

Approved: February 7, 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 February 6, 1996 in Room 527S-of the Capitol.

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

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

Conferees appearing before the committee: Jim Maag, Kansas Bankers Association  
Larry Williams, Past President of KBA, Halstead  
Pete McGill, Community Bankers Association  
Clark Young, President of Community Bankers, Hugoton  
Jackie Clark, Greater KC Chamber of Commerce  
Larry McCants, First National Bank of Goodland  
Mark Lair, Bank of Commerce, Chanute  
Tom Page, Emprise Bank, Wichita  
Larry Wangrud, Bank of Southwest, Dodge City  
Bob Jones, Holcomb  
Gary Padgett, Citizens National, Greenleaf  
Kent McKinney, Community National Bank, Topeka

Others attending: See attached list

Lori Callahan, General Counsel for KaMMCO (Kansas Medical Mutual Insurance Company), requested the introduction of legislation which would allow KaMMCO to directly mail reports of closure of all actions for damages to the Board of Healing Arts (Attachment 1). They are currently required to mail them to the Health Care Stabilization Fund, who in turn mails them to the Insurance Department, who in turn mails them to the Board of Healing Arts. All of these mailings are done with no processing of the reports. All entities agree with the proposed mailing arrangement.

Representative Dawson moved for the introduction of the proposed legislation as a committee bill. Motion was seconded by Representative Graeber. Motion carried.

**Hearing on HB 2716 - Prohibiting certain merger transactions and interstate banking (Opt out)**

William Wolff, Legislative Research, presented capsulated information regarding nationwide interstate banking and interstate branch banking (Attachment 2). The federal government mandated that all states be open to interstate banking effective September 29, 1995. The Riegle-Neal act allows states to determine at what level they wish to participate in interstate branching, including the authority to prohibit such an activity. States may "opt-in" and permit interstate branching or "opt-out" and not participate in interstate branching with the deadline being June 1, 1997. If no action is taken, the state is automatically opened for interstate banking by out-of-state national banks and in-state national banks while state chartered banks will not be allowed to branch across state lines. Legislation would be required to allow state chartered banks to participate. If a state opts-in they cannot opt-out at a later date. Opt-out means no branching either into Kansas nor out of Kansas. Texas is the only state which has opted-out at this point.

Jim Maag, representing Kansas Bankers Association, introduced Larry Williams of Halstead, immediate past president of Kansas Bankers Association and chairman of the Governing Council of the Kansas Bankers Association (Attachment 3). He reviewed the survey completed by 75% of all banks in Kansas. Over 2/3 of those banks supported an opt-out position. Reasons to support the "opt-out" bill were:

1. By maintaining a bank charter, there is commitment to the state and an equitable method of bank taxation. Privilege taxes have not been determined as it may be possible for banks to move assets from state to state. Privilege taxes are currently figured differently on branches or state-chartered banks.
2. Has not been determined if Kansas will have control over state banking industry in an interstate

## CONTINUATION SHEET

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branching system. States owning the parent bank would have control.

3. Loss of home offices will impact jobs development and jobs retention in Kansas.
4. Will small businesses and agricultural producers continue to have access to much needed capital?

Pete McGill, representing Community Bankers Association, reminded the Committee that multi-bank holdings usually means fewer employees and larger fees.

Clark Young, president of the Citizens State Bank of Hugoton and president of the Community Bankers Association, appeared in support of the "opt-out" which would require that every bank operating in Kansas maintain a charter in Kansas (Attachment 4). By maintaining a charter each bank would have:

1. A local board of directors which are community based, interested, and involved.
2. Be competing on a level playing field.
3. Be subject to equal taxation.
4. Have separate audited financial statements.
5. Be subject to separate community reinvestment examinations.
6. Be responsible for more accountability.

Mark T. Lair, president of the Bank of Commerce, Chanute, appeared as an opponent of **HB 2716** (Attachment 5). Interstate banking is already in Kansas because bank holding companies can presently purchase a Kansas bank. National banks can operate branches up to 30 miles away regardless of whether or not it crosses a state line with the likelihood of being able to operate other branches. By increasing competition in the marketplace, the consumer will be the ultimate winner due to availability of higher quality service, lower interest rates on bank loans, higher interest rates on deposits and greater availability of capital. Kansas should not follow the pattern of isolationism or both banks and consumers become the losers.

Larry McCants, First National Bank of Goodland, reviewed the status of their 100 year old bank which is the second largest agricultural bank in Kansas (Attachment 6). He stressed the need for their bank to be able to grow in the interstate banking arena as much of their market is in Colorado. If they are denied the right for growth, inasmuch as they are a national bank, they could change their base bank to Colorado. Competition for loans already exists for business due to credit unions, the federal land bank, PCA's, mutual funds, the internet, out-of-state savings and loans, and mortgage brokers. He stressed that the banking industry in Kansas did not need protection, but rather the freedom to compete.

Tom Page, president of Emprise Bank of Wichita, informed the Committee that consumers buy financial services by where they live, work, and shop and not by boundaries of cities, counties, or states (Attachment 7). Barriers such as denial of interstate branch banking would be an inconvenience to consumers. No industry has every preserved itself for very long through protectionist legislation. He warned the Committee of the future possibility of requiring companies such as Dillon's or State Farm to operate a separate subsidiary in Kansas to protect small grocery stores or independent insurance agents if such a precedent is passed.

Larry Wangrud, President of the Bank of the Southwest in Dodge City, stated that the key issue is an institution's ability to serve its customers with products that they need at a price they are willing to pay while providing competitive return to its shareholders not the issue of branches vs. charters (Attachment 8). Attempting to intervene via legislation against competition would be harmful to communities and customers.

Robert L. Jones, J.O. Cattle Co., Inc., of Holcomb, explained the importance of the availability of credit in his industry (Attachment 9). Many of the cattlemen in his area are already getting financing from out-of-state financial institutions. In western Kansas there is a larger borrowing base than deposit base and they need and depend on other banks with a low loan demand and a high deposit base. More restrictive laws may cause difficulty in securing credit and increased costs. The choice of services and providers should remain at the consumer's discretion.

Gary Padgett, president and CEO of five banks with headquarters at the Citizens National Bank in Greenleaf, said that the passage of the proposed legislation would definitely condemn small independent banks residing in local communities to "second class" franchises (Attachment 10). The market place should offer citizens choices and this legislation holds no purposeful objective or mission that is good for the state. Diversity is the

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strength of a great economy.

Jacqueline K. Clark, Chair of the Kansas State Affairs Committee of the Greater Kansas City Chamber of Commerce, said that the adoption of the proposed legislation would create a barrier to competition and deny the right to lower cost financial services to consumers as well as making banking inconvenient (Attachment 11) By forcing banks operating in Kansas and any other state to maintain two organizations rather than one would duplicate costs. Kansas banks would not be playing by the same rules as banks in at least 22 other states who have "opted-in." Kansas businesses need access to the financial industry.

Kent S. McKinney, Community National Bank of Topeka, reminded the Committee that due to the slow actions of past legislatures to adapt to the changes going on the rest of the country, Kansas banks have not had the opportunity to expand and strengthen in the way out-of-state banks have (Attachment 12) Kansas banks have not kept abreast of all the competitive factors in the financial marketplace due to restrictions in their ability to grow and strengthen, thus they do not have the capital strength to compete with the larger regional banks. This has caused the present takeover of our commercial banking institutions by outsiders. Kansans should have a choice in their banking services and competition should flourish as well as Kansans being allowed to pursue opportunities in other states.

Written testimony from The Smith County State Bank stating opposition to the bill was presented to Committee members (Attachment 13).

Jim Magg, Kansas Bankers Association, made available copies of a legal opinion from Arthur E. Wilmarth of Barley, Snyder, Senft & Cohen law firm in Pennsylvania regarding the 30 mile rule (Attachment 14).

Representative Correll moved for the approval of the minutes of February 1 and 6. Motion was seconded by Representative Landwehr. Motion carried.

The meeting was adjourned at 4:55 p.m. The next meeting is scheduled for February 7, 1996.

# HOUSE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE GUEST LIST

DATE: 2/6/96

NAME	REPRESENTING
Ken Anderson	BANK IV Topeka
David Brant	"
Robert Jones	IO Little C
Brad Swoot	Bank IV
Jacqui Clark	Sec Chamber volunteer
Ken Baker	4th Financial Corp
John Peterson	Bank IV
Tom PAGE	EMPRISE BANK
MIKE SLACK	BANK IV Pittsburg
Marion S. McMillan	BANK IV Hays
Kent McKinney	Community Nat'l, Topeka
Billie	KBA
Dickie Stutz	1st Nat'l Alma
Jan Stutz	1st Nat'l Alma
Jean Weudling	Lyndon State, Lyndon
Melvin Morley	Valley State Bank, Bellevue
Doug Woodruff	Boofman's Bankshares, Inc
Larry K Williams	KBA

# HOUSE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE GUEST LIST

DATE: \_\_\_\_\_

NAME	REPRESENTING
Anne Williams Talbot	The Hulshead Bank
Gay W. Brant	The City Natl Bk. President
Walter A. Bair	Chemute, Kansas Bank of Commerce
THOMAS KIRSCH	Lt. Gov.
Wesley M. Gank	FNB Goodland
Paul E. Russell	WNB Russell
Thurmond Russell	WNB Russell & Natoma
Kathy Spralace -	Community Bankers Assn -
Chris Drahnal	KU Law School
Elwin Fields	Intern
Russ Bowman	FNB-T - Phillipsburg
ARLEN GABRIEL	DE SOTO STATE BANK, DE SOTO, KS
Linda Ayres	CITIZENS State Bank Hamilton KS
Richard A. Leonard	State Exchange Markets
Bill Rainey	BANK IV
ROBERT W. WIGHTMAN	BANK IV
GORDON GREER	BANK IV
Joe Morris	FIRST Bank Kansas
Gail Chapman	Kansas State Bank Overbrook

Sammy Hayes  
Kevin Glendening  
Dorell Stone

Bank IV  
State Banking Dept.  
KBP

# HOUSE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE GUEST LIST

DATE: 2-6-96

NAME	REPRESENTING
Frank J. Sullivan	State Bank of Colwell
Max Hill	Stockman State Bank Max Hill
Michael Byington	Wichita Industries & Services for the Blind
Alan Steppat	PETE MCGILL & ASSOCIATES
Marvin R. Webb	Webb & Associates
STEVEN MILLER	THE GUARDIAN TRUST COMPANY
Chad D. Tempermy	Sec of State
Matthew Goddard	Heartland Community Bankers
Roger Franke	FFC
David Wheeler	Bank IV
W. Newton Male	Ks. Banking Dept.
Kathy Owen	KBA
Alicia Vaughn	Ks Ins Dept.
Danielle Kloe	KCUA
Dusti Altmaneri	KCUA
JASON NORROW	KCCU

# KaMMCO

## KANSAS MEDICAL MUTUAL INSURANCE COMPANY

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TO: House Committee on Financial Institutions and Insurance  
FROM: Lori Callahan, General Counsel  
RE: Bill Request  
DATE: February 6, 1996

KaMMCO, the Kansas Medical Society's medical malpractice insurance company is the largest insurer of physicians in the state of Kansas. Under current law, we are required to report the closure of all actions for damages to the Commissioner of Insurance, who passes such information on to the State Board of Healing Arts. In 1995, when the Health Care Stabilization Fund was separated from the Kansas Department of Insurance, this statute was not changed to reflect that the reports should now go to the Health Care Stabilization Fund. By agreement reached with the Insurance Department this last year, those reports are being filed initially with the Health Care Stabilization Fund, then being forwarded to the Insurance Department, so that the statutory requirement is met, and the Insurance Department then forwards those on to the State Board of Healing Arts.

It has recently become apparent that neither the Health Care Stabilization Fund, who receives notice of lawsuits under separate statute, nor the Kansas Insurance Department, who has no interest in the matter since they no longer support the Health Care Stabilization Fund, are processing these reports. Rather, the Health Care Stabilization Fund receives the report, immediately mails it to the Insurance Department, who immediately turns around and mails it to the Board of Healing Arts. All entities agree it would be much easier if such reports were merely sent initially to the State Board of Healing Arts.

KaMMCO respectfully requests introduction of legislation to amend K.S.A. 40-1126 to allow this direct filing with the Board of Healing Arts.

*House F.D.S.*  
*Attachment 1*

*Endorsed by the Kansas Medical Society*

*Feb. 6, 1996*

Bill No. \_\_\_\_\_

AN ACT concerning reports of health care providers, attorneys, and persons engaged in technical professions; relating to copies of such reports provided to certain agencies of the state; amending K.S.A. 40-1126, 40-1128, and 40-1129 and repealing the existing sections.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

Section 1. K.S.A. 40-1126 is hereby amended to read as follows: 40-1126. (a) Every insurer providing professional liability insurance to a health care provider who is licensed, registered or certified by the state board of healing arts and covered by the health care stabilization fund established pursuant to subsection (a) of K.S.A. 40-3403 and amendments thereto or entity with whom the insurer contracts for purposes of complying with this act shall report to the ~~commissioner of insurance~~ *state board of healing arts* any action for damages for personal injuries or loss claimed to have been caused by error, omission, or negligence in performance of such insured's professional services or based on a claimed performance of professional services without consent, upon final disposition of the act.

(b) Reports of the information required by subsection (a) shall be filed with the ~~commissioner of insurance~~ *state board of healing arts* no later than 30 days following final disposition of the action. The ~~commissioner of insurance~~ shall provide a copy of each such report to the ~~state board of healing arts~~.



(c) Failure to report the information required by subsection (a) shall constitute a violation of K.S.A. 40-1120 and amendments thereto and shall be subject to the penalties applicable thereto."

Sec. 2. K.S.A. 40-1128 is hereby amended to read as follows: 40-1128. The ~~commissioner of insurance~~ *state board of healing arts* shall make such reports available to the public in a manner which will not reveal the names of any person or facility involved.

Sec. 3. K.S.A. 40-1129 is hereby amended to read as follows: 40-1129. There shall be no liability on the part of and no cause of action of any nature shall arise against any insurer reporting hereunder or its agents or employees, or the commissioner of insurance or the commissioner's employees, *or the state board of healing arts or its employees*, for any action taken by them pursuant to this act.

Sec. 4. K.S.A. 40-1126, 40-1128, and 40-1129 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

# MEMORANDUM

## Kansas Legislative Research Department

300 S.W. 10th Avenue  
Room 545-N – Statehouse  
Topeka, Kansas 66612-1504  
Telephone (913) 296-3181 FAX (913) 296-3824

February 6, 1996

**To:** House Committee on Financial Institutions and Insurance  
**From:** William G. Wolff, Principal Analyst  
**Re:** Interstate Banking and Branching<sup>1</sup>

In 1994, the federal Congress enacted the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994. As the title suggests, the bill addressed two banking issues: nationwide interstate banking and interstate branch banking.

### INTERSTATE BANKING

Regarding interstate banking, the Act amended the federal Bank Holding Company Act to allow adequately capitalized and adequately managed bank holding companies to acquire a bank located in another state. This provision was effective September 29, 1995, and on and after that date, there has been full interstate banking among the states. The Act allowed certain provisions to continue in state laws provided they applied equally to all in-state and out-of-state banks and bank holding companies; however, the Act mandated that all states be open to interstate banking. Kansas, in the 1994 Legislature, amended state bank holding company statutes and banking statutes to remove any conflicts with the federal Act.

### INTERSTATE BRANCH BANKING

While Kansas and all the other states had no part in the decision to implement full interstate banking, Riegle-Neal allows states to determine at what level they wish to participate in interstate branching, including the authority to prohibit such an activity. In the language of the Act, states may "opt-in" and permit interstate branching or "opt-out" and not participate in interstate branching. The deadline for deciding the issue is June 1, 1997.

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<sup>1</sup> The information for this memorandum comes primarily from a document entitled "The Riegle-Neal Interstate Banking and Branching Efficiency Act: The Challenge for the States" prepared by the Conference of State Bank Supervisors, Washington, D.C., 1994.

*House FID  
Attachment 2*

*2-6-96*

If Kansas takes no action, on and after June 1, 1997, the state will be opened for interstate branching by out-of-state national banks and in-state national banks; state-chartered banks will not be allowed to branch across state lines. It will take specific legislation to allow Kansas state-chartered banks to participate in interstate branching and, as in the case of interstate banking, the legislation must be nondiscriminatory. Once a state opts-in, it may not opt-out at a later date. Likewise, it will take specific legislative action to "opt-out" of interstate branching. If the state opts-out, no bank in any other state may branch into Kansas and no Kansas bank may branch outside of the state. The prohibition will apply to all banks, national and state-chartered institutions.

Although the trigger date for interstate branching is June 1, 1997, Riegle-Neal allows states to opt-in before that date. Those states which choose an earlier date, may impose bank holding company-type conditions on the operation of an interstate bank so long as those conditions are nondiscriminatory and not otherwise preempted by federal law. The authority to impose conditions expires after May 31, 1997.

States choosing to opt-in, may establish the manner in which interstate mergers may take place: by acquisition of a bank or bank holding company; by de novo branching (allowing an out-of-state bank to establish a new branch in the state); or by acquisition of a branch only of a bank within the state. Further, states may place age-of-existence restrictions on banks specifying a time that a bank must be in existence, not to exceed five years, before it can be acquired. Finally, although the federal Act establishes concentration limits on banks' branching, states may set the concentration limit for banks branching into their jurisdictions. The thresholds established in the federal Act are amounts not to exceed 10 percent of insured deposits nationwide and 30 percent of insured deposits within a state.

Other provisions of the federal Act make it clear that: state antitrust laws apply to branches of banks; that other state laws, *e.g.*, consumer protection, fair lending, and community reinvest, and intrastate branching, apply to branches of out-of-state banks; and, rules and regulations of specified federal regulators are to be adopted regarding the operation of branches as deposit production offices to ensure that banks operating out-of-state branches are reasonably helping to meet the credit needs of the communities served by the bank.

On the national level, the Conference of State Bank Supervisors, a national association of state officials responsible for chartering, regulating, and supervising state banks, has announced that state bank regulators have developed and adopted unanimously safety and soundness, compliance, applications, and assessment fee guidelines for state-chartered banks engaged in interstate branching.

Finally, on a related and not unimportant matter, the federal law addresses the authority of states or political subdivisions of a state to tax "any bank, bank holding company, or foreign bank, any affiliate of any bank, bank holding company, or foreign bank, to the extent such tax or tax method is otherwise permissible by or under the Constitution of the United States or other Federal law."

## IN SUMMARY

Twenty-two states and Puerto Rico have passed legislation "opting-in" to interstate branching: Alabama, Alaska, California, Colorado, Connecticut, Delaware, Idaho, Illinois, Louisiana, Maryland, Michigan, Nevada, New Hampshire, New York, North Carolina, North Dakota, Oregon, Pennsylvania,

(Puerto Rico), Rhode Island, Tennessee, Utah, and Virginia.<sup>2</sup> (See enclosed survey for more specific information regarding each state's actions.)

To date, one state, Texas, has enacted legislation to "opt-out."

Currently, the Multistate Tax Commission, and other interested parties including the American Bankers Association, are developing a bank tax formula to propose to the states for adoption.

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<sup>2</sup> Conference of State Bank Supervisors, **INTERSTATE SURVEY**, as of October 18, 1995.

