Approved: 2/13/95
Date

MINUTES OF THE Senate Committee on Financial Institutions and Insurance.

The meeting was called to order by Chairperson Dick Bond at 9:06 a.m. on February 9, 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: Senator Tim Emert
Mark Knackendoffel, First Manhattan Trust Company
William Grant, State Banking Department

Others attending: See attached list

Senator Tim Emert appeared before the committee to request introduction of legislation relating to life insurance beneficiaries. The bill will be drafted after a Missouri statute so that a divorced spouse no longer will be considered the beneficiary of a life insurance policy except by court order or when specifically agreed upon within the divorce decree. Senator Hensley made a motion to introduce this bill conceptually; Senator Clark seconded the motion. The motion carried.

Mark Knackendoffel, First Manhattan Trust Company, also appeared before the committee to request introduction of a bill regarding the appointment of successor trustee. (Attachment #1) Senator Steffes moved to introduce the legislation requested. Senator Praeger seconded the motion; the motion carried.

The hearing was opened on **SB 204**, which would amend the bank holding company act and banking code as a first step to bring Kansas statute into conformity with the Riegle Neal Act of 1994. William Grant, General Counsel to the Office of the State Bank Commissioner, appeared before the committee to explain the bill section by section. (Attachment #2) Mr. Grant informed the committee that, in general, **SB 204** disposes of the discriminatory aspects of the state banking laws by subjecting both in state and out of state holding companies to the same procedures for securing approval to acquire Kansas banks. Mr. Grant clarified the residency requirements in response to Senator Bond's request, and stated that the statutes deal primarily with holding company activities and not banks themselves.

In response to Senator Steffes' question regarding whether this bill would place too great a burden on the State Banking Department staff in reviewing all the reports required, Mr. Grant stated that the requirements have been reduced as much as possible and the Bank Department can see no alternative to this in view of the new federal law.

After discussion concerning when select parts of the bill should go into effect, Chairman Bond requested Mr. Grant to present the committee a list of recommendations for the effective date of each section and also to draft new language clarifying Section 11 of the bill. The hearing on **SB 204** will be continued on Monday, February 13.

The committee adjourned at 10:00 a.m.

SENATE FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE GUEST LIST

DATE: 2-9-95

NAME	REPRESENTING
Sue Anderson	Community Bankers Assn.
Whitney Damron	Pete McGill & Associates / CBA
Larry K Williams	Kansas Bankers Assn
Chuck Stones	ICBA
Jim Mayo	KBA
Tadd Stoner	ICBA
Judi Stork	OSBC
Kevin Glendening	Office of the State Bank Commissioner
Wm. Grant	" " "
Roger Treaster	FFC
Tom Wilder	Kan Dept of Insurance
Frank Card, Jr.	Polsinelli, White et al
Danielle Noe	KS Credit Union Assn
Bill Sneed	NIAA
MARK KNACKENDOFFEL	FIRST MANHATTAN TRUST CO.
BRAD BERGMAN	MIDWEST TRUST CO.
John Peterson	Fourth Financial Corp.

First Manhattan Trust Company

701 Poyntz Avenue, P.O. Box 66, Manhattan, KS 66502-0001
Phone: (913) 537-7200 Fax: (913) 537-2030

MEMORANDUM

TO: **Brad Bergman**
FROM: Mark Knackendoffel
DATE: February 7, 1995
RE: **Proposed Successor Trustee Language**

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PROPOSED LEGISLATION REGARDING APPOINTMENT OF SUCCESSOR TRUSTEE

K.S.A. 58-2412. Removal of Trustees.

(a) Whenever a trustee is or becomes an incapacitated person, becomes insolvent, or there is reasonable doubt as to the solvency of the trustee or the trustee's surety, or is otherwise incapable of performing the duties of the trustee, the trustee may be removed.

(b) Whenever a trustee has violated or attempted to violate any express trustee or fails or refuses to perform any of the duties imposed upon the trustee by law, by the provisions of the trust instrument or by any lawful order of the court, the trustee may be removed and his or her compensation may be reduced or forfeited, in the discretion of the court.

(c) If, upon petition of the trustee or any beneficiary of a trust requesting appointment of a specific successor trustee, the court having jurisdiction over a trust finds that:

(1) appointment of such requested successor trustee(s) would not jeopardize the purpose of the trust;

(2) either all the beneficiaries of such trust consent in writing to appointment of such requested successor(s) or the court determines the appointment of such requested successor(s) will not adversely affect the beneficiaries who have not consented; ***and***

(3) the proper administration of the trust and the trustee's relationship with the beneficiaries have been adversely affected by a transfer of control, change of management or transfer of the principal office location for the delivery of trustee services of a corporate trustee,

the court, after due notice to all persons, or the representatives of persons having an interest in the trust may appoint such requested successor(s) as trustee, regardless of the absence of any provision in the trust instrument for removal of trustee or appointment of successor trustee or the existence of any limitation in the trust instrument regarding the identity or qualifications of a successor trustee. For this purpose, all beneficiaries of such trust shall include all the current and future beneficiaries, whether vested or contingent, but any such beneficiary who is unborn or a minor may be represented (i) by any ancestor who is also a beneficiary or (ii) otherwise by a guardian ad litem appointed by the court, for the purpose of receiving notice or consenting, and permissible appointees under a power of appointment contained in the trust are not included.

