

Approved: January 23, 1996
Date

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Chairperson Bill Bryant at 3:30 p.m. on January 17, 1996 in Room 527S-of the Capitol.

All members were present except: Representative Delbert Crabb
Representative Phill Kline
Representative Tom Sawyer

Committee staff present: Bill Wolff, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Nikki Feuerborn, Committee Secretary

Conferees appearing before the committee: Roger Wine, Kansas Securities Commission
Roger Walter, Kansas Securities Commission
Judy Story, Deputy Bank Commissioner
John Peterson, Fourth Financial Corporation

Others attending: See attached list

Roger Wine, Kansas Securities Commission, introduced Roger Walter, General Counsel for the Commission, who requested technical cleanup legislation for KSA 17-1252 (Attachment 1). The proposal is non-controversial and was requested to clarify existing statutes.

Representative Dawson moved for the proposal to be introduced as a committee bill. Representative Gilbert seconded the motion. Motion carried.

John Peterson, representing Fourth Financial Corporation, requested the introduction of legislation which would allow interstate branch banking by merger only and would prohibit de novo interstate branches (Attachment 2).

Representative Cox moved for the introduction of this proposal into legislation as a committee bill. Representative Dawson seconded the motion. Motion carried.

Hearing on HB 2631 - Banks and banking, relating to liquidation, merger or consolidation

Judy Stork, reviewed the amendment which would affect KSA 9-1109, 9-1110, and 9-1604 (Attachment 3). The amendment would change the currently required 2/3 vote of stock holders to liquidate, merge, consolidate or sell certain assets of the bank or trust department to a simple majority vote. The amendment would provide consistency with the provisions of KSA 9-1724 and the General Corporations Code as it applies to state chartered banks.

Representative Correll moved that the bill be placed on the Consent Calendar. Representative Smith seconded the motion. Motion carried.

Hearing on HB 2628 - Relating to trust authority; concerning inactive trust companies or departments

Judy Stork, Deputy Bank Commissioner, explained the legislation as being a mechanism whereby the Commissioner would be required to grant written approval to banks who currently have inactive trust departments to reactivate their trust departments (Attachment 3). This provision would ensure that adequate policies and procedures, as well as knowledgeable staff are in place prior to beginning fiduciary activities.

Representative Dawson moved for the favorable passage of this proposed legislation. Motion was seconded by Representative Landwehr. Motion carried.

Representative Gilbert moved for the approval of the January 9, 1996, minutes. Motion was seconded by Representative Correll. Motion carried.

The next meeting is scheduled for January 18, 1996.

Section 5. K.S.A. 1994 Supp. 17-1252 is hereby amended to read as follows:

17-1252. Definitions. When used in this act, unless the context otherwise requires:

(a) "Commissioner" means the securities commissioner of Kansas, appointed as provided in K.S.A. 17-1270, and amendments thereto.

(b) "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities. "Agent" does not include an individual who represents an issuer only in transactions in securities exempted by subsections (a), (b), (c), (f), (i), (j), (l) or (p) of K.S.A. 17-1261, and amendments thereto. A partner, officer or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if such person otherwise comes within this definition.

(c) "Broker-dealer" means any person engaged in the business of purchasing, offering for sale or selling securities for the account of others or for such person's own account; but the term does not include an agent, issuer, bank, savings institution, insurance company, or a person who effects transactions in this state exclusively with the issuer of the securities involved in the transactions or with any person to whom a sale is exempt under subsection (f) of K.S.A. 17-1262, and amendments thereto.

(d) "Guaranteed" means guaranteed as to payment of principal, interest or dividends.

(e) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management or unit type; the term "issuer" also means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued. The issuer of a certificate of interest in an oil and gas royalty, lease or mineral deed is the owner of the interest in the oil and gas royalty, lease or mineral deed who creates the certificate of interest for purpose of sale.

(f) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(g) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government or a political subdivision of a government.

(h) (1) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value.

(2) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

(3) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value.

(4) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, and every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(5) A purported gift of assessable stock is considered to involve an offer and sale of such stock.

(i) "Securities act of 1933," "securities exchange act of 1934," "public utility holding company act of 1935," and "investment company act of 1940" mean the federal statutes of those names.

(j) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificates; thrift certificates or investment certificates, or thrift notes issued by investment companies; certificate of deposit for a security; certificate of interest in oil and gas royalties, leases or mineral deeds; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or some other specified period.

