

MINUTES OF THE Senate Committee on Financial Institutions and Insurance.

The meeting was called to order by Chairperson Dick Bond at 9:05 a.m. on February 13, 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: Sue Anderson, Community Bankers Association of Kansas
Bradley Smoot, American Insurance Association
James Maag, Kansas Bankers Association
William Grant, Kansas Bank Commissioner's Office

Others attending: See attached list

Senator Steffes moved to approve the minutes of the meetings of February 8 and February 9 as submitted. Senator Clark seconded the motion. The motion carried.

The chairman reopened the hearing on SB 204, amending the bank holding company act and banking code in response to the 1994 Riegle Neal Act. Sue Anderson, Community Bankers Association, appeared before the committee to propose an amendment to define agency relationship. (Attachment #1) Senator Bond stated that the Bank Commissioner's staff should respond to whether they need to know when banks are forming or dissolving a relationship as requested by Ms. Anderson. In response to Senator Clark's request, Senator Bond explained "agency relationship" as it is currently understood; final clarification will have to come from the OCC.

The hearing on SB 204 was suspended so that the committee could receive requests for bill introduction. Brad Smoot, American Insurance Association, requested introduction of legislation to amend KSA 40-1132 concerning reporting requirements for product liability insurance. (Attachment #2) Senator Praeger moved to introduce the requested legislation; Senator Steffes seconded the motion. The motion carried.

James Maag, Kansas Bankers Association, requested introduction of legislation amending KSA 9-1104. (Attachment #3) Senator Steffes made a motion to introduce this legislation. Senator Praeger seconded the motion; the motion carried.

The hearing was resumed on SB 204 with William Grant, State Banking Department, reappearing before the committee with proposed changes to new Section 11 and clarification of effective dates as requested in the meeting of February 9. (Attachment #4) In reference to new Section 11, Senator Corbin asked Mr. Grant why it is necessary to have this legislation to keep foreign banks out of the state. Mr. Grant replied that it is needed to keep the playing field level for Kansas banks by prohibiting the establishment of branches of foreign banks.

Mr. Grant requested that the effective dates of the legislation be as follows: Sections 1 through 10 - effective date 9/29/95 (the date the federal law goes into effect); Sections 11 through 15 - effective upon publication in the Kansas Register. Mr. Grant also responded to the request for amendments by the Community Bankers Association by stating that federal language regarding agency relationship was copied verbatim so that state banks would not be put at a future disadvantage with national banks, and that the Bank Commissioner's staff do not believe we have the authority to impose restrictions on national banks.

In response to Senator Steffes's question, Mr. Grant stated that there is no real need for the reporting requirement when relationships are being formed or dissolved since the bank examiners are in each bank annually and would be alert to what type of activity is going on in any particular bank. There being no further questions and no other conferees, the hearing on SB 204 was closed. Senator Steffes made a motion to adopt the recommendations by Mr. Grant in regard to amending Section 11 and the publication of this bill in the Kansas Register, with the effective dates as outlined above. The motion also included conceptual clean-up amendments as requested by Mr. Carman. Senator Lawrence seconded the motion; the motion carried.

Senator Lawrence moved to pass the bill favorably as amended; Senator Steffes seconded the motion. The motion carried.

The full committee adjourned at 9:30 a.m.. The remainder of the hour was spent by the subcommittee in further consideration of SB 9. The next meeting is scheduled for Tuesday, February 14.