Senate 4/4
2/9/95
Attachment #1

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 9, 1995

Mr. Chairman and Members of the Committee:

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

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

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

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

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

Senate FI&I
2/9/95
Attachment #2

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

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

The term "out-of-state bank holding company" was required in order to draft the one statutory proposal which continues to maintain a discriminatory effect. Section 12 (page 7, line 21) contains a proposed age requirement statute which will prevent an out-of-state holding company's acquisition of a Kansas bank unless the bank has existed for five years or more.

A definition of "foreign bank" was required in order to draft the proposed prohibition against foreign banks establishing branches in Kansas. See Section 11 (page 7, line 19).

Section 2 (page 3, line 10) contains no substantive change. It should be noted that Kansas has an independent state requirement that a majority of the directors of a state bank be residents of this state. Federal law requires two-thirds of the directors of a national bank to reside in the state "in which the bank is located" or within 100 miles of the "office of the association". According to Wayne Vernard, staff attorney, Office of the Comptroller of the Currency, the phrases "in which the bank is located" and "office of the association" both refer to the main office location.

Section 3 (page 3, line 16) contains the proposed amendment of K.S.A. 9-532. This statute is the heart and soul of Kansas' limited interstate banking law. Subsection(a) currently provides the necessary grant of authority to regional out-of-state holding companies to enter Kansas by acquisition of a Kansas banking operation. Subsection (c) currently requires any out-of-state applicant to file an application for approval with the state banking board.

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

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

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

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

Section 4 (page 4, line 15) amends K.S.A. 9-533, which provides a list of items required to be submitted by an applicant holding company seeking to acquire a Kansas bank.

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

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

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

Section 5 (page 5, line 6) amends K.S.A. 9-534, which provides the factors to be considered when evaluating a bank holding company's application for acquisition of a Kansas bank. The section contains only technical amendments with the exception of the addition of the new subsection (e). This new standard was found to be very common throughout other states' holding company acts and will allow the commissioner to consider the applicant holding company's financial condition and the impact that condition will have on the target Kansas bank. This subsection will provide additional protection against the infection of a Kansas bank by a suitor with financial difficulties.

Section 6 (page 5, line 28) amends K.S.A. 9-535. The present language found in subsections (a) and (b) currently exist to compliment the "regional" nature of the KBHCA, and consequently, both provisions will be preempted by Riegle-Neal. SB 204 retains the substance of the current subsection (c), which requires approval of an application that meets the standards set out in the previous section. The bill contains a new subsection (b) which will allow the applicant to appeal the commissioner's decision to the state banking board.

Section 7 (page 6, line 17) and Section 8 (page 6, line 21) contain no substantive changes. On line 23 of page 6 of SB 204 the phrase "located in a state or jurisdiction other than this state" has been removed. This is a classic example of the type of discriminatory statutory provision that will be preempted by the repeal of the Douglas Amendment in September , 1995. The language has been altered to apply to any bank holding company that owns a Kansas bank, regardless of the home state of the holding company.

Section 9 (page 6, line 30) of the bill amends K.S.A. 9-538. The current statute requires the filing of CRA evaluations by each Kansas bank which is owned by an out-of-state bank holding company. The amendment eliminates the discriminatory effect by requiring both in-state and out-of-state holding companies to file CRA evaluations on their Kansas banks. However, the scope of mandatory filings has been relaxed so that only those evaluation reports which assign a rating of "needs improvement" or "substantial non-compliance" must be submitted, unless others are requested by the commissioner.

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

New section 11 (page 7, line 19) is an express prohibition against the establishment of branches, agencies or offices in Kansas, by a bank from a foreign country. The enactment of Riegle-Neal necessitates the passage of this provision to insure that foreign banks are treated the same as domestic out-of-state banks. Currently, under federal law, a foreign bank which presently has a branch in another U.S. state is subjected to the same Douglas Amendment restrictions as a holding company located in the foreign bank's "home" state. In September of 1995, just as holding companies, foreign banks with locations in any state in the U.S. will be authorized to purchase banks in Kansas. These acquisitions will continue to be subject to any approval procedures or age requirements implemented as a result of this bill. However, without the passage of this section, a foreign bank which has not located an operation in the U.S., is authorized to establish a "de novo" banking operation, known as a federal branch, in Kansas, without regard to any state application or approval procedures.

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

New section 12 (page 7, line 21) is proposed language designed to impose a minimum age requirement of five years on a Kansas bank which is an acquisition target of an out-of-state holding company. This is the only discriminatory provision of the KBHCA which will survive Congress' repeal of the Douglas Amendment and reimposition of the Constitutional constraints posed by the Commerce Clause.

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

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

In order to effectuate the implementation of this authority it is necessary to add a definition of "depository institution" to K.S.A. 9-701 (page 10, line 34), as well as to include a specific grant of authority in the state bank powers statute, K.S.A. 9-1101 (page 16, line 25). It is also necessary to amend the Kansas branching statute, K.S.A. 9-1111 (page 16, line 43), to insure the state banks' ability to utilize the agency services of one of its affiliates without the activity being considered branching.

An extremely important point to note is that the language used for this grant of authority purposefully mirrors the language in Riegle-Neal. Riegle-Neal's agency authority only extends to national banks. The definitive scope of the activities encompassed by this language is undeterminable at this time. There is no way to know what Congress intended and it is impossible to estimate what type of creative approach will be adopted by the OCC. Therefore, the agency language found in SB 204 which amends 9-1101 at page 16, line 25, is necessary to preserve parity for the state chartered banks in Kansas. Unless the language contained in this bill is adopted, there is a substantial risk that the national banks in Kansas will end up with a significant competitive advantage over the state banks.