Approved: 3/14/95
Date

MINUTES OF THE Senate Committee on Financial Institutions and Insurance.

The meeting was called to order by Chairperson Dick Bond at 9:08 a.m. on March 9, 1995 in Room 529-S of the Capitol.

Members present were: Senator Clark, Senator Corbin, Senator Emert, Senator Lee, Senator Petty, Senator Praeger, Senator Steffes

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

Conferees appearing before the committee: James Maag, Kansas Bankers Association
Judi Stork, State Banking Department
Chuck Stones, Kansas Bankers Association
Cliff Hall, Kansas Press Association
Jeff Sonnich, KS-NE-OK League of Savings Institutions

Others attending: See attached list

Senator Petty moved to approve the minutes of the meeting of March 8 as submitted; Senator Praeger seconded the motion; the motion carried.

The chairman reopened the hearing on **HB 2069**, which was originally heard February 15 and referred back to the conferees and staff to clarify the amending language. Jim Maag, Kansas Bankers Association, presented an amendment which Dr. Woolf explained will allow banks and trust companies to agree with a municipality or quasi-municipality to participate with the lessor on a lease-purchase agreement for real property. (Attachment #1) The amendment also limits the total liability to any bank to 25% of the capital stock. Judi Stork added the State Banking Department's approval of the language in the amendment. Senator Steffes moved to adopt the amendment; Senator Clark seconded the motion. The motion carried. **HB 2069** will be acted upon in a future meeting.

The hearing was opened on **HB 2073**, relating to financial reports from banks and trust companies. Judi Stork, State Banking Department, explained that the bill adds language to the banking code to make two changes: to delete the provision for state banks to fill call reports and to publish these reports quarterly; and to add a mandatory requirement for all trust companies and trust departments to file an annual fiduciary report with the Bank Commissioner. (Attachment #2) Ms. Stork stated that the information contained in the call reports is available from three other sources and constitutes unnecessary paperwork for both the banks and the Banking Department.

In response to Senator Bond's question, Ms. Stork clarified the difference between call reports and fiduciary reports. Senator Steffes observed that national banks are not required to publish call reports and questioned whether the public would be harmed if state banks ceased to publish call reports. Ms. Stork stated that the Banking Department receives no more than one request in a six month period for these reports and the information could still be made available by the Banking Department from other sources such as the FDIC data base. Senator Lee stated that, in her opinion, the general public is unaware of the existence of the State Banking Department and ceasing to publish bank call reports would deny the public easy access to information that might be helpful.

Chuck Stones, Kansas Bankers Association, stated that the KBA supports **HB 2073**. (Attachment #3)

Senator Steffes expressed concern regarding the impact of lost revenue on small newspapers if they no longer have these reports to publish. Cliff Hall, Kansas Press Association, requested an amendment on page 1, line 39, to strike "may" and insert "shall" and stated that publishing the report only once annually was an acceptable compromise. (Attachment #4)

There were no other conferees. The hearing on **HB 2073** was closed. Senator Lee moved to amend the bill as requested by Mr. Hall. Senator Petty seconded the motion.

Senator Steffes made a substitute motion to add "...*once annually and* at any time upon the commissioner's request." Senator Corbin seconded the motion.

Following further discussion regarding how the proposed amendment(s) should be drafted to achieve the committee's wishes, all motions were withdrawn and the committee requested that Senator Steffes, staff, and interested parties meet to draft language to require all state financial institutions to publish a statement of condition once annually. **HB 2073** will be brought back for action in a future meeting.

The chairman opened the hearing on **HB 2089**, which would allow financial institutions to internally determine if they are in compliance with a variety of laws and regulations without the possibility of their findings being used against them in a court of law. Chuck Stones, KBA, appeared testimony in support of this bill, stating that everyone will benefit from its passage. (Attachment #5)

Jeff Sonnich, Kansas-Nebraska-Oklahoma League of Savings Institutions, also testified as a proponent and stated that internally generated and controlled documents will still be available to regulators. (Attachment #6)

There were no questions and no other conferees; the hearing was closed. Senator Praeger made a motion to pass **HB 2089** favorably. Senator Steffes seconded the motion; the motion carried.