## INTERSTATE AT HALFTIME

Since most state legislatures have adjourned for the year, it's time to take one last look at the interstate banking and branching laws enacted around the country in 1995. For those who want more detailed information, CSBS is holding a conference on interstate banking and branching laws here in Washington on February 2. Call Elizabeth Piper at 202/728-5729 for more information or registration materials.

STATE	EFFECTIVE DATE	OPT IN	OPT OUT	ALLOWS DE NOVO	ACQUISITION OF BRANCH ONLY*	AGE OF ACQUISITION
<i>Alabama</i>	5/1/97	Yes	n/a	No	No	5 year
<i>Alaska</i>	1/1/94	n/a <sup>1</sup>	n/a	No	Yes	3 year
<i>California</i>	10/2/95	Yes	n/a	No	No	5 year
<i>Colorado</i>	6/1/97	No <sup>2</sup>	n/a	No	No	5 year
<i>Connecticut</i>	6/27/95	Yes	n/a	Yes	Yes	5 year <sup>3</sup>
<i>Delaware</i>	9/29/95	Yes	n/a	No	No	5 year
<i>Idaho</i>	7/1/95	Yes	n/a	No	No	5 year
<i>Illinois</i>	6/1/97	Yes	n/a	No	No	None
<i>Louisiana</i>	6/1/97	Yes	n/a	No	No	5 year
<i>Maryland</i>	9/29/95	Yes	n/a	Yes	Yes	n/a
<i>Michigan</i>	11/29/95	Yes	n/a	Reciprocal basis	Yes	No

<sup>1</sup>Passed interstate branching legislation before Riegle-Neal.

<sup>2</sup>Includes no express authorization of interstate branching, but sets requirements and restrictions on interstate branch operation.

<sup>3</sup>For merger transactions only.

\*Allows out-of-state banks to acquire a single branch from an in-state bank's branch network rather than requiring the purchase of the entire bank.

STATE	EFFECTIVE DATE	OPT IN	OPT OUT	ALLOWS DE NOVO	ACQUISITION OF BRANCH ONLY*	AGE OF ACQUISITION
<i>Nevada</i>	9/28/95	Yes	n/a	In counties with less than 100,000	In counties with less than 100,000	5 year
<i>New Hampshire</i>	6/1/97	Yes	n/a	No	No	None
<i>New York</i>	6/23/92	n/a <sup>1</sup>	n/a	Yes	Yes	n/a
<i>North Carolina</i>	6/22/95	Yes	n/a	Reciprocal basis until 6/1/97, then unrestricted	Yes	n/a
<i>North Dakota</i>	6/1/97	Yes	n/a	No	No	None
<i>Oregon</i>	2/27/95	Yes	n/a	No	Yes	3 year
<i>Pennsylvania</i>	7/6/95	Yes	n/a	Reciprocal basis	Yes	n/a
<i>Puerto Rico</i>	9/29/95	Yes <sup>4</sup>	n/a	Yes	Yes	n/a
<i>Rhode Island</i>	6/20/95	Yes	n/a	Reciprocal basis	Yes	n/a
<i>Tennessee</i>	6/1/97	Yes	n/a	No	No	5 year
<i>Texas</i>	5/1/97	n/a	Yes	n/a	n/a	n/a
<i>Utah</i>	6/1/95	Yes	n/a	No	Yes	5 year
<i>Virginia</i>	7/1/95	Yes	n/a	Reciprocal Basis	Yes	n/a

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<sup>4</sup>Circular Letter Number 95-96-D-55-2, issued on September 29, 1995, clarifies that interstate banking and branching have been authorized by the Banking Act since its adoption in 1933.

\*Allows out-of-state banks to acquire a single branch from an in-state bank's branch network rather than requiring the purchase of the entire bank.

CSBS EXAMINER

December 1, 1995



The KANSAS BANKERS ASSOCIATION  
A Full Service Banking Association

February 6, 1996

TO: House Financial Institutions and Insurance Committee

RE: **HB 2716 - Interstate Branching**

Mr. Chairman & Members of the Committee:

My name is Larry Williams of Halstead, KS. I am a banker in Halstead and have been with The Halstead Bank for 35 years. I am a 4<sup>th</sup> generation Kansas banker.

Today, I appear before you as chairman of the Governing Council of the Kansas Bankers Association having just completed a year as KBA President. Thank you for giving me this opportunity to appear before you to discuss the merits of **HB 2716**.

The issue of interstate branching is one which the KBA has spent many hours discussing over the past year. Presentations and discussion groups were held at our Senior Management Forum in August and at six regional meetings around the state in September. Bill Grant, of the State Banking Department, made detailed presentations, much as he did for the Committee yesterday.

In October a survey was sent to all member banks asking them to express their opinion on this interstate branching issue. A copy of that survey and its results are attached to this testimony. This survey was taken after the extensive educational effort was presented and discussed in great detail. A significant majority of bank CEO's attended one or more of these sessions so we strongly believe those bankers responding had a very informed understanding of the issue.

The response of the survey was significant with 75% of all banks expressing an opinion. A majority of all member banks supported an opt-out position and of those banks which returned the ballot over 2/3 supported an opt-out position. It is also important to note that in each geographical region of the state the opt-out position exceeded the opt-in by a wide margin.

*Larry Williams*

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

*Attachment 3*  
*2-6-96*



At the semi-annual KBA Governing Council meeting in December which is the top policy making body of the KBA, the vote was 12-7 to have the Kansas Bankers Association support opt-out legislation during the 1996 session. So, I appear today as a representative of the KBA in support of **HB 2716**.

With that background, I would now like to discuss with you some of the reasons why bankers throughout Kansas and I have concerns about interstate branching. Why we believe you, as legislators, should support the provisions of **HB 2716**.

First, there is the belief that maintaining a bank charter in Kansas is important, very important. Not only is there a commitment to the state but there is also an equitable method of bank taxation.

Second, there is the concern of whether Kansas can sustain meaningful control over state banking in an interstate branching system.

Since Kansas would most likely be a "host" state rather than a "home" state, it would mean a larger percentage of Kansas banking assets would wind up under the control and supervision of bank commissioners in other states. No matter what the future may hold, keeping as many bank charters as possible in Kansas gives us a much greater control over our banking industry.

Third, bankers have real concerns over the impact on jobs development and jobs retention in Kansas. This is very important. You, as legislators, appropriate millions of dollars each year to promote economic development and job creation. Yet, with interstate branching and the resulting loss of "home offices" it will mean more job losses in Kansas. Retaining charters in Kansas will retard the job loss and the economic harm that follows, and **HB 2716** will help retain charters in Kansas.

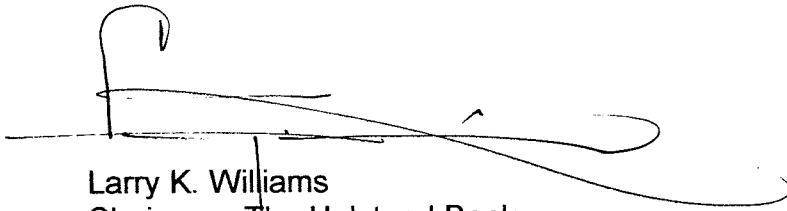
Fourth, will small businesses and agricultural producers continue to have access to much needed capital? Kansas is basically a small business and agricultural state. Community banks, such as mine, take pride in serving the needs of small business and farmers. As bank consolidations result in larger and larger operations headquartered several states away, what impact will that have? As a member of the board of directors of Kansas, Inc. this is a real concern to me.

Yes, there is some interstate branching in place in Kansas today, but is that justification for allowing such branching unfettered on a state-wide basis? Interstate branching will mean control of more Kansas banking assets by out-of-state branching operations. Their capacity to move into Kansas is much greater than the capacity of Kansas banks to move into other states. That being the case, why make a "rush to judgment" which reduces the state's role in the dual



banking system, diminishes the number of banking jobs, has a potentially harmful impact on lending to a vital part of our economy, and creates a less equitable tax structure?

Again, I wish to thank you, Mr. Chairman and members of the committee for this opportunity to discuss this important economic issue. I truly want to see all parts of this state continue to prosper and I am pleased to express my concerns and the concerns of many fellow Kansas bankers. On behalf of the Kansas Bankers Association, I would respectfully request your support of **HB 2716**.

A handwritten signature in black ink, appearing to read 'Larry K. Williams', with a long, sweeping flourish extending to the right.

Larry K. Williams  
Chairman, The Halstead Bank  
and Chairman, KBA Governing Council

KANSAS BANKERS ASSOCIATION  
Interstate Branching Survey  
Month, Day, Year

TO: CHIEF EXECUTIVE OFFICER, ALL KANSAS BANKS

From: Harold Stones

Re: Survey on Interstate Branching

The Riegle-Neal Interstate Banking/Branching bill authorizes interstate branching in every state effective 6/1/97 unless a state legislature either (1) opts in before 6/1/97; or (2) opts out before 6/1/97.

The following survey form will tell us precisely what KBA member banks want KBA's position to be during the 1996 session. Both "opt out" and "opt in early" bills may be introduced during the 1996 Legislative Session.

The KBA's only position on the issue is that any out of state bank's original entry into Kansas must be by acquisition, with or without interstate branching. The KBA presently has "NO POSITION" on interstate branching itself. Your KBA Board of Directors and Gov. Council believe it is important to make clear that this will continue to be our position until and unless a MAJORITY of our 440 member banks go on record voting for us to adopt a specific position.

One further item is to remember this is NOT a survey asking what the State Legislature should do on interstate branching, but rather if the KBA should take a position, and if so, what that position should be.

---

*Return to KBA at 800 S.W. Jackson; Ste 1500; Topeka, KS 66612; or FAX 913-232-3484*

1. Concerning legislation authorizing banks from outside Kansas to branch inside Kansas before June 1, 1997, and allowing Kansas banks to branch in other states (Opt in):

*(Vote for One)*

\_\_\_\_\_KBA should SUPPORT opt-in legislation.

\_\_\_\_\_KBA should OPPOSE opt-in legislation.

\_\_\_\_\_Other (Please explain.)

2. Concerning legislation which prohibits banks located outside Kansas from operating only branches in Kansas, and prohibits Kansas banks from branching in other states (Opt out):

*(Vote for One)*

\_\_\_\_\_KBA should SUPPORT opt-out legislation.

\_\_\_\_\_KBA should OPPOSE opt-out legislation.

\_\_\_\_\_Other (Please explain.)

*[Please note any additional comments you have on the back side of this survey form]*

---

Asset size of Bank:	Geographic location of Bank	
_____Less than \$25 million	_____Northwest KS	_____Southwest KS
_____ \$25-\$50 million	_____North Central KS	_____South Central KS
_____ \$50-\$100 million	_____Northeast KS	_____Southeast KS
_____ \$100-\$500 million		
_____Over \$500 million		

## Brief Analysis of KBA Interstate Branching Survey

437 banks received survey.  
327 banks (75%) returned survey.  
88 banks (20.1% of all banks) said support OPT IN.  
221 banks (50.6% of all banks) said support OPT OUT.

### BY SIZE

177 banks are under \$25 million  
28 banks (16%) said OPT IN.  
96 banks (54%) said OPT OUT.

125 banks between \$25-50 million  
17 banks (14%) said OPT IN.  
69 banks (55%) said OPT OUT.

81 banks between \$50-100 million  
17 banks (21%) said OPT IN.  
36 banks (44%) said OPT OUT.

49 banks between \$100-500 million  
19 banks (39%) said OPT IN.  
16 banks (31%) said OPT OUT.

5 banks over \$500 million  
4 banks (80%) said OPT IN.  
1 banks (20% said OPT OUT.

### BY GEOGRAPHY

Northeast Kansas  
18 banks said OPT IN.  
49 banks said OPT OUT.

North Central Kansas  
17 banks said OPT IN.  
36 banks said OPT OUT.

Northwest Kansas  
6 banks said OPT IN.  
13 banks said OPT OUT.

Southeast Kansas  
7 banks said OPT IN.  
23 banks said OPT OUT.

South Central Kansas  
14 banks said OPT IN.  
42 banks said OPT OUT.

Southwest Kansas  
7 banks said OPT IN.  
17 banks said OPT OUT.

**Community Bankers Association  
of Kansas**

**Statement in support of  
HB 2716**

**by**

**Clark Young**

**before the**

**House Financial Institutions  
and Insurance Committee**

**February 6, 1996**

*House FID  
Attachment 4  
Feb. 6, 1996*

STATE OF KANSAS LEGISLATIVE HEARINGS  
OPT IN HB 2670  
TESTIMONY BY CLARK P. YOUNG  
FEBRUARY 6, 1996

Chairman Bryant, members of the committee, it is indeed an honor and privilege to appear before you. My name is Clark P. Young and I am president of the Citizens State Bank, Hugoton, KS, and am currently serving as president of the Community Bankers Association.

Today, I appear on behalf of the Community Bankers Association along with the Kansas Bankers Association in support of the same bill. Both organizations have polled their members and both organizations have reached the same conclusion: A majority of Kansas bankers support opting out of interstate branching.

This opt out bill is unique in that it does not change the current laws on our books, but extends them.

Actually, the burden of proof is on those who support opting in to show why their system is superior to opting out of interstate branching. Why should we change and adopt their view when we have successfully been living under an opt out position? Is their system comparatively advantageous to what we currently have under Kansas law? If so, for whom is it comparatively advantageous? Who benefits?

The fact of the matter is simple: we need both community banks and the regional/national banks. Both types of banks are needed to effectively compete in this global economy. What I'm here to tell you is we don't need to opt in to interstate branching. Interstate banking

*House Bill 2716  
Testimony by Clark P. Young  
February 6, 1996*

already exists. Banks can move from state to state with little restriction. The only restriction we ask is that they maintain one charter in Kansas like every current Kansas bank.

Secondly, the consolidation of the banking industry will continue whether we opt in or opt out. Kansas will not play the role of a home state and will more than likely be a host state.

Thirdly, it is important to retain our level playing field in assessing the state privilege tax to all banks. If we allow a separate set of rules on assessing the privilege tax (13th largest revenue-generator totalling 40 million dollars in 1994), those banks will use its rules to best benefit their situation. The result will be a loss of revenue from a source that can, and should, pay its fair share.

Finally, weigh the interests of all concerned. What is best for the state of Kansas and Kansans? Who has the potential to benefit from opting in and who has the potential of being adversely affected by this legislation?

I urge you to maintain the present system by supporting the opt out bill, House Bill 2716.

# Maintaining our Opt Out position

1. Local Board of Directors *-community based, interested, involved*

2. Level Playing Field

3. Equal Taxation

4. Separate Audited Financial Statements

5. Separate Community Reinvestment Examination

6. More Accountability

## 1 Bank Charter

# FRONTIERS

CHANGE MAKERS AND TRENDSETTERS TO WATCH IN THE YEAR AHEAD

BOB D'AMICO/RICH - SYGMA



## GEORGE W. BUSH BEST LITTLE GOVERNOR IN TEXAS

**1**t's one thing to pass laws. We've got to change our culture as well." So says George W. Bush, in pinstripes and boots, speaking in a Texas drawl appropriate to the only Bush son who grew up mostly in Texas. Now George W., as most people know him, is governor of Texas and arguably the most popular big-state governor in the country. Schmoozing and listening, immersing himself in the details of domestic policy, Bush spent 1995 getting the legislature to enact four major reforms, "a framework for innovation." Now he plans to spend 1996 getting Texans to innovate.

While Washington has been enmeshed in partisan battles, Bush has been governing by consensus, working closely with Democratic Lt. Gov. Bob Bullock, an old pro who runs the state Senate, and House Speaker Pete Laney. Together they passed a school-reform bill that removed most state controls on local districts, a welfare reform measure that allowed greater local innovation, a juvenile-justice law with tougher sentencing and a tort-reform bill changing the rules that made Texas a trial lawyer's paradise. At the same time, Bush has kept spending increases at a 50-year record low and — read his lips, no new taxes.

Devolution is one Bush theme: If Newt Gingrich wants to devolve power from Washington to the states, Bush wants to devolve power from the pink-marble Texas Capitol to the state's 254 counties. His education law lets districts "declare independence from the state of Texas," so they will be "free of everything but the Constitution and the statewide measuring system." He sets the goal — "at least get one thing right: Every child must

**READ MY LIPS.** Gov. George W. Bush is bringing big changes to the Lone Star State with his message of devolution and personal responsibility — and getting rave reviews. "Let Texans run Texas," the former president's son tells local audiences.



SUMMARY OF TESTIMONY

TESTIMONY OF MARK T. LAIR, PRESIDENT OF BANK OF COMMERCE, CHANUTE, KANSAS, GIVEN BEFORE THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE ON FEBRUARY 6, 1996.

I am Mark T. Lair, President of Bank of Commerce, Chanute, Kansas. My family owns six separately chartered banks in the Southeast Kansas cities of Chanute, Neodesha, Erie, Chetopa, Thayer and Stark. We also have branch bank facilities in Parsons, Fall River and Longton. I am an opponent of House Bill 2716(Opt Out) as well as a proponent of House Bill 2670(Opt In).

I believe the Committee members will receive ample testimony from other sources analyzing the effects of interstate banking. My purpose is to provide you with the perspective of a rural Kansas banker and my opinion of the effects interstate branch banking will have on the rural banking industries and its customers.

My first observation regarding interstate branch banking is that many bankers, trade associations and lobbyists are trying to convince the Kansas legislature that there is a tremendous battle to be fought when in fact, the war is already over. A bank holding company from another state is presently able to purchase a Kansas bank. Most of us are familiar with the fact that Boatmen's Bancshares is purchasing Bank IV. Is there really any difference if Bank IV and its branches are merged to become branches of Boatmen's? The primary regulator of national banks, the Comptroller of Currency, allows National Banks to operate branches up to 30 miles away regardless of whether or not it crosses a state line. Once an out of state bank obtains a Kansas branch, it seems likely the Comptroller of Currency will allow the Kansas branch to operate other branches, with the result that National Banks will be conducting interstate branching activity throughout Kansas.

My point is that whether we like it not, interstate banking and interstate branch banking are already here.

Opting out of interstate branch banking will not be of benefit to rural Kansas banks nor the people and businesses these banks serve. Restricting competition or taking a position of isolationism is never the right path to choose.

*House File D  
Attachment 3  
Feb. 6, 1996*

Rural Kansas banks are faced with more competition today from nonbank and like-a-bank competitors, yet these banks continue to thrive. I have no fear of being able to compete with an out of state branch bank in my trade territory. As a local bank, I can provide better service, I know my customers better, and I have more passion to see my bank be successful. I believe many rural bankers fear that an out of state bank may have a competitive edge in areas involving technology and bank product development. I do not find any concern in this area, and in fact, believe that it has been technological advances that have allowed small banks to remain competitive with large banks.

Some bankers may fear that interstate branch banking will diminish the value of their bank stock. I do not believe this will be the result. Most large banking organizations have achieved their growth through acquisitions, not by opening a branch facility in a community where no customer base exists. For the last several years, Kansas has allowed an in-state bank, with regulatory approval, to approve a branch anywhere in the state. Very few large banks have opened branches in smaller markets, and when they did so, it was by acquisition. If the large Kansas banks didn't choose to enter the smaller Kansas markets, I believe an out of state bank will be even less likely to do so.