SENATE FINANCIAL INSTITUTIONS & INSURANCE
COMMITTEE GUEST LIST

DATE: 2/13/95

NAME	REPRESENTING
William Grant	OFFICE STATE BANK COMM.
Judi Stork	✓
Kevin Glendenings	✓
Sue Anderson	Community Bankers Assn.
Danielle Noe	KCUA
Jim Reardon	Kans Assn of Counties
Roger Franke	FIC
Sandra McHenry	KS Insurance Dept.
Bill Sneed	NAIA
Jama Wagner	STO
John Quinn	STO
John Peterson	Fifth Federal Credit
Brad Smoot	AIA
Jim Mann	KBA
Walter Taylor	ICBA
Chuck Stone	"
Harold Stone	"
Alan Steppat	PETE McGill & Assoc.
Bill Caton	PMIB



**Testimony before the Senate
Committee on Financial Institutions and Insurance
Thursday, February 9, 1995
Subject: Senate Bill 204**

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

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

While serving on the Task Force, our representatives have had the opportunity to offer input into the elements comprising the bill before you. It is our firm belief that each state must take every avenue left available to us to establish reasonable parameters of the banking business that will be conducted in our State. When you have the opportunity to assert states rights and prerogatives, in whatever area, we urge you to assertively establish state powers.

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

However, there is a key element which is missing from Senate Bill 204. That element is a definition of agent relationship. The federal law is very vague on this particular issue and that leaves an opportunity for the state to set some reasonable guidelines now.

*Senate 7/41
2/13/95
Attachment #1*

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Since this particular affiliation may be very attractive until such time as the legislature decides how Kansas will treat the issue of interstate branching, it is imperative to have some definitive language in the statute for its existence.

A useful guideline for this definition can be found under the banking code in Article 16. Since the statutes clearly define what trust authority means, why can't the statutes define what agent authority means. Trust authority is recognized by national banks doing business in Kansas. It's applied equally and non-discriminately to state banks and national chartered banks. The federal law is vague and does not define agent. Therefore, federal law does not preempt state law on this issue.

We recommend that K.S.A. 9-701 be amended to include a specific definition for bank agent relationships.

At the very least, for an agency relationship to be established the following should be required:

- 1) A granting of application process to the state banking board or the bank commissioner
- 2) Provisions to notify the bank commissioner if the relationship terminates
- 3) Notification to the bank commissioner or bank board if a change of ownership or a successor occurs (e.g. transfer of agent powers)

In closing, because the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 has not defined the agent relationship, this leaves a clear opportunity for individual states to place an agent definition in state law that will apply to all banks, both state and national, operating within the state. Let's give the Bank Commissioner the opportunity to at least be aware when agent relationship exist within the state.

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Suggested language for "agency" legislation relative to the Reigle-Neal Act, to amend S.B.204 as it relates to K.S.A. § 9-519 *et seq.*

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

Section 1. K.S.A. 9-701 is hereby amended to read as follows:

(#) "agent for a depository institution affiliate," as that term is used in the Reigle-Neal Interstate Banking and Branching Efficiency Act of 1994, 12 U.S.C. 1811 *et seq.*, as amended, shall mean such subsidiary of a bank holding company which has satisfied the application process as established by the Commissioner, such application process to specifically include provisions by which an applicant shall immediately notify the Commissioner upon termination of the agent relationship, or upon transfer of the agent powers by change in ownership or successorship; and, such application process to specifically include such other requirements as are required pursuant to K.S.A. 17-7301 as relate to foreign corporations.

**AMENDMENTS TO KANSAS 40-1132. PRODUCT LIABILITY INSURANCE;
ANNUAL REPORTS; PENALTY**

40-1132. Product liability insurance; annual reports; penalty.

(a) Within 120 days after the effective date of this act, each insurer authorized to transact business in this state and providing product liability insurance shall file with the commissioner of insurance a report containing the information specified by this section. Insurers that are members of the same insurance group may aggregate the information required by this section in a single report. Reports for subsequent years shall be filed with the commissioner of insurance before May 1 of each year. Such reports shall be made upon forms provided by the commissioner of insurance and shall request the following information:

(1) The name of the insurance company; and
(2) the Kansas and countrywide product liability policy year premium and paid loss experience for the latest policy year ~~policy year 1977~~ and each completed policy year thereafter and any other information the commissioner deems relevant for the purpose of this act.

(b) The reports required by subsection (a) shall contain a summary for each policy year which includes the following information:

(1) Total policy year paid losses;
(2) policy year allocated and unallocated loss expenses;
(3) the number of open and closed claims for the each policy year reported; and
(4) reserves maintained for product liability claims filed for the ~~each~~ policy year.

