

Approved: January 26, 1999
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE .

The meeting was called to order by Chairperson Senator Don Steffes at 9:00 a.m. on January 25, 1999, in Room 529 S of the Capitol.

All members were present except:

Committee staff present: Dr. Bill Wolff, Research
Ken Wilke, Office of Revisor
Nikki Feuerborn, Committee Secretary

Conferees appearing before the committee: Judi Stork, Acting State Bank Commissioner

Others attending: See Attached

At the request of Senator Barone, a summary of condition and income data, performance ratios, and condition ratios for state-chartered and nationally-chartered FDIC insured institutions for 1996, 1997, and 1998 was presented to the Committee (Attachment 1). The dramatic increase in return on assets and equity (after taxes) for state-chartered banks was discussed. As the tax burden (privilege tax) was reduced, the yield increased, a significant difference on profitability. It was noted that from 40-50% of the loans were virtually risk-free real estate loans with the majority of those being residential, commercial, or land secured. Two-thirds of all the loans commercial banks made were well secured, long-term, and well-margined loans. There was a charge off of less than .08%. At one time, the majority of loans made by banks were for economic development rather than real estate. This change has occurred since the demise of the savings and loan industry and the encouragement of FDIC bank examiners to grant more secure loans. The new larger banks are making fewer real estate loans than state-chartered banks. It appears that many of their loans are to very large secure companies. Mortgage brokers in cities are taking part of the first mortgage real estate loans but usually these businesses are not located in small cities or the rural area. It is not known if this is a trend in other parts of the country. A national magazine recently published an article stating small business is driving the economy as it is generating more jobs and growth, not downsizing as is happening in large companies.

Judi Stork, Acting State Bank Commissioner, explained the makeup of the State Banking Board and gave copies of the packet each new member receives (Attachment 2). The Kansas Bank Board has decision making as well as policy setting powers. The majority of the states operate without policy making boards, and if they do have boards, they act in an advisory capacity only. Mrs. Stork said the most powerful functions of the Bank Board were approving or denying requests for branches as well as granting approval or denial for relocation of main offices or branches. Banks can appeal decisions to the District Court but the most often used procedure is to seek a national charter which is quite easily obtained. Bank Boards also approve charters for banks. There are more applications for state-chartered banks than nationally-chartered banks throughout the nation. If the powers of the Bank Board were transferred to the Bank Commissioner, he would be making the above decisions. Currently the Bank Board cannot override the Bank Commissioner's decisions but many are dual decisions. The only confidential material the Bank Board is privy to is a financial summary of any bank making application for chartering. The State Bank Commissioner acts as Secretary to the Board.

Commissioner Stork requested the introduction of a bill which would address the issue of notification to the Legislature including leadership of House and Senate Financial Committees of all special orders issued by the Bank Commissioner (Attachment 3).

Senator Becker moved for introduction of legislation according to the request from Commissioner Stork. Motion was seconded by Senator Biggs. Motion carried.

A Subcommittee to prepare proposed legislation addressing the job description of the State Bank Commissioner, configuration of the State Bank Board, and any other issues relative to proposed changes in

CONTINUATION SHEET

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

this financial regulatory agency was named. Members serving are: Senator Praeger, Chairman; Senator Feleciano, Senator Biggs, Senator Becker, and Senator Corbin.

Senator Corbin moved that the minutes of January 20 and January 21, 1999, be approved as presented. Senator Praeger seconded the motion. Motion carried.

The meeting was adjourned at 10:00 a.m. The next meeting is scheduled for January 26, 1999.

State Banking Performance Summary FDIC-Insured Institutions

State Chartered
Commercial Banks
Kansas
September 30, 1998
State Chartered
Commercial Banks
Kansas
December 31, 1997
State Chartered
Commercial Banks
Kansas
December 31, 1996

(dollar figures in millions)

	All Institutions	Assets less than \$100 million	Assets greater than \$100 million	All Institutions	Assets less than \$100 million	Assets greater than \$100 million	All Institutions	Assets less than \$100 million	Assets greater than \$100 million
Number of institutions reporting	284	246	38	287	255	32	294	266	28
Total employees (full-time equivalent)	7,658	3,534	4,124	7,312	3,715	3,597	7,390	4,072	3,318
AGGREGATE CONDITION AND INCOME DATA									
Net income (year-to-date)	202	78	124	232	100	132	203	97	105
Total assets	19,508	8,038	11,470	18,445	8,443	10,003	17,011	8,832	8,180
Earning assets	18,215	7,510	10,705	17,066	7,869	9,197	15,745	8,200	7,546
Total loans & leases	12,070	4,737	7,333	11,286	4,842	6,444	9,216	4,751	4,465
Other real estate owned	22	6	15	26	6	21	38	9	29
Total deposits	16,555	6,861	9,694	15,847	7,304	8,543	14,599	7,665	6,933
Equity capital	1,976	891	1,085	1,796	891	905	1,719	921	799
PERFORMANCE RATIOS (YTD, %)									
Yield on earning assets	8.17	8.10	8.22	8.58	8.11	9.02	8.12	8.14	8.09
Cost of funding earning assets	3.83	3.75	3.88	3.97	3.73	4.21	3.76	3.76	3.77
Net interest margin	4.34	4.35	4.33	4.60	4.38	4.82	4.35	4.38	4.32
Noninterest income to avg. earning assets	.87	.65	1.04	.94	.68	1.19	.96	.74	1.23
Noninterest expense to avg. earning assets	2.96	3.02	2.91	3.21	3.14	3.29	3.20	3.22	3.19
Net charge-offs to loans & leases	.08	.08	.09	.24	.11	.36	.33	.17	.51
Credit-loss provision to net charge-offs	185.95	234.24	156.86	97.34	153.42	82.43	101.56	156.48	80.97
Net operating income to average assets	1.40	1.30	1.47	1.39	1.23	1.55	1.26	1.12	1.42
Retained earnings to average equity	7.10	5.22	8.66	4.11	5.47	2.66	6.82	5.91	7.92
Return on assets	1.41	1.31	1.47	1.39	1.23	1.55	1.27	1.14	1.42
Return on equity	14.18	12.08	15.94	13.90	11.65	16.29	12.49	10.89	14.46
Percent of unprofitable institutions	1.76	2.03		1.39	1.57		2.04	2.26	
Percent of institutions with earning gains	62.32	59.76	78.95	69.34	68.63	75.00	72.79	70.30	96.43
CONDITION RATIOS (%)									
Net loans and leases to assets	60.86	57.96	62.90	60.18	56.39	63.38	53.09	52.76	53.45
Loss allowance to:									
Loans and leases	1.63	1.65	1.62	1.65	1.68	1.62	2.00	1.92	2.10
Noncurrent loans and leases	210.70	163.33	260.33	217.10	203.02	229.43	176.77	202.41	157.34
Noncurrent loans & leases to total loans & leases	.77	1.01	.62	.76	.83	.71	1.13	.95	1.33
Nonperforming assets to assets	.59	.67	.53	.61	.54	.66	.84	.62	1.08
Core deposits to total liabilities	84.02	83.82	84.15	84.97	84.43	85.42	85.41	86.31	84.45
Equity capital to total assets	10.13	11.09	9.46	9.74	10.55	9.05	10.11	10.42	9.76
Core capital (leverage) ratio	9.73	10.62	9.09	9.74	10.49	9.08	9.91	10.38	9.38
Total capital to risk-weighted assets	15.79	18.10	14.30	15.73	18.06	13.96	17.51	18.73	16.23
Gross 1-4 family mortgages to gross assets	14.42	13.16	15.30	14.84	12.99	16.39	10.66	12.04	9.16
Gross real estate assets to gross assets	37.70	30.76	42.56	37.50	30.18	43.68	31.78	29.71	34.00