The committee adjourned at 10:00 a.m. The next meeting is scheduled for March 14, 1995.

SENATE FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE GUEST LIST

DATE: 3/9/95

NAME	REPRESENTING
Bill Mitchell	KCTA
JEFF "ED" SONNICH	KNOCSI
Chuck Stones	KBA
Kathy Taylor	"
L.M Cornish	Ks Life Ins Assn.
Roger Freund	FFC
John Ensley	Ks. Press Assn.
William Grant	OFFICE STATE BANK COMMISSIONER
Judi Stork	✓
Sonya Allen	✓
Cliff Hall	KS. PRESS ASSN

Draft

CRH2069b1

REPORTS OF STANDING COMMITTEES

MR. PRESIDENT:

Your Committee on Financial Institutions and Insurance

Recommends that House Bill No. 2069

"AN ACT relating to banks and trust companies; concerning directors and officers thereof; requiring notice of application for change of place of business; amending K.S.A. 9-1114, 9-1118 and 9-1717 and K.S.A. 1994 Supp. 9-1115 and 9-1804 and repealing the existing sections."

Be amended:

On page 3, following line 18, by inserting a section as follows:

"Sec. 6. K.S.A. 1994 Supp. 9-1102 is hereby amended to read as follows: 9-1102. (a) Any bank or trust company may own, purchase, lease, hold, encumber or convey real property and certain personal property subject to the following:

(1) Own suitable building, furniture and fixtures, stock in a single trust company organized under the laws of the state of Kansas, and stock in a safe deposit company organized under the laws of the state of Kansas, and stock in a corporation organized under the laws of this state owning real estate all or a part of which is occupied or to be occupied by the bank or trust company;

(2) purchase, hold, encumber and convey real estate or lease, as lessor or lessee, any building or buildings. Any real estate not necessary for the bank's or trust company's accommodation in the transaction of its business shall be disposed of or charged off its books by the bank or trust company not later than seven years after its acquisition unless the state bank commissioner authorizes the bank or trust company to retain such real estate on its books for a period not to exceed an additional two years;

(3) a bank's or trust company's total investment or ownership at all times in any one or more of the following shall

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Attachment #1

not exceed 1/2 of its unimpaired capital stock, surplus, undivided profits and capital notes and debentures, and any such excess shall be removed from the bank's or trust company's books unless approval is granted by the state bank commissioner:

(A) The book value of real estate plus all encumbrances thereon;

(B) the book value of furniture and fixtures;

(C) the book value of stock in a safe deposit company;

(D) the book value of stock in a trust company; or

(E) the book value of stock in a corporation organized under the laws of this state owning real estate occupied by the bank or trust company and advances to such corporation acquired or made after July 1, 1973. Except that any real estate not necessary for the accommodation of the bank's or trust company's business shall be disposed of or charged off its books according to paragraph (2).

(b) Any bank or trust company may acquire real estate in satisfaction of any debts due it and may purchase real estate in satisfaction of any debts due it, and may purchase real estate at judicial sales, but no bank or trust company shall bid at any judicial sale a larger amount than is necessary to protect its debts and costs. No real estate or interest in oil and gas leasehold acquired in the satisfaction of debts or upon judicial sales shall be carried as a book asset of the bank or trust company for more than 10 years. At the termination of the 10 years such real estate shall be charged off. The commissioner may grant an extension not to exceed four years, if in the commissioner's judgment it will be to the advantage of the bank or trust company to carry the real estate as an asset for such extended period. Any such extensions issued shall be reviewed by the commissioner on an annual basis.

