

MINUTES OF THE Senate Committee on Financial Institutions and Insurance.

The meeting was called to order by Chairperson Dick Bond at 9:07 a.m. on February 8, 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: Kathy Taylor, Kansas Bankers Association
Elwaine Pomeroy, Kansas Credit Attorneys Association
William Sneed, Health Insurance Association of America
Brad Smoot, Blue Cross Blue Shield of Kansas
Tom Wilder, State Insurance Department
Bill Grant, Office of State Bank Commissioner

Others attending: See attached list

Senator Clark made a motion to approve the minutes of the meeting of February 7 as submitted. Senator Praeger seconded the motion. The motion carried.

The hearing on **SB 35**, concerning garnishment of funds held by financial institutions, was reopened with Kathy Taylor, Kansas Bankers Association, presenting a revised version of the bill. (Attachment #1) Senator Bond inquired if there was need for a cap on the amount of administrative fee that can be charged for a garnishment. Elwaine Pomeroy, Kansas Credit Attorneys Association, suggested that these fees should not be regulated unless the legislature is willing to statutorily regulate the amount of all fees allowed under Kansas law. Ms. Taylor stated that the opposing parties, the KBA and Mr. Pomeroy, could not agree on new subsection (f). She explained, in response to questioning by Senator Lee and Senator Petty, the procedure for freezing joint accounts for purposes of garnishment.

Mr. Pomeroy argued that, in his opinion, civil procedure should be addressed in statute and not dealt with via procedure. There were no further questions and no other conferees; the hearing on **SB 35** was closed.

Senator Lee made a motion to adopt the amendments proposed by Ms. Taylor. Senator Praeger seconded the motion and further requested the bill be amended to strike the language, "The garnishee will not...", on page 2, lines 21-22 of the bill, and substitute, "Neither the garnishee nor the garnishor shall...."

Senator Petty offered a substitute motion to delete subsection (f), lines 16-23. Senator Hensley seconded the motion. The motion failed.

The original motion made by Senator Lee and seconded by Senator Praeger carried.

Senator Praeger then moved to pass the bill as amended. Senator Steffes seconded the motion; the motion carried.

The hearing was reopened on **SB 133**, relating to the revision of the definition of pre-existing conditions. William Sneed, Health Insurance Association of America, testified in opposition to this legislation (Attachment #2), and stated that since the bill was originally heard, a member company of his association has attempted to assess the fiscal impact of **SB 133** and predicted that it would result in a 15% increase in premium on individual policies. Mr. Sneed explained the necessity for the longer waiting period and clarified that this bill would negatively affect all individual policy holders.

Brad Smoot, Blue Cross Blue Shield of Kansas, advised the committee that he had originally misunderstood the language in the bill and that it would permit insurance companies to require waiting periods by designating the condition and the waiting period by rider. Mr. Smoot, therefore, testified that his company is not opposed to this legislation. (Attachment #3)

CONTINUATION SHEET

MINUTES OF THE Senate Committee on Financial Institutions & Insurance, Room 529-S Statehouse, on February 8, 1995.

Senator Steffes observed that, if the language is easily misinterpreted now, it could cause long-range legal problems.

Tom Wilder, State Insurance Department, suggested revised language for subsection (c). (Attachment #4) The hearing on SB 133, was closed.

The chairman opened the hearing on HB 2074, requiring notification to the Bank Commissioner when state banks convert to a national charter. Bill Grant, State Banking Department, explained the original bill and requested amendments to make the bill effective on the date of publication in the Kansas Register and to consolidate three separate leasing laws issued by two different branches of government over a 20 year period. It would provide banks in Kansas with flexibility in conducting their lending business while maintaining appropriate structural requirements and exposure limitations. (Attachment #5) In response to Senator Bond's question, Mr. Grant stated that the bill will give state chartered banks parity with national banks regarding leasing and will clarify the rules related to leasing.

Mr. Grant informed Senator Hensley that these amendments were not available when the bill was in the House of Representatives.

There were no further questions and no other conferees; the hearing was closed. Senator Steffes made a motion to amend the bill as requested. Senator Clark seconded the motion; the motion carried.

Senator Steffes made a motion, seconded by Senator Clark, to move the bill favorably as amended. The motion carried. Senator Steffes will carry this bill on the Senate floor.

Senator Hensley made a motion to favorably recommend Sue Ann Shelby to the Credit Union Council. Senator Lee seconded the motion. The motion carried. Since Ms. Shelby is a reappointee, her presence was not necessary at today's committee meeting. (Attachment #6)

The committee adjourned at 10:04 a.m. The next meeting is scheduled for February 9, 1995.

SENATE FINANCIAL INSTITUTIONS & INSURANCE
COMMITTEE GUEST LIST

DATE: 2/8/95

| NAME | REPRESENTING |
|-------------------------------|---|
| JEFF SONNICH | KNOLSI |
| Chuck Stones | KBA |
| Kathy Taylor | " |
| Jamie Corkhill | SRS/CSE |
| Mike Montano | Alan Lobb |
| Josio Torrez | Families Together Inc. |
| Clarence H. Ramsey | Kansas Credit Attorneys Assn |
| Matt Scott | KANS. CREDIT BUREAUS |
| Wm. J. Atanga | KANS. Credit Attorneys Assn |
| Diane Duffy | Antem - Sen. J. Moran |
| Tom Wilder | Office of the State Treasurer |
| Kevin Davis | Dept of Insurance |
| Debra Beamer | Am. Family Ins Group |
| Danielle Hae | KCUA |
| Bill Sneed | HIAA |
| Smalley | KBA |
| Judi STEER | OSBC |
| | |
| | |

ASSN



The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

February 8, 1995

To: Senate Committee on Financial Institutions and Insurance

From: Kathy Taylor, Kansas Bankers Association

Re: **SB 35: Garnishment of funds in financial institutions**

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to come again to the committee to present a revised version of **SB 35**. As you will recall this bill amends KSA 61-2013 with a technical amendment, and makes several amendments to KSA 60-726.

I have attached revisions made to the original bill as were agreed to by Mr. Elwaine Pomeroy, representative of the collection agencies and collection attorneys groups.

Recouping compliance costs. Regarding the amendment to lines 21, 23 and 24, we agreed that since this is purely language designed to clarify that in fulfilling an order of garnishment, a financial institution has two options available to recoup costs - one being the administrative fee that was added as a result of SB 530 last year, and the other being to contract with the financial institution's customer for that fee - the sentence on lines 23 and 24 was unnecessary and may have caused more need for clarification of terms used.

Identifying language. As stated in my prior testimony, the new language that is to be included in lines 32 and 33 is patterned after the wage garnishment statute (KSA 60-717(a)(2)). This additional information will be helpful to financial institutions in the case of common names.

Search for trust assets. After contacting some of our members who had requested the language in lines 37 and 38, we agreed that including such language may generate blanket requests for a search of trust assets. Even though we had suggested an amendment requiring that all such requests required a good faith belief that there were trust assets of the defendant in the institution, the ultimate decision was to omit this language all together.

Joint tenancy and multiple garnishments. As for new subsection (f), the parties could not agree. Institutions are faced with a dilemma when they receive an order of garnishment on a joint tenancy account. The law regarding joint tenancy accounts states that each joint tenant has access to all the funds. The IRS requires the institution to freeze the entire joint account, even when only one owner has been levied against.

Senate 7/14 2/8/95

Office of Executive Vice President • 1500 Merchants National Building
Eighth and Jackson • Topeka, Kansas 66612 • (913) 232-3444
FAX (913) 232-3484

Attachment #1



The solution presented in subsection (f) tells the institution what to do in that case...it is procedural in nature. If passed, the law would direct the institution to freeze the entire amount of the garnishment and report the amount on the form. It is at that time that the court must decide what proportion of the account may actually be the defendant's. According to the Kansas Supreme Court in the Walnut Valley v. Stovall case, the court would then presume that a proportionate share is the defendant's. That presumption would be reflected on the Order of Payment that is sent to the institution, and the institution would then carry out the order of the court by remitting that share of the account.

We have not tried to change the substantive law as it was set out by the Kansas Supreme Court. Rather, we are just trying to resolve a procedural problem that occurs on a daily basis. Resolving the problem in this way is consistent with banking law, with the IRS rules, and it still allows the court to apply the law as it is stated for Kansas.