Source: Call Report and Thrift Financial Report:
Prepared by the FDIC-Division of Research and Statistics

Loan / Deposit

72.91%

71.22%

63.13%

Senate Financial Institutions & Insurance

Date 1/25/99

Attachment # 1

State Banking Performance Summary FDIC-Insured Institutions

Nationally Chartered
Commercial Banks
Kansas
September 30, 1998
Nationally Chartered
Commercial Banks
Kansas
December 31, 1997
Nationally Chartered
Commercial Banks
Kansas
December 31, 1996

(dollar figures in millions)

	All Institutions	Assets less than \$100 million	Assets greater than \$100 million	All Institutions	Assets less than \$100 million	Assets greater than \$100 million	All Institutions	Assets less than \$100 million	Assets greater than \$100 million
Number of institutions reporting	114	87	27	116	89	27	122	93	29
Total employees (full-time equivalent)	5,594	1,813	3,781	5,508	1,798	3,710	5,242	1,784	3,458
AGGREGATE CONDITION AND INCOME DATA									
Net income (year-to-date)	112	35	76	126	42	84	95	39	56
Total assets	13,044	3,917	9,127	12,872	3,930	8,942	11,596	3,769	7,827
Earning assets	12,028	3,634	8,395	11,734	3,649	8,085	10,613	3,499	7,114
Total loans & leases	7,601	2,385	5,216	7,348	2,352	4,996	6,674	2,105	4,570
Other real estate owned	7	3	4	10	4	6	10	3	7
Total deposits	10,910	3,360	7,550	10,857	3,392	7,466	9,915	3,280	6,635
Equity capital	1,292	417	875	1,208	400	808	1,112	380	731
PERFORMANCE RATIOS (YTD, %)									
Yield on earning assets	8.51	8.14	8.67	8.46	8.10	8.63	8.44	8.03	8.64
Cost of funding earning assets	3.90	3.79	3.94	3.85	3.74	3.91	3.86	3.72	3.93
Net interest margin	4.62	4.36	4.73	4.61	4.36	4.72	4.58	4.31	4.71
Noninterest income to avg. earning assets	1.65	1.94	1.53	1.58	1.96	1.40	1.66	2.26	1.36
Noninterest expense to avg. earning assets	3.83	4.33	3.61	3.97	4.43	3.75	4.30	4.76	4.07
Net charge-offs to loans & leases	.79	.14	1.08	.69	.19	.92	.99	.15	1.38
Credit-loss provision to net charge-offs	120.45	200.93	115.84	119.84	153.25	116.67	91.83	162.20	88.43
Net operating income to average assets	1.15	1.22	1.12	1.05	1.11	1.02	.84	1.05	.74
Retained earnings to average equity	7.86	6.20	8.66	6.20	4.07	7.27	4.46	3.45	5.00
Return on assets	1.16	1.23	1.13	1.05	1.11	1.02	.85	1.06	.75
Return on equity	12.05	11.86	12.15	11.01	10.90	11.06	8.74	10.33	7.90
Percent of unprofitable institutions	1.75	2.30		4.31	5.62		5.74	6.45	3.45
Percent of institutions with earning gains	59.65	59.77	59.26	72.41	70.79	77.78	64.75	64.52	65.52
CONDITION RATIOS (%)									
Net loans and leases to assets	57.28	60.02	56.11	56.16	59.04	54.90	56.70	55.05	57.50
Loss allowance to:									
Loans and leases	1.70	1.43	1.83	1.62	1.37	1.74	1.50	1.43	1.52
Noncurrent loans and leases	186.05	164.93	194.99	163.42	142.03	173.09	137.38	156.97	130.34
Noncurrent loans & leases to total loans & leases	.92	.87	.94	.99	.96	1.00	1.09	.91	1.17
Nonperforming assets to assets	.59	.60	.58	.64	.67	.63	.71	.60	.77
Core deposits to total liabilities	81.31	83.26	80.48	81.75	83.31	81.07	85.23	84.76	85.45
Equity capital to total assets	9.91	10.64	9.59	9.39	10.18	9.04	9.59	10.09	9.34
Core capital (leverage) ratio	8.88	10.07	8.37	8.78	9.94	8.25	8.90	10.07	8.33
Total capital to risk-weighted assets	14.69	16.71	13.84	14.37	16.31	13.51	14.72	17.47	13.48
Gross 1-4 family mortgages to gross assets	10.46	13.81	9.02	10.29	13.65	8.82	10.71	12.93	9.64
Gross real estate assets to gross assets	28.85	34.90	26.26	27.47	33.58	24.79	28.69	32.12	27.04

Source: Call Report and Thrift Financial Report:
Prepared by the FDIC-Division of Research and Statistics

Loan/Deposit

69.67%

67.68%

67.31%

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State Banking Performance Summary FDIC-Insured Institutions

<i>(dollar figures in millions)</i>	Commercial Banks Kansas			Commercial Banks Kansas			Commercial Banks Kansas		
	September 30, 1998			December 31, 1997			December 31, 1996		
	All Institutions	Assets less than \$100 million	Assets greater than \$100 million	All Institutions	Assets less than \$100 million	Assets greater than \$100 million	All Institutions	Assets less than \$100 million	Assets greater than \$100 million
Number of institutions reporting	398	333	65	403	344	59	416	359	57
Total employees (full-time equivalent)	13,252	5,347	7,905	12,820	5,513	7,307	12,632	5,856	6,776
AGGREGATE CONDITION AND INCOME DATA									
Net income (year-to-date)	314	114	200	358	142	215	298	136	162
Total assets	32,552	11,955	20,597	31,317	12,373	18,945	28,607	12,601	16,006
Earning assets	30,243	11,144	19,099	28,800	11,518	17,282	26,358	11,698	14,659
Total loans & leases	19,671	7,122	12,549	18,634	7,195	11,440	15,891	6,856	9,035
Other real estate owned	29	9	20	36	10	27	48	13	35
Total deposits	27,465	10,221	17,244	26,704	10,696	16,009	24,514	10,946	13,568
Equity capital	3,268	1,308	1,960	3,005	1,291	1,714	2,831	1,301	1,530
PERFORMANCE RATIOS (YTD, %)									
Yield on earning assets	8.31	8.11	8.42	8.53	8.11	8.83	8.25	8.10	8.37
Cost of funding earning assets	3.86	3.76	3.91	3.92	3.73	4.06	3.80	3.75	3.85
Net interest margin	4.45	4.35	4.51	4.60	4.37	4.77	4.44	4.36	4.51
Noninterest income to avg. earning assets	1.18	1.06	1.25	1.20	1.09	1.29	1.25	1.20	1.29
Noninterest expense to avg. earning assets	3.30	3.44	3.22	3.53	3.54	3.51	3.65	3.68	3.63
Net charge-offs to loans & leases	.35	.10	.50	.43	.14	.62	.61	.16	.97
Credit-loss provision to net charge-offs	129.97	218.94	119.97	112.28	153.34	106.24	94.85	158.04	86.52
Net operating income to average assets	1.30	1.27	1.31	1.25	1.19	1.29	1.09	1.10	1.08
Retained earnings to average equity	7.40	5.53	8.66	4.96	5.04	4.89	5.87	5.18	6.48
Return on assets	1.31	1.28	1.32	1.25	1.19	1.29	1.10	1.12	1.08
Return on equity	13.35	12.01	14.25	12.72	11.42	13.76	10.99	10.72	11.22
Percent of unprofitable institutions	1.76	2.10	1.75	2.23	2.62	2.10	3.13	3.34	1.75
Percent of institutions with earning gains	61.56	59.76	70.77	70.22	69.19	76.27	70.43	68.80	80.70
CONDITION RATIOS (%)									
Net loans and leases to assets	59.43	58.63	59.89	58.53	57.23	59.37	54.55	53.45	55.43
Loss allowance to:									
Loans and leases	1.66	1.58	1.71	1.64	1.58	1.67	1.79	1.77	1.81
Noncurrent loans and leases	200.17	163.81	226.52	192.42	180.94	199.93	160.62	188.83	144.56
Noncurrent loans & leases to total loans & leases	.83	.96	.75	.85	.87	.84	1.11	.94	1.25
Nonperforming assets to assets	.59	.65	.56	.62	.58	.65	.79	.61	.93
Core deposits to total liabilities	82.93	83.64	82.53	83.64	84.07	83.37	85.34	85.84	84.94
Equity capital to total assets	10.04	10.94	9.52	9.59	10.43	9.05	9.90	10.33	9.56
Core capital (leverage) ratio	9.39	10.44	8.77	9.35	10.32	8.69	9.50	10.29	8.87
Total capital to risk-weighted assets	15.35	17.64	14.10	15.18	17.49	13.75	16.33	18.34	14.84
Gross 1-4 family mortgages to gross assets	12.83	13.37	12.52	12.97	13.20	12.82	10.68	12.31	9.39
Gross real estate assets to gross assets	34.16	32.12	35.34	33.38	31.26	34.76	30.53	30.43	30.60