(c) Notwithstanding the limitations set forth in subsections (a) and (b) above, any bank or trust company may agree with a municipal corporation or quasi-municipal corporation, as defined in K.S.A. 9-701 and amendments thereto to be the lessor or may

take an assignment from the lessor or may participate with the lessor on a municipal lease-purchase agreement for real property and also may be the lessee on a ground lease or base lease that is executed in conjunction with a municipal lease-purchase agreement so long as the municipal lease-purchase agreement and the ground lease or the base lease are for terms not to exceed 15 years and are executed in accordance with the laws of the state of Kansas. The total liability under this subsection to any bank of any municipal corporation or quasi-municipal corporation shall not exceed 25% of the amount of the capital stock paid in and unimpaired and the unimpaired surplus fund of such bank. The legality of a municipal lease-purchase agreement shall be determined as of the date the municipal lease-purchase agreement is made.";

in line 19, after "Supp." by inserting "9-1102,"; by renumbering sections 6 and 7 as 7 and 8;

On page 1, in the title, in line 11, before "amending" by inserting "limitation on certain loans;"; in line 12, after "Supp." by inserting "9-1102,";

And the bill be passed as amended.

_____Chairperson

STATE OF KANSAS
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

MARCH 9, 1995

Mr. Chairman and Members of the Committee:

My name is Judi Stork and I am the Deputy Commissioner with the Office of the State Bank Commissioner. I am here today on behalf of Commissioner Frank Dunnick to testify in favor of House Bill 2073.

House Bill 2073 adds new language to the banking code under K.S.A. 9-1704. This statute governs the making of reports to the Commissioner by banks and trust companies. The new language makes two substantive changes. First, the requirement for banks and trust companies to file quarterly call reports, and to publish those call reports, is changed from a mandatory provision to that of reports being required only upon the request of the Commissioner. Currently, reports from banks and trust companies are required and received by our office three times per year. This information is filed in our office and is rarely used after receipt. The reason for this is the same reports are also filed with the Federal Deposit Insurance Corporation (FDIC) who then in turn input such reports on to their data base. The FDIC call report data base is available to our office and because of the enhanced accessibility offered by use of a computer, our office staff almost exclusively utilizes the FDIC data base for obtaining information they would otherwise retrieve from the paper copies in our office. The use of the paper copies is an antiquated method and the need for a bank to file such report on a regular basis no longer exists. However, we do not want to entirely remove the authority contained in this section as there may be a particular instance or reason where the Commissioner wishes for a bank or banks to file information on the condition of their bank(s).

The second substantive change occurs on page two, subsection (b) of the bill. This adds a mandatory requirement for all trust companies and trust departments to file an annual report, the form of which is determined by the Commissioner. Under K.S.A. 9-1703, the Commissioner assesses banks and their trust departments as well as trust companies an annual fee. The calculation for the trust departments and trust companies is based on their fiduciary assets as contained in an annual report that is filed with the Commissioner. We are asking for this annual report to be a mandatory filing to ensure we have reports available on which to base our assessment fee.

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Attachment #2

The Kansas Bankers Association

800 SW Jackson, Suite 1500
Topeka, KS 66612
913-232-3444 FAX 913-232-3484

TO: Senate Financial Institutions and Insurance Committee

FROM: Chuck Stones, Director of Research

RE: HB 2073

Mr. Chairman and Members of the Committee,

The Kansas Bankers Association appreciates the opportunity to appear today in support of HB 2073.

HB 2073 eliminates the requirement to file and publish repetitive information that is currently available. The information that is currently published is currently available to the public at the bank. Interested individuals can easily obtain this information. The publication requirement can also be costly. Banks in urban areas pay large amounts of money to comply with this requirement.

HB 2073 would eliminate many hours of repetitive paperwork. The information provided to the state is essentially the same as is provided to the FDIC. They are, however, different forms so a Xerox copy is not acceptable.

Federal law, effective September 1994, lifted the publication requirement for all banks. (See attached OCC Bulletin) State law should be repealed to maintain regulatory parity between state and national banks.

Thank you for your time and we urge your favorable consideration.

Senate 7/41
3/9/95
Attachment #3

OCC BULLETIN

Comptroller of the Currency
Administrator of National Banks

Subject: Call Reports

Description: Repeal of Publication Requirements

TO: The Chief Executive Officers of all National Banks, Department and Division Heads, and all Examining Personnel

PURPOSE

This bulletin announces the repeal of the call report publication requirements for national banks contained in 12 U.S.C. 161. This repeal is effective as of September 23, 1994, and is part of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law No. 103-325.