It is our belief that the financial institution should not be the entity that is deciding how the funds are divided. An institution is merely a conduit, as keeper of the funds, for attaining the funds. It does not benefit whatsoever from the attachment of these funds.

What we have prescribed by this amendment is merely procedural so that we do not attempt to reach the issue of ownership of the funds. Therefore, the final sentence of subsection (f) is added as protection to the financial institution for complying with another party's order of garnishment.

There will always be the instances where the garnishment order reaches a joint account and the funds are truly not the defendant's, but the other joint owner's. This possibility exists now. As the court in the Walnut Valley case states, the burden of proof that an account is held other than in equally lies with the party asserting such claim. The court further states that persons wishing to avoid the effect of this rule may maintain their property separately. We have not changed the rule by our amendment.

Thank you again and I hope that you will act favorably on **SB 35** as amended.

SENATE BILL No. 35

By Committee on Financial Institutions and Insurance

1-12

1-3

9 AN ACT concerning garnishment of funds held by financial institutions;
10 amending K.S.A. 60-726 and 61-2013 and repealing the existing
11 sections.
12

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

14 Section 1. K.S.A. 60-726 is hereby amended to read as follows: 60-
15 726. (a) The written direction of a party seeking an order of garnishment
16 attaching funds, credits or indebtedness held by a bank, savings and loan
17 association, credit union or finance company shall state the amount to be
18 withheld, which shall be 1½ times the amount of the plaintiff's claim, in
19 the case of prejudgment garnishment, or 1½ times the amount of the
20 judgment, in the case of postjudgment garnishment. The garnishee may,
21 *without prior agreement*, withhold and retain to defray the garnishee's
22 costs, an administrative fee of \$10 for each order of garnishment that
23 attaches funds, credits or indebtedness. ~~The parties may contract for an~~
24 ~~administrative fee greater than \$10.~~ Such administrative fee shall be in
25 addition to the amount required to be withheld under the order for gar-
26 nishment, except that if the amount required to be withheld under the
27 order for garnishment is greater than the amount of the funds, credits or
28 indebtedness held by a bank, savings and loan association, credit union
29 or finance company, the fee shall be deducted from the amount withheld.

30 (b) All orders of garnishment issued in this state for the purpose of
31 attaching funds, credits or indebtedness held by a bank, savings and loan
32 association, credit union or finance company ~~shall include either the de-~~
33 ~~endant's address or tax identification number, and~~ shall specify the
34 amount of funds, credits or indebtedness to be withheld by the garnishee,
35 which shall be 1½ times the amount of the plaintiff's claim or 1½ times
36 the amount of the judgment, as stated in the written direction of the party
37 seeking the order. ~~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
40 funds, credits or indebtedness held by a bank, savings and loan associa-
41 tion, credit union or finance company shall include the following state-
42 ment:

43 "If you hold any funds, credits or indebtedness belonging to or owing to the defendant,

shall include the defendant's address and tax identification number, if known, and

MEMORANDUM

TO: The Honorable Dick Bond, Chairman
Senate Financial Institutions and Insurance Committee

FROM: William W. Sneed, Legislative Counsel
The Health Insurance Association of America

DATE: February 1, 1995

RE: S.B. 133

Mr. Chairman, Members of the Committee: My name is Bill Sneed and I am Legislative Counsel for the Health Insurance Association of America ("HIAA"). The HIAA is a health insurance trade association consisting of over 300 insurance companies that write over 80% of the health insurance in the United States today. Please accept this memorandum as our testimony in regard to S.B. 133. S.B. 133 is an amendment to, in effect, provide for all individual accident and health policies and small employer policies a ninety-day pre-existing provision. Please accept this memorandum as my client's opposition to the proposed amendments found in S.B. 133.

Before discussing the specifics of S.B. 133, I believe it is important to bring to the Committee's attention a review of the various changes that the Kansas legislature has enacted over the last few years. Additionally, it may be helpful in identifying two particular terms of art that will be utilized in the discussion of this bill.

During the course of hearing this bill, the Committee will hear the terms "pre-existing condition" and "waiting period." Generally, a pre-existing condition clause in an insurance contract states that a policy has a provision in it which excludes or limits coverage for a specific time period. That particular provision generally utilizes two time frames. First is a time frame when, prior to the effective date of coverage, the condition was diagnosed, treated or advice was sought. The second

time frame is that period of time in which that particular condition will not be paid for while the contract is in effect. The latter is commonly referred to as a "waiting period."

Prior to the 1994 legislative session, health insurance, broken down by its three major components (individual coverage, large group, and small employer coverage), had the following breakdown:

| <u>Type of Coverage</u> | <u>Waiting Period</u> | <u>Pre-Existing Conditions</u> |
|-------------------------|-----------------------|--------------------------------|
| Small Employer | One Year | Six Months |
| Large Group | One Year | Ninety Days |
| Individual Coverage | Two Years | Two Years |

During the 1994 legislative session, H.B. 2633 was passed by the legislature and signed into law which changed several of these time frames. The changes are as follows:

| <u>Type of Coverage</u> | <u>Waiting Period</u> | <u>Pre-Existing Conditions</u> |
|-------------------------|-----------------------|--------------------------------|
| Small Employer | Ninety Days | Six Months |
| Large Group | Ninety Days | Ninety Days |
| Individual | Two Years | Two Years |

S.B. 133 is a proposal to change the current law whereby individual health insurance contracts would allow up to a ninety-day waiting period and a ninety-day pre-existing clause. However, on page two of the bill prior to the new language found in subsection (c), subsection (b) of current law is still in the bill and there is some confusion as to whether you still have a two-year waiting period.

The bill then goes to further amend the small employer law, which would reduce the pre-existing clause from six months to ninety days.

As you can see, this bill would attempt to have these policies substantially reduce their waiting period and pre-existing time for accident and health insurance. During 1993 and 1994, when working on the small employer group reform and other reform measures, great care was taken to provide a balance on the ability to provide access for these programs and to establish the programs in such a manner as to not substantially increase the cost of these programs, and thus substantially hurt access because of the cost factor. A major way that that can be accomplished is through the use of gatekeeping procedures for pre-existing conditions.

Currently Kansas has one of the most substantial pre-existing laws of any state in the United States. Outside of a few states, our pre-existing and waiting period language on individual contracts is identical to most states' laws.

Certainly we understand the concerns on individual contracts. However, many entities have wrestled with the problem of creating better access through individual products. However, most groups have come to the conclusion that simply changing a waiting period or pre-existing clause provisions may in fact make the product "available," but the product will not truly be accessible because of its cost factor.

I am aware that other conferees will be discussing the cost factor, and my Association is attempting to contact some of its members to provide additional cost material for this Committee.

Based upon the above, my client respectfully requests that this Committee act unfavorably on S.B. 133. We believe that although the intent may be seen as one of creating better availability, by virtue of creating new costs the products may not be truly accessible.

Respectfully submitted,

William W. Sneed

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STATEMENT OF BRAD SMOOT, LEGISLATIVE COUNSEL
BLUE CROSS BLUE SHIELD OF KANSAS
SENATE FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE
REGARDING 1995 SENATE BILL 133
February 1, 1995

I am Brad Smoot, Legislative Counsel for Blue Cross and Blue Shield of Kansas, a not-for-profit domestic mutual insurance company serving thousands of Kansans. Thank you for this opportunity to comment on 1995 Senate Bill 133.

We at BCBS certainly admire the intentions of supporters of this measure in their desire to encourage access to personal health insurance coverage. However, we must respectfully disagree that this bill will promote that worthy goal and believe that it might, in fact, be counter-productive.

It is important to remember why such things as waiting periods for pre-existing conditions exist in the first place. If we had universal coverage -- everyone had it and everyone was paying for it -- we would not need pre-existing condition waiting periods or "riders" or other limitations on insurance access. But we don't have universal coverage. We don't even have employer or individual mandates. Consequently, insurers must concern themselves with the natural human tendency to purchase insurance only when one falls ill. Waiting periods are designed to discourage just such behavior.