(k) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

(l) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term does not include:

*House FD&J
Attachment 1*

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(1) A bank, savings and loan association, credit union, or trust company;

(2) a lawyer, accountant, engineer, ~~management consultant~~ or teacher whose performance of these services is solely incidental to the practice of the individual's profession;

(3) a broker-dealer whose performance of these services is solely incidental to the conduct of business as a broker-dealer and who receives no special compensation for them;

(4) a publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation;

(5) a person who has no place of business in this state if (A) such person's only clients in this state are other investment advisers, broker-dealers, banks, savings and loan associations, credit unions, trust companies, insurance companies, investment companies as defined in the investment company act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (B) during any period of 12 consecutive months such person does not direct business communications into this state in any manner to more than five clients other than those specified in subsection (1)(5)(A), whether or not such person or any of the persons to whom the communications are directed is then present in this state; or

(6) such other persons not within the intent of this definition as the commissioner designates by order or by rules and regulations.

Section 6. K.S.A. 1994 Supp. 17-1253 is hereby amended to read as follows:

17-1253. Unlawful acts in connection with offer, sale or purchase of securities; qualifications; "assignment" defined; penalty. (a) It is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly, to:

(1) Employ any device, scheme or artifice to defraud;

(2) make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(3) engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

(b) It is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise, to:

(1) Employ any device, scheme or artifice to defraud the other person; or

(2) engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon the other person.

(c) It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract ~~unless the investment adviser provides in writing:~~

if the contract:

(1) ~~That the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;~~

Provides for compensation to the investment adviser

(2) ~~that no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract.~~ fails to provide in writing or fails to provide in writing

(3) that the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

Subsection (c)(1) shall not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date, or in any other manner authorized by rules and regulations adopted by the commissioner for the purposes of furthering compatibility with federal regulations authorizing fees based upon a share of the capital gains upon or capital appreciation of client assets. "Assignment," as used in this subsection, includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

(d) It is unlawful for any investment adviser to take or have custody of any securities or funds of any client if:

(1) The commissioner by rules and regulations prohibits custody; or

(2) in the absence of such rules and regulations, the investment adviser fails to notify the commissioner that such adviser has or may have custody.

(e) A conviction for a violation of this section is a severity level 6, nonperson felony. Any violation of this section committed on or after July 1, 1993, resulting in a loss of \$25,000 or more, regardless of its location on the sentencing grid block, shall have a presumptive sentence of imprisonment.

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

Section 1. K.S.A. 17-1254a, 17-1254b, and 17-1254c are hereby repealed.

Section 2. K.S.A. 1994 Supp. 17-1259 is hereby amended to read as follows:

K.S.A. 17-1259. (a) When securities are registered by notification or by coordination or by qualification, they may be offered and sold by a registered agent of the insurer or by any registered broker-dealer. Every registration shall remain effective for one year after its effective date unless the commissioner by rule or order extends the period of effectiveness or until terminated upon request of the registrant with the consent of the commissioner. No registration is effective while a stop order is in effect under K.S.A. 17-1260, and amendments thereto. So long as a registration remains effective, all outstanding securities of the same class shall be considered to be registered for the purpose of any nonissuer distribution. Any registration statement may be amended after its effective date so as to increase the securities specified therein as proposed to be offered. The commissioner may permit the omission of any document or item of information from any registration statement. Upon completion of a registered offering a registrant shall file a final report of sales.

(b) (1) Every person filing a registration statement shall pay a fee of .05% of the maximum aggregate offering price at which the securities are to be offered in this state, but not less than \$100 or more than \$2,500 for each year of effectiveness. The commissioner shall establish registration fees by rules and regulations. The commissioner may by rule and regulation set the maximum amount of securities that may be registered at any one time by a face-amount certificate company or an open-end management company or unit investment trust, as those terms are defined in the investment company act of 1940. If a registration statement is voluntarily withdrawn prior to being examined by the staff of the commissioner, the commissioner may refund 50% of the fee so paid.

(2) ~~Every person filing an application to amend or extend an effective registration statement shall pay a fee of \$100. The commissioner may by rule and regulation set a fee not to exceed \$100 for filing to amend an effective registration statement.~~ If an application to amend increases the maximum aggregate offering price of securities to be offered in this state, an additional fee shall be paid based upon the increase in such price calculated in accordance with the rate and annual minimum and maximum fees specified in paragraph (1) of this section.

(3) The commissioner may by rule and regulation set a fee not to exceed \$2,500 for an application or filing made in connection with any exemption from securities registration.

(c) The commissioner at the time of the granting of the authorization to sell securities as herein provided, may determine and fix the maximum amount that may be paid as or in the way of commission, advertising expense and all other expenses from the sale of such securities.

(d) Before any authorization to sell securities shall be issued by the commissioner as herein provided, all stock or securities of any kind issued, or to be issued, for consideration less than the public offering price or for consideration other than cash may be required to be deposited in escrow according to such conditions as the

commissioner shall provide by rule and regulation.

(e) The commissioner shall keep a register showing the issuer, date of registration, amount in number of dollars, of the securities registered.