Many proponents of the opt out position believe it is necessary to keep interstate branches out of Kansas to prevent deposits from leaving the state and not being available to make loans to Kansas consumers, businesses and agriculture. This will never be the case. Any banker, whether they are from Missouri or California, wants to make a good loan, and they would just as soon make it in Kansas as any where else. When I am negotiating a loan with a customer, I find that I am most often competing with a lending entity that does not have its home office in Kansas. These entities include all of your large insurance companies, the major automotive finance companies, the farm machinery and heavy equipment finance companies and many, many more. If Prudential Insurance Company, Ford Motor Credit, and John Deere Credit are all aggressively pursuing loans in Kansas, I do not understand how someone reached the conclusion that an out of state bank would choose to make an investment in a Kansas banking facility and then not pursue loans within the community it serves.

The obvious benefactor an opt in policy will be the people and businesses of Kansas. The competition this will foster will elevate the level of services and products provided by the banking community while decreasing the cost. Will this competition in turn be detrimental to the existing Kansas banks? In my opinion, no. I am confident the well managed Kansas banks will have no trouble holding on to and increasing their share of the banking pie.

In closing, I would like to state that neither my family's banks nor myself have anything to gain or lose whether Kansas opts in or opts out of interstate branch banking. None of our banks are for sale, and none of the proponents of opt in have offered anything for this testimony. I am simply a concerned Kansan and banker and believe that a decision to opt out is a mistake.

Thank you for taking the time to hear from me today.

Lawrence L. McCants  
Chairman and President  
First National Bank  
Goodland, Kansas

- I. First National Bank
  - A. 100 Years Old
  - B. Second largest agricultural bank in Kansas
  - C. Fifth largest as a percent of ag loans in the U.S.
  - D. Four branches - Goodland, Colby, St. Francis, Sharon Springs
  - E. \$168,000,000 total assets
  
- II. Geography
  - A. 200 x 400 miles or 12,000 boarder miles
  - B. 39 counties boarder an adjacent state or states
  - C. 97 Kansas banks are within 30 miles of a larger city in an adjacent state
  
- III. Community Banks are Thriving
  - A. Four denovo charters since 1994
  - B. Community Bank's establishment of branches and acquisitions and mergers
  - C. Earnings ROA statewide ROE 11.45
  - D. Community banks provided superior service - Bank IV, Commerce, Sunflower - at best: stable
  - E. Statewide branching provided community banks with growth opportunities
  - F. We need to be able to grow with our customers
  
- IV. Competition
  - A. Credit unions
  - B. Federal Land Bank
  - C. PCA's
  - D. Edward D. Jones/Brokerage/Mutual Funds
  - E. Out of state credit cards
  - F. Internet
  - G. Out of state savings and loans - 61 branches, \$2.2 billion in deposits, unknown number of agents
  - H. Mortgage brokers
  
- V. Consumer
  - A. They are better served by competition
  - B. Have ultimate power - vote with their feet
  
- VI. We don't need protection, we need the freedom to compete

*Lawrence L. McCants*  
*Attachment 6*  
*Feb. 6, 1996*

STATEMENT TO HOUSE COMMITTEE  
ON FINANCIAL INSTITUTIONS AND INSURANCE  
FEBRUARY 6, 1996

CHAIRMAN BRYANT, LADIES AND GENTLEMEN, THANK YOU FOR THE OPPORTUNITY TO SHARE SOME THOUGHTS WITH YOU TODAY.

MY NAME IS TOM PAGE, AND I AM PRESIDENT OF EMPRISE BANK - WICHITA. EMPRISE BANK - WICHITA HAS TOTAL ASSETS OF \$290 MILLION DOLLARS, AND IS THE LARGEST OF 5 BANKS OWNED BY EMPRISE FINANCIAL CORPORATION WHICH IS, IN TURN, OWNED BY THE MICHAELIS FAMILY OF WICHITA. ALL OF EMPRISE FINANCIAL CORPORATION'S BUSINESS IS CONDUCTED WITHIN KANSAS AND WE HAVE NO PLANS THAT WOULD INVOLVE INTERSTATE OPERATIONS, AS EITHER A UNIT BANK OR AS A BRANCH.

MY PURPOSE FOR BEING HERE TODAY IS TO ENCOURAGE YOU NOT TO ADOPT HOUSE BILL 2716 OR ANY SIMILAR LEGISLATION TO CAUSE KANSAS TO OPT OUT OF INTERSTATE BRANCHING.

I BELIEVE THAT TO OPT OUT WOULD BE BAD FOR CONSUMERS. THE MANNER IN WHICH CONSUMERS SEEK OUT AND BUY FINANCIAL SERVICES IS DETERMINED BY WHERE THEY LIVE, SHOP, AND WORK. THE LEGAL BOUNDARIES OF CITIES, COUNTIES, OR STATES ARE SIMPLY NOT RELEVANT TO THEM IN THEIR DAILY ROUTINES. KANSAS SHARES OVER 1,000 MILES OF BORDERS WITH FOUR OTHER STATES. IN MANY AREAS, THE NATURAL MARKET OVERLAPS STATE BORDERS. CONSUMERS MOVE FREELY WITHIN THESE MARKETS TO PURCHASE MANY TYPES OF GOODS AND SERVICES. TO ERECT, OR MAINTAIN, AN ARTIFICIAL BARRIER IN THESE MARKETS FOR FINANCIAL SERVICES CAN ONLY BE AN INCONVENIENCE AND A DISSERVICE TO CONSUMERS. MUCH HAS BEEN MADE OF THE POTENTIAL FOR ABUSE OF LOCAL MARKETS BY REGIONAL BANKS, PARTICULARLY BY REMOVING LOCAL DEPOSITS TO FUND LOANS ELSEWHERE. RECENT HISTORY WOULD SUGGEST THAT THESE CONCERNS ARE NOT JUSTIFIED. MOST OF THE BRANCHING IN SMALLER MARKETS HAS BEEN DONE BY COMMUNITY BANKS SEEKING TO EXPAND THEIR MARKETS. VIRTUALLY ALL OF THIS BRANCHING WAS DONE IN AN EFFORT TO MAKE MORE LOANS, NOT TO FIND MORE DEPOSITS. TO BELIEVE THAT REGIONAL BANKS WOULD BRANCH INTO AREAS FOR DEPOSITS, WHILE COMMUNITY BANKS ARE BRANCHING INTO THE SAME MARKETS FOR LOANS SEEMS ILLOGICAL TO ME. REGARDLESS OF ONE'S FEELINGS ABOUT THE

POTENTIAL FOR ABUSE, THERE IS ONE ABSOLUTE FACT TO REMEMBER: INTERSTATE BANKING IS ALREADY THE LAW IN ALL 50 STATES AND BARRING BRANCHING WILL DO NOTHING TO PROTECT AGAINST ANY POTENTIAL ABUSE OF LOCAL MARKETS. IT WILL ONLY BE A DISSERVICE TO CONSUMERS.

I BELIEVE THAT TO OPT OUT WOULD BE BAD FOR BANKING. NO INDUSTRY HAS EVER PRESERVED ITSELF FOR VERY LONG THROUGH PROTECTIONIST LEGISLATION. ONLY BY FACING AND MEETING THE COMPETITIVE THREATS IN THE MARKETPLACE WILL WE INSURE OUR FUTURES. THE CLEAR AND PRESENT DANGER TO KANSAS BANKS IS THE HOST OF NON-BANK COMPETITORS OPERATING IN THE MARKET PLACE - AND NOT A SINGLE ONE IS BURDENED WITH THE COST OF MAINTAINING A SEPARATE COMPANY FOR EACH STATE IN WHICH THEY DO BUSINESS. ONE OF THE FREQUENTLY OVERLOOKED ASPECTS OF "OPTING OUT" IS THE LIKELIHOOD THAT KANSAS BANKS WILL NOT RECEIVE ANY PRIVILEGE FROM OTHER STATES THAT WE DO NOT GRANT TO BANKS FROM THOSE STATES. IN OTHER WORDS, WE WILL NOT GET MORE THAN WE ARE WILLING TO GIVE. THERE ARE MANY KANSAS BANKS WHO WANT, OR MAY WANT IN THE FUTURE, TO SERVE THEIR CUSTOMERS IN A MARKET THAT OVERLAPS STATE BOUNDARIES. TO DENY THESE BANKS THIS OPPORTUNITY WILL ACCOMPLISH NOTHING, BUT WILL STIFLE AN INNOVATIVE SEGMENT OF OUR INDUSTRY.

I BELIEVE TO OPT OUT WOULD BE BAD PUBLIC POLICY FOR KANSAS. THE WHOLE CONCEPT OF USING LEGISLATION TO PROTECT ONE PART OF AN INDUSTRY TO THE DETRIMENT OF ANOTHER IS NOT SOUND PUBLIC POLICY IN THE LONG RUN. ACCESS TO FINANCIAL SERVICES IS ESSENTIAL IN SMALL COMMUNITIES. HOWEVER, ACCESS TO OTHER SERVICES MAY BE EVEN MORE SO. IT IS HARD TO ARGUE THAT BANK SERVICES ARE MORE IMPORTANT THAN GROCERIES. ARE WE PREPARED TO REQUIRE DILLON'S TO OPERATE A SEPARATE SUBSIDIARY IN KANSAS TO PROTECT SMALL GROCERY STORES? OF COURSE NOT. ARE WE PREPARED TO REQUIRE STATE FARM TO OPERATE A SEPARATE SUBSIDIARY IN KANSAS TO PROTECT INDEPENDENT INSURANCE AGENTS? AGAIN, I DOUBT IT. THE BOTTOM LINE IS, ONCE THIS TYPE OF PRECEDENT IS ESTABLISHED, THERE IS NO LOGICAL PLACE TO STOP.

IN SUMMARY, I BELIEVE TO OPT OUT WOULD BE BAD FOR CONSUMERS, BAD FOR BANKING, AND BAD PUBLIC POLICY. THANK YOU FOR YOUR TIME. I WOULD BE HAPPY TO ANSWER ANY QUESTIONS YOU MAY HAVE.



PO BOX 1240  
DODGE CITY KS 67801-1240

TO: The Honorable Bill Bryant, Chairman  
House of Representative Committee on Financial Institutions and Insurance

FROM: Larry Wangrud, President  
Bank of the Southwest

DATE: February 6, 1996

RE: H.B. 2716

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Mr. Chairman and Members of the Committee: My name is Larry Wangrud and I am President of the Bank of the Southwest in Dodge City, Kansas. We are a \$50 million asset bank located in a very competitive market. Considering that I am a community banker, you might think that I would fall in line with many of my peers on the opt-out issue. Be very clear, we have no peers, we are better than most and worse than some. I have never considered the issue of branches versus legal charters as a focal point for a banker. There is and will continue to be numerous choices for the people of Kansas to make as it relates to financial services. The key issue is an institution's ability to serve its customers with products that they need at a price that they are willing to pay while providing competitive return to its shareholders. Customer choice determines banks that grow, banks that decline, and even banks that fail.

I am very proud of my bank and its record of serving our customers and community. We are 75% loaned up, yet our community is served by other banks, both larger and smaller in size. These banks compete each day for customers both in Dodge City and in nearby communities. Some of our customers use our Bank's services exclusively, while others use only one particular product that appeals to them. There are people in our community that bank with financial institutions that are out-of-state. At the Bank of the Southwest, we continually look for new opportunities to lend money, gather deposits, and invest funds in areas that allow us to be safe and strong. We don't need more legislation to determine

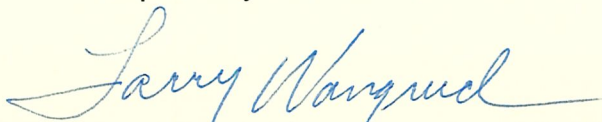
*Larry Wangrud*  
*Attachment B*

what the right structure is for banking, the reality is we need less legislation. Then we can truly compete equally with the credit card issuers, the finance companies, the savings institutions, credit unions, life insurance companies and mutual funds.

I wonder what the reaction would be if a local gas station owner or merchant were to come before this legislature or committee and ask that Quik Trip, Coastal, or Walmart be prohibited from entering his community because he was afraid of the competition. The people of Kansas should be allowed to get the benefits from increased competition in all services, including banking. I am not afraid of similar competition from other banks today and see no reason to have the state of Kansas intervene on my bank's behalf. In fact, such artificial support often is worse in the long run because the protected organization doesn't change and evolve to meet the real needs of its customers. Its failure to evolve ultimately results in its obsolescence. The reason our bank is aggressive is we need to be to survive over the long term. We are gaining market share because we work at it. No one knows what tomorrow will bring for new technologies. We also can not accurately predict what services will be needed and which ones will go away. I urge you to let the most efficient form of banking be determined by the communities and customers needing these services and NOT the legislature of the State of Kansas. H.B. 2716 is not in the best interest of the citizens of this state. If there is to be legislation on this subject, then be sure it benefits an overwhelming majority of Kansans and not a special or protected segment of our economy.

I appreciate the opportunity to present testimony to this committee. Please feel free to contact me if you have any questions and I will respond in an honest and objective way.

Respectfully submitted,



Larry Wangrud  
President



MEMORANDUM

TO: The Honorable Bill Bryant, Chairman  
House of Representative Committee on Financial Institutions and Insurance

FROM: Robert L. Jones  
J.O. Cattle Co. Inc.

DATE: February 6, 1996

RE: H.B. 2716

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Mr. Chairman and members of the committee. My name is Robert Jones. I live in Holcomb, Kansas. I am a rancher, a farmer, and a Finney County Commissioner. I have been in the cattle business most of my life.

One of the primary tools of my industry is the availability of credit. People supporting HB 2716 say "opting-in" would have a negative influence on my industry. I disagree. Many cattlemen in my area are already getting financing from out-of-state financial institutions. One of the primary needs of my industry is the availability of credit at a competitive rate from a financial institution of sufficient size to handle the credit with ease. The "opt-out" proponents suggest scenarios that are not happening in the real world.

"Opt-out" proponents are worried about loan to deposit ratios and local lending. In western Kansas there is a larger borrowing base than deposit base. We need and depend on other banks with a low loan demand and a high deposit base. Ernie Yake, president of Bank IV Garden City, says one of his goals is to have loans exceed deposits. He can do this as part of Bank IV Kansas but not as a separately chartered bank.

My company and I are customers of Bank IV and we are proud of how Bank IV serves our community and industry. I know the borrowing needs of many cattlement are large enough and complicated enough that they would place a small independent bank in an unsafe concentration of

*Robert L. Jones*  
*Attachment 9*  
*Feb. 6, 1996*

credit. These large borrowers need to bank with institutions that can manage these credits in a large diverse portfolio. If our banking laws become even more restrictive, it may be more difficult to get credit and the cost to me as a consumer could be higher. The same holds true for the other services that a bank can offer if it has the opportunity to spread the cost over a large customer base. So the actual record of what is happening today is more relevant than a bunch of doomsday predictions. The choice of services and providers should remain mine and it's something I want to preserve whether I bank down the street or down the road.

Finally, I will have to admit my frustration that bankers are even fussing about "opt-in; opt-out". In the age of fewer regulations and down-sizing of government, this should be a non-issue. Banks should be more concerned about other businesses that are performing banking functions. Those businesses have neither the government regulations or penalties that banks do. The real challenge is for banks to be able to meet this competition on a level playing field.

I urge you not to support HB 2716 and more restrictions.

Thank you and please feel free to contact me if I can be of any further assistance.

Sincerely yours,

Robert L. Jones



# THE CITIZENS NATIONAL BANK

P.O. Box 228  
Lansing, KS 66043  
(913) 727-3266

P.O. Box 68  
Leavenworth, KS 66048  
(913) 651-3266

Remarks of: Gary W. Padgett  
President and CEO  
The Citizens National Bank  
Corporate Office  
P O Box 309  
Greenleaf, KS 66943

Introduction: National Charter  
Belleville, Pop. 2521  
Concordia, Pop. 6133  
Greenleaf, Pop. 353  
Lansing, Pop. 6,778  
Leavenworth, Pop. 40,636  
2 facilities located within 30 miles of two separate  
state borders

Subject: Remarks against House Bill 2716, which purportedly  
is "opt out" legislation.

...Prohibits any Kansas Bank - defined as a bank whose home state is Kansas - from engaging in an interstate merger transaction - meaning 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.

If this piece of legislation were passed, it would definitely condemn small independent banks residing in local communities to "second class" franchises.

...Legislative bodies are historically "reactive" bodies; not "proactive" bodies. This proposed legislation holds no purposeful objective or mission that is good for the State of Kansas or the whole body of citizens that the legislative bodies represent.

...Market forces are in place to offer citizens "choices". This bill does not offer choices. It only muddies already murky waters that exist for what has "traditionally" been named a Bank. My challenge to this Committee would be not to be short-sighted for a forward-looking state, but to create a vision for delivery of financial products to all citizens of the State of Kansas.

It has been said that managers do things right, leaders do the right thing. It is clear that the "right thing" for the citizens of the state is not passing of House Bill 2716.

The only thing that can be said of the small, locally owned, bank is they are locally owned, dependent upon the local economies,

*House File  
Attachment 10  
Feb. 6, 1996*

with local people with local interests in charge. Folks, that sounds good, but it is not good. Diversity is the strength of a great economy. Plans have been set in motion by some of you and your predecessors to diversify the Kansas economy. House Bill 2716 does not address those plans.

I come before you not as a Kansas Banker with parochial-special interest views. I come before you as a citizen of small communities of 400, 2500, 6000, 7000, and 40,000 and a great state to tell you House Bill 2716 is not good for any of those communities or the State of Kansas.

**House Bill No. 2716**

**House Financial Institutions and Insurance**

Testimony by

Jacqueline K. Clark  
Chair, Kansas State Affairs Committee  
Greater Kansas City Chamber of Commerce

*House F&I  
Attachment 11  
Feb. 6, 1996*

Good afternoon, Chairman Bryant and members of the committee. My name is Jackie Clark. I am a volunteer committee chair for the Greater Kansas City Chamber of Commerce's Kansas State Affairs group. Many of you know that I am a registered lobbyist for Hallmark Cards, however, I am here today on behalf of the chamber.

The chamber represents more than 1,000 Kansas businesses. Our top priority is to support legislative efforts to enhance Kansas' economic growth. As we considered proposals last fall, we focused on issues of concern to business growth. One of the issues with which we were concerned is the effort to allow Kansas to "opt out" of federal legislation that permits interstate branching. As a result of those concerns, the Greater Kansas City Chamber of Commerce opposes House Bill 2716.

We would like to share with you our concerns about House Bill 2716 and urge you to join 22 other states that have passed legislation to "opt in."

We believe that House Bill 2716 would create a barrier to competition and to providing lower cost financial services to consumers as well as making banking inconvenient. For consumers, it is most convenient to be able to deposit and withdraw funds from any branch without regard for the location of the facility. Banks operating in Kansas and any other state would have to maintain two organizations rather than one and the duplication increases costs.

We also believe that if Kansas blocks interstate branching it will mean that Kansas banks will not play by the same rules as banks in at least 22 other states and Kansas banks be left behind banks in surrounding states. In today's international economy, Kansas businesses need access to the financial industry. Using old-style laws and regulations will create barriers to conducting business efficiently.

Greater Kansas City Chamber of Commerce  
Testimony on House Bill 2716  
House Financial Institutions & Insurance  
Page 2

If the growth of Kansas banks is impaired by "opting out," it will be more difficult to keep businesses in the state and to attract new businesses. We do not believe that Kansas should hold back natural growth.

The Greater Kansas City Chamber of Commerce believes that House Bill 2716 will impede business growth as we enter the 21st Century. Fear of fair and healthy competition is not the best way to set public policy. Banking should be treated like other businesses and should not be placed at a competitive disadvantage with other types of financial service companies. In order for businesses and banks to succeed, we encourage you to oppose House Bill 2716. Thank you for your consideration of our perspective.