Employers, individuals and families who do act responsibly by purchasing insurance in a timely fashion, have a legitimate right to be concerned about this behavior. After all, there is no "magic" to insurance. A \$100 in premium will never pay for \$3000 in benefits. Instead, it takes \$100 in premium and \$2900 in premium from OTHERS to pay \$3000 in benefits. In other words, insurance is about the pooling of assets for future risks. It is not about the subsidizing of known costs. When a person requests immediate coverage for a pre-existing condition, he or she is bringing known costs to the insurance pool without bringing comparable premium. This is especially true where the insured individual may drop insurance coverage at any time. The effect of this type of behavior (sometimes referred to as "adverse selection") shifts costs to those who have

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Attachment #3*

purchased insurance in a timely fashion and contributed their fair share to the insurance pool.

Traditionally, insurers have used three methods to discourage individuals from waiting to purchase insurance until they were sick: 1) One method was to exclude any pre-existing conditions from coverage for a specified time; 2) a second was to exclude from coverage specific named conditions by way of a so-called "rider;" and 3) lastly, by establishing waiting periods before certain named conditions would be covered. BCBS relies on the latter two methods for our AffordaCare and First Choice non group products. With AffordaCare, a particular condition may be "ridered out" for some period of time as a condition to issuance of the policy. This tends to keep premiums lower for the subscriber. With First Choice, waiting periods of up to 240 days are used for five conditions but nothing is subject to "rider." These policies might cost more but do cover unnamed pre-existing conditions.

Just how all these condition exclusions would be affected by SB 133 is not clear. As introduced, SB 133 appears to still permit carriers to use "riders" and waiting periods for named conditions, thus only limiting unnamed pre-existing condition exclusions. If this is true the impact of the bill is very limited and in fact its only effect may be to reduce the choices of coverage available in the voluntary marketplace. If it is the intent of SB 133 to restrict all types of condition exclusions, then the bill has negative implications for the affordability and accessibility of non-group coverage. Carriers would now be required to either spread the cost of the "known" condition to all others in the non group market (thus raising their premiums), underwrite the "Johnnie-come-lately" insured at a rate sufficient to cover the costs or simply refuse to cover the applicant.

In summary, SB 133 appears to ignore the fundamental differences between the group insurance marketplace where guaranteed availability and group size tend to make a 90 day period acceptable and the non group market where such condition exclusions are sound public policy and a basic element of affordability. As introduced, SB 133 will increase premiums, encourage adverse selection and reduce accessibility. For these reasons, we must oppose the passage of SB 133. Thank you.

M E M O R A N D U M

TO: Fred Carmen
Revisor of Statutes

FROM: Richard Huncker
Kansas Insurance Department

SUBJECT: Senate Bill 133

DATE: February 7, 1995

Below is suggested revised language for Senate Bill 133 for
K.S.A. 40-2203(A)(c):

(c) For policies providing hospital, medical or surgical expense benefits the following shall apply: "Unless excluded from coverage by name or specific description, benefits for a loss incurred after 90 days from the date of issue of this policy shall not be reduced or denied for a disease or physical condition for which diagnosis, advice or treatment was sought during the 90 days immediately preceding the effective date of coverage of this policy."

If you should have any questions regarding this matter, please do not hesitate to call me.

Very truly yours,



Richard G. Huncker

RGH:ch

cc: Tom Wilder

Senate 7/41
2/8/95
Attachment #4

**BILL GRAVES
GOVERNOR**

Frank D. Dunnick
Bank Commissioner

Judi M. Stork
Deputy Commissioner

Kevin C. Glendening
Assistant Deputy Commissioner



William D. Grant Jr.
General Counsel

Ruth E. Glover
Administrative Officer

**OFFICE OF THE
STATE BANK COMMISSIONER**

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

February 8, 1995

Mr. Chairman and Members of the Committee:

My name is William Grant, General Counsel to Commissioner Frank Dunnick and the Office of the State Bank Commissioner, and I am here to testify in support of the current proposed provisions of House Bill 2074 and also, to ask the committee to consider adding an amendment to HB 2074.

House Bill 2074 amends K.S.A. 9-809 and K.S.A. 9-1724. These statutes pertain to state chartered banks converting to a national association and mergers of state chartered banks, respectively. The proposed language adds notification requirements, to our agency, when a state chartered bank either converts to or is merged into a national bank. Since few conversions have occurred in recent years, the most current problems we experience are with merger situations. Currently, if a state chartered bank merges into a national bank, our office has no approval over the transaction and there are no notification requirements. The proposed language adds to both statutes a notice requirement prior to consummation of the merger or conversion, and the remittance of the bank's state charter along with certification to us that notification was given to the Secretary of State's office. In order to ensure that our records as well as those of the Secretary of State's office are maintained correctly, this proposed legislation is necessary. Additionally, if such notification does not occur, banks who no longer exist as state chartered institutions are being assessed by our office for an annual fee because we are unaware of their merger/conversion. Much controversy has arisen in this area and the notification requirement will help to alleviate improper assessments. We would ask this legislation become effective upon publication in the Kansas Register to eliminate confusion that may occur when we are establishing assessments, in June, for the coming year.

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Senate F.I. & I.
February 8, 1995
Page Two

Proposed Amendment: Leasing of Tangible Personal Property. On behalf of the State Bank Commissioner, I respectfully request that HB 2074 be amended to include the language being presented with this testimony. This amendment relates to a Kansas state bank's power to engage in the leasing of tangible personal property.

It is being offered as an amendment for the sake of expediency. Our agency has been contacted recently by a number of institutions regarding this issue and quite recently the commissioner was requested to exercise his "wild-card" authority, pursuant to K.S.A. 9-1715, to address some of the inconsistencies presented by our current regulatory framework. The wild card statute allows the commissioner to issue a special order permitting state banks to engage in activities similar to those allowed for national banks.

Because the legislature is in session, and because the banks' current authority to engage in this activity is found throughout a patchwork consisting of one statute and two special orders, and a number of interpretive agency memos, a more thorough, comprehensive resolution is sought.

The current piecemeal guidelines, which consist of K.S.A. 9-1101(10) (enacted in 1969) and special orders 1976-2 and 1988-1 (attached hereto), contain conflicting terms which create unnecessary limitations on state banks. Enactment of this proposed amendment, would eliminate the need for promulgation of a new special order, and allow for the repeal of the present rules and their conflicting provisions.

This suggested amendment is conceptually and structurally similar to the federal regulations governing national banks' leasing authority. They are based upon a recognition of the functional equivalence between a lease financing transaction and a loan, if the lease transaction is properly structured. And so long as the banks' exposure is prudently limited, it is appropriate for banks to engage in the business of loaning money.

The proposed language implements structural requirements which insure that the leasing activity allowed for banks will, in fact, closely resemble a lending function. Subsection (a), of New Section 3, page 1 of the amendment, requires each lease to be a "net" lease, which is defined under subsection (e). In general terms, a net lease means the lessee-customer retains responsibility for things such as the maintenance, repair, and insurance of the property. This puts the bank in a position similar to where it would be had it loaned money to the customer and retained a security interest in the property.

Additionally, subsection (a), of the amendment, requires each lease to be "full-payout" lease, which is also defined in subsection (e). This generally means the bank must expect to recoup the cost of the property plus "interest" under the terms of its lease agreement with the lessee-customer. Again, this requirement insures the transaction retains the characteristics of a loan by allowing the bank to enter only those leases which are designed to return the bank the principal amount of its investment plus a reasonable rate of return.

Subsection (b) requires an up-front commitment from a lessee-customer regarding the lease transaction. This also requires the lease to resemble a loan transaction in that it provides the bank with the opportunity to evaluate the credit quality of the customer and the potential risk associated with the

transaction prior to making an investment of any principal. This restriction is also an effective restraint on inventory accumulation by the bank.

Subsection (c) requires the bank to liquidate any leased property returned to the bank as a result of termination or default, and to charge any off-lease property off the banks' books after a period of one year. This also prevents inventory accumulation and is consistent with rules relating to repossessed personal property in the loan context.

As previously stated, this amendment is based upon the premise that if all the structural requirements found in subsections (a) through (c) are adhered to, the transaction will represent a lending function. Consequently, subsection (d) remains consistent with this notion by applying the legal lending limits to lease transactions in the same fashion as the limits currently apply to loans. While subsections (a) through (c) are designed to require proper structure subsection (d) is designed to diversify the bank's investment exposure.