(f) Neither the commissioner nor any employee of the securities department shall be interested as an officer, director, or stockholder in securing any authorization to sell securities under the provisions of this act.

(g) Upon termination of a registration the filing of a final report as required by subsection (a) shall satisfy the filing requirements of subsection (m)(3) of K.S.A. 17-1261, and amendments thereto.

Section 3. K.S.A. 1994 Supp. 17-1261 is hereby amended to read as follows:

K.S.A. 17-1261. K.S.A. 17-1255 through 17-1260, and amendments thereto, shall not apply to any of the following securities:

(a) Any security issued or guaranteed by the United States or by any state, territory or insular possession thereof, or by any political subdivision of any such state, territory or insular possession, or by the District of Columbia, or by any public agency or instrumentality of one or more of any of the foregoing.

(b) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing or any other foreign government or governmental combination or entity with which the United States maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer, insurer or guarantor.

(c) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution, credit union or trust company organized and supervised under the laws of this state except that the issuer of such security is subject to the supervision of the banking department, savings and loan department or credit union administrator of this state.

(d) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any savings and loan association organized under the laws of this state and authorized to do business in this state.

(e) Any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of any state and authorized to do business in this state when such securities are sold by the issuer.

(f) Any security issued or guaranteed by any railroad, or public utility which is:

(1) Subject to the jurisdiction of the interstate commerce commission;

(2) a registered holding company under the public utility holding company act of 1935 or a subsidiary of such a company within the meaning of that act; or

(3) regulated by a governmental authority of the United States or any state in respect to the issuance or

guarantee of the security.

(g) Any security as to which the commissioner by rule and regulation finds that registration is not necessary or appropriate for the protection of investors.

~~(h) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, fire protection, fire fighting or reformatory purposes, or as a chamber of commerce or trade or professional association if no part of the net earnings of such person inures to the benefit of any private stockholder. Before any such security shall be issued, such person shall first file with the commissioner an application for exemption, which application will contain such information and documents, including sales material, as the commissioner shall by rules and regulations prescribe and if the securities to be issued exceed the total amount of \$25,000 the application shall contain a copy of the security to be issued along with an opinion of an attorney at law, who is admitted to practice in Kansas, to the effect that: (1) Such security is secured by a trust indenture pledging moneys or properties to secure such security, and such securities constitute a lien on the property, (2) the instruments guaranteeing such pledge or trust indenture are the lawful obligations of the issuing person, (3) such security is, in fact, an exempt security under this section. The commissioner shall issue a certificate of exemption to the applicant within 30 days after the filing of the application with the commissioner unless the commissioner, after reasonable notice to the applicant and a hearing on the application, finds that the sale of the securities covered in the application would violate any provision of this act or the act of which this act is amendatory and enters an order denying a certificate of exemption. The commissioner may in the commissioner's discretion exempt any person from the licensing provisions of the Kansas securities act as regards broker-dealers and agents, if the commissioner finds that any such person is a stockholder or member of such nonprofit organization or corporation and is offering such securities only to stockholders or members of the nonprofit organization or corporation, or in the case of religious nonprofit organization or corporation to members of the same denomination or religious faith domiciled within the state of Kansas, and such person will receive no compensation therefor. Every person filing an application for exemption of such securities shall pay a filing fee of \$50, and provided that the issuer has filed with the commissioner at least 10 days prior to any sale a notice setting forth the material terms of the proposed sale, copies of any sales and advertising literature to be used, and such other information required by the commissioner, and the commissioner does not by order disallow the exemption within 10 days after filing.~~

(i) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal.

(j) Any securities issued in connection with an employee's stock purchase, savings, pension, profit-sharing or similar benefit plan, or a self-employed person's retirement plan.

(k) Any security evidencing membership in, or issued as a patronage dividend by, a cooperative association

organized under the laws of this state exclusively for the purpose of conducting an agricultural, dairy, livestock or produce business, or selling, processing, storing, marketing or otherwise handling any agricultural, dairy, livestock or produce, and any activities incidental to these purposes.

(l) Any security issued by and representing an interest in or debt of, or evidencing membership in, or issued as a patronage dividend to residents or landowners of not to exceed five contiguous counties in Kansas by a cooperative association organized under the laws of this state exclusively for the purpose of conducting an agricultural, dairy, livestock or produce business, or selling, processing, storing, marketing, retailing, or otherwise handling any agricultural, dairy, livestock or produce, or farm supplies, and any activities incidental to these purposes.