**Community  
National Bank**

P.O. Box 4876 ■ Topeka, Kansas 66604

February 6, 1996

Testimony before the House Committee on Financial Institutions and Insurance

re: Interstate branching

Dear Chairman and Distinguished Members of the Committee:

Thank you for the opportunity to present my views today.

Kansas has been protective of its banking industry. We have in the past been slow to give up unit banking, to allow branching of our own banks and to allow multi-bank holding companies. It seems that we are hearing many of the same arguments today that we heard when these issues were addressed. Has this protection paid any dividends? Is Kansas in any better condition?

I would propose that we are not. Because we have been slow to adapt to the changes going on in the rest of the country, Kansas banks have not had the opportunity to expand and strengthen in the way out-of-state banks have. Kansas banks, in general, have not had to keep fully abreast of all the competitive factors in the financial marketplace. Kansas banks have been restricted in their ability to grow and strengthen and do not now have the capital strength to compete with the larger regional banks. In the end, the thing most feared, takeover of our commercial banking institutions by outsiders, is in process. Maybe if Fourth Financial, and possibly others, would have had an earlier start, they would be the acquirer and Wichita, and Kansas, would be home to a financial powerhouse.

But this is not the time to continue this process. I think we sell ourselves short if we think we cannot compete competitively with these outsiders. Why should we continue to restrict our own banks' abilities to grow and prosper by restricting their ability to expand into other states? Why do we think we should try to keep banking influences all under local control when we have nationally owned grocery stores, drug stores, department stores etc.? Many industries are seeing this type of "nationalization." If Kansas is to be in the mainstream of business activity, it should allow its banks to play on a level playing field with other states' banks.

Now I am not going to tell you that every major bank that has or will enter Kansas will be a perfect corporate citizen. Nor will I tell you that every Kansas bank is a perfect corporate citizen. In fact, although I will admit that they have strengths, they do have their weaknesses. Because of their weaknesses, our bank was made possible. We believe so strongly in community ownership and management that we named our bank "Community." We feel local banks do have advantages. We feel that local banks will always have a place. The role may be different that in the past. But if the major banks are not doing their job, new charters like ours will fill the void. And this is how the citizen's of Kansas will not suffer.

*David F. S. J.*  
*Attachment 12*  
*Feb. 6, 1996*

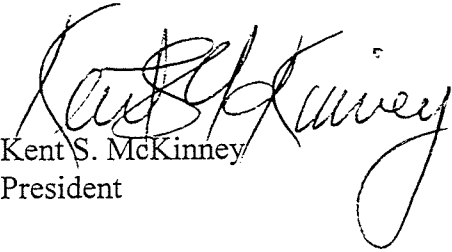


I am happy to report to you that so far our thinking appears to be correct. The community of Topeka is welcoming us by contributing to our growth at the rate of more than \$1,000,000 per month. We have more than \$9,000,000 in deposits in about eight months. This is a solid growth achieved by a beginning staff of only six individuals and a very limited marketing budget. Nationwide, there is a resurgence in the chartering of new banks for just the same reason.

Kansans should have a choice in their banking services and competition should flourish. Kansas bankers should have a choice to pursue opportunities in other states. There are plenty of participants to keep the competition healthy.

Let the competition begin!

Respectfully Submitted,



Kent S. McKinney  
President

THE SMITH COUNTY STATE BANK  
AND TRUST COMPANY  
SMITH CENTER, KANSAS

February 1, 1996

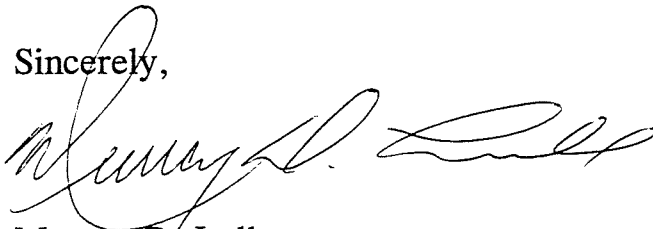
Nikki Feuerborn  
Office of Representative Bill Bryant  
State Capitol  
300 SW 10th Avenue  
Room 115S  
Topeka, Kansas 66612-1504

Dear Ms. Feuerborn,

Thank you for the opportunity to present the enclosed written testimony to the House Committee on Financial Institutions Hearing on HB 2670 on February 7.

Thanks for your consideration.

Sincerely,



Murray D. Lull  
President

*House FD+I  
attachment 13  
Feb. 6, 1996*

February 7, 1996

**Dr. Bill Bryant**  
**Chairman, House Committee on Financial Institutions and Insurance**

**Testimony of**  
**Murray D. Lull**

Smith County State Bank and Trust Company  
P.O. Box 307, 136 South Main Street  
Smith Center, Kansas 66967

**in favor of**  
**Opt-in Legislation / HB 2670**  
allowing bank branching in conjunction with  
acquisitions and mergers

**Dear Chairman Bryant and Members of the House Committee on  
Financial Institutions:**

My name is Murray Lull. I am a fourth-generation president of The Smith County State Bank and Trust Company, a \$59 million asset bank, in Smith Center, Kansas, which has a population of about 2,000 people. I have been interested in banking and banking issues for a number of years. I served as the 1992-93 president of the Kansas Bankers Association, and I am currently a member of the Board of Directors of the American Bankers Association, and am also chairman of a special ABA Task Force on the Payments System which is presently looking at the literally world-wide system of financial exchange that allows our customers, wherever they might be at the time, to have access to financial services of our banks and the banking system.

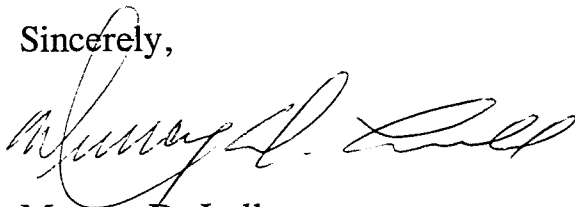
Please consider this my personal testimony, however, as a representative of a relatively small bank in a very sparsely populated area of Kansas, *in favor* of legislation that will lead to the allowance of Kansas to "opt-in" in regard to the interstate exchange of banking and banking services.

I would suggest to you that most bankers favor free enterprise and the competitive system of commerce, and that many of these bankers do not oppose such being extended to the banking industry. I happen to believe strongly in the free enterprise system and that banking ought to be part of that, even though there truly are some downsides to the present trend in bank consolidations and mergers. I believe strongly that Kansas banking and our customers are NOT well served by shutting our doors to the world.

The interstate banking issue, and the emotions raised, will be a considerable challenge for both the Kansas Legislature and our bankers to deal with. Structure, taxation, and supervision are among the many components of the question, and it's not all black and white. I wish you well in your deliberations, but wanted you to know that you cannot assume that all small-town bankers might oppose opting in, even though we realize there will be those downsides in the evolution of our banking world should we join the other states in interstate. **For any of us to grow, we have to stand the tempering process of the tremendous competitive forces "out there" and that competition is coming from far more places than just other banks.** These non-bank competitors are already interstate in a big-time way! A fence around Kansas for banking but not for any other financial competitors would leave Kansans terribly disadvantaged, and that would ultimately and negatively impact Kansas banking as well.

I urge your favorable consideration of the adoption of an opt-in stance for Kansas and thank you and your Committee for this opportunity to speak in favor of such.

Sincerely,

A handwritten signature in cursive script, appearing to read "Murray D. Lull". The signature is written in dark ink and is positioned above the printed name.

Murray D. Lull

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RICHARD A. SNYDER  
(1045-1098)

January 23, 1995

\* ADMITTED IN NEW HAMPSHIRE ONLY

WRITER'S DIRECT DIAL NUMBER (717) 386- 1512

Mr. James B. Watt  
President and Chief Executive Officer  
Conference of State Bank Supervisors  
1015 - 18th Street, N.W., Suite 1100  
Washington, D.C. 20036-5725

Re: Authority of a State to "Opt In" to Interstate Branching after It Has "Opted Out" under Section 44(a)(2) of the Federal Deposit Insurance Act

Dear Jim:

You have asked me to consider the question of whether a state may choose to "opt in" to interstate branching by merger after it has "opted out" of such branching pursuant to Section 44(a)(2) of the Federal Deposit Insurance Act (the "FDI Act"), as amended by Section 102(a) of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (the "Riegle-Neal Act"), Pub. L. No. 103-328, § 102(a), 108 Stat. 2338, 2343-44. In addition, you have asked me to review two legal opinions, which have concluded that a state may not elect to "opt in" to interstate branching by merger after it has "opted out." Those opinions are set forth in a letter dated December 6, 1994, from Day, Edwards, Federman, Propster & Christensen, P.C. of Oklahoma City, Oklahoma (the "Day Opinion"), and a letter dated January 13, 1995, from Foss and Moore of Bismark, North Dakota (the "Foss Opinion").

For the reasons stated below, I respectfully disagree with the conclusion reached in the Day and Foss Opinions. In my view, Section 44(a)(2) of the FDI Act allows a state to "opt

*House FDID  
Attachment 14  
Feb. 6, 1996*

BARLEY, SNYDER, SENFT & COHEN

Mr. James B. Watt  
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out" of interstate branching by merger at any time until May 31, 1997, while retaining the power at a subsequent date to repeal its "opt out" statute and thereby "opt in" to interstate branching.

Statutory Language

Section 44(a)(1) of the FDI Act generally provides that, beginning on June 1, 1997, the responsible federal agency may approve an interstate merger between two FDIC-insured banks that have different home states "without regard to whether such transaction is prohibited under the law of any State." Under Section 44(d), the resulting bank may retain any banking office that the constituent banks were operating prior to the merger, and may also establish additional branches at each location where either of the constituent banks could have established or acquired branches under applicable federal and state law.

However, under Section 44(a)(2), a federal agency may not approve an interstate merger if the home state of either constituent bank has "opted out" of interstate branching by enacting a law, between September 29, 1994 (the date of enactment of the Riegle-Neal Act) and June 1, 1997, that expressly prohibits merger transactions involving all out-of-state banks. Thus, a state that "opts out" of interstate branching under Section 44(a)(2) will experience the following effects: (i) out-of-state banks will be prohibited from establishing in-state branches by merger, and (ii) home state banks will be barred from establishing out-of-state branches by merger.<sup>1</sup>

The Riegle-Neal Act contains no provision which expressly deals with the issue of whether a state would have authority to repeal its "opt out" statute and, thereby, "opt in" to interstate branching by merger. Section 44(a)(2) is silent on this point, as is the conference report accompanying the Riegle-Neal Act.<sup>2</sup>

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<sup>1</sup> See H. Conf. Rep. No. 651, 103d Cong. 2d Sess. 56 (1994) (hereinafter "Conf. Rep."), reprinted in 1994 U.S. Cong. & Ad. News 2068, 2077.

<sup>2</sup> See *id.* at 50, 56, reprinted in 1994 U.S. Code Cong. & Ad. News at 2071, 2077.

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### Analysis

The Day and Foss Opinions conclude that, because Section 44(a)(2) does not expressly grant a state the right to "opt in" to interstate branching by repealing an earlier "opt out" statute, Congress intended to forbid any state from taking any such action. Both Opinions claim to base their conclusion on the "plain language" of Section 44(a)(2), but in fact their conclusion is based on an inference from congressional silence. For example, the Day Opinion acknowledges that its position is "inferred by [sic] the literal language of H.R. 3841," and the Day Opinion goes on to suggest: "By its express provisions, H.R. 3841 seemingly makes irrevocable a state's election to opt out of section 44(a)(1), since it provides no relief whereby a state may elect to come back within the preemptive effect of such statute."<sup>3</sup>

The inference from congressional silence relied upon in the Day and Foss Opinions is erroneous, because it is completely contrary to controlling principles of legislative authority and federal preemption analysis, as well as applicable case law. It is a fundamental axiom that, except as otherwise limited by constitutional law (e.g., with respect to the protection of vested rights), a legislature always retains the power to repeal any statute that the legislature

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<sup>3</sup> Day Opinion at 2-3 (emphasis added in part). The Foss Opinion (at 2) similarly relies on congressional "silence" with respect to the authority of a state to "opt in" after "opting out" under Section 44(a)(2). The Foss Opinion also relies on an "assum[ed]" congressional intent to "encourage the speedy development of a nationwide interstate banking and branching network . . . by making the consequences of an 'opt-out' decision irrevocable and so potentially onerous to a state's banking industry that no state will choose to 'opt-out'" (*id.*). The Foss Opinion cites no legislative materials to support this "assumed" congressional intent, and the author acknowledges that "I have not thoroughly researched the legislative history of the Act" (*id.* at 1).

In fact, as pointed out *infra* at notes 9-10 and accompanying text, the House and Senate floor debates on the conference report for the Riegle-Neal Act indicate a strong consensus in favor of giving the states a meaningful choice on whether to permit interstate branching. No participant in those debates suggested that Congress intended to force the states to "opt in" by making any "opt out" decision irrevocable. Thus, the "assumed" congressional purpose cited in the Foss Opinion is unfounded.

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Mr. James B. Watt  
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has enacted.<sup>4</sup> Thus, the position taken in the Day and Foss Opinions would lead to a significant preemption of state legislative authority, because it would deny to a state legislature its inherent power to repeal a previously-enacted "opt out" statute.

The Supreme Court has said that courts must apply a "presumption against finding preemption of state law in areas traditionally regulated by the States."<sup>5</sup> There is no doubt that this presumption against preemption applies to the interpretation of Section 44(a)(2), because the regulation of banking has long been recognized as an area of traditional state power. For example, the Supreme Court has repeatedly affirmed that "banking and related financial activities are of profound local concern."<sup>6</sup>

Section 44(a)(2) defines a specific and limited area of preemption by providing that a state may not "opt out" of interstate branching by merger after May 31, 1997. As discussed above, Section 44(a)(2) is completely silent on the question of whether a state may repeal an "opt out" statute. In this context, the Supreme Court has warned that the scope of Congress' express preemption must be given a "narrow reading" in order not to disturb the presumption against "the pre-emption of state police power regulations." Cipollone, 112 S.Ct. at 2618. Put another way, "Congress' enactment of a provision defining the pre-emptive reach of a statute implies that matters beyond that reach are not pre-empted." Id. (emphasis added). In light of these principles of preemption analysis, the Day and Foss Opinions are plainly in error when they argue that a state's authority to repeal an "opt out" statute should be deemed preempted based merely on congressional silence in Section 44(a)(2).

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<sup>4</sup> E.g., District of Columbia v. John R. Thompson Co., 346 U.S. 100, 113-14 (1953); People ex rel. Eitel v. Lindheimer, 371 Ill. 367, 21 N.E.2d 318, 321-22, appeal dismissed sub nom. Illinois ex rel. Eitel v. Toman, 308 U.S. 505 (1939); 1A Sutherland, Statutes and Statutory Construction § 23.03 at §22 (N. Singer 5th ed. 1993). This axiom is a corollary of the well-established principle that a legislature cannot, by ordinary enactment, "bind its own hands or those of future Legislatures by adopting rules not capable of change." People's Advocate, Inc. v. Superior Court, 181 Cal.App.3d 316, 328, 226 Cal. Rptr. 640, 647 (1986). Accord, 1A Sutherland, supra, § 23.03 N.4 at 323.

<sup>5</sup> California v. ARC America Corp., 490 U.S. 93, 101 (1989). Accord, Cipollone v. Liggett Group, Inc., 112 S.Ct. 2608, 2617, 2618 (1992).

<sup>6</sup> Northeast Bancorp v. Board of Governors, 472 U.S. 159, 177 (1985) (quoting Lewis v. BT Investment Managers, Inc., 447 U.S. 27, 33 (1980)).



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Mr. James B. Watt  
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A federal bankruptcy court reached the same result in In re Criswell, 152 B.R. 264 (Bkrcty. E.D. Ark. 1992). The court in Criswell considered a federal statute, 11 U.S.C. § 522, which established a federal list of exemptions from the estates of bankrupt debtors but, at the same time, allowed each state to "opt out" of the federal list and establish its own list of exemptions. While the right of a state to "opt out" of the federal scheme was expressly recognized in 11 U.S.C. § 522(b), the statute was silent with respect to the power of a state to repeal its "opt out" election. In 1981, the Arkansas legislature enacted a law "opting out" of the federal list of exemptions, but ten years later the legislature repealed its "opt out" law.

A creditor in Criswell asserted that Arkansas' repealing statute was invalid because the state's decision to "opt out" was irrevocable under 11 U.S.C. § 522(b). The court rejected this argument, noting that "Congress could have inserted language making the opt-out irrevocable, as it has in other statutes. . . . 11 U.S.C. § 522 contains no language suggesting that a state's decision to opt-out of the federal exemption scheme is irrevocable." 152 B.R. at 266. Thus, Criswell, like Greenwood Trust, followed an approach consistent with the Supreme Court's preemption analysis described above. Under this analysis, where Congress has not adopted express statutory language to forbid a state from repealing its "opt out" law, it must be presumed that Congress did not intend to preempt the state from exercising its fundamental power of repeal.

The foregoing judicial interpretations of "opt out" statutes are consistent with the legislative history of Section 44(a)(2). During the Senate floor debate on the conference report for the Riegle-Neal Act, Senator Roth (a member of the Senate Committee on Banking, Housing, and Urban Affairs) specifically confirmed that a state could choose to "opt out" of interstate branching by merger prior to June 1, 1997, and could then "opt-in at any later time it finally decides."<sup>9</sup> No member of Congress contradicted Senator Roth or otherwise indicated that a state's decision to "opt out" would become irrevocable under Section 44(a)(2). On the contrary, the House and Senate floor debates on the conference report contain numerous statements indicating that Congress intended to give each state a meaningful choice on the

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<sup>9</sup>140 Cong. Rec. § 12,788 (daily ed. Sept. 13, 1994) (emphasis added).

BARLEY, SNYDER, SENFT & COHEN

Mr. James B. Watt  
January 23, 1995  
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issue of whether to allow interstate branching. No member of Congress stated during those debates that Congress intended to force the states to "opt in" by using the tactic of barring the states from repealing any "opt out" election.<sup>10</sup>

Conclusion

Based on the authorities reviewed above, I believe that Section 44(a)(2) of the Riegle-Neal Act permits a state to "opt out" of interstate branching by merger prior to June 1, 1997, and subsequently to repeal its "opt out" law and thereby "opt in" to interstate branching by merger.

Please call me if you have any questions regarding the matters discussed in this letter.

Sincerely yours,

*Art E. Wilmarth*

Arthur E. Wilmarth, Jr.

AEW/dg/202416.1

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<sup>10</sup> See 140 Cong. Rec. S 12,771 (daily ed. Sept. 13, 1994) (remarks of Sen. D'Amato); *id.* at S 12,787 (remarks of Sen. Dodd); *id.* at S 12,788 (remarks of Sen. Dole and Sen. Roth); *id.* at H 6,775 (daily ed. Aug. 4, 1994) (remarks of Rep. Neal and Rep. Gonzalez); *id.* at H 6,777-78 (remarks of Rep. Roukema and Rep. Bereuter); *id.* at H 6,779 (remarks of Rep. Thomas); *id.* at H 6,781-82 (remarks of Rep. Vento and Rep. Castle).