Subsection (f) contains a structural exception to the residual value requirements contained in the definition of "full-payout" lease. This provision will allow the residual values relied upon by the bank to be higher than the 25% limit found in paragraph (e)(2)(B), so long as certain criteria are met, including a limit on the total volume of high residual leases that can be entered by the bank. The total value of the leases which fall within this exception is limited to 10% of the value of the bank's total assets.

Subsection (g) is a "grandfather clause" which will permit banks to continue under the terms of those leases entered before implementation of these provisions. This will allow those leases to run their course despite their failure to adhere to the specific structure requirements contained in this language.

Finally, all of Sec. 4, which begins on page 4 of the proposed amendment, is included for the sole purpose of repealing the current leasing statute found at K.S.A. 9-1101(10). This current statutory provision will no longer be needed. Special Orders 1976-2 and 1988-1 will also be revoked in the event this proposed language is enacted.

Acceptance of this amendment and its final passage will consolidate into a single legislative action, 3 separate leasing laws, issued by 2 different branches of our government over a twenty year period. This proposal offers an expedient alternative to the passage of a third special order. It provides the banks in Kansas with flexibility in regard to conducting their lending business while maintaining appropriate structural requirements and exposure limitations. Therefore, we request that this committee move favorably to amend HB 2074 by including this proposed language.

STATE OF KANSAS
STATE BANK COMMISSIONER
SPECIAL ORDER 1976-2

This Order issued this 20th day of December, 1976, by the State Bank Commissioner with the prior approval of the State Banking Board.

WHEREAS, under state statutes, "state banks are authorized to become the owner or lessor of personal property acquired upon the specific request for the use of a customer and may incur such additional obligations as may be necessary in becoming an owner or lessor of such property;" and,

WHEREAS, the State Banking Department has interpreted this very narrowly and limited state banks in leasing transactions to be the full owner of the personal property leased to the lessee; and,

WHEREAS, the regulation for national banks pursuant to interpretative ruling 7.3400 of Comptrollers for national banks is worded identically to the state statute; and,

WHEREAS, the Comptroller of Currency has given a broad interpretation to the federal ruling and allowed national banks to buy participations in lease agreements both by taking a participation in the lease and share in the ownership of the equipment, depreciation, and investment tax credit in the personal property and also by buying ownership in the lease and taking a security interest in the personal property being leased without sharing in the benefits or obligations of ownership of the equipment or personal property; and,

WHEREAS, KSA 9-1715 provides the State Bank Commissioner with the prior approval of the Banking Board to authorize state banks to engage in those activities that they could do if they were operating as a national bank; and,

WHEREAS, the Commissioner deems it reasonably required to preserve and protect the welfare of the state banks and to promote the competitive equality of state and national banks, to allow state banks to purchase participating interests in lease transactions.

NOW THEREFORE, it is hereby ordered by the State Bank Commissioner with the prior approval of the State Banking Board that state banks may purchase a participation in a lease on personal property and equipment and either take actual ownership in a proportionate amount of the personal property as its participation is in the lease agreement or by taking a security interest in the personal property and equipment the same as if it were a national bank. Provided, a bank may not invest in excess of 10% of its capital, capital notes, and surplus in any one participation in a lease agree-

ment. Provided further, that a bank may not invest in excess of 30% of its capital, capital notes, and surplus in participations with any one leasing company. Provided further, that any bank shall not invest in excess of 50% of its capital, capital notes, and surplus in participations with all leasing companies. Provided further, that any and all such participations must be properly documented and credit information obtained on all lessees.

This Special Order shall take effect December 20, 1976.

IT IS SO ORDERED.

STATE BANK COMMISSIONER
Emery E. Fager

STATE OF KANSAS
STATE BANK COMMISSIONER
SPECIAL ORDER 1988-1

This Order issued this 25th day of January, 1988, by the State Bank Commissioner.

WHEREAS, pursuant to Kansas Statutes Annotated 9-1101(10), Kansas state banks are authorized, ". . . to become the owner or lessor of personal property acquired upon the specific request and for the use of a customer, and may incur such additional obligations as may be necessary in becoming an owner or lessor of such property."; and,

WHEREAS, the corporate powers conferred by Kansas Statutes Annotated 9-1101(10) historically have been interpreted by the Kansas Department of Banking to be more restrictive than those corporate powers conferred upon national banks by Title 12, Code of Federal Regulations § 7.3400; and,

WHEREAS, pursuant to Kansas Statutes Annotated 9-1715, the State Bank Commissioner sought to eliminate any competitive disparity between Kansas state banks subject to Kansas Statutes Annotated 9-1101(10) and national banks subject to Title 12, Code of Federal Regulations § 7.3400 by issuing Special Order 1976-2 on December 20, 1976, which enabled any Kansas state bank, upon obtaining the prior approval of the Kansas State Banking Board, to purchase participation interests in equipment leases on the same terms and conditions as can national banks pursuant to Title 12, Code of Federal Regulations § 7.3400; and,

WHEREAS, Title 12, United States Code § 24 (Tenth) has been amended by § 108 of the Competitive Equality banking Act of 1987, P.L. 100-86 ("CEBA") to authorize national banks, ". . . [t]o invest in tangible personal property, including, without limitation, vehicles, manufactured homes, machinery, equipment, or furniture, for lease financing transactions on a net lease basis, but such investment may not exceed 10 percent of the assets of the association."; and,

WHEREAS, the legislative history of § 108 of CEBA is set forth in Conference Report No. 100-261 on H.R. 27 (July 31, 1987), which Conference Report states at page 143 thereof that Congress enacted § 108 of CEBA to expand the corporate powers of national banks regarding personal property leasing beyond those powers already conferred by Title 12, Code of Federal Regulations § 7.3400; and,

WHEREAS, the Kansas Department of Banking has been advised by the Office of the Comptroller of the Currency that subject to certain restrictions, a national bank may exercise its power under

Title 12, United States Code § 24 (Tenth), as amended, by purchasing a limited partnership interest in a limited partnership whose business activities are restricted to investing in tangible personal property for lease financing transactions on a net lease basis; and,

Whereas, there is no provision under the Kansas Banking Code of 1947, as amended, or the regulations and special orders promulgated thereunder, which confer Kansas state banks with corporate authority equivalent to that conferred upon national banks pursuant to Title 12, United States Code § 24 (Tenth), as amended; and,

WHEREAS, Kansas Statutes Annotated 9-1715(a) authorizes the State Bank Commissioner to approve the application of a Kansas state bank to engage in those activities in which it could otherwise engage if it were operating as a national bank; and,

WHEREAS, FIRSTBANK, 955 Iowa, Lawrence, Kansas 66044 ("Bank"), a Kansas state bank, has submitted an application ("Application") pursuant to Kansas Statutes Annotated 9-1715(a) to acquire, under the same terms and conditions applicable to a national bank, a limited partnership interest in a limited partnership ("Limited Partnership") whose business activities will be restricted to those activities permitted a national bank under Title 12, United States Code § 24 (Tenth), as amended; and,

WHEREAS, the State Bank Commissioner deems it reasonably required to preserve and protect the welfare of the Bank and to promote the general economy of this state to allow Bank to purchase such a limited partnership interest in the Limited Partnership in the amount set forth in the Application.

NOW THEREFORE, it is hereby ordered by the State Bank Commissioner that Bank may purchase a limited partnership interest in a Delaware limited partnership in the manner proposed by the Application subject to the following conditions:

1. The business purpose of the Limited Partnership shall be strictly limited to investing in tangible personal property for leasing on a net lease basis on the same terms and conditions applicable to a national bank under Title 12, United States Code § 24 (Tenth), as amended by § 108 of CEBA and any regulations promulgated thereunder (provided, however, nothing in this Special Order shall be deemed to impose any restriction on the percentage of the Limited Partnership's assets invested in such tangible personal property for leasing on a net lease basis), and to engaging in such other activities related to equipment leasing as a national bank may engage in pursuant to Title 12, Code of Federal Regulations § 7.3400, as amended.

2. The sole general partner of the Limited Partnership ("General

Partner") shall be a well established corporation highly experienced in equipment leasing and shall have no prior affiliation with Bank.