(m) Securities constituting part of an issue, which, in whole or in part has been lawfully sold and distributed to the public in this or any other state, when offered for resale in good faith and not directly or indirectly for the benefit of the issuer or for the direct or indirect purpose of promoting any scheme or enterprise having the effect of violating or evading any provisions of this act, except that this exemption shall not apply (1) where the authority to sell such securities has been prohibited or denied under the provisions of this act, or (2) where the sale of such securities in this state has been enjoined as provided in this act or (3) until there shall have been filed with the securities commissioner of Kansas by any registered broker-dealer a prospectus in such form as may be prescribed by the commissioner containing: (A) Latest available financial statement of the issuer; (B) management personnel; and (C) such other available information as the commissioner may require. The filing of the prospectus and its approval by the commissioner shall constitute the exemption herein provided. Any prospectus may be disapproved at any time, if after a reasonable notice and a hearing, the commissioner shall find that the further exemption of the securities would be fraudulent or tend to work imposition or fraud upon the purchaser thereof.

(n) Any annuity, gift annuity, charitable remainder unitrust, charitable remainder annuity trust, endowment contract, life income contract, or investment contract issued by the governing body of any four-year liberal arts college situated in the state of Kansas, and the provisions of K.S.A. 17-1254, and amendments thereto, shall not apply to any person in the issuance of such securities governed by this subsection.

(o) Any annuity, gift annuity, charitable remainder unitrust, charitable remainder annuity trust, endowment contract, life income contract or investment contract issued by the governing body of any nonprofit corporation or foundation organized under the laws of this state, for religious, charitable or educational purposes, or for the treatment and rehabilitation of children and adolescents, and which corporation or foundation is licensed by the secretary of social and rehabilitation services or secretary of health and environment, if such corporation or foundation has been in existence for more than five years and has fund balances in its endowment fund and unrestricted funds totaling together \$1,000,000 or more, and the provisions of K.S.A. 17-1254, and amendments thereto, shall not apply to any person in the issuance of securities governed by this subsection.

(p) Any security issued by a bank holding company wholly or partially in exchange for the capital stock of a bank that is, or will become upon consummation of such exchange, a subsidiary of such bank holding company:

or any security issued by a savings and loan holding company wholly or partially in exchange for the capital stock of an insured institution that is, or will become upon consummation of such exchange, a subsidiary of such savings and loan holding company. As used in this subsection, "bank," "bank holding company" and "subsidiary" shall have the same meanings as are set forth in the federal bank holding company act of 1956, as amended and "savings and loan holding company" and "insured institution" shall have the same meanings as are set forth in section 408 of the national housing act, as amended.

Section 4. K.S.A. 1994 Supp. 17-1262 is hereby amended to read as follows:

K.S.A. 17-1262. Except as expressly provided in this section, K.S.A. 17-1254, 17-1255, 17-1256, 17-1257, 17-1258, 17-1259 and 17-1260, and amendments thereto, shall not apply to any of the following transactions:

(a) Any isolated transaction, whether effected through a broker-dealer or not.

(b) Any nonissuer distribution by or through a registered broker-dealer of outstanding securities at a price reasonably related to the current market price of such securities, if Moody's manual, Standard & Poor's manual, or any recognized securities manual approved by the commissioner, contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within 18 months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations. If the commissioner finds that the sale of certain securities in this state under this exemption would work or tend to work a fraud on purchasers thereof, the commissioner may revoke the exemption provided by this subsection with respect to such securities by issuing an order to that effect and sending copies of such order to all registered broker-dealers.

(c) Any nonissuer transaction by a registered broker-dealer pursuant to an unsolicited order or offer to buy. The commissioner may require, by rules and regulations, that: (1) The customer acknowledge upon a specified form that the sale was unsolicited; and (2) a signed copy of each such form be preserved by the broker-dealer for a specified period.

(d) Any transactions in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit.

(e) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian or conservator; any transaction executed by a bona fide pledgee without any purpose of evading this act or any transaction incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims or property interests.

(f) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the investment company act of 1940, pension or profit-sharing trust or other financial

institution or institutional buyer or to a broker-dealer or underwriter.

(g) Any offer or sale of a preorganization certificate or subscription if: (1) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber and no advertising has been published in connection with any such sale; (2) no payment is made by any subscriber; and (3) such certificate or subscription is expressly voidable by the subscriber until such subscriber has been notified of final acceptance or completion of the organization and until the securities subscribed for have been registered. The commissioner may require, by rules and regulations or by order, reports of sales under this exemption.

(h) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants or transferable warrants exercisable within 90 days of their issuance, if: (1) No commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state; or (2) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow the exemption within the next five full business days.

(i) Any offer (but not a sale) of a security if: (1) Registration statements for such security have been filed under both this act and the securities act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either act; or (2) a registration statement for such security has been filed under K.S.A. 17-1256 or 17-1258, and amendments thereto, no stop order or emergency order issued pursuant to K.S.A. 17-1260, and amendments thereto, is in effect and the offer is made on behalf of the issuer by a registered broker-dealer.