Source: Call Report and Thrift Financial Report:
Prepared by the FDIC-Division of Research and Statistics

Loan/Deposit

71.62%

69.78%

64.82%

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KANSAS STATUTES AND REGULATIONS RELATING TO THE STATE BANKING BOARD

KANSAS STATUTES

1. K.S.A. 9-519 through 9-523 Bank holding companies
This is provided to the Banking Board for informational purposes only.
2. K.S.A. 9-532 through 9-541 Interstate banking
The banking board reviews any appeal of the Commissioner's determination of approval or denial for an interstate change of control.
3. K.S.A. 9-812 Change of bank name
The banking board approves the name change of a bank.
4. K.S.A. 9-901a Amount of capital of a bank or trust company
This statute outlines the minimum capital requirements for a new bank or trust company, which the banking board approves or denies.
5. K.S.A. 9-901b Minimum capital requirements
This section allows the commissioner, with banking board approval, to allow a bank to operate with capital levels less than those required by K.S.A. 9-901a.
6. K.S.A. 9-908 Issuance of preferred stock
The issuance of preferred stock by a bank or trust company must first be approved by the banking board.
7. K.S.A. 9-912 Reduction of surplus account
Before a bank or trust company can reduce their surplus account, the banking board must give approval.
8. K.S.A. 9-1101(21) Bank subsidiary for securities activities
The banking board must approve the establishment of a subsidiary which sells securities, issues and underwrites municipal bonds, operates mutual funds, or acts as broker-dealer.
9. K.S.A. 9-1101(24)(b)(iv) Bank owned life insurance
If a bank holds a life insurance policy for the express purpose of providing a deferred compensation benefit, and there is no liability that exist under that deferred compensation plan, the bank cannot continue to hold the life insurance policy without the express permission of the banking board.
10. K.S.A. 9-1101a Issuance of capital notes or debentures
Before a bank can issue capital notes or debentures, they must have the approval of the banking board.

Senate Financial Institutions & Insurance

Date 1/25/99

Attachment # 2

11.

K.S.A. 9-1111

Branch banking

The banking board must approve all branches, except those that result from the merger of two banks.

12.

K.S.A. 9-1123 through 9-1127d

Bank service corporations

A bank may not invest in certain types of service corporations without the prior approval of the banking board.

13.

K.S.A. 9-1702

Examination of fiduciaries and affiliated organizations

14.

K.S.A. 9-1713

Adoption of rules and regulations

All rules and regulations adopted by the Commissioner shall first be submitted to the banking board for their review and approval.

15.

K.S.A. 9-1801 through 9-1803

Application for a certificate of authority

The banking board approves all new bank and trust company charters.

16.

K.S.A. 9-1804

Change of location of a bank or trust company

Before a bank or trust company relocates their main office or branch, they must first receive approval of the banking board.

17.

K.S.A. 9-1805

Removal of a bank or trust company officer or director

The banking board may remove an officer of a bank or trust company if they have been "dishonest, reckless or incompetent" in performing their duties.

18.

K.S.A. 9-1806

Maximum interest rate

19.

K.S.A. 9-1807

Issuance of an order to cease and desist

The banking board determines whether the issuance of an order to cease and desist, proposed by the bank commissioner, is appropriate. The C&D orders are usually issued when a bank is operating in an unsafe and unsound manner.

20.

K.S.A. 9-1808

Approval of a bankers' bank

This section give the banking board the authority to grant a state charter for the purpose of establishing a bankers' bank.

21.

K.S.A. 9-2106

Change of trust company name

The banking board approves the change of name of a trust company.

22.

K.S.A. 74-3004 et. seq.

State banking board

This statutes establishes the banking board and defines the requirements associated with serving on the board.

KANSAS ADMINISTRATIVE REGULATIONS

1. K.A.R. 17-16-1 through 17-16-9 Charter application guidelines
2. K.A.R. 17-19-1 through 17-19-4 Securities subsidiary application guidelines
3. K.A.R. 17-21-1 through 17-21-8 Bank holding companies; Application guidelines for the acquisition of a Kansas bank or bank holding company
4. K.A.R. 17-22-1 Application fees

property, or both. Without limiting the generality of the foregoing, an emergency may arise as a result of any one or more of the following: Fire; flood; earthquake; hurricane; wind, rain or snow storm; labor strike by bank employees; power failure; transportation failure; interruption of communication facilities; shortage of fuel, housing, food, transportation or labor; robbery or attempted robbery; actual or threatened enemy attack; epidemic or other catastrophe; riot, civil commotion, and other acts of lawlessness or violence, actual or threatened. (L. 1971, ch. 35, § 1; July 1.)

9-515. Same; powers of commissioner. Whenever the commissioner is of the opinion that an emergency exists, or is impending, in this state or in any part or parts of this state, he or she may, by proclamation, authorize banks located in the affected area or areas to close their offices. In addition, if the commissioner is of the opinion that an emergency exists, or is impending, which affects, or may affect, a particular bank or banks, but not banks located in the area generally, he or she may authorize the particular bank or banks to close. The bank or banks so closed shall remain closed until the commissioner proclaims that the emergency has ended, or until such earlier time as the officers of the bank determine that the bank theretofore closed because of the emergency, should reopen, and, in either event, for such further time thereafter as may reasonably be required to reopen as determined by the commissioner. (L. 1971, ch. 35, § 2; July 1.)

