

Approved: February 17, 1999
Date

MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS.

The meeting was called to order by Chairperson Ray Cox at 3:30 p.m. on February 10, 1999 in Room 527-S of the Capitol.

All members were present except: Representative Helgerson - Excused
Representative Mayans - Excused

Committee staff present: Dr. Bill Wolff, Legislative Research
Bruce Kinzie, Office of Revisor
Maggie Breen, Committee Secretary

Conferees appearing before the committee: Sonya Allen, General Counsel, Bank Commissioner's Ofc.
Daryl Craft, Kansas Bankers Association Trust Division

Others attending: See Attached List

Chairman Cox opened the hearing on **HB 2296 - Trust Companies, contracting trustee.**

Proponent:

Sonya Allen, General Counsel, Bank Commissioner's Office, testified in favor of **HB 2296. (Attachment 1)** The bill amends K.S.A. 9-2107, that is commonly referred to as "contracting trustee" statute. K.S.A. 9-2107 gives authority for state chartered banks and trust companies to contract away their fiduciary responsibilities to another trustee. The general rule is that the trustee must be a Kansas bank or trust company. There is an exception to the rule, which allows state banks and trust companies to contract with an affiliate bank that's located outside the state. Meaning that bank is owned by the same holding company as the state bank but is located outside of Kansas. That's currently in the statute and it's come to their attention that it does not include the same exception for trust companies that are located outside the state. They want them to be able to contract with the trust company as well.

Chairman Cox asked for a real live example. Sonya said Mercantile Bank has a bank holding company and they have a state charter in Kansas. Under their holding company, they have a Mercantile Trust Company in Missouri. This bill would allow them to contract with Mercantile Trust Company (in Missouri) to provide trust services at the Kansas Mercantile Bank location.

Someone asked why the contracting of a trustee would be needed. An example given was a small town bank who has trust powers and wants to provide the service but may lack the staff, or staff expertise, so they contract out to a larger organization, who has the resources.

A question was posed as to whether the tax consequence would be affected if the contract was to a trustee out of state.

Per Daryl Craft, the tax liability depends upon the site of the trust, not where the trustee is located. So unless the trust was actually transferred out of state, **HB 2296** would not affect taxation.

Chairman Cox closed the hearing on **HB 2296** and opened the hearing on **HB 2295 - Liability of trustee.**

Proponent:

Daryl Craft, Kansas Bankers Association Trustee Division, spoke in favor of **HB 2295. (Attachment 2)** Several years ago, Kansas trustees were surprised and to find out that federal legislation regarding

CONTINUATION SHEET

MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS, Room 527-S Statehouse, at 3:30 p.m. on February 10, 1999.

hazardous waste sites created an unexpected potential liability for the trustee, who held title to such a site. EPA regulations appeared to hold a trustee personally liable for such ownership to the extent that, if the trust assets were not adequate to clean up the site, a trustee's personal assets could be taken to complete the work. This was even if the trustee was not aware of the waste site and had no part in the creation of it. Subsequent federal legislation has resolved this problem for trustees nationally. But a review of Kansas statutes, on the general issue of trustee liability, has raised the concern that a Kansas trustee could be held personally liable for its actions, taken in good faith, as a trustee. This bill is designed to remedy this situation. The result of the passage of **HB 2295** would be to provide Kansas trustees with the assurance that, if they entered into a contract as a trustee and without fault, their personal assets would not be at risk due to any claim resulting from the contract. The bill provides that a trustee must identify its status, as a trustee. It does not prevent a party from charging a trustee with personal liability. If there is a finding that a trustee was at fault in the administration of its duties, then it would be the courts determination of whether a trustee's individual assets should be taken. The statute mirrors the Missouri statute. It is applicable whether the trustee is an individual or a corporation. Mr. Craft asked the committee's support of the bill.

Chairman Cox Closed the hearing on **HB 2296** and opened the floor for discussion on the bill.