(j) The issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock.

~~(k) Any act incident to a class vote by stockholders, pursuant to the articles of incorporation, bylaws or applicable statute, on a merger, consolidation, reclassification of securities or sale of corporate assets in consideration of the issuance of securities of another corporation or any act incident to a plan of reorganization, approved by a majority of the stockholders of every corporation involved in such reorganization, in which a security is issued in exchange for one or more outstanding securities, claims or property interests, or partly in such exchange and partly for cash. The issuer of such securities must first file a notice specifying the terms of the offer and such other information as the commissioner requires, and the commissioner by order may disallow this exemption within 30 days. A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, or other reorganization to which the issuer, or its parent or subsidiary, and the other person, or its parent or subsidiary, are parties, if:~~

(1) the securities to be distributed are registered under the securities act of 1933 before the consummation of the transaction; or

(2) the securities to be distributed are not required to be registered under the securities act of 1933, written

notice of the transaction and a copy of the materials, if any, by which approval of the transaction will be solicited is given to the commissioner at least 10 days before the consummation of the transaction and the commissioner does not disallow, by order, the exemption with the next 10 days.

(l) The offer or sale of securities by an issuer that is a corporation, limited partnership or limited liability company formed under the laws of the state of Kansas, if: (1) The aggregate number of sales by the issuer in the twelve-month period ending on the date of the sale does not exceed 20 sales, except that until July 1, 1993, aggregate number of sales by a limited liability company shall not exceed 35; (2) the seller believes that the purchaser is purchasing for investment; (3) no commission nor other remuneration is paid or given, directly or indirectly, for soliciting the purchaser; and (4) neither the issuer nor any person acting on its behalf shall offer or sell the securities by any form of general solicitation or general advertising, including, but not limited to, the following: (A) Any advertisement, article, notice or other communication published in any newspaper, magazine or similar media or broadcast over television or radio or (B) any seminar or meeting whose attendees have been invited by any general solicitation or general advertising.

In calculating the number of sales in a twelve-month period, sales made in violation of K.S.A. 17-1255, and amendments thereto, and sales exempt from registration under subsection (a) or (l) shall be taken into account. For purposes of the exemption in this subsection, a husband and wife shall be considered as one purchaser. A corporation, partnership, association, joint-stock company, trust or other unincorporated organization shall be considered as one purchaser unless it was organized for the purpose of acquiring the purchased securities. In such case each beneficial owner of equity interest or equity securities in the entity shall be considered a separate purchaser. The commissioner may withdraw this exemption or impose conditions upon its use.

(m) Any transaction pursuant to rules and regulations adopted by the commissioner for limited offerings which was adopted for the purpose of furthering the objectives of compatibility with federal exemptions and uniformity among the states.

(n) Any transaction pursuant to rules and regulations adopted by the commissioner concerning the offer or sale of an oil, gas or mining lease, fee or title if the commissioner finds that registration is not necessary or appropriate for the protection of investors.

(o) Any offer or sale by an investment company, as defined by K.S.A. 16-630, and amendments thereto, of its investment certificates.

(p) The offer or sale of a security, issued by Kansas Venture Capital, Inc., or its successors.

HOUSE BILL NO. _____

By Committee on Financial Institutions and Insurance

AN ACT concerning banks and banking; prohibiting de novo interstate branches; merger transactions involving out-of-state banks; repealing K.S.A. 9-813 and K.S.A. 1995 Supp. 9-540.

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

Section 1. No out-of-state bank shall establish and nothing in this act shall be construed as permitting any de novo branch in Kansas by an out-of-state bank pursuant to §103 of the Riegle-Neal interstate banking and branching efficiency act of 1994, Public Law No. 103-328.

Sec. 2. This act shall only permit interstate branching by merger as provided in § 102 of the Riegle-Neal interstate banking and branching efficiency act of 1994, Public Law No. 103-328 (12 U.S.C. §1831u(a)(3)).

Sec. 3. (a) Pursuant to §1009 of the Riegle-Neal act, an out-of-state bank which establishes and maintains one or more branches in Kansas is prohibited from using such branches primarily for the purpose of deposit production and must reasonably help to meet the credit needs of the communities in which the branches serve;

(b) if the appropriate federal banking agency (as defined in section 3 of the federal deposit insurance act) for the out-of-state bank determines that the bank's level of lending in Kansas relative to the deposits from Kansas is less than half the average of total loans in Kansas relative to total deposits from Kansas for all banks the home state of which is Kansas, then:

(1) The appropriate federal banking agency for the out-of-state bank shall review the loan portfolio of the bank and determine whether the bank is reasonably helping to meet the credit needs of the communities served by the bank in Kansas; and

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(2) if the agency determines that the out-of-state bank is not reasonably helping to meet those needs:

(A) The agency may order that an interstate branch or branches of such bank in Kansas be closed unless the bank provides reasonable assurances to the satisfaction of the appropriate federal banking agency that the bank has an acceptable plan that will reasonably help to meet the credit needs of the communities served by the bank in Kansas; and

(B) the out-of-state bank may not open a new interstate branch in Kansas unless the bank provides reasonable assurances to the satisfaction of the appropriate federal banking agency that the bank will reasonably help to meet the credit needs of the community that the new branch will serve.