The Senate committee bill (S. 1963), which provided the basis for the Senate's earlier deliberations on interstate branching legislation, would have expressly preserved the right of any state to "opt in" after it had "opted out" of interstate branching by consolidation. S. Rep. No. 240, 103d Cong. 2d Sess. 21, 31 (1994). This provision was not included in the Riegle-Neal Act. However, it should be noted that the House-Senate conference committee did not follow the Senate bill's general approach to interstate branching, and therefore the conference report did not include many of the Senate bill's provisions. See Conf. Rep. 50, reprinted in 1994 U.S. Code Cong. & Ad. News at 2071. In view of the drafting history of the conference report, and the other judicial and legislative authorities discussed in this letter, I do not believe that the conclusion reached herein should be changed merely because the Riegle-Neal Act does not include the Senate bill's express reservation of state power to repeal an "opt out" statute.

# Nationwide Interstate Bank Branching

# Informational Handbook

By:

The Community Bankers Association of Kansas  
&  
The Kansas Bankers Association

# RIEGLE-NEAL INTERSTATE BANKING AND BRANCHING EFFICIENCY ACT OF 1994

## GENERAL OVERVIEW

### **Federal Law.**

Late in the congressional session of 1994, the United States Congress passed, and the President signed the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law 103-328 (the "Act"). The Act deals with many aspects of the nation's banking system.

As evident from its name, the Act addresses two issues:

1. It establishes nationwide, interstate banking throughout the United States effective September 29, 1995.
2. It establishes nationwide, interstate branching unless a state chooses to opt-out before June 1, 1997. If a state doesn't opt-out by that date, it will automatically become a part of a nationwide interstate branching system. The federal act gives states one chance to opt-out of nationwide bank branching and unlimited chances to opt-in at a later date.

For the purposes of reviewing the relevant provisions of the Act, it will be addressed in two portions: the provisions relating to bank holding company interstate acquisitions ("interstate banking"), and the provisions relating to establishment of interstate branches ("interstate branching").

### **1. Interstate Banking.**

The Act amends the Bank Holding Company Act to permit an adequately capitalized, adequately managed bank holding company to acquire a bank located in another state. As of September 29, 1995, the Federal Reserve Board may approve an application for interstate acquisition, subject to certain conditions, regardless of whether such transactions are permitted under the law of the state in which the bank to be acquired is located. Therefore, the Act supersedes Kansas' five state, regional interstate banking law and now mandates nationwide interstate banking.

Kansas had a few options available with respect to the mandatory interstate banking provisions. So, during the 1995 Session, the Kansas Legislature enacted legislation, Senate Bill 204, (refer to copy following this text) which prohibits out-of-state holding

companies from acquiring any Kansas banks which have been in existence less than five years; prohibits the acquisition of any bank in Kansas by a foreign bank; and allows affiliated banks to act as agents for other bank affiliates in the same holding company.

## **2. Interstate Branching.**

Effective June 1, 1997, the responsible federal agency may approve applications for national banks that are adequately capitalized and managed to consolidate their multi-state operations and branch interstate by acquisition. If Kansas opts-out, national and state banks are prohibited from branching into Kansas via mergers and Kansas banks are prohibited from branching interstate via mergers.

### **State Law.**

Under Kansas law, out-of-state holding companies may acquire banks in Kansas. Thus, **interstate banking** is already present in Kansas. However, the current law was carefully written to ensure that a Kansas bank charter be maintained and managed under a Kansas Board of Directors. Thus, under Kansas law, any banking organization choosing to come to Kansas may do so providing they maintain a Kansas charter. Under **interstate branching**, those same out-of-state bank holding companies could simply convert their operations in Kansas to branches of their out-of-state operations, thereby, eliminating local boards of directors.

### **State Action.**

Kansas legislators are empowered to decide whether to participate in interstate branching. The Act allows state action regarding many aspects of the interstate branching provisions, which can be characterized as follows:

- a. **Opt-Out.** Kansas may decide whether to participate in interstate bank mergers. If Kansas does not wish to allow banks to merge their interstate operations into branch networks, it must pass non-discriminatory legislation before June 1, 1997, prohibiting interstate bank mergers into and out of Kansas.

If Kansas opts-out of interstate branching, no bank in any other state may establish a branch in Kansas. Likewise, a bank chartered in Kansas may not participate in any interstate merger transactions.

If Kansas does not wish to allow interstate branching, it must pass a law opting

out of branching by merger. **If Kansas opts out, it may at any time opt-in to interstate branching.**

**It is important to remember that, even if Kansas opts-out, any out-of-state bank may still operate a branch or branches in Kansas as long as it maintains a Kansas charter.**

b. **Opt-In Early.** To allow interstate branching before June 1, 1997, it would be necessary for the Legislature to pass "opt-in" legislation.

If Kansas opts-in early to interstate branching, it may impose conditions on the entry of interstate banks. Kansas may pass legislation that imposes bank holding company-type conditions on the operation of an interstate bank branch. These conditions must be nondiscriminatory and must not be preempted by federal law. **Such conditions would not apply after May 31, 1997.**

c. **De Novo Branching.** Kansas may act to permit de novo interstate branching by passing a law expressly permitting all out-of-state banks to establish de novo branches in its state.

If Kansas takes no action before June 1, 1997, the interstate branching provisions will become effective with respect to national banks; therefore, legislative action to opt-out of the interstate branching provisions must be enacted prior to that date. It is important to note that a state may opt-out prior to June 1, 1997, and still be allowed to opt in at a later date. Once a state opts-in, however, it may not opt-out at a later date.

## **L.O.O.K.**

L.O.O.K., "Let's Opt Out Kansas," is a statewide coalition that advocates opting out of the interstate branching provisions of the Riegle-Neal Act.

We believe every bank doing business in Kansas should be required to maintain a charter. By maintaining a charter, all banks will be on the same "playing field," subject to the same requirements and accountability to Kansas and its citizens.

Coalition members believe the Kansas Legislature must opt-out of interstate branching in order to protect local jobs, to insure adequate capital for lending to small business, agriculture, and consumers, and to preserve customer service.

**There are no good state policy reasons for Kansas to rush to judgment on the interstate branching issue. There is a definite need to closely study the impact of**

# L.O.O.K. Coalition Members

**Kansas** - Community Bankers Association; Kansas Automobile Dealers Association; Kansas Farmers Union; Kansas Independent Automobile Dealers Association; National Federation of Independent Business - Kansas (NFIB); **Aliceville** - Farmers State Bank; **Alma** - Alma Chamber of Commerce; First National Bank; **Altamont** - Labette County State Bank; **Alta Vista** - State Bank; **Andover** - State Bank; **Anthony** - First National Bank; **Argonia** - Farmers & Merchants State Bank; **Arkansas City** - Union State Bank; **Arma** - First State Bank; **Ashland** - Stockgrowers State Bank; **Auburn** - Security State Bank; **Axtell** - State Bank; **Baldwin City** - State Bank; **Baxter Springs** - American Bank; **Baxter State Bank**; **Belle Plaine** - Valley State Bank; **Bendena** - State Bank; **Bern** - State Bank; **Bird City** - Security State Bank; **Bison** - State Bank; **Blue Mound** - Farmers State Bank; **Burden** - State Bank; **Burlingame** - Norman Bloomquist; First State Bank; Burlingame Rotary Club; James J. Clancy; Osage County Chronicle; Soendker's Grocery & Deli; Harry E. Taylor; **Burlington** - First National Bank of Kansas; Peoples National Bank & Trust; **Burrton** - State Bank; **Canton** - Farmers State Bank & Trust; State Bank; **Carbondale** - State Bank; **Cawker City** - Farmers & Merchants State Bank; **Cedar Point** - Cottonwood Valley Bank; **Centerville** - State Bank; **Cheney** - Citizens State Bank; **Circleville** - Farmers State Bank; **Clay Center** - Union State Bank; **Colby** - Peoples State Bank; **Coldwater** - National Bank, Peoples Bank; **Colwich** - State Bank; **Conway Springs** - First National Bank; State Bank; **Cottonwood Falls** - Exchange National Bank; **Council Grove** - Farmers & Drovers Bank; **Courtland** - Swedish American State Bank; **Cunningham** - First National Bank; **Derby** - First National Bank; **DeSoto** - State Bank; **Dighton** - First National Bank; **Denton** - Bank of Denton; **Dodge City** - Fidelity State Bank & Trust; **Downs** - National Bank; State Bank; **Dwight** - Farmers State Bank; **Edna** - First State Bank; **Effingham** - Farmers & Merchants State Bank; **Elkhart** - First State Bank; **Ellis** - State Bank; **Emporia** - Admire Bank & Trust; First National Bank; **Enterprise** - Dickinson County Bank; **Esbridge** - Flint Hills Bank; **Eureka** - Home Bank & Trust; **Everest** - Union State Bank; **Fairview** - Farmers State Bank; **Fort Riley** - National Bank; **Fort Scott** - City State Bank; **Fowler** - State Bank; **Frankfort** - Amoco Food Shop; Davenport Lumber; First National Bank; Gift Box; Harrington Retail Liquor and Snack Shop; Harrington Oil; Welsh Brothers Meat Company; Whiteway Chevrolet; **Galena** - Citizens State Bank; **Garnett** - Kansas State Bank; State Savings Bank; **Genesee** - Citizens State Bank; **Goddard** - Suburban West State Bank; **Gorham** - State Bank; **Grainfield** - Citizens State Bank; **Greeley** - Bank of Greeley; **Greensburg** - State Bank; **Halstead** - Halstead Bank; **Hanston** - State Bank; **Hardtner** - Farmers State Bank; **Harper** - Freeport State Bank; **Hartford** - State Bank; **Harveyville** - First National Bank; **Haven** - State Bank; **Healy** - First State Bank; **Hesston** - State Bank; **Hiawatha** - Citizens State Bank & Trust; **Hill City** - Consolidated State Bank; Farmers & Merchants Bank; **Hillsboro** - State Bank; **Hoisington** - National Bank; **Holton** - Denison State Bank; **Hope** - First National Bank; **Hoxie** - State Bank; **Hugoton** - Citizens State Bank; Hugoton Area Chamber of Commerce; **Humboldt** - National Bank; **Hutchinson** - Central Bank and Trust Co.; **S. Hutchinson** - Bank of Kansas; **Inman** - United Bank; **Jetmore** - Farmers State Bank; **Junction City** - Community Bank; First National Bank & Trust; **LaCrosse** - Nekoma State Bank; **LaCygne** - Linn County Bank; **Lawrence** - University National Bank; **Lebo** - State Bank; **Lenexa** - Premier Bank; **Lenora** - Exchange Bank; **Leon** - State Bank; **Leoti** - First State Bank; **LeRoy** - First National Bank; **Liberal** - Citizens State Bank; **Lincoln** - Saline Valley Bank; **Lorraine** - State Bank; **Lyons** - Coronado Bank; **Lyndon** - State Bank; **Lyons** - State Bank; **Macksville** - Farmers & Merchants State Bank; **Manhattan** - Kansas State Bank; **Mankato** - State Exchange Bank; **Maple Hill** - Stockgrowers State Bank; **Marquette** - Farmers State Bank; **McDonald** - Peoples State Bank; **McLouth** - Bank of McLouth; **McPherson** - Farmers State Bank; Peoples Bank & Trust; **Meriden** - Glenn and Ida Swank; Kiwanis Club of Meridan; State Bank; **Miltonvale** - Citizens State Bank; **Montezuma** - State Bank;

**Morland** - Citizens State Bank; **Mound City** - Farmers & Merchants Bank; **Moundridge** - Citizens State Bank; **Mount Hope** - First National Bank; **Natoma** - United National Bank; **Nickerson** - State Bank; **Norton** - First State Bank; **Norwich** - Farmers State Bank; **Oakley** - Farmers State Bank; **Olathe** - First National Bank; **Olpe** - State Bank; **Olsburg** - Union State Bank; **Onaga** - First National Bank; **Osage City** - Citizens State Bank; **Osawatomie** - First National Bank & Trust; **Osborne** - Farmers National Bank; **Oskaloosa** - State Bank; **Oswego** - American State Bank; **Overbrook** - First Security Bank; Kansas State Bank; **Palmer** - Bank of Palmer; **Peabody** - State Bank; **Phillipsburg** - Farmers National Bank; First National Bank & Trust; Don Hayes, Retired; Don Keeten, B&B Farms; Darel Olliff, Funeral Home Director; Ross Reeves, Farmer; Chester Rumbaugh, Retired; Doyle Stanton, Car Salesman; Wayne Whitney, Retired; **Piqua** - State Bank; **Pittsburg** - First State Bank & Trust; **Plains** - State Bank; **Plainville** - State Bank; **Pratt** - First National Bank; **Protection** - Bank of Protection; **Ransom** - First State Bank; **Reading** - State Bank; **Rose Hill** - State Bank; **Sabetha** - Farmers State Bank; **Scott City** - First National Bank; **Seneca** - Baileyville State Bank; **Shawnee** - Spoon Creek Marketing; State Bank; **Smith Center** - First National Bank; **Spearville** - First National Bank; Ford County State Bank; **Spring Hill** - State Bank; **St. John** - First National Bank & Trust; National Bank; **St. Marys** - First National Bank; State Bank; **Stockton** - National Bank; **Sterling** - Farmers State Bank; **Sylvan Grove** - State Bank; **Tescott** - Bank of Tescott; **Topeka** - Capital City Bank; Columbian National Bank & Trust; Deghand Retail Liquor, Foltz-Roepke Insurance Agency; Guardian Trust Company; Kaw Valley State Bank & Trust; Peoples State Bank; Rodd Miller, Everen Securities; The Hat Box; Webb and Associates; **Towanda** - State Bank; **Tribune** - First National Bank; **Troy** - 1st Bank; State Bank; **Udall** - Bank of Commerce; **Ulysses** - Grant County Bank; **Uniontown** - Union State Bank; **Vermillion** - Argo Construction; State Bank; **Wakeeney** - Trego-Wakeeney State Bank; **Wakefield** - Farmers & Merchants State Bank; **Wamego** - First National Bank; Kaw Valley State Bank & Trust; **Wathena** - Farmers State Bank; **Weir** - Citizens Bank; **Wellington** - Security State Bank; **Wellsville** - Wellsville Bank; **Westmoreland** - Farmers State Bank; **Whitewater** - Bank of Whitewater; **Wichita** - Bankers Bank of Kansas; Jane A. Deterding, Attorney; Garden Plain State Bank; Intrust Bank; PC Business Services; Trust Company of Kansas; **Wilmore** - State Bank; **Wilson** - State Bank; **Yoder** - Farmers State Bank.



As Amended by House Committee

[As Amended by Senate Committee of the Whole]

As Amended by Senate Committee

SENATE BILL No. 204  
By Committee on Financial Institutions and Insurance

[e14]2-6

13 AN ACT concerning banks and banking; amending bank holding com-  
14 pany act and banking code; re federal Riegle-Neal interstate banking  
15 and branching efficiency act of 1994; amending K.S.A. 9-519, 9-533,  
16 9-534, 9-535, 9-536, 9-537, 9-538 and 9-539 and K.S.A. 1994 Supp. 9-  
17 523, 9-532, 9-701, 9-1101 and 9-1111 and repealing the existing sec-  
18 tions; also repealing K.S.A. 9-522 and [K.S.A. 1994 Supp.] 9-524.

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

21 Section 1. On September 29, 1995, K.S.A. 9-519 is hereby  
22 amended to read as follows: 9-519. For the purposes of K.S.A. 9-520  
23 through 9-524, and amendments thereto, and K.S.A. 9-532 through 9-  
24 539, and amendments thereto, unless otherwise required by the context:  
25 (a) (1) "Bank holding company" means any company:  
26 (A) Which directly or indirectly owns, controls, or has power to vote  
27 25% or more of any class of the voting shares of a bank or 25% or more  
28 of any class of the voting shares of a company which is or becomes a bank  
29 holding company by virtue of this act;

30 (B) which controls in any manner the election of a majority of the  
31 directors of a bank or of a company which is or becomes a bank holding  
32 company by virtue of this act;

33 (C) for the benefit of whose shareholders or members 25% or more  
34 of any class of the voting shares of a bank or 25% or more of any class of  
35 the voting shares of a company which is or becomes a bank holding com-  
36 pany by virtue of this act, is held by trustees; or

37 (D) which, by virtue of acquisition of ownership or control of, or the  
38 power to vote the voting shares of, a bank or another company, becomes  
39 a bank holding company under this act.

40 (2) Notwithstanding paragraph (1), no company:

41 (A) Shall be deemed to be a bank holding company by virtue of its  
42 ownership or control of shares acquired by it in connection with its un-  
43 derwriting of securities if such shares are held only for such period of  
44 time as will permit the sale thereof on a reasonable basis;

45 (B) formed for the sole purpose of participating in a proxy solicitation  
46 shall be deemed to be a bank holding company by virtue of its control of  
47 voting rights of shares acquired in the course of such solicitation;

48 (C) shall be deemed to be a bank holding company by virtue of its  
49 ownership or control of shares acquired in securing or collecting a debt  
50 previously contracted in good faith, provided such shares are disposed of

51 within a period of two years from the date on which such shares could  
52 have been disposed of by such company;

53 (D) owning or controlling voting shares of a bank shall be deemed to  
54 be a bank holding company by virtue of its ownership or control of shares  
55 held in a fiduciary capacity except where such shares are held for the  
56 benefit of such company or its shareholders.

57 (b) "Company" means any corporation, trust, limited partnership, as-  
58 sociation or similar organization including a bank but shall not include  
59 any corporation the majority of the shares of which are owned by the  
60 United States or by any state, or include any individual or partnership.

61 (c) "Bank" means an insured bank as defined in section 3(h) of the  
62 federal deposit insurance act, 12 U.S.C. 1813(h), except the term shall  
63 not include a national bank which engages only in credit card operations,  
64 does not accept demand deposits or deposits that the depositor may with-  
65 draw by check or similar means for payment to third parties or others,  
66 does not accept any savings or time deposits of less than \$100,000, accepts  
67 deposits only from corporations which own 51% or more of the voting  
68 shares of the bank holding company or its parent corporation of which  
69 the bank engaging only in credit card operations is a subsidiary, maintains  
70 only one office that accepts deposits, and does not engage in the business  
71 of making commercial loans.

72 (d) "Subsidiary" with respect to a specified bank holding company  
73 means:

74 (1) Any company more than 5% of the voting shares of which, ex-  
75 cluding shares owned by the United States or by any company wholly  
76 owned by the United States, is directly or indirectly owned or controlled  
77 by such bank holding company or is held by it with power to vote;

78 (2) any company the election of a majority of the directors of which  
79 is controlled in any manner by such bank holding company; or

80 (3) any company more than 5% of the voting shares of which is held  
81 by trustees for the benefit of such bank holding company or its share-  
82 holders.

83 (e) "Commissioner" means the Kansas state bank commissioner.

84 (f) "Kansas bank" means any bank, as defined by subsection (c),  
85 which, in the case of a state chartered bank, is a bank chartered under  
86 the authority of the state of Kansas, and in the case of a national banking  
87 association, a bank with its main office located in Kansas.

88 (g) "Kansas bank holding company" means a bank holding company,  
89 as defined by subsection (a), with total subsidiary bank deposits in Kansas  
90 which exceed the bank holding company's subsidiary bank deposits in any  
91 other state.

92 (h) "Out-of-state bank holding company" means any holding com-  
93 pany which is not a Kansas bank holding company as defined in subsec-  
94 tion (g).

95 (i) "Foreign bank" means any company organized under the laws of  
96 a foreign country, a territory of the United States, Puerto Rico, Guam,  
97 American Samoa or the Virgin Islands, which engages in the business of  
98 banking, or any subsidiary or affiliate, organized under such laws, of any  
99 such company.