BACKGROUND

On September 23, 1994, the President signed into the law the Riegle Community Development and Regulatory Improvement Act of 1994. Section 308 of the act repeals the requirement that every national bank publish its statement of resources and liabilities contained in the call report in a local newspaper. This repeal does not affect any of the other requirements that national banks face regarding making call reports publicly available. Section 308 repeals similar requirements for state member banks under the Federal Reserve Act (12 U.S.C. 324), and for insured state non-member banks under the Federal Deposit Insurance Act (12 U.S.C. 1817).

RESPONSIBLE OFFICE: Questions concerning this bulletin should be directed to the Office of the Chief National Bank Examiner, (202) 874-5190.

Jimmy F. Barton
Chief National Bank Examiner

Kansas Press Association, Inc.

5423 SW 7th Street, Topeka, KS 66606 Phone 913-271-5304, Fax 913-271-7341

Testimony on House Bill 2073
before
Senate Committee on Financial Institutions and Insurance
Thursday, March 9, 1995

Mr. Chairman, members of the committee, my name is Cliff Hall and I am the publisher of The Metro News, a weekly publication here in Topeka. I am appearing today on behalf of the Kansas Press Association, a trade association representing the 250 weekly and daily newspapers in Kansas.

While we are listed today as an opponent, the Kansas Press Association is only asking for a slight amendment to the bill. On line 39, we would recommend the word "may" be changed to "shall."

This amendment would effectively require, rather than allow, financial institutions to publish their reports of financial condition.

I am sure there are some members of the press association who are looking to this issue for self interest. In some small communities in Kansas, an occassional advertisement can make a big difference.

For the most part, however, the publishers I have talked to, and those submitting comments to the association office, have indicated a concern that public financial disclosure is very important. Leaving publication to chance, as suggested in House Bill 2073, may not be the strongest public policy.

On behalf of the Kansas newspaper industry, we would request the committee's support of the amendment in line 39.

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3/9/95
Attachment #4

The Kansas Bankers Association

800 SW Jackson, Suite 1500
Topeka, KS 66612
913-232-3444 FAX 913-232-3484

TO: Senate Financial Institutions and Insurance Committee

FROM: Chuck Stones, Director of Research

RE: HB 2089

Mr. Chairman and Members of the Committee:

The Kansas Bankers Association appreciates the opportunity to appear before you in support of HB 2089.

What is it?

HB 2089 would allow banks and S & L's to perform candid self-evaluations in order to have an effective compliance program. It will ensure the confidentiality of records and files of a "Compliance Review Committee." This Compliance Review Committee functions to evaluate and improve loan underwriting standards, asset quality, financial reporting to federal and state regulatory agencies, and compliance with federal or state statutory of regulatory requirements. The task of these compliance programs is to review internal activities, to identify weaknesses in procedures and policies, and to discover violations of law. It is our belief that a fine-tuned compliance program is highly desirable by all parties involved, bankers, bank regulators, and consumers. It can correct practices that, if otherwise not addressed, could result in a violation of law.

What does it do?

HB 2089 allows banks and S & L's to internally determine if they are in compliance with a variety of laws and regulations without the fear that those same internal documents will later be used against them in a court of law. It states "Compliance review documents are confidential and are not discoverable or admissible in evidence in any civil action arising out of matters evaluated by the compliance review committee"...

Why is it needed?

We believe that for a bank to be more effective and a better service to its community it needs the ability to fully evaluate its compliance with all laws and regulations. It must be free to review its own performance without fear that its own analysis of what occurred and resulting dialogue as to the remedy will be used against it in legal proceedings. Under current law, an institution's criticism of its own practices can and is used against the institution in the litigation process.

The fact that these records and documents can be used against them causes the bank to either not perform the compliance review or hinders their ability to be totally candid in the evaluation and resulting recommendations for remedy.

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What is included and not included.

The bill is very specific. Only "Compliance Review Documents" (as defined) prepared by the "Compliance Review Committee" (as defined) are protected.