(c) In making a determination under subsection (b)(1), the appropriate federal banking agency shall consider:

(1) Whether the interstate branch or branches of the out-of-state bank were formerly part of a failed or failing depository institution;

(2) whether the interstate branch was acquired under circumstances where there was a low loan-to-deposit ratio because of the nature of the acquired institution's business or loan portfolio;

(3) whether the interstate branch or branches of the out-of-state bank have a higher concentration of commercial or credit card lending, trust services or other specialized activities;

(4) the ratings received by the out-of-state bank under the community reinvestment act of 1977;

(5) economic conditions, including the level of loan demand, within the communities served by the interstate branch or branches of the out-of-state bank; and

(6) the safe and sound operation and condition of the out-of-state bank.

Sec. 4. Each out-of-state bank which maintains one or more branches within Kansas shall have prepared by the appropriate

federal financial supervisory agency a separate written community reinvestment act evaluation of the institution's record of performance within Kansas, and a separate evaluation of the institution's record of performance within Kansas separately for each metropolitan area (as defined in § 1010 of the Riegle-Neal act) in which the institution maintains one or more branch offices and a separate report for the remainder of the nonmetropolitan area of the state if the institution maintains one or more domestic branch offices in such non-metropolitan area.

Sec. 5. As used in this act:

(a) "Bank" has the meaning set forth in 12 U.S.C. §1813(h); provided that the term "bank" does not include any "foreign bank" as defined in 12 U.S.C. §3101(7), except that such term shall include any foreign bank organized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa or the Virgin Islands, the deposits of which are insured by the federal deposit insurance corporation.

(b) "Bank holding company" has the meaning set forth in 12 U.S.C. §1841(a)(1).

(c) "Bank supervisory agency" means:

(1) Any agency of another state with primary responsibility for chartering and supervising banks; and

(2) the office of the comptroller of the currency, the federal deposit insurance corporation, the board of governors of the federal reserve system, and any successor to these agencies.

(d) "Branch" has the meaning set forth in K.S.A. 9-1111 and amendments thereto.

(e) "Commissioner" means the state bank commissioner provided for by K.S.A. 75-1304 and amendments thereto.

(f) "Control" shall be construed consistently with the provisions of 12 U.S.C. §1841(a)(2).

(g) "Home state" means:

(1) With respect to a state bank, the state by which the bank is chartered; and

(2) with respect to a national bank, the state in which the main office of the bank is located.

(h) "Home state regulator" means, with respect to an out-of-state state bank, the bank supervisory agency of the state in which such bank is chartered.

(i) "Host state" means a state, other than the home state of a bank, in which the bank maintains, or seeks to establish and maintain a branch.

(j) "Interstate merger transaction" means:

(1) The merger or consolidation of banks with different home states, and the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank; or

(2) the purchase of all or substantially all of the assets (including all or substantially all of the branches) of a bank whose home state is different from the home state of the acquiring bank.

(k) "Out-of-state bank" means a bank whose home state is a state other than Kansas.

(l) "Out-of-state state bank" means a bank chartered under the laws of any state other than Kansas.

(m) "Resulting bank" means a bank that has resulted from an interstate merger transaction under this act.

(n) "State" means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the trust territory of the Pacific Islands, the Virgin Islands and the Northern Mariana Islands.

(o) "Kansas bank" means a bank whose home state is Kansas.

(p) "Kansas state bank" means a bank chartered under the laws of Kansas.

Sec. 6. With the prior approval of the commissioner, a Kansas state bank may establish, maintain and operate one or more branches in a state other than Kansas pursuant to an interstate merger transaction in which the Kansas state bank is the resulting bank. Not later than the date on which the required

application for the interstate merger transaction is filed with the responsible federal bank supervisory agency, the applicant Kansas state bank shall file an application on a form prescribed by the commissioner and pay the fee prescribed by subsection (f) of section 10, K.S.A. 9-532 and 9-1724 and amendments thereto. The applicant shall also comply with the applicable provisions of K.S.A. 17-6003 and amendments thereto. If the commissioner finds that (a) the proposed transaction will not be detrimental to the safety and soundness of the applicant or the resulting bank, (b) any new officers and directors of the resulting bank are qualified by character, experience and financial responsibility to direct and manage the resulting bank, and (c) the proposed merger is consistent with the convenience and needs of the communities to be served by the resulting bank in this state and is otherwise in the public interest, the commissioner shall approve the interstate merger transaction and the operation of branches outside of Kansas by the Kansas state bank. Such an interstate merger transaction may be consummated only after the applicant has received the commissioner's written approval.