3. Except for Bank's obligation to make a fixed capital contribution in consideration for its limited partnership interest in the amount set forth in the Application, the Limited Partnership Agreement shall provide that Bank shall have no personal liability or obligation for the liabilities and obligations of either the Limited Partners or the General Partner. Furthermore, Bank shall have no obligation to make any advances, loans or additional capital contributions to the Limited Partnership.

4. The exercise of any rights granted to the Limited Partners under the Limited Partnership Agreement shall not cause the Limited Partners to be deemed general partners under applicable law nor shall the exercise of such rights cause the Limited Partners to become generally liable for the liabilities or obligations of either the Limited Partnership or the General Partner.

5. The Limited Partnership Agreement shall provide that no amendment thereof shall be effective without the prior written consent of each Limited Partner, including, without limitation, Bank.

6. Bank shall acquire its limited partnership interest in the Limited Partnership as a means of developing and performing its lawful banking activities in a reasonable and convenient manner, and not merely as an investment.

7. The amount of Bank's capital contribution for its limited partnership interest in the Limited Partnership, together with any other legally permissible investment now held or hereafter acquired by Bank in tangible personal property for lease financing transactions on a net lease basis, shall not at any one time exceed 10 percent of the assets of Bank.

8. Bank shall furnish the Kansas Department of Banking with copies of the books and records of the Limited Partnership upon the request of the State Bank Commissioner.

9. Bank shall have the ability to withdraw as a Limited Partner from the Limited Partnership if either the Comptroller of the Currency determines that a national bank's participation as a Limited Partner in the Limited Partnership would be inconsistent with the requirements of any statute or regulation applicable to national banks, or if the State Bank Commissioner deems such withdrawal necessary under principles of safe and sound banking and prudential supervisory practices.

Rules

587

This Special Order shall take effect this 25th day of January, 1988.
IT IS SO ORDERED.

STATE BANK COMMISSIONER
W. Newton Male

Proposed Amendment to HB 2074

On page 2, following line 31, by inserting two sections as follow:

"New Sec. 3. In addition to powers and limitations conferred or imposed on any bank by K.S.A. 9-1101 and amendments thereto, any bank is hereby authorized to exercise by its board of directors or duly authorized officers or agents, subject to law, all such powers including incidental powers as shall be necessary or convenient to do what is authorized by this section:

(a) (1) A bank may become the legal or beneficial owner of tangible personal property for the purpose of leasing such property;

(2) to obtain an assignment of a lessor's interest in a lease of such property; or

(3) to incur obligations incidental to its position as the legal or beneficial owner and lessor of the leased property; so long as each lease entered into by the bank is a net, full-payout lease.

(b) A bank may acquire specific property to be leased only after the bank has entered into either:

(1) A legally binding written agreement to lease the property on terms which comply with this section; or

(2) a legally binding written agreement which indemnifies the bank against loss in connection with its acquisition of the property.

(c) In the event of the lessee's default, early termination of a lease or at the expiration of the lease, the bank's interest in the property shall be liquidated or re-leased in accordance with this section as soon as practicable, but in no case shall the off-lease property be carried on the bank's books for a period exceeding one year.

(d) Each lease financing transaction entered into by the

bank pursuant to this section shall be considered a loan for the purposes of applying all legal lending limitations and prior approval requirements contained in K.S.A. 9-1104 and amendments thereto.

(e) For purposes of this section:

(1) (A) "Net lease" means a lease under which the bank will not, directly or indirectly, provide or be obligated to provide for:

(i) The servicing, repair or maintenance of the leased property during the lease term;

(ii) the purchasing of parts and accessories for the leased property, except that improvements and additions to the leased property may be leased to the lessee upon such lessee's request in accordance with the full-payout requirements of this section;

(iii) the loan of replacement or substitute property while the leased property is being serviced;

(iv) the purchasing of insurance for the lessee, except where the lessee has failed to discharge a contractual obligation to purchase or maintain insurance; or

(v) the renewal of any license, registration or filing for the property unless such action by the bank is necessary to protect the bank's interest as an owner or financier of the property;

(B) if, in good faith, a bank believes there has been an unanticipated change in conditions which threaten its financial position by significantly increasing its exposure to loss, the provisions of (e)(1)(A) shall not prevent the bank:

(i) As the owner and lessor under a net, full-payout lease, from taking reasonable and appropriate action to salvage or protect the value of the property of its interest arising under the lease;

(ii) as the assignee of a lessor's interest in a lease, from becoming the owner and lessor of the leased property pursuant to its contractual right, or from taking any reasonable and appropriate action to salvage or protect the value of the

property or its interest arising under the lease; or

(iii) from including any provisions in a lease, or from making any additional agreements, to protect its financial position or investment in the circumstances set forth in provisions (i) or (ii).

(2) (A) "Full-payout lease" means a lease from which the lessor can reasonably expect to realize a return of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease, from rentals, estimated tax benefits and the estimated residual value of the property at the expiration of the initial term of the lease.

(B) Except as provided in subsection (f), the estimated residual value of the property shall not exceed 25% of the original cost of the property to the lessor unless the estimated residual value is guaranteed by a manufacturer, a lessee or a third party not an affiliate of the bank and the bank properly documents that the guarantor has the resources to meet the guarantee. In all cases both the estimated residual value of the property and that portion of the estimated residual value relied upon by the lessor to satisfy the requirements of a full-payout lease must be reasonable in light of the nature of the leased property and all relevant circumstances so that realization of the bank's full investment plus the cost of financing the property depends primarily on the creditworthiness of the lessee and of any guarantor of the residual value, and not on the residual market value of the leased property.

(f) Notwithstanding the limit on residual value contained in (e)(2)(B), the bank may enter into lease financing transactions in which the residual value relied upon for realization of a return of its full investment plus costs of financing exceeds 25% of the original cost of the property provided:

(1) The lease financing transaction conforms with all other requirements of this section;

(2) the lease financing transaction has a term in excess of 90 days;

(3) the records relating to lease financing transactions entered into pursuant to this provision are clearly segregated and specifically identified to distinguish them from the records relating to lease financing transactions entered into pursuant to the other provisions; and

(4) the aggregate book value of all tangible personal property held for lease pursuant to this subsection does not exceed 10% of the consolidated assets of the bank.

(g) This section shall not apply to any leases executed by a bank prior to the effective date of this act. Any lease which was entered into in good faith prior to the effective date of this act that does not comply with the provisions of this section may be renewed only if there is a binding agreement in the expiring lease which requires the bank to renew the lease at the lessee's option, and the bank cannot otherwise reasonably or properly avoid its commitment to renew. Except for those leases renewed pursuant to such a binding agreement, any prior lease renewed after the effective date of this act shall be included for purposes of determining compliance with the legal lending limitations contained in K.S.A. 9-1104 and amendments thereto and subsection (d).

Sec. 4. K.S.A. 1994 Supp. 9-1101 is hereby amended to read as follows: 9-1101. Any bank hereby is authorized to exercise by its board of directors or duly authorized officers or agents, subject to law, all such powers, including incidental powers, as shall be necessary to carry on the business of banking, and:

(1) To receive deposits and to pay interest thereon at rates which need not be uniform. The state bank commissioner, with approval of the state banking board, may by regulations of general application fix maximum rates of interest to be paid on deposit accounts other than accounts for public moneys;

(2) to buy and sell exchange, gold, silver, foreign coin, bullion, commercial paper, bills of exchange, notes and bonds;

(3) to buy and sell bonds, securities, or other evidences of indebtedness of the United States of America or those fully

guaranteed, directly or indirectly, by it, and general obligation bonds of the state of Kansas or any municipality or quasi-municipality thereof, and of other states, and of municipalities or quasi-municipalities in other states of the United States of America. No bank shall invest an amount in excess of 15% of its capital stock paid in and unimpaired and the unimpaired surplus fund of such bank in bonds, securities or other evidences of indebtedness of any municipality or quasi-municipality of any other state or states of the United States of America: (a) If and when the direct and overlapping indebtedness of such municipality or quasi-municipality is in excess of 10% of its assessed valuation, excluding therefrom all valuations on intangibles and homestead exemption valuation; (b) or if any bond, security, or evidence of indebtedness of any such municipality or quasi-municipality has been in default in the payment of principal or interest within 10 years prior to the time that any bank acquires any such bonds, security or evidence of indebtedness;