9-516. Same; powers of bank officers. (a) Whenever the officers of a bank are of the opinion that an emergency exists, or is impending, which affects, or may affect, a bank's offices, they shall have the authority, in the reasonable and proper exercise of their discretion, to determine not to open such offices on any business or banking day or, if having opened, to close such offices during the continuation of such emergency. The offices so closed shall remain closed until such time as the officers determine that the emergency has ended, and for such further time thereafter as may reasonably be required to reopen; however, in no case shall such offices remain closed for more than forty-eight (48) consecutive hours, excluding other legal holidays, without requesting and obtaining the approval of the commissioner.

(b) The officers of a bank may close the bank's offices on any day or days designated by proclamation of the president of the United States or the governor or legislature of this state, as a day or days of mourning, rejoicing or other special observance, and on such other day or days of local special observance as in the reasonable and proper exercise of their discretion they feel the bank should observe. (L. 1975, ch. 44, § 4; July 1.)

9-517. Same; notice to commissioner. A bank closing its offices pursuant to the authority granted under K.S.A. 9-516(a) shall give as prompt notice of its action as conditions will permit and by any means available to the commissioner, or in the case of a national bank, to the comptroller of the currency. (L. 1971, ch. 35, § 4; July 1.)

9-518. Same; effect of closing; act in addition to other laws. Any day on which a bank is closed during all or any part of its normal banking hours pursuant to the authorization granted under this act shall be, with respect to such bank, a legal holiday for all purposes with respect to any banking business of any character. No liability, or loss of rights of any kind, on the part of any bank, or director, officer, or employee thereof, shall accrue or result by virtue of any closing authorized by this act.

The provisions of this act shall be construed and applied as being in addition to, and not in substitution for or limitation of, any other law of this state or of the United States, authorizing the closing of a bank or excusing the delay by a bank in the performance of its duties and obligations because of emergencies or conditions beyond the bank's control or otherwise. (L. 1971, ch. 35, § 5; July 1.)

→ **9-519. Bank holding companies; definitions.** For the purposes of K.S.A. 9-520 through 9-524, and amendments thereto, and K.S.A. 9-532 through 9-541, and amendments thereto, unless otherwise required by the context:

(a) (1) "Bank holding company" means any company:

(A) Which directly or indirectly owns, controls, or has power to vote 25% or more of any class of the voting shares of a bank or 25% or more of any class of the voting shares of a company which is or becomes a bank holding company by virtue of this act;

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

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

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

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

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

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

(C) shall be deemed to be a bank holding company by virtue of its ownership or control of shares acquired in securing or collecting a debt previously contracted in good faith, provided such shares are disposed of within a period of two years from the date on which such shares could have been disposed of by such company;

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

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

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

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

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

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

(3) any company more than 5% of the voting shares of which is held by trustees for the benefit of such bank holding company or its shareholders.

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

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

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

(h) "Out-of-state bank holding company" means any holding company which is not a Kansas bank holding company as defined in subsection (g).

(i) "Foreign bank" means any company organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa or the Virgin Islands, which engages in the business of banking, or any subsidiary or affiliate, organized under such laws, of any such company. (L. 1996, ch. 175, § 17; April 25.)

9-520. Same; ownership limitations; exceptions. (a) Excluding shares held under the circumstances set out in paragraph (2) of subsection (a) of K.S.A. 9-519, and amendments thereto, no bank holding company or any subsidiary thereof shall directly or indirectly acquire ownership or control of, or power to vote, any of the voting shares of any bank which holds Kansas deposits if, after such acquisition, the bank holding company and all subsidiaries would hold or control, in the aggregate, more than 15% of total Kansas deposits.

(b) This section shall not prohibit a bank holding company or any subsidiary thereof from acquiring ownership or control of, or power to vote, any of the voting shares of any bank if the commissioner, in the case of a bank organized under the laws of this state, or the comptroller of the currency, in the case of a national banking association, determines that an emergency exists and that the acquisition is appropriate in order to protect the public interest against the failure or probable failure of the bank.

(c) As used in this section, "Kansas deposits" means deposits, savings deposits, shares or similar accounts held by banks, savings and loan associations, savings banks and building and loan associations attributable to any office in Kansas where deposits are accepted as determined by the commissioner on the basis of the most recent reports to supervisory authorities which are available at the time of acquisition. (L. 1997, ch. 59, § 3; May 29.)

9-521. Repealed.

9-522. Repealed.

9-523. **Same; board of directors of each bank.** Except for banks whose voting shares are acquired by a bank holding company pursuant to subsection (b) of K.S.A. 9-520, and amendments thereto, a majority of the board of directors of each Kansas bank which is a subsidiary of a bank holding company shall be residents of this state. (L. 1995, ch. 79, § 2; September 29.)

9-524 to 9-531. Repealed.

→ 9-532. **Limited interstate banking; states; application; limitations.** With prior approval of the commissioner, any bank holding company may acquire, directly or indirectly, ownership or control of, or power to vote, any of the voting shares of, an interest in, or all or substantially all of the assets of a Kansas bank or of a Kansas bank holding company. Request for approval shall be made by filing an application in such form as required by the commissioner, containing the information prescribed by K.S.A. 9-533, and amendments thereto, and by rules and regulations adopted by the commissioner. At the time of filing the application, the applicant shall pay to the commissioner a fee in an amount established by rules and regulations adopted by the commissioner. (L. 1995, ch. 79, § 3; September 29.)

9-533. **Same; application; required information.** An application filed pursuant to K.S.A. 9-532 and amendments thereto shall provide the following information and include the following documents:

(a) A copy of any application by applicant seeking approval by a federal agency of the acquisition of the voting shares or assets of a Kansas bank or of a Kansas bank holding company, and of any supplemental material or amendments filed with the application.

(b) Copies of the public sections of the most recent CRA performance evaluations for all banks which are subsidiaries of the applicant which were assigned a rating of "needs to improve record of meeting community credit needs" or "substantial noncompliance in meeting community needs" under the federal community reinvestment act of 1977, 12 U.S.C. 2901 *et seq.*

(c) Statements of the financial condition and future prospects, including current and projected capital positions and levels of indebtedness, of the applicant and the Kansas bank or Kansas bank holding company which is the subject of the application filed pursuant to K.S.A. 9-532 and amendments thereto.

(d) Information as to how the applicant proposes to adequately meet the convenience and needs of the community served by the Kansas bank or Kansas bank holding company which is the subject of the application filed pursuant to K.S.A. 9-532 and amendments thereto and the communities served by other Kansas banks which are subsidiaries of applicant, in accordance with the federal community reinvestment act of 1977, 12 U.S.C. 2901 *et seq.*

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

(f) Any additional information the commissioner deems necessary. (L. 1995, ch. 79, § 4; September 29.)

9-534. **Same; application; approval; factors.** In determining whether to approve an application filed pursuant to K.S.A. 9-532 and amendments thereto, the commissioner shall consider the following factors:

(a) Whether the banks already subsidiaries of the applicant are operated in a safe, sound and prudent manner.

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

(c) Whether the applicant proposes to provide adequate and appropriate services, including services contemplated by the federal community reinvestment act of 1977, 12 U.S.C. 2901 *et seq.*, in the communities served by the Kansas bank or by the Kansas bank subsidiaries of the Kansas bank holding company.

(d) Whether the proposed acquisition will result in a Kansas bank or Kansas bank holding company that has adequate capital and good earnings prospects.