Sec. 7. (a) One or more Kansas banks may enter into an interstate merger transaction with one or more out-of-state banks under this act, and an out-of-state bank resulting from such transaction may maintain and operate the branches in Kansas of a Kansas bank that participated in such transaction, provided that the conditions and filing requirements of this act are met.

(b) The provisions of K.S.A. 9-541 and amendments thereto shall apply to transactions under this act.

Sec. 8. Any out-of-state bank that will be the resulting bank pursuant to an interstate merger transaction involving a Kansas state bank shall notify the commissioner of the proposed merger not later than the date on which it files an application for an interstate merger transaction with the responsible federal bank supervisory agency, and shall submit a copy of that application to the commissioner and pay the filing fee, if any, required by the commissioner. Any Kansas state bank which is a

party to such interstate merger transaction shall comply with K.S.A. 17-6003 and amendments thereto and with other applicable state and federal laws. Any out-of-state bank which shall be the resulting bank in such an interstate merger transaction shall provide satisfactory evidence to the commissioner of compliance with applicable requirements of the laws of the out-of-state bank.

Sec. 9. An interstate merger transaction prior to June 1, 1997, involving a Kansas bank shall not be consummated, and any out-of-state bank resulting from such a merger shall not operate any branch in Kansas, unless the commissioner first: (a) Finds that the laws of the home state of each out-of-state bank involved in the interstate merger transaction permits Kansas state banks, under substantially the same terms and conditions as provided in this act, to acquire banks and establish and maintain branches in that state by means of interstate merger transactions; (b) concludes that the resulting out-of-state bank has complied with all applicable requirements of Kansas law and has agreed, in writing, to comply with the laws of this state applicable to its operation of branches in Kansas; and (c) certifies to the federal bank supervisory agency having authority to approve the interstate merger transaction that the conditions and requirements of this act have been met.

Sec. 10. (a) An out-of-state state bank which establishes and maintains one or more branches in Kansas under this act may conduct any activities at such branch or branches that are authorized under the laws of this state for Kansas state banks.

(b) A Kansas state bank may conduct any activities at any branch outside Kansas that are permissible for a bank chartered by the host state where the branch is located.

(c) An out-of-state bank that has established a branch in Kansas under this act may establish additional branches in Kansas to the same extent that any Kansas bank may establish or acquire a branch in Kansas under applicable federal and state law.

Sec. 11. (a) To the extent consistent with subsection (c),

the commissioner may make such examinations of any branch established and maintained in this state pursuant to this act by an out-of-state state bank as the commissioner deems necessary to determine whether the branch is being operated in compliance with the laws of this state and in accordance with safe and sound banking practices. The provisions of K.S.A. 9-1801 et seq. and amendments thereto shall apply to such examinations.

(b) The commissioner may prescribe requirements for periodic reports regarding any out-of-state bank that operates a branch in Kansas pursuant to this act. The required reports shall be provided by such bank. Any reporting requirements prescribed by the commissioner under this subsection (b) shall be: (1) Consistent with the reporting requirements applicable to Kansas state banks; and (2) appropriate for the purpose of enabling the commissioner to carry out the commissioner's responsibilities under this act.

(c) The commissioner may enter into cooperative, coordinating and information-sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies with respect to the periodic examination or other supervision of any branch in Kansas of an out-of-state state bank, or any branch of a Kansas state bank in any host state, and the commissioner may accept such parties' reports of examination and reports of investigation in lieu of conducting the commissioner's own examinations or investigations.

(d) The commissioner may enter into contracts with any bank supervisory agency that has concurrent jurisdiction over a Kansas state bank or an out-of-state state bank operating a branch in this state pursuant to this act to engage the services of such agency's examiners at a reasonable rate of compensation, or to provide the services of the commissioner's examiners to such agency at a reasonable rate of compensation. Any such contract shall be deemed a sole source contract.

(e) The commissioner may enter into joint examinations or

joint-enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any branch in Kansas of an out-of-state state bank or any branch of a Kansas state bank in any host state; provided that the commissioner may at any time take such actions independently if the commissioner deems such actions to be necessary or appropriate to carry out the commissioner's responsibilities under this act or to ensure compliance with the laws of this state. In the case of an out-of-state state bank, the commissioner shall recognize the exclusive authority of the home state regulator over corporate governance matters and the primary responsibility of the home state regulator with respect to safety and soundness matters.