(4) to make all types of loans, including loans on real estate, subject to the loan limitations contained in this act. Every real estate loan shall be secured by a mortgage or other instrument constituting a lien, or the full equivalent thereof, upon the real estate securing the loan, according to any lawful or well recognized practice, which is best suited to the transaction. The mortgage may secure future advances. The lien of such mortgage shall attach upon its execution and have priority from time of recording as to all advances made thereunder until such mortgage is released of record. The lien of such mortgage shall not exceed at any one time the maximum amount stated in the mortgage;

(5) to discount and negotiate bills of exchange, negotiable notes and notes not negotiable;

(6) to buy and sell investment securities which are evidences of indebtedness. The buying and selling of investment securities shall be limited to buying and selling without

recourse marketable obligations evidencing indebtedness of any person, copartnership, association, corporation, or state or federal agency, including revenue bonds issued pursuant to K.S.A. 76-6a15, and amendments thereto, or the state armory board in the form of bonds, notes or debentures or both, commonly known as investment securities, under such further definition of the term "investment securities" as prescribed by the board, but the total amount of such investment securities of any one obligor or maker held by such bank shall at no time exceed 15% of the capital stock paid in and unimpaired and the unimpaired surplus fund of such bank except that this limit shall not apply to obligations of the United States government or any agency thereof. If the obligor is a state agency including any agency issuing revenue bonds pursuant to K.S.A. 76-6a15, and amendments thereto, or the state armory board, the total amount of such investment securities shall at no time exceed 25% of the capital stock paid in and unimpaired and the unimpaired surplus fund of such bank;

(7) to subscribe to, buy and own such stock of the federal national mortgage association as required by title 3, section 303 of the federal act known as the national housing act as amended by section 201 of public law No. 560, of the United States (68 Stat. 613-615), known as the housing act of 1954, or amendments thereto;

(8) to subscribe to, buy and own stock in one or more small business investment companies in Kansas as otherwise authorized by federal law, except that in no event shall any bank acquire shares in any small business investment company if, upon the making of that acquisition the aggregate amount of shares in small business investment companies then held by the bank would exceed 5% of its capital and surplus. Nothing in this act contained shall prohibit any bank from holding and disposing of such real estate and other property as it may acquire in the collection of its assets;

(9) to subscribe to, buy and own stock in any agricultural credit corporation or livestock loan company, or its affiliate,

organized pursuant to the provisions of the laws of the United States providing for the information and operation of agricultural credit corporations and livestock loan companies, in an amount not exceeding either the undivided profits or 10% of the capital stock and surplus and undivided profits from such bank, whichever is greater;

~~{10} to become the owner or lessor of personal property acquired upon the specific request and for the use of a customer, and may incur such additional obligations as may be incident to becoming an owner or lessor of such property. Any bank which claims a credit against its privilege tax of any amount of ad valorem taxes on property acquired pursuant to this subsection shall not be designated as a depository for any state funds by the pooled money investment board. Lease transactions shall not result in obligations for the purpose of determining limitations or restrictions on the amount of loans. Lease payments on such transactions shall be considered rents and not interest;~~

{11} (10) to subscribe to, buy and own stock in minbanc capital corporation, a company formed for the purpose of providing capital to minority-owned banks. No bank's investment in such stock shall exceed 2% of its capital and surplus;

{12} (11) to buy, hold, and sell any type of investment securities not enumerated in this section with approval of the commissioner and upon such conditions and under such regulations as are prescribed by the state banking board;

{13} (12) to act as escrow agent;

{14} (13) to subscribe to, acquire, hold and dispose of stock of a corporation having as its purpose the acquisition, holding and disposition of loans secured by real estate mortgages, and to acquire, hold and dispose of the debentures and capital notes of such corporation. No bank's investment in such stock, debentures and capital notes shall exceed 2% of its capital stock, surplus and undivided profits and such investment shall be carried on the books of the bank as directed by the commissioner;

~~(15)~~ (14) to purchase and sell securities and stock without recourse solely upon the order, and for the account, of customers;

~~(16)~~ (15) to subscribe to, acquire, hold and dispose of any class of stock, debentures and capital notes of MABSCO agricultural services, inc. or any similar corporation having as its purpose the acquisition, holding and disposition of agricultural loans originated by Kansas banks. No bank's investment in such stock, debentures and capital notes shall exceed 2% of its capital stock, surplus and undivided profits. Such investment shall be carried on the books of the bank as directed by the commissioner;

~~(17)~~ (16) to buy, hold and sell mortgages, stock, obligations and other securities which are issued or guaranteed by the federal home loan mortgage corporation under sections 305 and 306 of the federal act known as the federal home loan mortgage corporation act (P.L. 91-351);

~~(18)~~ (17) to buy, hold and sell obligations or other instruments or securities, including stock, issued or guaranteed by the student loan marketing association created by (P.L. 92-318) of the United States;

~~(19)~~ (18) to engage in financial future contracts on United States government and agency securities subject to such rules and regulations as the state bank commissioner may prescribe pursuant to K.S.A. 9-1713, and amendments thereto, to promote safe and sound banking practices;

~~(20)~~ (19) to subscribe to, buy and own stock in a state or federally chartered bankers' bank or a one bank holding company which owns or controls such a bankers' bank, except no bank's investment in such stock shall exceed 10% of its capital stock, surplus and undivided profits;

~~(21)~~ (20) subject to such rules and regulations as the state bank commissioner may adopt pursuant to K.S.A. 9-1713, and amendments thereto, to promote safe and sound banking practices, upon recorded prior approval by the board of directors of the

initial investment in a specific company and pursuant to an investment policy approved by the board of directors which specifically provides for such investments to buy, hold and sell shares of an open-end investment company registered with the federal securities and exchange commission under the federal investment company act of 1940 and the federal securities act of 1933 and of a privately offered company sponsored by an affiliated commercial bank, the shares of which are purchased and sold at par and the assets of which consist solely of securities which may be purchased by the bank for its own account. Such shares may be purchased without limit if the assets of the company consist solely of and are limited to obligations that are eligible for purchase by the bank without limit. If the assets of the company include securities which may be purchased by the bank subject to limitation, such shares may be purchased subject to the limitation applicable to purchase by the bank of such securities;

~~(22)~~ (21) subject to the prior approval of the state bank commissioner and the state banking board and subject to such rules and regulations as are adopted by the state bank commissioner pursuant to K.S.A. 9-1713, and amendments thereto, to promote safe and sound banking practices, a bank may establish a subsidiary which engages in the following securities activities: (a) selling or distributing stocks, bonds, debentures, notes, mutual funds and other securities, (b) issuing and underwriting municipal bonds, (c) organizing, sponsoring and operating mutual funds, (d) acting as a securities broker-dealer;

~~(23)~~ (22) to subscribe to, acquire, hold and dispose of stock of any class of the federal agricultural mortgage corporation, a corporation having as its purpose the acquisition, holding and disposition of loans secured by agricultural real estate mortgages. No bank's investment in such corporation shall exceed 5% of its capital stock, surplus and undivided profits and such investment shall be carried on the books of the bank as directed by the commissioner;

~~(24)~~ (23) to subscribe to, buy and own stock in an insurance company incorporated prior to 1910, under the laws of Kansas, with corporate headquarters in this state, which only provides insurance to financial institutions. The investment in such stock shall not exceed 2% of the bank's capital stock, surplus and undivided profits;

~~(25)~~ (24) to purchase and hold an interest in life insurance policies on the life of its executive officers and directors, and to purchase life insurance policies for the sole purpose of providing employee deferred compensation and benefit plans subject to the limitations listed herein. Funding for the payment of employee compensation and benefit plans as well as the benefits derived may be made or split in a joint manner between the bank, employee or bank holding company as in "split dollar" or other insurance plans:

(a) Life insurance purchased and held on the life of executive officers and directors are subject to the following limitations:

(i) The cash surrender value of any life insurance policy on an executive officer or director underwritten by any one life insurance company cannot at any time exceed 15% of the bank's capital stock, surplus, undivided profits, loan loss reserve, capital notes and debentures and reserve for contingency, unless the bank has obtained the prior approval of the state bank commissioner;

(ii) the cash surrender value of life insurance policies on executive officers or directors, in the aggregate from all companies, cannot at any time exceed 25% of the bank's capital stock, surplus, undivided profits, loan loss reserve, capital notes and debentures and reserve for contingency, unless the bank has obtained the prior approval of the state bank commissioner;

(iii) the authority to hold life insurance on any executive officer ceases if the executive officer is no longer employed by the bank or no longer meets the definition of an executive officer;

(iv) the authority to hold life insurance on a director ceases when that director is no longer a member of the board of directors;

(v) the bank's board of directors must approve and document the purchase of any life insurance, including the reasonableness of such purchase; and

(vi) except as part of a reasonable compensation or benefit plan, a bank is not authorized to purchase life insurance as an estate management device for the benefit of officers, directors or employees who are also controlling shareholders of the bank.