(e) Whether the financial condition of the applicant or any of its subsidiary banks would jeopardize the financial stability of the Kansas bank or Kansas bank holding company which is the subject of the application. (L. 1995, ch. 79, § 5; September 29.)

9-535. **Same; approval of application.** (a) The commissioner shall approve the application if the commissioner determines that the application favorably meets each and every factor prescribed in K.S.A. 9-534 and amendments thereto,

the proposed acquisition is in the interest of the depositors and creditors of the Kansas bank or Kansas bank holding company which is the subject of the proposed acquisition and in the public interest generally. Otherwise, the application shall be denied.

(b) Within 15 days after the commissioner's approval or denial, the applicant shall have the right to appeal in writing to the state banking board the commissioner's determination by filing a notice of appeal with the commissioner. The state banking board shall fix a date for hearing, which hearing shall be held within 45 days after such notice of appeal is filed. The board shall conduct the hearing in accordance with the provisions of the Kansas administrative procedure act and render its decision affirming or rescinding the determination of the commissioner. Any action of the board pursuant to this section is subject to review in accordance with the act for judicial and civil enforcement of agency actions. An applicant who files an appeal to the state banking board of the commissioner's determination shall pay to the commissioner a fee in an amount established by rules and regulations of the commissioner, adopted pursuant to K.S.A. 9-1713 and amendments thereto, to defray the board's expenses associated with conducting the appeal. (L. 1995, ch. 79, § 6; September 29.)

9-536. Same; subject to change of control provisions. An applicant filing an application pursuant to K.S.A. 9-532 and amendments thereto also shall be subject to K.S.A. 9-1719 through 9-1724 and amendments thereto to the extent applicable. (L. 1995, ch. 79, § 7; September 29.)

9-537. Same; review of operations by commissioner; additional information. The commissioner at any time may review the activities of any bank holding company with a subsidiary bank in Kansas and its subsidiary banks to determine if the proposals of the company as stated in the information provided pursuant to K.S.A. 9-533 and amendments thereto are being fulfilled. The commissioner may require the company and such banks to furnish such additional information as the commissioner finds necessary to make such determination. (L. 1995, ch. 79, § 8; September 29.)

9-538. Same; filing of CRA performance evaluation. (a) Each bank holding company with a subsidiary bank in Kansas shall file with the commissioner a copy of the public section of any CRA performance evaluation of the Kansas bank, issued under the federal community reinvestment act of 1977, 12 U.S.C. 2901 *et seq.*, which assigns the Kansas bank a CRA rating of "needs to improve record of meeting community credit needs" or "substantial noncompliance in meeting community credit needs" or which is requested by the commissioner. The copy shall be filed within 30 days of its receipt by the bank from the bank's primary federal financial supervisory agency.

(b) Should any such evaluation assign the bank a rating of "substantial noncompliance in meeting community credit needs," the state bank commissioner shall give appropriate public notice of that fact. The commissioner also shall notify the pooled money investment board of the bank's rating of substantial noncompliance and thereafter the bank shall not be designated as a depository for any state moneys until such time as the commissioner notifies the board that the bank is no longer assigned such rating. (L. 1995, ch. 79, § 9; September 29.)

9-539. Same; rules and regulations. The commissioner shall adopt such rules and regulations as shall be necessary to carry out the intent and purposes of K.S.A. 9-519 through 9-524, and amendments thereto, and K.S.A. 9-532 through 9-539, and amendments thereto, which shall be known as the bank holding company act. All rules and regulations of general application shall first be submitted by the commissioner to the state banking board for its approval and upon approval shall be filed as provided by article 4 of chapter 77 of the Kansas Statutes Annotated. (L. 1995, ch. 79, § 10; September 29.)

9-540. Foreign bank prohibited from having branch bank in state. No foreign bank shall establish or maintain any branch, agency, office or other place of business in this state. (L. 1995, ch. 79, § 11; July 1.)

9-541. Acquisition of bank by out-of-state bank holding company; age limitation; exceptions. (a) No out-of-state bank holding company or any subsidiary thereof shall directly or indirectly acquire ownership or control of, or power to vote, more than 5% of any class of the voting shares of any Kansas bank unless such Kansas bank has been in existence and actively engaged in business for five or more years.

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

(c) This section shall not prohibit an out-of-state bank holding company or any subsidiary thereof from acquiring

ownership or control of, or power to vote, more than 5% of any class of the voting shares of any Kansas bank if the commissioner, in the case of a bank organized under the laws of this state, or the comptroller of the currency, in the case of a national banking association, determines that an emergency exists and that the acquisition is appropriate in order to protect the public interest against the failure or probable failure of the Kansas bank. (L. 1995, ch. 79, § 12; July 1.)

Article 6.-FEDERAL DEPOSIT INSURANCE

9-601 to 9-607. Repealed.

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(b) In any conversion authorized by this section the capital requirements of this act shall apply, and the new name for such resulting bank shall be approved by the commissioner. In any conversion authorized by this section the resulting state bank shall have authority to issue its shares of stock for shares of stock in the national bank, or property of the national bank, for and upon such valuation as shall be agreed upon, and approved by the commissioner. In any conversion authorized by this section the resulting state bank by operation of law shall continue all trust functions being exercised by the national bank, and shall be substituted for the national bank and shall have the right to exercise trust or fiduciary powers created by any instrument designating the national bank, even though such instruments are not yet effective.

(c) In any conversion authorized by this section the resulting state bank shall succeed by operation of law without any conveyance or transfer by the act of the national bank to all the actual or potential assets, real property, tangible personal property, intangible personal property, rights, franchises and interests, including those in a fiduciary capacity of the national bank, and shall be subject to all of the liabilities of the national bank.

(d) In any conversion authorized by this section the rights and responsibilities of any shareholder of the national bank who objects or dissents to the proposed conversion shall be governed by the provisions of K.S.A. 17-6712 and amendments thereto as though the national bank was a Kansas corporation and the objecting or dissenting shareholder was objecting or dissenting to a proposed merger transaction. In any conversion authorized by this section the corporate existence of the national bank shall be merged into and shall be continued in the resulting state bank, and the resulting state bank shall be deemed to be the identical corporate entity as the national bank. (L. 1994, ch. 192, § 2; July 1.)

9-809. Stockholder vote for conversion to national bank; proceedings. (a) Any state bank may at any time, upon the affirmative vote of not less than 2/3 of its outstanding voting stock, become a national bank but in all the proceedings incident thereto such banks shall be governed by the same rulings, laws and regulations as may be in force and effect under federal law and authority governing national banks becoming state banks.

(b) The state bank shall provide written notice to the state bank commissioner within 10 days after the date the state bank receives preliminary approval to convert to a national banking association from the office of the comptroller of the currency. In addition, not more than 15 days following the issuance of a charter certificate to the bank by the comptroller, the bank shall surrender its state certificate of authority or charter and shall certify in writing that notice of the conversion has been given to the corporations division of the secretary of state's office. (L. 1995, ch. 19, § 1; July 1.)

9-810. Private banks prohibited. No private bank shall engage in the banking business in this state. (L. 1947, ch. 102, § 13; June 30.)