100 Sec. 2. On September 29, 1995, K.S.A. 1994 Supp. 9-523 is hereby  
101 amended to read as follows: 9-523. Except for banks whose voting shares  
102 are acquired by a bank holding company pursuant to subsection (b) of  
103 K.S.A. 9-520, and amendments thereto, a majority of the board of direc-  
104 tors of each *Kansas bank domiciled in this state* which is a subsidiary of  
105 a bank holding company shall be residents of this state.

106 Sec. 3. On September 29, 1995, K.S.A. 1994 Supp. 9-532 is hereby  
107 amended to read as follows: 9-532. ~~(a) On and after July 1, 1992, a bank~~

108 holding company located in a state contiguous to this state or in the state  
 109 of Arkansas or Iowa, with approval of the state banking board, *With prior*  
 110 *approval of the commissioner, any bank holding company may acquire,*  
 111 directly or indirectly, ownership or control of, or power to vote, any of  
 112 the voting shares of, an interest in, or all or substantially all of the assets  
 113 of a *Kansas* bank having its principal place of business located in this state  
 114 or of a *Kansas* bank holding company located in this state.

115 (b) ~~For purposes of K.S.A. 9-519 through 9-524, and amendments~~  
 116 ~~thereto, and K.S.A. 9-532 through 9-539, and amendments thereto, a~~  
 117 bank holding company is located in that state or jurisdiction in which the  
 118 total deposits of its banking subsidiaries are largest.

119 (c) ~~A bank holding company located in a state or jurisdiction other~~  
 120 ~~than this state proposing to acquire, directly or indirectly, ownership or~~  
 121 ~~control of, or power to vote, any of the voting shares of, an interest in, or~~  
 122 ~~all or substantially all of the assets of a bank having its principal place of~~  
 123 ~~business located in this state, or of a bank holding company located in~~  
 124 ~~this state, shall file an application with the state banking board in a form~~  
 125 ~~and Request for approval shall be made by filing an application in such~~  
 126 ~~form as required by the commissioner, containing the information pre-~~  
 127 ~~scribed by K.S.A. 9-533, and amendments thereto, and by rules and reg-~~  
 128 ~~ulations adopted by the state bank commissioner. At the time of filing~~  
 129 ~~the application, the applicant shall pay to the commissioner a fee in an~~  
 130 ~~amount established by rules and regulations adopted by the commis-~~  
 131 ~~sioner.~~

132 (d) ~~Nothing in this section shall be construed to permit a bank hold-~~  
 133 ~~ing company located in a state other than those referred to in subsection~~  
 134 (a), to acquire directly or indirectly, ownership or control of, or power to  
 135 vote, any of the voting shares of, an interest in, or all or substantially all  
 136 of the assets of a bank or bank holding company located in this state. In  
 137 the event a bank holding company ceases to be "located" as defined in  
 138 subsection (b), in a state referred to in subsection (a), the bank holding  
 139 company shall immediately notify the commissioner of the change in its  
 140 status and shall, as soon as practical and within not more than two years  
 141 after the change in its status, divest itself of direct or indirect ownership  
 142 or control of, or power to vote, any of the voting shares of, an interest in,  
 143 or all or substantially all of the assets of all Kansas banks and Kansas bank  
 144 holding companies. A bank holding company that fails to immediately  
 145 notify the commissioner shall be guilty of a misdemeanor and shall be  
 146 fined \$500 each day beginning the day its status changed and ending the  
 147 day notification is received by the commissioner.

148 Sec. 4. On September 29, 1995, K.S.A. 9-533 is hereby amended  
 149 to read as follows: 9-533. An application filed pursuant to subsection (c)  
 150 of K.S.A. 9-532 and amendments thereto shall provide the following in-  
 151 formation and include the following documents:

152 (a) A copy of any application by applicant seeking approval by a fed-  
 153 eral agency of the acquisition of the voting shares or assets of a *Kansas*  
 154 bank having its principal place of business in this state or of a *Kansas*  
 155 bank holding company located in this state, and of any supplemental ma-  
 156 terial or amendments filed with the application.

157 (b) Copies of the public sections of the most recent CRA perform-  
 158 ance evaluations for all banks which are subsidiaries of the applicant ~~eval-~~  
 159 ~~uating performance of such banks which were assigned a rating of "needs~~  
 160 ~~to improve record of meeting community credit needs" or "substantial~~  
 161 ~~noncompliance in meeting community needs" under the federal com-~~  
 162 ~~munity reinvestment act of 1977, 12 U.S.C. 2901 et seq.~~

163 (c) Statements of the financial condition and future prospects, in-  
 164 cluding current and projected capital positions and levels of indebtedness,

165 of the applicant, ~~its existing subsidiaries,~~ and the Kansas bank or *Kansas*  
 166 bank holding company which is the subject of the application filed pur-  
 167 suant to ~~subsection (c) of K.S.A. 9-532 and amendments thereto.~~

168 (d) Information as to how the applicant proposes to adequately meet  
 169 the convenience and needs of the community served by the *Kansas* bank  
 170 or *Kansas* bank holding company which is the subject of the application  
 171 filed pursuant to ~~subsection (c) of K.S.A. 9-532 and amendments thereto~~  
 172 and the communities served by other *Kansas* banks ~~having their principal~~  
 173 ~~places of business in Kansas~~ which are subsidiaries of applicant, in accor-  
 174 dance with the federal community reinvestment act of 1977, 12 U.S.C.  
 175 2901 et seq.

176 (e) *A list of the name and location of each subsidiary bank of the*  
 177 *applicant, together with each subsidiary's most recent examination date,*  
 178 *and assigned composite CAMEL rating, and information reflecting each*  
 179 *subsidiary's total assets, capital ratios, return on assets ratio and loan to*  
 180 *deposit ratios.*

181 (f) *Any additional information the commissioner deems necessary.*  
 182 Sec. 5. On September 29, 1995, K.S.A. 9-534 is hereby amended  
 183 to read as follows: 9-534. In determining whether to approve an appli-  
 184 cation filed pursuant to ~~subsection (c) of K.S.A. 9-532 and amendments~~  
 185 ~~thereto,~~ the state banking board commissioner shall consider the following  
 186 factors:

187 (a) Whether the banks already subsidiaries of the applicant are op-  
 188 erated in a safe, sound and prudent manner.

189 (b) Whether banks already subsidiaries of the applicant have provided  
 190 adequate and appropriate services to their communities, including serv-  
 191 ices contemplated by the federal community reinvestment act of 1977,  
 192 12 U.S.C. 2901 et seq.

193 (c) Whether the applicant proposes to provide adequate and appro-  
 194 priate services, including services contemplated by the federal community  
 195 reinvestment act of 1977, 12 U.S.C. 2901 et seq., in the communities  
 196 served by the *Kansas* bank ~~having its principal place of business located~~  
 197 ~~in this state~~ or by the *Kansas* bank subsidiaries of the *Kansas* bank holding  
 198 company located in this state.

199 (d) Whether the proposed acquisition will result in a *Kansas* bank or  
 200 *Kansas* bank holding company located in this state that has adequate  
 201 capital and good earnings prospects.

202 (e) *Whether the financial condition of the applicant or any of its*  
 203 *sub-sidiary banks would jeopardize the financial stability of the Kansas bank*  
 204 *or Kansas bank holding company which is the subject of the application.*

205 Sec. 6. On September 29, 1995, K.S.A. 9-535 is hereby amended  
 206 to read as follows: 9-535. (a) ~~The state banking board commissioner shall~~  
 207 ~~approve the application if it determines the commissioner determines that:~~

208 ~~(a) The acquisition is authorized by this act;~~

209 ~~(b) the laws of the state or jurisdiction in which the applicant bank~~  
 210 ~~holding company is located in effect as of the time the application is filed~~  
 211 ~~permit a bank holding company located in this state to acquire, directly~~  
 212 ~~or indirectly, the voting shares of, an interest in, or all or substantially all~~  
 213 ~~of the assets of a bank having its principal place of business located in~~  
 214 ~~such other state or jurisdiction on terms that are substantially no more~~  
 215 ~~restrictive than those established under this act; and~~

216 ~~(c) after consideration of the factors the application favorably meets~~  
 217 ~~each and every factor prescribed in K.S.A. 9-534 and amendments~~  
 218 ~~thereto,~~ the proposed acquisition is in the interest of the depositors and  
 219 creditors of the *Kansas* bank or *Kansas* bank holding company which is  
 220 the subject of the proposed acquisition and in the public interest gener-  
 221 ally. *Otherwise, the application shall be denied.*

279 which shall be known as the bank holding company act. All rules and  
 280 regulations of general application shall first be submitted by the com-  
 281 missioner to the state banking board for its approval and upon approval  
 282 shall be filed as provided by article 4 of chapter 77 of the Kansas Statutes  
 283 Annotated.

284 New Sec. 11. ~~(a)~~ No foreign bank shall ~~transact any business estab-~~  
 285 ~~lish;~~ or maintain any branch, agency, office or other place of business in  
 286 this state.

287 ~~(b) This section shall take effect and be in force from and after~~  
 288 ~~September 29, 1995.~~

289 New Sec. 12. (a) No out-of-state bank holding company or any sub-  
 290 sidiary thereof shall directly or indirectly acquire ownership or control of,  
 291 or power to vote, more than 5% of any class of the voting shares of any  
 292 Kansas bank unless such Kansas bank has been in existence and actively  
 293 engaged in business for five or more years.

294 (b) This section shall not prohibit an out-of-state bank holding com-  
 295 pany or any subsidiary thereof from acquiring ownership or control of, or  
 296 power to vote, more than 5% of the voting shares of any Kansas bank  
 297 which has been organized solely for the purpose of, and does not open  
 298 for business prior to, facilitating a merger of such Kansas bank with or  
 299 into a Kansas bank which has been in existence and actively engaged in  
 300 business for five or more years, or a consolidation of such Kansas bank  
 301 and one or more Kansas banks which have been in existence and actively  
 302 engaged in business for five or more years.

303 (c) This section shall not prohibit an out-of-state bank holding com-  
 304 pany or any subsidiary thereof from acquiring ownership or control of, or  
 305 power to vote, more than 5% of any class of the voting shares of any  
 306 Kansas bank if the commissioner, in the case of a bank organized under  
 307 the laws of this state, or the comptroller of the currency, in the case of a  
 308 national banking association, determines that an emergency exists and  
 309 that the acquisition is appropriate in order to protect the public interest  
 310 against the failure or probable failure of the Kansas bank.

311 ~~(d) This section shall take effect and be in force from and after~~  
 312 ~~September 29, 1995.~~

313 Sec. 13. ~~On September 29, 1995,~~ K.S.A. 1994 Supp. 9-701 is  
 314 hereby amended to read as follows: 9-701. Unless otherwise clearly in-  
 315 dicated by the context, the following words when used in this act, for the  
 316 purposes of this act, shall have the meanings respectively ascribed to them  
 317 in this section:

318 (a) "Bank" means a state bank incorporated under the laws of Kansas.

319 (b) "Trust company" means a trust company incorporated under the  
 320 laws of Kansas and which does not accept deposits.

321 (c) "Board" means the Kansas state banking board.

322 (d) "Commissioner" means the Kansas state bank commissioner.

323 (e) "Executive officer" means the chairperson of the board, the pres-  
 324 ident, each vice president, the cashier, the secretary and the treasurer of  
 325 a bank, unless such officer is excluded by resolution of the board of di-  
 326 rectors or by the bylaws of the bank or bank holding company from par-  
 327 ticipation, other than in the capacity of a director, in major policymaking  
 328 functions of the bank or bank holding company, and the officer does not  
 329 actually participate in major policymaking functions of the bank or bank  
 330 holding company.

331 (f) "Insured bank" means a state bank whose deposits are insured  
 332 through the federal deposit insurance corporation or other governmental  
 333 agency or by an insurer approved by the state commissioner of insurance  
 334 for such purpose.

335 (g) "Item" means any check, note, order, or other instrument or

336 memorandum providing for the payment of money, or upon which money  
337 may be collected.

338 (h) "Demand deposits" includes every deposit which is not a "time  
339 deposit," "savings deposit" or "negotiable order of withdrawal deposit"  
340 as defined in this section.

341 (i) "Time deposits" means "time certificates of deposit" and "time  
342 deposits, open account" as defined in this section.

343 (j) "Time certificate of deposit" means a deposit evidenced by a ne-  
344 gotiable or nonnegotiable instrument which provides on its face that the  
345 amount of such deposit is payable, upon presentation and surrender of  
346 the instrument, to bearer or to any specified person or to such person's  
347 order:

348 (1) On a certain date, specified in the instrument, not less than seven  
349 days after the date of the deposit; or

350 (2) at the expiration of a certain specified time not less than seven  
351 days after the date of the instrument; or

352 (3) upon notice in writing which is actually required to be given not  
353 less than seven days before the date of repayment.

354 (k) "Time deposit, open account" means a deposit, other than a "time  
355 certificate of deposit," with respect to which there is in force a written  
356 contract with the depositor that neither the whole nor any part of such  
357 deposit may be withdrawn, by check or otherwise, prior to the date of  
358 maturity, which shall be not less than seven days after the date of the  
359 deposit, or prior to the expiration of the period of notice which must be  
360 given by the depositor in writing not less than seven days in advance of  
361 withdrawal.

362 (l) "Savings deposit" means a deposit: (1) Which consists of funds  
363 deposited to the credit of or in which the entire beneficial interest is held  
364 by one or more individuals, or of a corporation, association or other or-  
365 ganization operated primarily for religious, philanthropic, charitable, ed-  
366 ucational, fraternal or other similar purposes and not operated for profit;  
367 or that consists of funds deposited to the credit of or in which the entire  
368 beneficial interest is held by the United States, any state of the United  
369 States or any county, municipality or political subdivision thereof, or that  
370 consists of funds deposited to the credit of, or in which any beneficial  
371 interest is held by a corporation, partnership, association or other organ-  
372 ization not qualifying above; and (2) with respect to which the depositor  
373 is not required by the deposit contract but may at any time be required  
374 by the bank to give notice in writing of an intended withdrawal not less  
375 than seven days before such withdrawal is made and which is not payable  
376 on a specified date or at the expiration of a specified time after the date  
377 of deposit.

378 (m) "Public moneys" means all moneys coming into the custody of  
379 the United States government or any board, commission or agency  
380 thereof, and also shall mean all moneys coming into the custody of any  
381 officer of any municipal or quasi-municipal or public corporation, the  
382 state or and political subdivision thereof, pursuant to any provision of law  
383 authorizing any such official to collect or receive the same.

384 (n) "Municipal corporation" means any city incorporated under the  
385 laws of Kansas.

386 (o) "Quasi-municipal corporation" means any county, township,  
387 school district, drainage district, or any other governmental subdivision  
388 in the state of Kansas having authority to receive or hold moneys or funds.

389 (p) "Certificate of authority" means a statement signed and sealed by  
390 the commissioner evidencing the authority of a bank or trust company to  
391 transact a general business as such.

392 (q) "Transaction account" means a deposit or account on which the

393 depositor or account holder is permitted to make withdrawals by nego-  
394 tiable or transferable instrument, payment orders of withdrawal, tele-  
395 phone transfers, or other similar device for the purpose of making pay-  
396 ments or transfers to third persons or others.

397 (r) "Nonpersonal time deposit" means a time deposit, including a  
398 savings deposit that is not a transaction account, representing funds in  
399 which any beneficial interest is held by a depositor which is not a natural  
400 person.

401 (s) "Negotiable order of withdrawal deposit" means a deposit on  
402 which interest is paid and which is subject to withdrawal by the owner  
403 by negotiable or transferable instruments for the purpose of making trans-  
404 fers to third parties, and which consists solely of funds in which the entire  
405 beneficial interest is held by one or more individuals, an organization  
406 which is operated primarily for religious, philanthropic, charitable, edu-  
407 cational, fraternal or other similar purposes and which is not operated for  
408 profit, and with respect to deposits of public funds by an officer, employee  
409 or agent of the United States, any state, county, municipality or political  
410 subdivision thereof, the District of Columbia, the commonwealth of  
411 Puerto Rico, American Samoa, Guam, any territory or possession of the  
412 United States or any political subdivision thereof.

413 (t) "Trust business" means engaging in, or holding out to the public  
414 as willing to engage in, the business of acting as a fiduciary for hire, except  
415 that no accountant, attorney, credit union, insurance broker, insurance  
416 company, investment adviser, real estate broker or sales agent, savings  
417 and loan association, savings bank, securities broker or dealer, real estate  
418 title insurance company or real estate escrow company shall be deemed  
419 to be engaged in a trust company business with respect to fiduciary serv-  
420 ices customarily performed by them for compensation as a traditional  
421 incident to their regular business activities.

422 (u) "Community development corporation" (CDC) means a corpo-  
423 rate entity established by one or more financial institutions or by financial  
424 institutions and other investors or members, and operating for the pri-  
425 mary purpose of housing development, economic growth and revitaliza-  
426 tion, small and minority business creation, and other community devel-  
427 opment initiatives.

428 (v) "Community development project" (CD project) means a specific  
429 project in a particular location, such as a neighborhood, city, county or  
430 state, the primary purpose of which is the economic improvement of that  
431 area or the provision of housing for low-income and moderate-income  
432 persons in that area and any state tax credit equity fund established pur-  
433 suant to K.S.A. 74-8904, and amendments thereto.

434 (w) "*Depository institution*" means any state bank, national banking  
435 association, state savings and loan or federal savings association, without  
436 regard to the state where the institution is chartered or the state in which  
437 the institution's main office is located.