(b) Life insurance purchased for the sole purpose of providing deferred compensation and benefit plans are subject to the following limitations:

(i) The bank may purchase individual or group policies for the sole purpose of providing deferred compensation agreements entered into with its officers and employees;

(ii) the bank may purchase policies on directors to fund a deferred directors fees program;

(iii) the board of directors must approve and document such deferred plans including the reasonableness of the plans;

(iv) the bank is not authorized to hold the policies unless specifically approved by the state banking board if no liability exists under the deferred compensation plans;

(v) the cash surrender value of any life insurance policy purchased for the sole purpose of providing deferred compensation and benefit plans, underwritten by any one life insurance company, cannot exceed at any time, 15% of the bank's capital stock, surplus, undivided profits, loan loss reserve, capital notes and debentures and reserve for contingency, unless the bank has obtained the prior approval of the state bank commissioner;

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

debentures and reserve for contingency, unless the bank has obtained the prior approval of the state bank commissioner; and

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

~~(26)~~ (25) to make loans to the bank's stockholders or the stockholders of the bank's controlling bank holding company on the security of the shares of the bank or shares of the bank's controlling bank holding company, with the limitation that this may occur only if the bank would have extended credit to such stockholder on exactly the same terms without the shares pledged as collateral, and provided the shares pledged are not a director's qualifying shares per K.S.A. 9-1117, and amendments thereto; and

~~(27)~~ (26) to make investments in and loans to community development corporations (CDCs) and community development projects (CD projects) as defined in K.S.A. 9-701 and amendments thereto, subject to the limitations prescribed by the comptroller of the currency as interpreted by rules and regulations which shall be adopted by the state bank commissioner as provided by K.S.A. 9-1713 and amendments thereto.";

Also on page 2, in line 32, before "9-1724" by inserting "9-1101 and"; by renumbering sections 3 and 4 as sections 5 and 6 respectively;

On page 1, in the title, in line 11, after the semicolon by inserting "tangible personal property;"; also in line 11, after "Supp." by inserting "9-1101 and";

SENATE CONFIRMATION QUESTIONNAIRE
APPOINTMENTS BY GOVERNOR JOAN FINNEY

Name: SUE ANN SHELBY

Home Address: 408 W 27TH

City, State, Zip Code: TOPEKA, KS 66611

Home Phone: 913 / 232 9944

Business Address: 707 SE QUINCY

City, State, Zip Code: TOPEKA, KS 66603

Business Phone: 913 / 235 9551

Date of Birth: 2-22-46 Place of Birth ELLENSBURG, WA

Party Affiliation DEMOCRAT KBI Check (Yes/No) YES

Appointed as: member, Credit Union Council

Effective 9/29/94 for the 3 year term

ending 6/1/97 Succeeding Horselt

Salary N/A Statutory Authority 17-2232

Statutory Requirements _____

1. EDUCATION:

High School LARNED HIGH SCHOOL

Year Graduated 1962

| Postsecondary | Degree, etc. | Dates |
|-----------------------------------|--|----------------|
| <u>Wichita Business Institute</u> | <u>Diploma</u> | <u>1964</u> |
| <u>University of Kansas</u> | <u>continuing education certificates</u> | <u>1977-81</u> |

Senate 7141
2-8-95
Attachment #6

2. MEMBERSHIP IN BUSINESS, TRADE AND PROFESSIONAL ORGANIZATIONS DURING PAST 10 YEARS:

| Dates | Name | Location |
|----------------|--|-------------------|
| <u>Current</u> | <u>American Business Women's Association</u> | <u>Topeka, KS</u> |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

3. HAVE YOU EVER BEEN ELECTED OR APPOINTED TO ANY PUBLIC OFFICE IN KANSAS? XX Yes _____ No
If so, please list dates and offices held.

| Date | Office |
|----------------|---|
| <u>1985-90</u> | <u>Credit Union Council</u> |
| <u>1991</u> | <u>Credit Union Council</u> |
| <u>1993</u> | <u>Acting Administrator, KS State Department of Credit Unions</u> |
| <u>1993</u> | <u>Credit Union Council</u> |
| <u>1994</u> | <u>Credit Union Council</u> |

4. HAVE YOU EVER BEEN EMPLOYED BY OR HELD A POSITION OR OFFICE WITH ANY FEDERAL, FOREIGN STATE, OR LOCAL GOVERNMENTAL ENTITY OR AGENCY? No
If so, please list dates and offices held:

5. HAVE YOU BEEN A REGISTERED LOBBYIST OR EMPLOYED A REGISTERED LOBBYIST AT ANY TIME DURING THE PAST 5 YEARS? No
If you were a registered lobbyist, did you receive any compensation? _____
List groups you represented or for which you employed a lobbyist:

EXPERIENCE OR INTERESTS WHICH QUALIFY YOU FOR THE OFFICE TO WHICH YOU HAVE BEEN APPOINTED:

Kansas Credit Union Council member 1985-90
Chairman, Vice Chairman and Secretary
Kansas Credit Union Council member 1991-present
currently serving as Chairman
Acting Administrator, Kansas State Department of Credit Unions 1993
NeKan Bell Credit Union - Executive Vice President
Mid American Credit Union (Wichita) Board member and supervisory committee member
Kansas Credit Union Association - former staff member

7. SUMMARY OF BUSINESS OR PROFESSIONAL EXPERIENCE: _____

~~I have been affiliated with credit unions since I began my career as a Kansas Credit Union League staff member. I am now Executive Vice President of NeKan Bell Credit Union, Topeka. I have served as Chairman, Vice Chairman and Secretary of the Kansas Credit Union Council during two separate terms and acting administrator of the Kansas State Department of Credit Unions. I also serve on the board of directors and am chairman of the supervisory committee of Mid American Credit Union, Wichita.~~

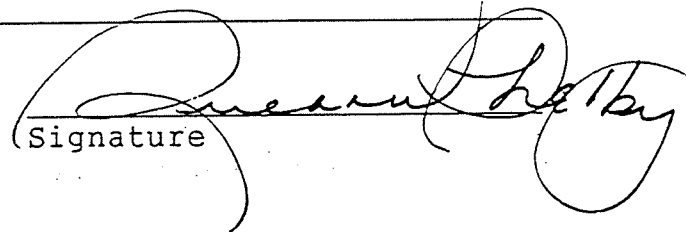
8. HAVE YOU EVER BEEN A MEMBER OF THE ARMED FORCES OF THE UNITED STATES? NO
If so, please list dates of service, branch of service and date and type of discharge:

9. HAVE YOU EVER BEEN ARRESTED, CHARGED OR HELD BY FEDERAL, STATE OR OTHER LAW ENFORCEMENT AUTHORITIES FOR VIOLATION OF ANY FEDERAL LAW, STATE LAW, COUNTY OR MUNICIPAL LAW, REGULATION OR ORDINANCE (EXCLUDING TRAFFIC VIOLATIONS FOR WHICH A FINE OF \$100 OR LESS WAS IMPOSED)? NO

10. DISPOSITION OF ANY INTERESTS THAT MIGHT HAVE PRESENTED A POTENTIAL CONFLICT OF INTEREST FOR THIS POSITION.

N/A

Return to: Mary Holladay
Appointment Secretary
Office of the Governor
2nd Floor, State Capitol
Topeka, KS 66612


(Signature)



S

FILED

MAR 11 1994

BILL GRAVES SECRETARY OF STATE

KANSAS COMMISSION ON GOVERNMENTAL STANDARDS AND CONDUCT

STATEMENT OF SUBSTANTIAL INTERESTS FOR INDIVIDUALS WHOSE

APPOINTMENT TO STATE OFFICE IS SUBJECT TO SENATE CONFIRMATION

INSTRUCTIONS. This statement (pages 1 through 4) must be completed by each person whose appointment to a state position is subject to Senate confirmation (K.S.A. 46-247 and 46-248). Failure to complete and return this statement may result in a fine of \$10 per day for each day it remains unfiled. Also, any individual who intentionally fails to file as required by law, or intentionally files a false statement, is subject to prosecution for a class B misdemeanor.