9-811. Prohibition against nonbank banks; allowing certain credit card banks. No financial institution whose deposits are insured by the federal deposit insurance corporation shall conduct business in this state unless such institution (a) has the legal right to accept deposits that the depositor has the legal right to withdraw on demand and to engage in the business of making commercial loans or, (b) is a national bank which engages only in credit card operations, does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others, does not accept any savings or time deposits of less than \$100,000, accepts deposits only from corporations which own 51% or more of the voting shares of the bank holding company or its parent corporation, as defined by K.S.A. 9-519, and amendments thereto, of which the bank engaging only in credit card operations is a subsidiary, as defined by K.S.A. 9-519, and amendments thereto, maintains only one office that accepts deposits, and does not engage in the business of making commercial loans. (L. 1991, ch. 46, § 2; July 1.)

→ **9-812. Bank change of name; approval required.** A bank corporation shall not change its name until such name change has been submitted to and approved by the state banking board. (L. 1986, ch. 53, § 1; April 24.)

9-813. Prohibiting interstate branch banking. (a) No bank the home office of which is located outside the state of Kansas shall establish or operate a branch bank within the state of Kansas.

(b) For the purpose of this section "branch bank" means any office, agency or other place of business, at which deposits are received, checks paid or money lent.

(c) For the purpose of this section "bank" means an insured bank as defined in section 3(h) of the federal deposit insurance act, 12 U.S.C. 1813(h), and amendments thereto. (L. 1991, ch. 47, § 3; July 1.)

* See Special Order 1995-5

Article 9.-BANKING CODE; CAPITAL STOCK AND STRUCTURE

9-901. Repealed.

- **9-901a. Amount of capital.** (a) For purposes of this section, the capital of a bank or trust company shall be the total of the aggregate par value of its outstanding shares of capital stock, its surplus and its undivided profits.
- (b) The minimum capital of a bank or trust company in existence on July 1, 1975, shall be \$250,000 or such lesser amount as such bank or trust company had on July 1, 1975. With respect to a bank or trust company in existence on July 1, 1975, which thereafter transfers its place of business from one city to another, the minimum capital shall be the amount required by subsection (c).
- (c) The minimum capital of a bank or trust company organized as a corporation after July 1, 1975, or which thereafter transfers its place of business from one city to another, shall be as follows:
- (1) For a bank at least \$250,000 or at least an amount equal to 8% of its estimated deposits five years after its organization or transfer of place of business, whichever is greater, of which 60% shall be the aggregate par value of its outstanding shares of capital stock, 30% its surplus and 10% its undivided profits; (2) for a trust company at least \$250,000 of which 60% shall be the aggregate par value of its outstanding shares of capital stock, 30% its surplus and 10% its undivided profits.
- The state banking board may require that the bank or trust company have capital in excess of the amounts specified in this subsection if the board determines that the amount and character of the anticipated business of the bank or trust company and the safety of the customers so require.
- (d) The minimum capital of a bank or trust company organized pursuant to subsection (b) of K.S.A. 9-1801, and amendments thereto, shall be determined by the commissioner, provided that the successor bank has obtained deposit insurance from the federal deposit insurance corporation or its successor.
- (e) Except as may be provided elsewhere in this act, no bank or trust company shall reduce voluntarily its capital stock or surplus below the amounts required by this section. (L. 1989, ch. 48, § 15; July 1.)

- **9-901b. Capital reduction; requirements.** (a) The state bank commissioner, with the prior approval of the state banking board, may establish minimum capital requirements for a bank which vary from capital requirements otherwise prescribed in K.S.A. 9-901a, and amendments thereto, whenever the commissioner determines that economic conditions necessitate such action to provide greater operational flexibility to well-managed, economically sound banks. A bank wanting to establish a minimum capital requirement under this section shall submit to the bank commissioner a written plan for restoring capital to the minimums required by K.S.A. 9-901a, and amendments thereto, in appropriate incremental amounts by no later than January 1, 1995. The establishment of capital requirements may be subject to such other conditions as the commissioner and board deem advisable. Such other conditions, including capital requirements, shall be established by special order which shall not be subject to the provisions of article 4 of chapter 77 of the Kansas Statutes Annotated, and amendments thereto.
- (b) The provisions of this section shall expire on January 1, 1995. (L. 1988, ch. 58, § 1; March 3.)

9-902. Par value of stock. The common and preferred stock of any bank or trust company hereafter created shall be divided into shares of \$5 each, or a multiple thereof. All subscriptions to such stock shall be paid in cash and any bank or trust company may change the par value of its shares to conform with this section. When any bank or trust company shall reduce its common capital stock and issue preferred stock in lieu of such reduction, it may reduce the par value of the common stock in the proportion that the total amount of capital stock is reduced, but when the preferred stock is retired the par value of the common shares shall be restored. (L. 1989, ch. 48, § 16; July 1.)

9-903. Transfer of stock; report to commissioner. The shares of stock of any bank or trust company shall be deemed personal property and shall be transferred on the books of the bank or trust company in such manner as the bylaws thereof may direct. No transfer of stock shall be valid against the issuing bank or trust company so long as the registered owner thereof shall be liable as principal debtor, surety or otherwise to the bank or trust company on a matured, charged off or forgiven obligation, nor shall any dividend, interest or profit be paid on such stock so long as the registered owner thereof is indebted to the bank or trust company on a matured, charged off or forgiven obligation, but all such dividends or profits shall be retained by the bank or trust company and applied to the discharge of any such obligations. No stock shall be transferred on the books of any bank or trust company when the bank or trust company is in a failing condition, or when its capital stock is impaired, except upon approval of the commissioner. Whenever a transfer of shares of stock of any bank or trust company occurs which results in direct or indirect ownership by a stockholder or an affiliated group of stockholders of 10% or more of the outstanding stock of the bank or trust company, and whenever additional shares of stock of the bank or trust company are transferred to such stockholder or affiliated group of stockholders, the president or other chief executive, officer of the bank or trust company shall report such transfer to the commissioner within 10 days after transfer of the shares of stock on the books of the bank or trust company. (L. 1996, ch. 175, § 11; April 25.)

9-904. Reduction of capital stock. (a) The capital stock of any bank or trust company may be reduced to the minimum provided by law for a new bank or trust company by resolution adopted by the stockholders representing 2/3 of the voting stock of such bank or trust company, except that no such reduction shall become effective until the commissioner approves the same.

(b) With prior approval of the state banking board, a bank or trust company may reduce its capital stock below the minimum amount allowed by subsection (a) by transferring capital stock to its surplus fund. No such reduction shall be approved unless the state banking board finds:

(1) The proposed reduction is necessary to provide greater operational flexibility to an adequately capitalized, well-managed institution;

(2) the proposed reduction does not result in or is not in furtherance of a reduction in the institution's capital to an amount below 8% of total deposits for a bank or below \$250,000 for a trust company;

(3) the proposed reduction is not intended to delay, prevent or be in lieu of capital stock impairment or a stockholder's assessment pursuant to K.S.A. 9-906 and amendments thereto; and

(4) the proposed reduction poses no significant risk to the financial stability, safety or soundness of the institution.

© After the commissioner or state banking board has approved such reduction a certificate signed by the president and cashier of the bank or trust company setting forth the result of such reduction of its capital stock, the names of its stockholders and the amount of stock held by each, shall be filed with the secretary of state and a duplicate shall be filed with the commissioner.

(d) Whenever the capital stock of any bank or trust company shall be reduced as herein provided, every stockholder, owner or holder of any stock certificate shall surrender the same for cancellation and shall be entitled to receive a new certificate for such person's proportion of the new stock. No dividends shall be paid to any such stockholder until the old certificate is surrendered. (L. 1996, ch. 175, § 12; April 25.)

