate and to the speaker and the minority leader of the house of representatives.

Senate 741 1/11/95
attachment # 4

21-3734. Impairing a security interest.

(a) Impairing a security interest is:

(1) Damaging, destroying or concealing any personal property subject to a security interest with intent to defraud the secured party;

(2) selling, exchanging or otherwise disposing of any personal property subject to a security interest without the written consent of the secured party, ~~with intent to defraud the secured party,~~ where such sale, exchange or other disposition is not authorized by the secured party under the terms of the security agreement; or

(3) failure to account to the secured party for the proceeds of the sale, exchange or other disposition of any personal property subject to a security interest, ~~with intent to defraud the secured party,~~ where such sale, exchange or other disposition is authorized and such accounting for proceeds is required by the se-

secured party under the terms of the security agreement or otherwise.

(b) Impairing a security interest is a severity level 7, nonperson felony when the personal property subject to the security interest is of the value of \$25,000 or more and is subject to a security interest of \$25,000 or more. Impairing a security interest is a severity level 9, nonperson felony when the personal property subject to the security interest is of the value of at least \$500 and is subject to a security interest of at least \$500 and either the value of the property or the security interest is less than \$25,000. Impairing a security interest is a class A nonperson misdemeanor when the personal property subject to the security interest is of the value of less than \$500, or of the value of \$500 or more but subject to a security interest of less than \$500.

History: L. 1969, ch. 180, § 21-3734; L. 1987, ch. 109, § 1; L. 1992, ch. 298, § 50; L. 1993, ch. 291, § 85; July 1.

Revisor's Note:

This section was also amended by L. 1992, ch. 239, § 128, but such amended version was repealed by L. 1993, ch. 291, § 283, effective July 1, 1993.

Senate File 7/11/95
Attachment # 5

40-222a. . Health coverage; jurisdiction of commissioner; exceptions. Any person or other entity which provides coverage in this state for medical, surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or optometric expenses, whether such coverage is by direct payment, reimbursement, or otherwise, shall be presumed to be subject to the jurisdiction of the commissioner of insurance unless the person or other entity: (a) is a professional association of architects incorporated in Kansas on October 4, 1954, which provides coverage for the payment of expenses described herein to or for the members of the association or dependents through a trust established November 1, 1986, and complies with K.S.A. 40-2222a;

(b) is a professional association of dentists incorporated in Kansas on July 3, 1972, which provides coverage for the payment of expenses described herein to or for the members of the association or dependents through a trust established November 1, 1985, and complies with K.S.A. 40-2222a;

(c) is a trade association of banks incorporated in Kansas on August 9, 1978, which provides coverage for the payment of expenses described herein to or for the members of the association or dependents through a trust established July 1, 1989, and complies with K.S.A. 40-2222a;

(d) is a trade association of truckers incorporated in Kansas on July 1, 1985, which provides coverage for the payment of expenses described herein to or for the members of the association or dependents through a trust established January 1, 1990, and complies with K.S.A. 40-2222a;

(e) is an association of physicians practicing in the Kansas City metropolitan area, incorporated in Missouri on March 5, 1891, and qualified as a foreign corporation in Kansas on May 19, 1987, which provides coverage for the payment of expenses described herein to or for the members of the association, their employees and dependents through a trust established November 1, 1984, and complies with K.S.A. 40-2222a;

(g) ~~N~~ conclusively shows by submission of an appropriate certificate, license, letter or other document issued by the United States department of labor that such person or entity is not subject to Kansas law; or

(h) ~~N~~ conclusively shows that it is subject to the jurisdiction of an agency of this state or the federal government. For purposes of this act, tax exempt status under section 501(c) of the federal internal revenue code of 1986 shall not be deemed to be jurisdiction of the federal government.

History: L. 1983, ch. 150, § 1; L. 1991, ch. 135, § 1; May 2.

(f) is a nonprofit trade association under section 501(c) of the federal internal revenue code of 1986, incorporated in Kansas, which has maintained a fully insured plan of coverage for the payment of expenses described herein to or for the members of the association or dependents for a period of 10 years or more, and which coverage is provided to 500 or more lives.

Senate 7/11/95
Attachment # 6

Sec. 11. K.S.A. 1993 Supp. 60-726 is hereby amended to read as follows: 3. (a) The written direction of a party seeking an order of garnishment attaching funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company shall state the amount to be withheld, which shall be 1 1/2 times the amount of the plaintiff's claim, in the case of prejudgment garnishment, or 1 1/2 times the amount of the judgment, in the case of postjudgment garnishment. *The garnishee may withhold and retain to defray the garnishee's costs, an administrative fee of \$10 for each order of garnishment that attaches funds, credits or indebtedness. Such administrative fee shall be in addition to the amount required to be withheld under the order for garnishment, except that if the amount required to be withheld under the order for garnishment is greater than the amount of the funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company, the fee shall be deducted from the amount withheld.*

[Redacted], without prior agreement,

The parties may contract for an administrative fee greater than \$10.

(b) All orders of garnishment issued in this state for the purpose of attaching funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company shall specify the amount of funds, credits or indebtedness to be withheld by the garnishee, which shall be 1 1/2 times the amount of the plaintiff's claim or 1 1/2 times the amount of the judgment, as stated in the written direction of the party seeking the order.

shall include either the defendant's address or tax identification number, and

All such orders shall also specify whether the trust records of the garnishee are to be searched for assets.

(c) The forms provided by law for an order of garnishment attaching funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company shall include the following statement:

"If you hold any funds, credits or indebtedness belonging to or owing the defendant, the amount to be withheld by you pursuant to this order of garnishment is not to exceed \$_____."

(amount stated in direction)

(d) The forms provided by law for the answer to an order of garnishment attaching funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company shall include the following statement:

"The amount of the funds, credits or indebtedness belonging to or owing the defendant which I shall hold shall not exceed \$_____."

(amount stated in order)

(e) If an order of garnishment attaches funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company and the garnishee holds funds or credits or is indebted to the defendant in two or more accounts, the garnishee may withhold payment of the amount attached from any one or more of such accounts.

(f) If an order of garnishment attaches funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company and the garnishee holds funds or credits or is indebted to the defendant in an account which defendant owns in joint tenancy with one or more individuals who are not subject to the garnishment, the garnishee shall withhold the entire amount sought by the garnishment. The garnishee will not be liable to the joint owners if the ownership of the funds is later proven not to be defendant's.

9) No party shall seek an order of garnishment attaching funds, credits or indebtedness held by a bank, savings and loan association, savings bank, credit union or finance company except on good faith belief of the party seeking garnishment that the party to be served with the garnishment order has, or will have, assets of the judgment debtor. Except as provided further, not more than two garnishments shall be issued by a party seeking an order of garnishment applicable to the same claim or claims and against the same judgment debtor in any 30-day period. A judge may order an exception to this subsection in any case in which the party seeking the garnishment shall in person or by attorney: (1) Certify that the garnishment is not for the purpose of harassment of the debtor, and (2) state facts demonstrating to the satisfaction of the judge that there is reason to believe that the garnishee has property or credits of the debtor which are not exempt from execution.

10) This section shall be part of and supplemental to the Kansas code of civil procedure.

[Redacted], and amendments thereto.

61-2013. Garnishment of funds held by financial institution; amount withheld; forms. The provisions of K.S.A. 1993 Supp. 60-726 shall be applicable to actions pursuant to the code of civil procedure for limited actions. History: L. 1984, ch. 215, § 4; July 1.

Senate 411 1/11/95
Attachment #7