438 Sec. 14. ~~On September 29, 1995,~~ K.S.A. 1994 Supp. 9-1101 is  
439 hereby amended to read as follows: 9-1101. Any bank hereby is authorized  
440 to exercise by its board of directors or duly authorized officers or agents,  
441 subject to law, all such powers, including incidental powers, as shall be  
442 necessary to carry on the business of banking, and:

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

448 (2) to buy and sell exchange, gold, silver, foreign coin, bullion, com-  
449 mercial paper, bills of exchange, notes and bonds;

450 (3) to buy and sell bonds, securities, or other evidences of indebt-  
451 edness of the United States of America or those fully guaranteed, directly  
452 or indirectly, by it, and general obligation bonds of the state of Kansas or  
453 any municipality or quasi-municipality thereof, and of other states, and  
454 of municipalities or quasi-municipalities in other states of the United  
455 States of America. No bank shall invest an amount in excess of 15% of its  
456 capital stock paid in and unimpaired and the unimpaired surplus fund of  
457 such bank in bonds, securities or other evidences of indebtedness of any  
458 municipality or quasi-municipality of any other state or states of the  
459 United States of America: (a) If and when the direct and overlapping  
460 indebtedness of such municipality or quasi-municipality is in excess of  
461 10% of its assessed valuation, excluding therefrom all valuations on in-  
462 tangibles and homestead exemption valuation; (b) or if any bond, security,  
463 or evidence of indebtedness of any such municipality or quasi-muni-  
464 cipality has been in default in the payment of principal or interest within  
465 10 years prior to the time that any bank acquires any such bonds, security  
466 or evidence of indebtedness;

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

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

479 (6) to buy and sell investment securities which are evidences of in-  
480 debtedness. The buying and selling of investment securities shall be lim-  
481 ited to buying and selling without recourse marketable obligations evi-  
482 dencing indebtedness of any person, copartnership, association,  
483 corporation, or state or federal agency, including revenue bonds issued  
484 pursuant to K.S.A. 76-6a15, and amendments thereto, or the state armory  
485 board in the form of bonds, notes or debentures or both, commonly  
486 known as investment securities, under such further definition of the term  
487 "investment securities" as prescribed by the board, but the total amount  
488 of such investment securities of any one obligor or maker held by such  
489 bank shall at no time exceed 15% of the capital stock paid in and unim-  
490 paired and the unimpaired surplus fund of such bank except that this  
491 limit shall not apply to obligations of the United States government or  
492 any agency thereof. If the obligor is a state agency including any agency  
493 issuing revenue bonds pursuant to K.S.A. 76-6a15, and amendments  
494 thereto, or the state armory board, the total amount of such investment  
495 securities shall at no time exceed 25% of the capital stock paid in and  
496 unimpaired and the unimpaired surplus fund of such bank;

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

502 (8) to subscribe to, buy and own stock in one or more small business  
503 investment companies in Kansas as otherwise authorized by federal law,  
504 except that in no event shall any bank acquire shares in any small business  
505 investment company if, upon the making of that acquisition the aggregate  
506 amount of shares in small business investment companies then held by



507 the bank would exceed 5% of its capital and surplus. Nothing in this act  
508 contained shall prohibit any bank from holding and disposing of such real  
509 estate and other property as it may acquire in the collection of its assets;  
510 (9) to subscribe to, buy and own stock in any agricultural credit cor-  
511 poration or livestock loan company, or its affiliate, organized pursuant to  
512 the provisions of the laws of the United States providing for the infor-  
513 mation and operation of agricultural credit corporations and livestock loan  
514 companies, in an amount not exceeding either the undivided profits or  
515 10% of the capital stock and surplus and undivided profits from such  
516 bank, whichever is greater;

517 (10) to become the owner or lessor of personal property acquired  
518 upon the specific request and for the use of a customer, and may incur  
519 such additional obligations as may be incident to becoming an owner or  
520 lessor of such property. Any bank which claims a credit against its privi-  
521 lege tax of any amount of ad valorem taxes on property acquired pursuant  
522 to this subsection shall not be designated as a depository for any state  
523 funds by the pooled money investment board. Lease transactions shall  
524 not result in obligations for the purpose of determining limitations or  
525 restrictions on the amount of loans. Lease payments on such transactions  
526 shall be considered rents and not interest;

527 (11) to subscribe to, buy and own stock in minbanc capital corpora-  
528 tion, a company formed for the purpose of providing capital to minority-  
529 owned banks. No bank's investment in such stock shall exceed 2% of its  
530 capital and surplus;

531 (12) to buy, hold, and sell any type of investment securities not enu-  
532 merated in this section with approval of the commissioner and upon such  
533 conditions and under such regulations as are prescribed by the state bank-  
534 ing board;

535 (13) to act as escrow agent;

536 (14) to subscribe to, acquire, hold and dispose of stock of a corpo-  
537 ration having as its purpose the acquisition, holding and disposition of  
538 loans secured by real estate mortgages, and to acquire, hold and dispose  
539 of the debentures and capital notes of such corporation. No bank's in-  
540 vestment in such stock, debentures and capital notes shall exceed 2% of  
541 its capital stock, surplus and undivided profits and such investment shall  
542 be carried on the books of the bank as directed by the commissioner;

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

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

552 (17) to buy, hold and sell mortgages, stock, obligations and other se-  
553 curities which are issued or guaranteed by the federal home loan mort-  
554 gage corporation under sections 305 and 306 of the federal act known as  
555 the federal home loan mortgage corporation act (P.L. 91-351);

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

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

563 (20) to subscribe to, buy and own stock in a state or federally char-

564 tered bankers' bank or a one bank holding company which owns or con-  
565 trols such a bankers' bank, except no bank's investment in such stock shall  
566 exceed 10% of its capital stock, surplus and undivided profits;

567 (21) subject to such rules and regulations as the state bank commis-  
568 sioner may adopt pursuant to K.S.A. 9-1713, and amendments thereto,  
569 to promote safe and sound banking practices, upon recorded prior ap-  
570 proval by the board of directors of the initial investment in a specific  
571 company and pursuant to an investment policy approved by the board of  
572 directors which specifically provides for such investments to buy, hold  
573 and sell shares of an open-end investment company registered with the  
574 federal securities and exchange commission under the federal investment  
575 company act of 1940 and the federal securities act of 1933 and of a pri-  
576 vately offered company sponsored by an affiliated commercial bank, the  
577 shares of which are purchased and sold at par and the assets of which  
578 consist solely of securities which may be purchased by the bank for its  
579 own account. Such shares may be purchased without limit if the assets of  
580 the company consist solely of and are limited to obligations that are eli-  
581 gible for purchase by the bank without limit. If the assets of the company  
582 include securities which may be purchased by the bank subject to limi-  
583 tation, such shares may be purchased subject to the limitation applicable  
584 to purchase by the bank of such securities;

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

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

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

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

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

616 (i) The cash surrender value of any life insurance policy on an exec-  
617 utive officer or director underwritten by any one life insurance company  
618 cannot at any time exceed 15% of the bank's capital stock, surplus, un-  
619 divided profits, loan loss reserve, capital notes and debentures and reserve  
620 for contingency, unless the bank has obtained the prior approval of the

621 state bank commissioner;

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

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

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

633 (v) the bank's board of directors must approve and document the  
634 purchase of any life insurance, including the reasonableness of such pur-  
635 chase; and

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

640 (b) Life insurance purchased for the sole purpose of providing de-  
641 ferred compensation and benefit plans are subject to the following limi-  
642 tations:

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

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

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

650 (iv) the bank is not authorized to hold the policies unless specifically  
651 approved by the state banking board if no liability exists under the de-  
652 ferred compensation plans;

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

660 (vi) the cash surrender value of life insurance policies purchased for  
661 the sole purpose of providing deferred compensation and benefit plans,  
662 in the aggregate from all companies, cannot at any time exceed 25% of  
663 the bank's capital stock, surplus, undivided profits, loan loss reserve, cap-  
664 ital notes and debentures and reserve for contingency, unless the bank  
665 has obtained the prior approval of the state bank commissioner; and

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

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

677 (27) to make investments in and loans to community development

678 corporations (CDCs) and community development projects (CD pro-  
 679 jects) as defined in K.S.A. 9-701 and amendments thereto, subject to the  
 680 limitations prescribed by the comptroller of the currency as interpreted  
 681 by rules and regulations which shall be adopted by the state bank com-  
 682 missioner as provided by K.S.A. 9-1713 and amendments thereto; and  
 683 (28) *subject to such rules and regulations as the state bank commis-*  
 684 *sioner may adopt pursuant to K.S.A. 9-1713 and amendments thereto to*  
 685 *promote safe and sound banking practices, to act as an agent and receive*  
 686 *deposits, renew time deposits, close loans, service loans, and receive pay-*  
 687 *ments on loans and other obligations for any company which is a subsid-*  
 688 *iary, as defined in subsection (d) of K.S.A. 9-519 and amendments thereto*  
 689 *of the bank holding company which owns the bank. Nothing in this sub-*  
 690 *section shall authorize a bank to conduct activities as an agent which the*  
 691 *bank or the subsidiary would be prohibited from conducting as a ~~principle~~*  
 692 *principal under any applicable federal or state law. Any bank which*  
 693 **enters or terminates any agreement pursuant to this subsection**  
 694 **shall within 30 days of the effective date of the agreement or ter-**  
 695 **mination provide written notification to the commissioner which**  
 696 **details all parties involved and services to be performed or ter-**  
 697 **minated.**

698 Sec. 15. ~~On September 29, 1995,~~ K.S.A. 1994 Supp. 9-1111 is  
 699 hereby amended to read as follows: 9-1111. The general business of every  
 700 bank shall be transacted at the place of business specified in its certificate  
 701 of authority and at one or more branch banks established and operated  
 702 as provided in this section. Except for the establishment or operation of  
 703 a trust branch bank or the relocation of an existing trust branch bank  
 704 pursuant to K.S.A. 1994 Supp 9-1135 *and amendments thereto*, it shall  
 705 be unlawful for any bank to establish and operate any branch bank or  
 706 relocate an existing branch bank except as hereinafter provided. *Notwith-*  
 707 *standing the provisions of this section, any location at which a depository*  
 708 *institution, as defined by K.S.A. 9-701 and amendments thereto, receives*  
 709 *deposits, renews time deposits, closes loans, services loans or receives pay-*  
 710 *ments on loans or other obligations, as agent, for a bank pursuant to*  
 711 *subsection ~~(27)~~ (28) of K.S.A. 9-1101 and amendments thereto or other*  
 712 *applicable state or federal law, shall not be deemed to be a branch bank:*

713 (a) For the purposes of this section, the term "branch bank" means  
 714 any office, agency or other place of business located within this state,  
 715 other than the place of business specified in the bank's certificate of  
 716 authority, at which deposits are received, checks paid, money lent or trust  
 717 authority exercised, if approval has been granted by the state bank com-  
 718 missioner, under K.S.A. 9-1602, and amendments thereto;

719 (b) after first applying for and obtaining the approval of the state  
 720 banking board, one or more branch banks may be established and oper-  
 721 ated anywhere within this state by a bank incorporated under the laws of  
 722 this state;

723 (c) an application to establish and operate a branch bank or to relo-  
 724 cate an existing branch bank shall be in such form and contain such in-  
 725 formation as the rules and regulations of the state bank commissioner,  
 726 adopted pursuant to K.S.A. 9-1713, and amendments thereto, shall pro-  
 727 vide;

728 (d) the application shall include estimates of the annual income and  
 729 expenses of the proposed branch bank, the annual volume of business to  
 730 be transacted by it, the nature of the banking business to be conducted  
 731 at the proposed branch bank, the primary geographical area to be served  
 732 by it and the personnel and office facilities to be provided at the proposed  
 733 branch bank;

734 (e) the application shall include the name selected for the proposed

735 branch bank. The name selected for the proposed branch bank shall not  
736 be the name of any other bank or branch bank doing business in the same  
737 city or town nor shall the name selected be required to contain the name  
738 of the applicant bank. If the name selected for the proposed bank does  
739 not contain the name of the applicant bank, the branch bank shall provide  
740 in the public lobby of such branch bank, a public notice that it is a branch  
741 bank of the applicant bank;

742 (f) the application shall include an affidavit of publication of notice  
743 that applicant bank intends to file an application to establish a branch  
744 bank or relocate an existing branch bank. The notice shall be published  
745 in a newspaper of general circulation in the county where the applicant  
746 bank proposes to locate the branch bank. The notice shall be in the form  
747 prescribed by the state banking board and at a minimum shall contain,  
748 the name and address of the applicant bank, the location of the proposed  
749 branch, a solicitation for written comments concerning the proposed  
750 branch be submitted to the state banking board, and provide for a com-  
751 ment period of not less than 10 days prior to the board's final consider-  
752 ation of the application;

753 (g) upon receipt of an application meeting the above requirements,  
754 if there is any written objection to the application filed with the board,  
755 within 60 days after receipt of the application, the state banking board  
756 shall hold a hearing in the county in which the applicant bank seeks to  
757 establish and operate a branch bank. If there is no written objection filed  
758 with the board within the time period specified under subsection (f), the  
759 board may hold a hearing on the application in such county. Notice of  
760 the time, date and place of such hearing if one is to be held shall be  
761 published in a newspaper of general circulation in such county by the  
762 bank seeking to establish and operate the branch bank not less than 10  
763 or more than 30 days prior to the date of the hearing, and an affidavit of  
764 publication thereof shall be filed with the commissioner. Not less than  
765 10 days or more than 30 days prior to any such date of the hearing, the  
766 commissioner shall give notice of the time, date and place of such hearing  
767 by registered or certified mail to all banks and national banking associa-  
768 tions having their principal places of business or branch banks in the  
769 county wherein the applicant bank seeks to locate a branch bank. At any  
770 such hearing, all interested persons shall be allowed to present written  
771 and oral evidence to the board in support of or in opposition to the ap-  
772 plication. Upon completion of a transcript of the testimony given at any  
773 such hearing, the transcript shall be filed in the office of the commissioner  
774 and copies shall be furnished to the members of the state banking board  
775 not less than 14 days prior to the meeting of the board at which the  
776 application will be considered;

777 (h) the state banking board shall approve or disapprove the applica-  
778 tion, within 90 days after consideration of the application and the evi-  
779 dence gathered during the board's investigation. If the board finds that:

780 (1) There is or will be at the time the branch bank is opened the need  
781 for the same in the community to be served by it;

782 (2) there is a reasonable probability of usefulness and success of the  
783 proposed branch bank;

784 (3) the applicant bank's financial history and condition is sound; and

785 (4) the proposed branch bank can be established without undue in-  
786 jury to properly conducted existing banks and national banking associa-  
787 tions, the application shall be granted, otherwise, the application shall be  
788 denied;

789 (i) any final action of the board approving or disapproving an appli-  
790 cation shall be subject to review in accordance with the act for judicial  
791 review and civil enforcement of agency actions upon the petition of any

792 adversely affected or aggrieved person who appeared and offered evi-  
793 dence at the hearing upon the application;

794 (j) any branch bank lawfully established and operating on the effec-  
795 tive date of this act may continue to be operated by the bank then op-  
796 erating the branch bank and by any successor bank;

797 (k) branch banks which have been established and are being main-  
798 tained by a bank at the time of its merger into or consolidation with  
799 another bank or at the time its assets are purchased and its liabilities are  
800 assumed by another bank may continue to be operated by the surviving,  
801 resulting or purchasing and assuming bank. The surviving, resulting or  
802 purchasing and assuming bank, with approval of the state bank commis-  
803 sioner, may establish and operate a branch bank or banks at the site or  
804 sites of the merged, constituent or liquidated bank or banks;

805 (l) any state bank or national banking association having its principal  
806 office and main banking house in this state may provide and engage in  
807 banking transactions by means of remote service units wherever located,  
808 which remote service units shall not be considered to be branch banks  
809 authorized herein. Any banking transaction effected by use of a remote  
810 service unit shall be deemed to be transacted at a bank and not at a remote  
811 service unit;

812 (m) as a condition to the operation and use of any remote service unit  
813 in this state, a state bank or national banking association, each hereinafter  
814 referred to as a bank, which desires to operate or enable its customers to  
815 utilize a remote service unit must agree that such remote service unit will  
816 be available for use by customers of any other bank or banks upon the  
817 request of such bank or banks to share its use and the agreement of such  
818 bank or banks to share all costs, including a reasonable return on capital  
819 expenditures incurred in connection with its development, installation  
820 and operation. The owner of the remote service unit, whether a bank or  
821 any other person, shall make the remote service unit available for use by  
822 other banks and their customers on a nondiscriminatory basis, condi-  
823 tioned upon payment of a reasonable proportion of all costs, including a  
824 reasonable return on capital expenditures incurred in connection with the  
825 development, installation and operation of the remote service unit. Not-  
826 withstanding the foregoing provisions of this subsection, a remote service  
827 unit located on the property owned or leased by the bank where the  
828 principal place of business of a bank, or an attached auxiliary teller facility  
829 or branch bank of a bank, is located need not be made available for use  
830 by any other bank or banks or customers of any other bank or banks;

831 (n) for purposes of this section, "remote service unit" means an elec-  
832 tronic information processing device, including associated equipment,  
833 structures and systems, through or by means of which information relat-  
834 ing to financial services rendered to the public is stored and transmitted,  
835 whether instantaneously or otherwise, to a bank and which, for activation  
836 and account access, is dependent upon the use of a machine-readable  
837 instrument in the possession and control of the holder of an account with  
838 a bank. The term shall include "online" computer terminals and "offline"  
839 automated cash dispensing machines and automated teller machines, but  
840 shall not include computer terminals or automated teller machines or  
841 automated cash dispensing machines using systems in which account  
842 numbers are not machine read and verified. Withdrawals by means of  
843 "offline" systems shall not exceed \$300 per transaction and shall be re-  
844 stricted to individual not corporate or commercial accounts.

845 *Sec. 16. ~~On September 29, 1995, K.S.A. 1994 Supp. 9-701, 9-~~*  
846 *1101 and 9-1111 are hereby repealed.*

847 *Sec. 16 17. On September 29, 1995, K.S.A. 9-519, 9-522, 9-524,*  
848 *9-533, 9-534, 9-535, 9-536, 9-537, 9-538 and 9-539 and K.S.A. 1994 Supp.*

FINAL BILL - SB 204

849 9-523[, 9-524], and 9-532, ~~9-701, 9-1101 and 9-1111~~ are hereby re-  
850 pealed.

851 Sec. ~~17~~ 18. This act shall take effect and be in force from and after  
852 its publication in the ~~statute book~~ *Kansas register*.

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## KANSAS BANKING AND BRANCHING

Many have argued that interstate branching is a moot point since we have interstate banking. There are, however, several major distinctions between interstate banking and interstate branching that may have significant impacts on the future of banking in the state of Kansas.

### **Comparison.**

The primary difference between interstate **banking** and interstate **branching** is that interstate banking requires the formation of separate banks which have separate boards of directors and management, separate examinations, separate audited financial statements and regulatory reports, separate support and control functions, theoretically separate computer systems. Interstate branching does not require this level of accountability.

If a bank is allowed to open a branch across state lines, the branch is actually a part of a bank charter outside of Kansas. Such a branch will not require a separate board of directors or management, separately disclosed financial reports, and could offer limited services.

### **Banking History.**

The Douglas Amendment of the federal Bank Holding Company Act stated that "states controlled whether and under what circumstances bank holding companies from other states could operate banks." Interstate banking was only possible when an individual state acted to allow it.

July 1, 1992, Kansas began participating in a regional interstate banking pact with states adjacent to its borders, and the states of Arkansas and Iowa. In accordance with the pact, only bank holding companies located in those states could operate a bank in Kansas as long as they maintained a Kansas charter.

The Riegle-Neal Act repeals the Douglas Amendment and allows bank holding companies to acquire banks anywhere in the country regardless of state law. It also preempts discriminatory requirements that state laws may have imposed on out-of-state bank holding companies.

Repealing the Douglas Amendment means that states, including Kansas, no longer have the right to say "no" to interstate banking, or set conditions for entry.



Nationwide interstate banking became a reality September 29, 1995. Therefore, Kansas's regional interstate banking pact is now null and void. Kansas can no longer restrict entry of out-of-state bank holding companies to certain states. Kansas can, however, continue to require out-of-state bank holding companies to maintain a Kansas charter.

### **Branching History.**

In the late 19th century, individual states began allowing intrastate branching. Intrastate branching is bank branching within the state's borders. However, there was no federal law that allowed national banks to branch intrastate.

Congress passed the McFadden Act in the late 1920's. This act allowed national banks to branch within the borders of their state, just as state chartered banks were allowed to branch. It effectively gave states, including Kansas, the authority to determine its own branching structure.

Now, with the passage of the Riegle-Neal Act, nationwide interstate branching will be authorized throughout the United States effective June 1, 1997 -- unless states choose to opt-out of the interstate branching provision before that date.

**Even if Kansas chooses to opt-out of interstate branching, out-of-state holding companies can still do business in Kansas. By maintaining a single charter (state or national), a bank or branch of an out-of-state holding company may establish any number of branches within the state's borders.**

Interstate Branching ...  
its impact on

**SMALL BUSINESS, AGRICULTURE,  
CONSUMERS, AND JOBS**

**Small Business and Agriculture.**

**Kansas will face a serious credit imbalance.** Branching will make it much easier to drain funds from a deposit-rich state such as Kansas to finance projects in other parts of the country. This is known as "capital flight."