The bill is very clear (Subsection d and e, Pg. 2, lines 2-9) that it does not apply to any information required by statute or rules and regulation, and that is not to be construed to limit the discoverability or admissibility in any civil action of any documents that are not compliance review documents. This would include documents used in the lending process, such as underwriting, credit scoring, and appraisal documents. The phrase " evaluate and seek to improve" (page 1 line 33) implies a retrospective consideration of events. In this regard, the compliance privilege does not protect contemplated future actions (like granting credit) that are not related to improvements in present conditions. Factual information relating to events that are now the subject of review would not be protected from discovery merely because they are mentioned in a compliance review document. From the perspective of the non-bank party seeking information, denial of access to compliance materials leaves that party in exactly the same situation it would have been in if no compliance reviews had been conducted. The review does not conceal anything; this privilege does not protect pre-existing facts.

HB 2089 is not a new idea. It is similar to the privilege extended to peer review panels in the health care industry. Also, SB 76, which would allow for self evaluations in environmental compliance to have this same protection. SB 76 passed the Senate earlier this session 39 - 1. The same rational and expected results would apply also to the banking industry.

In conclusion, we feel everybody involved will benefit from HB 2089. The bank will benefit because it can perform effective internal compliance reviews without fear that those review documents will be used against them in legal proceedings. The bank regulators will benefit by the knowledge that banks will be able to perform such reviews and have the ability to internally determine their compliance with laws and regulations. Consumers will benefit by their bank having the ability to better determine whether or not it complies with the many laws and regulations that apply to banks. As a result they will be better protected from becoming a non-intended victim of the bank's non-compliance. The consumer also benefits by the enhanced safety and soundness of their bank and the banking system if banks can candidly self evaluates for compliance.

Thank you for your attention and we urge your favorable support.

Kansas-
Nebraska-
Oklahoma
League of
Savings
Institutions

Jeffrey D. Sonnich, Vice-President

700 S. Kansas Ave., Suite 512
Topeka, Kansas 66603
(913) 232-8215

March 8, 1995

TO: Senate Committee on Financial Institutions and Insurance
FROM: Jeffrey Sonnich, Vice President
RE: HB 2089; Confidentiality of Compliance Review Documents

Mr. Chairman. Members of the Committee. The Kansas-Nebraska-Oklahoma League of Savings Institutions appreciates the opportunity to appear before the Senate Committee on Financial Institutions and Insurance in support of HB 2089.

It is a fact of life that financial institutions spend millions on compliance activities. Why? Because the penalties imposed for non-compliance are so severe, that without a comprehensive strategy the institution would be putting it's board of directors, officers, and shareholders at financial risk. Therefore, it is in the best interests of the institution to be able to review its policies, procedures, and internal controls in an unbiased and straightforward manner. It involves an honest look at whether the institution is meeting all statutory and regulatory requirements.

The problem we see is that the process of self-evaluation is like a "two-edged" sword. If an institution takes a hard look at its control procedures and documents a problem area, it has the opportunity to put in place corrective measures...thereby reducing potential risks. However, under current law these same documents may be subpoenaed and may become admissible in evidence in civil actions against the institution....thereby increasing potential risks. This puts the institution in the unfortunate position of having to weigh the benefits against the risks in every aspect of compliance review.

HB 2089 provides banks and savings institutions with a small margin of protection when performing compliance reviews. By preventing documents prepared by a "compliance review committee" from being admissible in civil actions, an institution is more likely to perform meaningful reviews of it's policies and procedures. I hope you would agree that the public is better served if potential problems are discovered and corrected, rather than ignored because the risks of knowing are too high.

In conclusion we feel that this bill will provide the best solution to an ever increasing area of concern for financial institutions. It does not limit the discoverability or admissibility in any civil action of any documents that are not compliance review documents. It's value is that it reduces an institution's overall exposure, so they are more able and willing to make meaningful self evaluations. We respectfully request your favorable support

Jeffrey D. Sonnich
Vice President

JDS:cip

Senate FI&I
3/9/95
Attachment #6