(f) Each out-of-state state bank that maintains one or more branches in this state may be assessed and, if assessed, shall pay supervisory and examination fees in accordance with the laws of this state and rules and regulations of the commissioner. Such fees may be shared with other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies in accordance with agreements between such parties and the commissioner.

Sec. 12. If the commissioner determines that a branch maintained by an out-of-state state bank in this state is being operated in violation of any provision of the laws of this state, or that such branch is being operated in an unsafe and unsound manner, the commissioner shall have the authority to take all such enforcement actions as the commissioner would be empowered to take if the branch were a Kansas state bank. The commissioner shall promptly give notice to the home state regulator of each enforcement action taken against an out-of-state state bank and, to the extent practicable, shall consult and cooperate with the home state regulator in pursuing and resolving such enforcement action.

Sec. 13. The commissioner may adopt rules and regulations as deemed necessary or appropriate in order to implement the provisions of this act.

Sec. 14. Each out-of-state state bank that has established and maintains a branch in this state pursuant to this act, or the home state regulator of such bank, shall give at least 30 days' prior written notice (or, in the case of an emergency transaction, such shorter notice as is consistent with applicable state or federal law) to the commissioner of any merger, consolidation or other transaction that would cause a change of control with respect to such bank or any bank holding company that controls such bank, with the result that an application would be required to be filed pursuant to the federal Change in Bank Control Act of 1978, as amended, 12 U.S.C. §1817(j), or the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. §1841 et seq. or any successor statutes thereto.

Sec. 15. If any provision of this act or the application of such provision is found by any court of competent jurisdiction in the United States to be invalid as to any bank, bank holding company, foreign bank, or other person or circumstances, or to be superseded by federal law, the remaining provisions hereof shall not be affected and shall continue to apply to any bank, bank holding company, foreign bank or other person or circumstance.

Sec. 16. K.S.A. 9-813 and K.S.A. 1995 Supp. 9-540 are hereby repealed.

Sec. 17. This act shall take effect and be in force from and after its publication in the statute book.

STATE OF KANSAS
BILL GRAVES
GOVERNOR



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Bank Commissioner

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Administrative Officer

OFFICE OF THE
STATE BANK COMMISSIONER

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

JANUARY 17, 1996

Mr. Chairman and Members of the Committee:

I am Judi Stork, Deputy Commissioner, and I am here today on behalf of Commissioner Male and the Office of the State Bank Commissioner to testify for two House Bills. Commissioner Male asked that I relay to you his regrets that he is unable to attend, but he is meeting with the department's field staff in Hays and Salina today.

The first bill, **House Bill 2628**, amends K.S.A. 9-1703, a statute that governs examination and assessment of state chartered banks and trust companies. In 1993, legislation was passed which allowed banks or trust companies, which have no fiduciary assets, to request the bank commissioner grant them inactive status. By receiving inactive status, their annual assessment goes from \$1,000 minimum to \$100. We currently have 13 departments that have inactive status. We are requesting the addition of language in this statute that requires the trust department or trust company to obtain written approval from the commissioner prior to re-engaging in the trust business. This provision is to ensure that adequate policies and procedures, as well as knowledgeable staff, are in place before fiduciary activities resume. No fee will be assessed to the bank or trust company in connection with the approval process for reactivation.

House Bill 2631 amends three statutes, K.S.A. 9-1108, K.S.A. 9-1110, and K.S.A. 9-1604. The amendment to all three of these statutes is for the same purpose. These statutes grant the power for banks to liquidate, merge, consolidate or sell certain assets of the bank or of the bank's trust department. Currently, all three of these statutes require that 2/3 of the outstanding voting stock be voted in favor of the action before the bank can exercise one of the above powers.

In contrast, the current language of K.S.A. 9-1724, the statute which describes the method/procedure a bank must follow if they are going to merge, consolidate, or sell assets or liabilities, requires only that a majority of the outstanding voting stock be voted in favor of action. Additionally, a majority vote is all that is required of other corporations under the General Corporations Code. Of all the statutes noted above, 9-1724 is the most recently enacted and constitutes the most recent expression by the legislature of the amount of stock required to be voted in favor of an action by a bank to effectuate a merger, consolidation, or purchase and assumption of assets and liabilities. Therefore, our Office has interpreted it as the controlling statute. We are asking that K.S.A. 9-1108, 9-1110, and 9-1604 be amended to require a majority, rather than a 2/3 vote of the outstanding stock. This change will eliminate the discrepancy that currently exists between these statutes and the requirements found in K.S.A. 9-1724, as well as provide consistency with the provisions of the General Corporations Code on the same subject.

We ask for your favorable consideration of these bills.

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