9-905. Increase of capital stock. The, capital stock of any bank or trust company may be increased. The president and cashier shall forward a verified statement to the commissioner showing the amount of the increase, the names and addresses of the subscribers, the amount subscribed by each and that the same has been paid in full to the bank or trust company. The date and amount of such increase also shall be certified to the secretary of state. (L. 1989, ch. 48, § 19; July 1.)

9-906. Restoration of impaired capital. Whenever it shall appear that the capital stock of any bank or trust company is impaired, the commissioner shall notify such bank or trust company to restore the capital stock within 90 days of receipt of such notice. Within 15 days of receipt of such notice, the board of directors of such bank or trust company shall levy an assessment on the common stockholders sufficient to restore the capital stock. Such bank or trust company with its board's approval may reduce its capital stock to the extent of the impairment, if such reduction will not reduce the capital stock below the amount required by this act. (L. 1987, ch. 54, § 3; May 7.)

9-907. Delinquent stockholders; public or private sale of stock. Whenever any stockholder of a bank or trust company or an assignee of such stockholder, fails to pay any assessment on such stockholder's stock when the same is required to be paid, the directors of such bank or trust company may sell the stock of such delinquent stockholder, or so much thereof as shall be necessary, to satisfy the assessment and any expenses incident thereto, within 120 days of the bank or trust company's receipt of impairment notice, to any person paying the highest price therefor, which price shall be not less than the amount due upon such stock with any expense incident thereto, and such sale may be either public or private. If sold at private sale and the price offered by any non-stockholder shall not exceed the highest bid of any stockholder, then such stock shall be sold to the stockholder. If such sale shall be public, then three weeks' notice thereof, published in a newspaper of general circulation in the city or county where the bank or trust company is located, shall be given. The excess, if any, realized upon the sale of the stock shall be paid to the delinquent stockholder unless such stockholder is further indebted to the bank or trust company then it may be retained by the bank or trust company as an offset. If no purchaser can be found for such stock upon the terms herein stated the stock shall be forfeited to the bank or trust company to be disposed of within six months from the date of the public or private sale as the board of directors shall determine. (L. 1987, ch. 54, § 4; May 7.)

→ **9-908. Preferred stock.** Any bank or trust company may issue preferred stock of one or more classes in such amounts as shall be approved by the state banking board. The holders of 2/3 in amount of the common stock of such bank or trust company must approve such issuance at a meeting held for that purpose and for which notice by registered mail must be given to each stockholder by mailing such notice at least five days in advance of the date of the meeting. No issue of preferred stock shall be valid until the par value of all stock so issued shall be paid in. With the approval of the board the common stock may be reduced below the requirements contained in K.S.A. 9-901a, and amendments thereto. No preferred stock shall be retired unless the common stock shall be increased in an amount equal to the amount of the preferred stock retired. All preferred stock shall be retired consistent with safety to the depositors. (L. 1989, ch. 48, § 20; July 1.)

approve such issuance at a meeting held for that purpose and for which notice by registered mail must be given to each stockholder by mailing such notice at least five days in advance of the date of the meeting. No issue of preferred stock shall be valid until the par value of all stock so issued shall be paid in. With the approval of the board the common stock may be reduced below the requirements contained in K.S.A. 9-901a, and amendments thereto. No preferred stock shall be retired unless the common stock shall be increased in an amount equal to the amount of the preferred stock retired. All preferred stock shall be retired consistent with safety to the depositors. (L. 1989, ch. 48, § 20; July 1.)

9-909. Preferred stock; rights and immunities of holders of preferred stock. The holders of preferred stock shall not be liable for assessments to restore any impairment in the capital stock of a bank or trust company. No dividends shall be declared or paid on common stock until all cumulative dividends, if any, on the preferred stock shall have been paid, and if the bank or trust company is dissolved or placed in liquidation no payments shall be made to the holders of common stock until the holders of the preferred stock first shall have been paid in full for any sums due upon such preferred stock. (L. 1993, ch. 14, § 1; July 1.)

9-910. Dividends from capital stock prohibited; how current dividends paid. No bank or trust company during the time it shall continue in business, shall permit to be withdrawn in the form of dividends, any portion of its capital stock. The current dividends of any bank or trust company shall be paid from undivided profits after deducting losses, to be ascertained by generally accepted accounting principles at the time of making such dividend. Any bank or trust company may reduce its capital stock as provided in this act. (L. 1990, ch. 55, § 1; July 1.)

9-911. Declarations of dividends. The directors of any bank or trust company may declare dividends from the undivided profits, but before the declaration of any dividend each bank or trust company shall transfer 25% of its net profits since the last preceding dividend to its surplus fund, until the surplus fund shall equal the total capital stock. (L. 1989, ch. 48, § 23; July 1.)

→ **9-912. Surplus account; stock dividends from reduction.** Any losses sustained by a bank or trust company in excess of its undivided profits may be charged to its surplus fund. Any bank or trust company, after receiving approval from the commissioner, may declare a stock dividend from its surplus fund, but no such dividend shall reduce the surplus fund to an amount less than 30% of the resulting total capital and any bank or trust company may reduce its surplus with permission of the state banking board. (L. 1989, ch. 48, § 24; July 1.)

Article 10.-BANKING CODE; RESERVES

9-1001. Reserves. Each bank shall maintain reserves against its deposits in such ratios as shall be determined from time to time by the commissioner with approval of the board. Such determinations by the commissioner and the board shall not be subject to the provisions of article 4 of chapter 77 of the Kansas Statutes Annotated, and amendments thereto.

The reserves shall be kept in cash in its vaults or in net balances with correspondent federal reserve banks or a correspondent bank maintaining a balance in a pass through account with a federal reserve bank. A bank shall be given credit against the reserve requirements determined by the commissioner with approval of the board for any reserves held as required by the laws or regulations of the federal government or agencies thereof. (L. 1984, ch. 48, § 3; July 1.)

9-1002 to 9-1004. Repealed.

Article 11.-BANKING CODE; POWERS

→ **9-1101. General powers; maximum interest rates on deposit accounts; investments.** Any bank hereby is authorized to exercise by its board of directors or duly authorized officers or agents, subject to law, all such powers, including incidental powers, as shall be necessary to carry on the business of banking, and:

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

(2) to buy and sell exchange, gold, silver, foreign coin, bullion, commercial paper, bills of exchange, notes and bonds;

(3) to buy and sell bonds, securities, or other evidences of indebtedness of the United States of America or those fully guaranteed, directly or indirectly, by it, and general obligation bonds of the state of Kansas or any municipality or quasi-municipality thereof, and of other states, and of municipalities or quasi-municipalities in other states of the United States of America. No bank shall invest an amount in excess of 15% of its capital stock paid in and unimpaired and the unimpaired surplus fund of such bank in bonds, securities or other evidences of indebtedness of any municipality or quasi-municipality of any other state or states of the United States of America: (a) If and when the direct and overlapping indebtedness of such municipality or quasi-municipality is in excess of 10% of its assessed valuation, excluding therefrom all valuations on intangibles and homestead exemption valuation; (b) or if any bond, security, or evidence of indebtedness of any such municipality or quasi-municipality has been in default in the payment of principal or interest within 10 years prior to the time that any bank acquires any such bonds, security or evidence of indebtedness;