(c) The Kansas and countrywide policy year premium, paid loss, reserved loss and other information the commissioner deems relevant for insurance policies delivered as part of a package which cannot be considered exclusively product liability insurance shall be separately reported on forms prescribed by the commissioner.

(d) Each company which has reported product liability premium and loss information in their 1977 and subsequent annual statements filed in accordance with K.S.A. 40-225 and amendments thereto is required to submit the policy year information required by this act.

(e) Any insurer failing to provide the information required pursuant to this section shall be subject to an administrative penalty of \$1,000 and an additional \$1,000 for every month that the insurer continues thereafter to transact business of insurance in this state without filing all past due reports, but the penalty shall not exceed a cumulative total of \$100,000.

This penalty provision shall not apply to policy years completed prior to the effective date of this act to the extent the chief executive officer of the insurer provides an affidavit

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Attachment #2

accompanied by adequate supporting information which demonstrates that all or any part of the information pertaining to such years is not available.

K.S.A. 9-1104

(3) the total liability in the form of notes or drafts to any bank of any person, copartnership, association or corporation, including in the liability of a copartnership or association the greatest of the individual liabilities of the respective members thereof other than limited partners who, under the limited partnership agreement, are not liable for the debts or actions of the limited partnership, and, except as provided herein for the liability of a limited partner, including in the liability of the copartnership or association, may equal but not exceed 25% of the amount of the capital stock paid in and unimpaired and unimpaired surplus fund of such bank provided such a portion of the liability, in an amount equal to or greater than the amount by which the total liability exceeds 15% of such capital stock and surplus, is secured by shipping documents or instruments transferring or securing title covering readily marketable nonperishable grains, seeds or livestock or giving a lien on readily marketable nonperishable grains, seeds or livestock having a market value at all times of not less than 115% of the amount by which such total liability exceeds 15% of the amount of ~~the such~~ capital stock paid in and unimpaired and ~~the unimpaired~~ surplus fund of such bank. ~~which~~ To qualify for the expanded limit provided by this subsection, the market value in the case of the livestock is shall be supported by an accurate written appraisal of an officer of the bank or an independent professional appraiser made not more than six months previously, and ~~which the~~ grains and seeds ~~are~~ shall be adequately insured. If under the limited partnership agreements a limited partner is not liable for the debts or actions of the partnership, the liability of the limited partnership shall not be included in the liability of the limited partner;

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Attachment #3

K.S.A. 9-1104

(5) the total liability in the form of notes or drafts to any bank of any person, copartnership, association or corporation, including in the liability of a copartnership or association the greatest of the individual liabilities of the respective members thereof other than limited partners who, under the limited partnership agreement, are not liable for the debts or actions of the limited partner, including in the liability of the copartnership or association, may exceed limitations otherwise imposed by this subsection by 10% of the amount of the capital stock paid in and unimpaired and the unimpaired surplus fund of such bank provided ~~that the~~ a portion of the liability, in an amount equal to or greater than the amount by which the total liability exceeds limitations otherwise imposed by this section, is secured as to payment by first lien or liens upon real estate in fee simple. ~~to the extent of the value thereof, having an appraised value of not less than~~ To qualify for the expanded limit provided by this subsection, the amount of the first lien or liens shall be at least twice the amount by which such total liability exceeds limitations otherwise imposed by this section, and shall be fully supported by the appraised value of the property. ~~and where~~ Additionally, such excess liability is ~~shall be~~ secured by a lien instrument under the terms of which any installment payments are sufficient to amortize the entire principal amount of such excess liability within a period of not more than 20 years. If under the limited partnership agreement a limited partner is not liable for the debts or actions of the partnership, the liability of the limited partnership shall not be included in the liability of the limited partner;

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19 New Sec. 11. No foreign bank shall ~~transact any business or maintain~~
20 any branch, agency, office or other place of business in this state.

establish

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Attachment #4