Please read the "Guide" and "Definition" section provided with this form for additional assistance in completing sections "C" through "G". If you have questions or wish assistance, please contact the Commission office at 109 West 9th, Topeka, KS or call 913-296-4219.

A. IDENTIFICATION:

PLEASE TYPE OR PRINT

S H E L B Y S U E A

Last Name

First Name

MI

N A

Spouse's Name

4 0 8 W E S T 2 7 T H

Number & Street Name, Apartment Number, Rural Route, or P.O. Box Number

T O P E K A K A N S A S 6 6 6 1 1

City, State, Zip Code

9 1 3 ** 2 3 2 ** 9 9 4 4

Home Phone Number

9 1 3 ** 2 3 5 ** 9 5 5 1

Business Phone Number

APPOINTED POSITION SUBJECT TO SENATE CONFIRMATION:

C R E D I T U N I O N C O U N C I L

Name of Agency, Commission or Board

T D E P T O F C R E D I T U N I O N S

The last four digits of your social security number will aid in identifying you on the same name on the computer list. This information is optional.

6-4

OF

11

C. **OWNERSHIP INTERESTS:** List any corporation, partnership, proprietorship, trust, joint venture and every other business interest, including land used for income in, which either you or your spouse has owned within the preceding 12 months a legal or equitable interest exceeding \$5,000 or 5%, whichever is less. If you or your spouse own more than 5% of a business, you must disclose the percentage held. Please insert additional page if necessary to complete this section.

If you have nothing to report in Section "C", check here X .

| BUSINESS NAME AND ADDRESS | TYPE OF BUSINESS | DESCRIPTION OF INTERESTS HELD | HELD BY WHOM | PERCENT OF OWNERSHIP INTERESTS |
|---------------------------|------------------|-------------------------------|---|--------------------------------|
| 1. | | | <input type="checkbox"/> You <input type="checkbox"/> Spouse <input type="checkbox"/> Jointly | |
| 2. | | | <input type="checkbox"/> You <input type="checkbox"/> Spouse <input type="checkbox"/> Jointly | |
| 3. | | | <input type="checkbox"/> You <input type="checkbox"/> Spouse <input type="checkbox"/> Jointly | |
| 4. | | | <input type="checkbox"/> You <input type="checkbox"/> Spouse <input type="checkbox"/> Jointly | |
| 5. | | | <input type="checkbox"/> You <input type="checkbox"/> Spouse <input type="checkbox"/> Jointly | |
| 6. | | | <input type="checkbox"/> You <input type="checkbox"/> Spouse <input type="checkbox"/> Jointly | |
| 7. | | | <input type="checkbox"/> You <input type="checkbox"/> Spouse <input type="checkbox"/> Jointly | |

D. **GIFTS OR HONORARIA:** List any person or business from whom you or your spouse either individually or collectively, have received gifts or honoraria having an aggregate value \$500 or more in the preceding 12 months.

If you have nothing to report in Section "D", check here X .

| NAME OF PERSON OR BUSINESS FROM WHOM GIFT RECEIVED | ADDRESS | RECEIVED BY |
|--|---------|-------------|
| 1. | | |
| 2. | | |
| 3. | | |

E. RECEIPT OF COMPENSATION: List all places of employment in the last calendar year, and any other businesses from which you or your spouse received \$2,000 or more in compensation (salary, thing of value, or economic benefit conferred on in return for services rendered, or to be rendered), which was reportable as taxable income on your federal income tax returns.

1. YOUR PLACE(S) OF EMPLOYMENT OR OTHER BUSINESS IN THE PRECEDING CALENDAR YEAR. IF SAME AS SECTION "B", CHECK HERE ____.
 If you have nothing to report in Section "E"1, check here ____.

| | NAME OF BUSINESS | ADDRESS | TYPE OF BUSINESS |
|----|-------------------------|----------------------------|-----------------------------|
| 1. | NEKAN BELL CREDIT UNION | 707 SE QUINCY, TOPEKA, KS | CREDIT UNION |
| 2. | STATE OF KANSAS | 400 KANSAS AVE, TOPEKA, KS | KS ST DEPT OF CREDIT UNIONS |

2. SPOUSE'S PLACE(S) OF EMPLOYMENT OR OTHER BUSINESS IN THE PRECEDING CALENDAR YEAR.
 If you have nothing to report in Section "E"2, check here ____.

| | NAME OF BUSINESS | ADDRESS | TYPE OF BUSINESS |
|----|------------------|---------|------------------|
| 1. | | | |
| 2. | | | |

F. OFFICER OR DIRECTOR OF AN ORGANIZATION OR BUSINESS: List any organization or business in which you or your spouse hold a position of officer, director, associate, partner or proprietor at the time of filing, irrespective of the amount of compensation received for holding such position. Please insert additional page if necessary to complete this section.
 If you have nothing to report in Section "F", check here ____.

| | BUSINESS NAME AND ADDRESS | POSITION HELD | HELD BY WHOM |
|----|--|---|--------------|
| 1. | Mid American Credit Union 8404 W Kellogg, Wichita, KS 67209 | Member, Board of Directors Chairman, Supervisory Committee | self |
| 2. | Consumer United Program 8410 W Kellogg, Wichita, KS 67209 | Member, Board of Directors | self |
| 3. | Credit Union Council Kansas State Department of Credit Unions 400 Kansas Ave, Topeka, KS 66612 | Chairman | self |
| 4. | | | |
| 5. | | | |

G. **RECEIPT OF FEES AND COMMISSIONS:** List each client or customer who pays fees or commissions to a business or combination of businesses from which fees or commissions you or your spouse received an aggregate of \$2,000 or more in the preceding calendar year. *The phrase "client or customer" relates only to businesses or combination of businesses.* In the case of a partnership, it is the partner's proportionate share of the business, and hence of the fee, which is significant, without regard to expenses of the partnership. An individual who receives a salary as opposed to portions of fees or commissions is generally not required to report under this provision. Please insert additional page if necessary to complete this section.

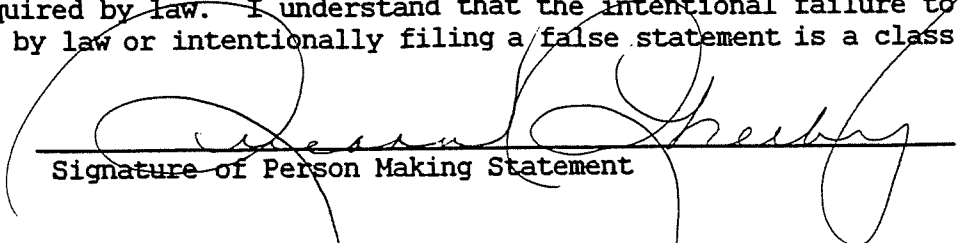
If you have nothing to report in Section "G", check here X.

| | NAME OF CLIENT / CUSTOMER | ADDRESS | RECEIVED BY |
|-----|---------------------------|---------|-------------|
| 1. | | | |
| 2. | | | |
| 3. | | | |
| 4. | | | |
| 5. | | | |
| 6. | | | |
| 7. | | | |
| 8. | | | |
| 9. | | | |
| 10. | | | |
| 11. | | | |
| 12. | | | |
| 13. | | | |

H. **DECLARATION:**

I, SUE ANN SHELBY, declare that this statement of substantial interests (including any accompanying pages and statements) has been examined by me and to the best of my knowledge and belief is a true, correct and complete statement of all of my substantial interests and other matters required by law. I understand that the intentional failure to file this statement as required by law or intentionally filing a false statement is a class B misdemeanor.

April 8, 1994
Date


Signature of Person Making Statement

NUMBER OF ADDITIONAL PAGES -0-.

Return your completed statement to the Secretary of State, State House, Topeka, Kansas 66612.