The state of Texas felt the effects of capital flight. Their five largest banks are all owned by out-of-state entities. The "Big 5" control 50 percent of the state's deposits but made less than one-third of banking's share of small business loans. Agriculture (one of the most significant parts of Texas' economy) fared worse. It only got 8 percent from the 'Big 5'.<sup>1</sup>

Those are staggering statistics when "banks with less than \$100 million in assets account for about 70 percent of the nation's 10,168 commercial banks. But they control only 10 percent of banking assets. And that percentage is shrinking as big banks become low cost producers."<sup>2</sup>

Kansas is made up of a multitude of small businesses and family farming operations. These small businesses are vital to the economic well being of their local communities, and the Kansas economy as a whole. "Clustered as a single economic entity, American small business would rank third after the United States and Japan in gross domestic product (GDP). Small business generates about 88 percent of the GDP in the United States, or closed to \$8 trillion annually. Small business survival and success is crucial for the ongoing vitality of the U.S. and global economy,"<sup>3</sup> and especially for Kansas.

**The largest banks lend a smaller percentage of their total loanable funds to small business and agriculture.** "Economist William Keeton of the Federal Reserve Bank of Kansas City recently analyzed data from banks in Kansas and other states in the 10th Federal Reserve District. He found that 'Branch banks, smaller banks in multibank holding companies, and banks owned by out-of-state multibank holding companies all tend to lend a smaller portion of their funds to small businesses than other banks'.<sup>4</sup> The money formerly loaned to Kansas business and agriculture could well be building condos in Florida or supporting commercial development in the boom towns of the Southwest. "In general, small business does not benefit when mega banks take over in an area unless the business needs to borrow a million dollars or more.

Most mega banks are not interested in small loans, especially those under \$100,000."<sup>5</sup>

The Atlanta Business Journal reported, "Unfortunately, while the entrepreneurial march [ie., development of small business] is proceeding, many financial institutions, particularly the large money center banks, are operating on a business as usual basis."<sup>6</sup> Yet another trade journal noted in 1995 that, "Typically, small banks are more successful in making loans to small and start-up businesses because personnel in a small bank tend to be aware of what is happening in the community. More importantly, they know their customers personally. Emerging small businesses are said to be the driving force of our present economy. If credit is curtailed for this segment of the population, our total economy will suffer."<sup>7</sup>

Small business owners, farmers, and ranchers appreciate the personal relationships they have with their Kansas bank lending officers. They value these relationships because they are their best guarantee of access to capital -- the life's blood of small business and agriculture operations.

Loan officers of Kansas' community-based banks know their clients' individual businesses and farm operations; their professional strengths and weaknesses; and most importantly, their character. When the bank's board gathers to review loan applications, the loan officer will go to bat for that applicant, advocating approval of the loan.

With interstate branching, small business and agriculture customers doubt this kind of personal attention would be possible with a megabank whose board sits in distant St. Louis, San Francisco, New York, Tokyo, etc., connected with a loan officer via an 800 telephone line. Normally, branch managers have little flexibility when it comes to bank policy. **Out-of-state branches will be less inclined to reinvest in small business and agriculture if they are no longer required to be managed by a Kansas board of directors who face accountability to their local communities.**

### **Consumer.**

In the beginning, **consumers may benefit in the short term** as the megabanks initiate predatory pricing to build their share of the local deposit market.

Just like small business owners, farmers and ranchers ... local consumers appreciate the personal relationships they have with their Kansas bank lending officers. They also value this relationship because it is their best guarantee of access to capital.

**Personal financial service will suffer.** "Nearly half of the 939 companies surveyed by IBM believe that the quality of their bank service will deteriorate after a bank merger."<sup>8</sup> The larger the banking system, the more rigid its policies are likely to be. The

flexibility to meet individual customer needs does not fit well in large corporate banking systems.

"The major problem with large banks is they try to run commercial accounts from a regional office,' said Morris Albright, chairman of Gulf Copper Manufacturing Corp., a Port Arthur, Texas ship repairer. 'In banking, you have to deal with someone you know will stick with you.' He found just that in Community Bank, whose senior chairman, Walter Umphrey, is a high-school friend and whose chief executive, Mr. McNinch, hunts quail with him. 'They know that if I live, I'll pay my debt,' Mr. Albright says."<sup>9</sup>

### **Jobs.**

If interstate branching comes to Kansas, **consolidation of banking functions will inevitably lead to job loss.** One way large entities save money is to centralize activities and cut jobs. Large out-of-state institutions have consistently released faithful employees as soon as they take over a merged bank.

One major bank, NationsBank, has already claimed that interstate branching will enable the bank to save \$50 million annually by closing offices, eliminating jobs, centralizing loan processing, trimming staff, and disbanding local boards of directors. The Chase Manhattan - Chemical Bank merger will save the bank \$1.5 billion a year. "The new bank will eliminate 12,000 jobs out of a total of 75,000 and close about 100 of its 626 branches."<sup>10</sup>

Closer to home, consider the Boatmen's - Bank IV merger. "Fourth Financial Corp. announced it would eliminate 270 jobs in the next three to 15 months as it merges operation with Boatmen's Bancshares of St. Louis. Fourth Financial already has cut 140 positions from its ranks since the merger was announced in August. Together, the cuts will bring Fourth Financial's total jobs reduction in preparation for the consolidation to 410 jobs -- nearly 12 percent of the company's workforce of 3,450."<sup>11</sup> This results in poor service to the public and an adverse impact on the local economy.

With interstate branching, the next jobs to go will be the local board of directors and management positions as well as operations staff. In other words, **Kansas decision makers will likely be terminated.**

Small businesses and agriculture, and the jobs they create, are the backbone of the Kansas economy. Banks owe it to the communities they serve to reinvest the deposits gathered there in that community.

Interstate Branching ...  
its impact on

**COMMUNITIES AND COMMUNITY BANKS**

**Community.**

"More than 70 percent of Kansas banks are located in communities of fewer than 5,000 people."<sup>13</sup> Outside of the major metropolitan areas, the local community bank is the backbone of the community. Banks are major employers in many small towns. They support community activities -- youth athletics, health fairs, and activities for seniors - - and they invariably constitute a base of volunteers, ready with funds and active, energetic personnel support. Unfortunately, as bank ownership and management becomes more remote, this relationship evaporates or greatly diminishes.

Currently, a bank owned by an out-of-state institution choosing to do business in Kansas, must maintain at least one Kansas bank charter, and must have a board of directors with a majority of Kansas residents. That will change with interstate branching. **Presidents and local boards of directors may be replaced by branch managers with little input regarding policy decisions which so directly impact the well-being of the community.**

**Community Banks.**

It is logical to think that Kansas-owned financial institutions might survive in an interstate environment because consumers would likely maintain their banking relationship with a locally owned financial institution responsive to their needs. However, in the long term, community banks and Kansas communities are almost certain to be severely damaged.

"Between the mergers, consolidations, and bank failures, the number of independent banks not in holding companies shrank from around 9,000 in 1980 to less than 3,000 by 1993. Some legislators, especially those in states with large rural areas, are concerned that interstate branching will add further momentum to the consolidation already under way through interstate banking and that local banks need protection from big-bank competition."<sup>14</sup>

**Larger banks will experience significant cost savings** since they will be able to eliminate local boards of directors and management, avoid reporting requirements, reduce examinations, and consolidate computer operations. Community banks will not have that advantage. "Boatmen's officials told analysts that they expect to cut \$60 million in costs during the first three years after completing the purchase of Fourth's Bank IV subsidiaries. The figure represents 24 percent of Fourth's total expenses."<sup>15</sup>

**Community banks would continue to be regularly examined for community reinvestment**, while their competitor branch of an out-of-state bank in non-metropolitan statistical areas would not be monitored as closely. Federal law does not require every branch located outside of a metropolitan statistical area to file a separate and individual community reinvestment report. Rather, their main bank reports the community reinvestment of their bank and branches as a whole.

Although interstate banks will be required to maintain loan-to-deposit ratios of only one half of the state average loan-to-deposit ratio or face closure by federal regulators, it is highly unlikely the federal government will close a branch since **out-of-state entities could simply transfer or buy loans to enhance the books of the branch at the time of examination.**

Interstate Branching ...  
its impact on

**TAX REVENUES**

Among the biggest public policy concerns is the expected loss of tax revenue when out-of-state banks convert Kansas chartered banks to interstate branches.

Kansas taxes banks based on their home state domicile ... the state in which they are chartered. At the present time, banks doing business in Kansas must maintain one Kansas bank charter. In turn, all Kansas chartered banks pay a financial institution privilege tax.

However, under the provisions of an interstate branching (opt-in) law, **banks would not be required to maintain a Kansas bank charter in order to do business in Kansas.** That being the case, how will Kansas tax interstate branch banks when their tax is based on their home state domicile, say for instance Missouri or Delaware?

In an effort to establish an equitable method of taxation for financial institutions operating in any given state, the Multistate Tax Commission (MTC) has studied the issue and recommended a taxation formula.

The MTC has proposed a formula to apportion financial institution's net income. Its net income would be multiplied by the apportionment percentage. The apportionment percentage would be determined by adding together the financial institution's "receipt" factor, "property" factor, and "payroll" factor, and dividing the sum by three.

Unfortunately, under the apportionment formula, out-of-state banks may still be able to manipulate those factors so they can minimize their overall tax liability. The formula offers no guarantee that out-of-state banks will pay their fair share of taxes, but to date, it is the most practical option available to the Legislature.

States may tax out-of-state entities, provided that such taxation does not discriminate, or put interstate branch banks and Kansas chartered banks at a competitive disadvantage. It will be up to the Kansas legislature to determine a fair method to tax such entities. Failure to pass equitable tax legislation could result in a considerable loss of revenue for Kansas. In addition, it would create an unfair advantage for out-of-state banks that own Kansas branches since **Kansas chartered banks would still be required to pay applicable state privilege taxes.**

The only way to tax financial institutions equitably is to require them to maintain a Kansas bank charter. This is yet another big reason why the Legislature should enact opt-out legislation.

## Interstate Branching ...

### QUESTIONS AND ANSWERS

#### QUESTION:

Why should Kansas opt-out of interstate branching?

#### ANSWER:

Out-of-state banks that choose to do business in Kansas should be on a level playing field with all other Kansas banks. They should be accountable to their local communities, businesses, customers, and the state of Kansas. Interstate branching significantly reduces the ability of the Legislature and the Bank Commissioner to regulate banking in Kansas. Kansas must retain control over these banks. The only way is to require them to maintain a Kansas bank charter. [Therefore, Kansas should enact opt-out legislation.]

#### QUESTION:

Aren't banks that oppose interstate branching just afraid of competition?

#### ANSWER:

No, banks are not afraid of competition. They can, and are willing to compete with out-of-state banks just as long as those banks are on a level playing field with Kansas chartered banks. The only way to assure this equality is to require all banks choosing to do business in Kansas to maintain a Kansas bank charter.

#### QUESTION:

Isn't interstate branching inevitable? Why not just opt-in now? Aren't banks able to branch across state lines by using the 30-mile rule?

#### ANSWER:

Interstate branching is not a "done deal." Kansans have the right to decide. Congress gives us that right. If we don't want to participate in nationwide interstate branching, we can opt-out. Effective June 1, 1997, the 30-mile rule will be null and void. In the



meantime, the state of Texas has chosen to opt-out of interstate branching. Texas regulators are challenging the use of the OCC's 30-mile rule allowing a bank to move into another state. Texas has filed suit, declaring that an OCC approved move does not comply with the Texas opt-out law (see National Conference of State Legislatures Memorial Resolution in Text Reference section). Should Texas win its case, it would undoubtedly impair the use of the 30-mile rule along the Kansas border.

**QUESTION:**

Won't Kansas be an exception if we opt-out?

**ANSWER:**

No, Kansas is far from alone. Less than half of all states have taken final action on interstate branching. Texas has already voted to opt-out of interstate branching. With hundreds of community-based financial institutions (very similar to Kansas), Texas understood the serious effects of the federal branching provision and summarily rejected it. Closer to home, groups in Colorado, Missouri, and Nebraska are all pursuing enactment of opt-out legislation, as are groups in Montana and New Mexico.

**QUESTION:**

Won't bigger banks have more money to lend?

**ANSWER:**

Branching will make it much easier to drain funds from a deposit-rich state such as Kansas to finance projects in other parts of the country. This is known as "capital flight." The largest banks lend a far smaller percentage of their total loan funds to small business and agriculture. In Texas the five largest banks control 50 percent of the state's deposits, yet only made 28 percent of the small business loans and less than 8 percent of the agriculture loans.

**QUESTION:**

What difference does it make? Interstate branching won't affect community banks.

**ANSWER:**

Over the long haul, community banks and Kansas communities are almost certain to be

severely damaged. Large out-of-state banks will have a variety of advantages over community banks. They will experience significant cost savings since they will be able to eliminate local boards of directors and management, reduce examinations, and consolidate computer operations; community banks would continue to be regularly examined for community reinvestment, while their competitor branch of an out-of-state bank in non-metropolitan statistical areas would not be monitored as closely. Out-of-state banks may well be able to manipulate the factors of any apportionment formula in order to minimize their overall tax liability, thus putting pressure on the Legislature to raise privilege taxes for all banks.

**QUESTION:**

Once a state opts-out of interstate branching, can it then opt-in at a later date?

**ANSWER:**

Yes. If a state opts-out, it has every right to opt-in at a later time. Numerous legal opinions have confirmed this.

**QUESTION:**

Who gains from nationwide bank branching in Kansas?

**ANSWER:**

Large, out-of-state banks will benefit if Kansas participates in nationwide bank branching. Nationally, big banks have been pushing for these reforms.

## DEFINITIONS

### **Assets.**

The resources, both tangible and intangible, of a bank.

### **Bank Holding Company.**

A company that holds at least 25 percent ownership of a bank and meets various other legislative and regulatory criteria. Holding companies are usually established for control purposes and are used as a method of geographic expansion and involvement in banking related activities. They are not operating entities.

### **Capital.**

In the accounting sense, capital is synonymous with net assets and is measured by the excess of assets over liabilities.

### **Capital "Flight".**

The ability of out-of-state owned financial institutions to gather deposits from local Kansas communities and export them to support loans in other states.

### **Community Bank.**

Small, medium, and large-sized, locally managed, hometown banks which are dedicated to meeting the financial needs of their communities. They provide personalized, community oriented services, and provide local credit for local needs thereby helping communities grow and thrive.

### **Community Reinvestment Act of 1977 (CRA).**

A federal act which requires banks to meet the credit needs of their . [and to encourage investment in the immediate communities served by depository institutions.]

### **De Novo Branching.**

Allows an out-of-state bank to establish branch operations in another state without acquiring an existing bank in that state.

### **Deposits.**

Balances due to depositors of a bank; funds credited to the accounts of depositors.

### **Financial Institution Privilege Tax.**

The Kansas privilege tax is a tax for the privilege of doing business as a financial institution. It applies to all banks, savings and loans, and savings banks. It does not apply to credit unions. It is a tax in lieu of the Kansas corporate income tax. This tax is based on a percentage of a bank's income for the next preceding taxable year.

### **Home State.**

For an interstate branching network, the "home state" is the state in which the bank is chartered or situated.

### **Host State.**

For those banks with interstate branching operations, it is all states other than the state in which the bank is chartered, in which that interstate bank has branches, or in which the bank holding company has affiliates.

### **Interstate Banking.**

A bank holding company can own and operate banking subsidiaries in more than one state. Each bank subsidiary of a bank holding company must have its own charter, capital, and its own board of directors and management. Each bank must comply with separate regulatory reporting requirements and undergo separate supervisory examinations. Each bank is taxed as a separate corporate entity.

### **Intrastate Branching.**

Allows a chartered bank to establish branches within the state boundaries. Intrastate branches are offices of the parent bank and share the parent bank's board of directors and management. In Kansas, the majority of a state chartered bank's board of directors must be Kansas residents.

### **Interstate Branching.**

A single bank can acquire or establish branches in other states. Under interstate branching, a bank doesn't need to be part of a holding company to cross state lines. Interstate branches are offices of the parent bank and share the parent bank's board of directors and management.

### **Multi Bank Holding Company.**

A bank holding company that owns more than one separately chartered bank.

### **Nondiscriminatory.**

Laws must be applicable to all banks, both state and national, operating in-state and out-of-state. A law that is written to apply only to those banks entering from out-of-state will apply to in-state institutions as well. The laws must treat all banks equally in law and effect.

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NATIONAL CONFERENCE OF STATE LEGISLATURES

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STAFF CHAIR, NCSL

**WILLIAM POUND**  
EXECUTIVE DIRECTOR

**MEMORIAL RESOLUTION**

**CALLING UPON CONGRESS TO HOLD HEARINGS WITH REGARD TO THE  
OFFICE OF THE COMPTROLLER OF THE CURRENCY**

**WHEREAS**, the United States Congress by an overwhelming bipartisan vote gave all states the option to decide their participation in a nationwide bank branching network in the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994; and

**WHEREAS**, it was the intent of Congress for every state legislature to have until May 31, 1997 to decide their state's participation in interstate bank branching; and

**WHEREAS**, twenty-one state legislatures have voted to opt-in to interstate bank branching and one state voted to opt-out during this past legislative session and an equal number are considering legislation for passage in next year's legislative session; and

**WHEREAS**, the Office of the Comptroller of the Currency by approving the application of national bank in Arkansas to relocate its headquarters 30 miles into the state of Texas and maintain its former bank and branches in Arkansas as interstate branches; and

**WHEREAS**, this action by the OCC was in direct contradiction of the wishes of the Texas State Legislature which by a unanimous vote decided to opt-out of interstate branching; and

**WHEREAS**, this action by the OCC has permitted interstate branching into Arkansas, before the Arkansas state legislature has had an opportunity to decide their participation; and

**WHEREAS**, the OCC has taken similar actions in a number of other states, Oklahoma, Michigan, Ohio, Georgia, New Hampshire, Kansas, Wyoming, Maine, New York, Virginia and West Virginia some of which have yet to act on interstate branching; and

**WHEREAS**, the OCC is continuing and purposely using other mechanisms to thwart the role of state legislatures to make a decision about their state's participation in an interstate branching;

**NOW, THEREFORE BE IT RESOLVED**, that the National Conference of State Legislatures calls upon the Comptroller of the Currency, Eugene Ludwig, to cease any and all efforts which makes a mockery of Congressional intent to let the states decide their own participation in interstate bank branching; and

**BE IT FURTHER RESOLVED**, that NCSL calls upon Senator Al D'Amato, Chairman of the United State Senate Banking, Housing and Urban Affairs Committee and Representative Jim Leach of the United State House of Representatives Banking and Financial Services Committee to initiate hearings in early 1996 on the conduct of the Comptroller of the Currency and his agency to take actions which are in direct contradiction to decisions made by state legislatures and to the intent of Congress in passing Riegle-Neal; and

**BE IT FURTHER RESOLVED**, that copies of this resolution be sent to the President of the United States, to the Comptroller of the Currency, to all members of Congress, the National Governors Association and the Conference of State Bank Supervisors.

*Resolution introduced by Representative Robert Brawley of North Carolina, Chair of the AFI Commerce and Communications Committee.*

*Resolution approved in Committee on Thursday, December 14, 1995 by voice vote.*

*Resolution approved by NCSL's Assembly on Federal Issues on Friday, December 15, 1995 by voice vote.*