Representative Grant made a motion to move **HB 2296** our favorably and put it on the consent calendar. Representative Minor seconded the motion. The motion carried.

Chairman Cox opened discussion on **HB 2295**.

Representative Sharp requested the bill not be worked today as she wants to check some things out.

Chairman Cox agreed.

Chairman Cox presented the committee minutes for February 3 for approval. Representative Grant made a motion to accept the minutes as presented. Representative Minor seconded the motion. The motion carried.

The meeting was adjourned at 3:50 p.m.

The next meeting is scheduled

STATE OF KANSAS
BILL GRAVES
GOVERNOR



Judi M. Stork
Acting Bank Commissioner

Kevin C. Glendening
Assistant Deputy Commissioner

Sonya L. Allen
General Counsel

Louise A. Monell
Administrative Officer

OFFICE OF THE
STATE BANK COMMISSIONER

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS

February 10, 1999

Mr. Chairman and Members of the Committee:

My name is Sonya Allen. I am General Counsel for the Office of the State Bank Commissioner. I am here today to request your favorable consideration of House Bill 2296. This bill amends K.S.A. 9-2107, which we commonly refer to as the "contracting trustee" statute. In part, K.S.A. 9-2107 gives authority for state banks and trust companies to contract away their fiduciary responsibilities to another trustee. The general rule is such contracts can only be entered into with other banks or trust companies having an office in this state. In the current statute, by virtue of the definition of "contracting trustee", there is an exception which would allow state banks and trust companies to contract with an affiliate bank, owned by the same holding company, regardless of where the affiliate is located. It has come to our attention that an oversight in drafting resulted in the exclusion of a trust company affiliate from that exception. It was not our intent to exclude trust company affiliates, and the proposed amendment would clarify that point.

House Financial Institutions
2-10-99
Attachment 1



THE
GUARDIAN
TRUST
COMPANY

1129 SW Wanamaker Rd - P.O. Box 2127 - Topeka, Kansas 66601

Daryl V. Craft, President

Testimony on House Bill No. 2295

On Behalf of the Kansas Bankers Association Trust Division

I am here today on behalf of the KBA Trust Division to provide you with a bit of background information on House Bill No. 2295. A few years back, Kansas trustees were surprised to find out that federal legislation regarding the ownership of hazardous waste sites created an unexpected potential liability for the trustee who held title to such a site. EPA regulations appeared to hold a trustee personally liable for such ownership, to the extent that if trust assets were not sufficient to clean up the site a trustee's personal assets could be taken to complete the work. This was so even if the trustee was not aware of the waste issue, and had no part in the creation of it. Subsequent federal legislation has resolved this problem for trustees, but a review of Kansas statutes on the general issue of trustee liability has raised the concern that in Kansas a trustee **could** be held personally liable for its actions, taken in good faith, as a trustee. This bill is designed to remedy this situation.

The result of passage of HB 2295 would be to provide Kansas trustees with the assurance that if they entered into a contract, as a trustee and without fault, that trustee's personal assets would not be at risk due to any claim resulting from the contract. The most common example of this would be when a trustee has entered into a partnership agreement, in its capacity of a fiduciary, and later there is a claim filed against the partnership. It is not uncommon for Kansas trustees to enter into partnership agreements with family members for farming operations. If there was a claim against the partnership, due to the injury of a farm worker, for example, there could be a finding of damages against the partnership. If the amount of the damages exceeded the value of trust assets held by a trustee, current Kansas law could allow for recovery from the trustee's individual assets. This bill would prevent such an occurrence.

The bill does provide that a trustee must identify its status, as a trustee, and it does not prevent a party from charging a trustee with personal liability. If there is a finding that a trustee was at fault in the administration of its duties, then it would be the courts determination of whether trustee's individual assets should be taken.

The Kansas Bankers Association Trust Division asks for your support of this bill.

House Financial Institutions
2-10-99
Attachment 2

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