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

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

(6) to buy and sell investment securities which are evidences of indebtedness. The buying and selling of investment securities shall be limited to buying and selling, without recourse marketable obligations evidencing indebtedness of any person, copartnership, association, corporation, or state or federal agency, including revenue bonds issued pursuant to K.S.A. 76-6a15, and amendments thereto, or the state armory board in the form of bonds, notes or debentures or both, commonly known as investment securities, under such further definition of the term "investment securities" as prescribed by the board, but the total amount of such investment securities of any one obligor or maker held by such bank shall at no time exceed 15% of the capital stock paid in and unimpaired and the unimpaired surplus fund of such bank except that this limit shall not apply to obligations of the United States government or any agency thereof. If the obligor is a state agency including any agency issuing revenue bonds pursuant to K.S.A. 76-6a15, and amendments thereto, or the state armory board, the total amount of such investment securities shall at no time exceed 25% of the capital stock paid in and unimpaired and the unimpaired surplus fund of such bank;

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

(8) to subscribe to, buy and own stock in one or more small business investment companies in Kansas as otherwise authorized by federal law, except that in no event shall any bank acquire shares in any small business investment company if, upon the making of that acquisition the aggregate amount of shares in small business investment companies then held by the bank would exceed 5% of its capital and surplus. Nothing in this act contained shall prohibit any bank from holding and disposing of such real estate and other property as it may acquire in the collection of its assets;

(9) to subscribe to, buy and own stock in any agricultural credit corporation or livestock loan company, or its affiliate, organized pursuant to the provisions of the laws of the United States providing for the information and operation of agricultural credit corporations and livestock loan companies, in an amount not exceeding either the undivided profits or 10% of the capital stock and surplus and undivided profits from such bank, whichever is greater;

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

(11) to buy, hold, and sell any type of investment securities not enumerated in this section with approval of the commissioner and upon such conditions and under such regulations as are prescribed by the state banking board;

(12) to act as escrow agent;

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

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

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

(16) to buy, hold and sell mortgages, stock, obligations and other securities which are issued or guaranteed by the federal home loan mortgage corporation under sections 305 and 306 of the federal act known as the federal home loan mortgage corporation act (P.L. 91-351);

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

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

(19) to subscribe to, buy and own stock in a state or federally chartered bankers' bank or a one bank holding company which owns or controls such a bankers' bank, except no bank's investment in such stock shall exceed 10% of its capital stock, surplus and undivided profits;

(20) subject to such rules and regulations as the state bank commissioner may adopt pursuant to K.S.A. 9-1713, and amendments thereto, to promote safe and sound banking practices, upon recorded prior approval by the board of directors of the initial investment in a specific company and pursuant to an investment policy approved by the board of directors which specifically provides for such investments to buy, hold and sell shares of an open-end investment company registered with the federal securities and exchange commission under the federal investment company act of 1940 and the federal securities act of 1933 and of a privately offered company sponsored by an affiliated commercial bank, the shares of which are purchased and sold at par and the assets of which consist solely of securities which may be purchased by the bank for its own account. Such shares may be purchased without limit if the assets of the company consist solely of and are limited to obligations that are eligible for purchase by the bank without limit. If the assets of the company include securities which may be purchased by the bank subject to limitation, such shares may be purchased subject to the limitation applicable to purchase by the bank of such securities (See Special Order 1987-1);

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

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

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

(24) to purchase and hold an interest in life insurance policies on the life of its executive officers and directors, and to purchase life insurance policies for the sole purpose of providing employee deferred compensation and benefit plans subject to the limitations listed herein. If the bank has the authority to direct the investments of the cash surrender value of the policy, those investments shall be limited solely to assets which may be directly purchased by the bank for its own account. The limitations set forth in paragraphs (a) and (b) of this subsection do not apply to any such life insurance policies in place before July 1, 1993. Funding for the payment of employee compensation and benefit plans as well as the benefits derived may be made or split in a joint manner between the bank, employee or bank holding company as in "split dollar" or other insurance plans:

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

(i) The cash surrender value of any life insurance policy on an executive officer or director underwritten by any one life insurance company cannot at any time exceed 15% of the bank's capital stock, surplus, undivided profits, loan loss reserve, capital notes and debentures and reserve for contingency, unless the bank has obtained the prior approval of the state bank commissioner;

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

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

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

(v) the bank's board of directors must approve and document the purchase of any life insurance, including the reasonableness of such purchase; and

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

(b) Life insurance purchased for the sole purpose of providing deferred compensation and benefit plans are subject to the following limitations:

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

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

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

(iv) the bank is not authorized to hold the policies unless specifically approved by the state banking board if no liability exists under the deferred compensation plans;

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

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

(25) subject to rules and regulations as the state bank commissioner may adopt pursuant to K.S.A. 9-1713 and amendments thereto to promote safe and sound banking practices, to act as an agent and receive deposits, renew time deposits, close loans, service loans, and receive payments on loans and other obligations for any company which is a subsidiary, as defined in subsection (d) of K.S.A. 9-519 and amendments thereto of the bank holding company which owns the bank. Nothing in this subsection shall authorize a bank to conduct activities as an agent which the bank or the subsidiary would be prohibited from conducting as a principal under any applicable federal or state law. Any bank which enters or terminates any agreement pursuant to this subsection shall within 30 days of the effective date of the agreement or termination provide written notification to the commissioner which details all parties involved and services to be performed or terminated;

(26) to make loans to the bank's stockholders or the stockholders of the bank's controlling bank holding company on the security of the shares of the bank or shares of the bank's controlling bank holding company, with the limitation that this may occur only if the bank would have extended credit to such stockholder on exactly the same terms without the shares pledged as collateral, and provided the shares pledged are not a director's qualifying shares per K.S.A. 9-1117, and amendments thereto (See Special Order 1995-2); and

(27) to make investments in and loans to community development corporations (CDCs) and community development projects (CD projects) as defined in K.S.A. 9-701 and amendments thereto, subject to the limitations prescribed by the comptroller of the currency as interpreted by rules and regulations which shall be adopted by the state bank commissioner as provided by K.S.A. 9-1713 and amendments thereto.

(28) to participate in a school savings deposit program authorized under section 9. [Editor's note: See new section at K.S.A. 9-1138.] (L. 1997, ch. 180, § 10; May 29.)

*See Special Orders generally for additional powers not specified in this statute.

→ **9-1101a. Issuance of capital notes or debentures, when; limitations.** In accordance with normal business considerations and upon approval of stockholders owning two-thirds of the voting stock of the bank, the bank may issue convertible or nonconvertible capital notes or debentures in such amounts and under such terms and conditions as shall be approved by the state banking board: *Provided*, That the principal amount of capital notes or debentures outstanding at any time shall not exceed an amount equal to one hundred percent (100%) of the bank's paid-in capital stock plus fifty percent (50%) of the amount of its unimpaired surplus fund. Capital notes or debentures which are by their terms expressly subordinated to the prior payment in full of all deposit liabilities of the bank shall be considered as part of the unimpaired capital funds of the bank for purpose of the computation of the bank's loan limit. (L. 1965, ch. 83, § 1; June 30.)

9-1101b. Same; banks ineligible as state depository, when. No bank doing business in the state of Kansas shall be designated as a depository for any state funds by the pooled money investment board if it owns any personal property which was acquired upon the specific request or for the use of a customer, which property is leased to such customer and upon which property no ad valorem property tax is levied and paid by such bank or by the customer leasing the same. (L. 1969, ch. 61, § 2; April 29.)

of its capital stock and surplus for temporary purposes. This limitation shall not apply to any borrowing secured by legal investment securities, for borrowing authorized under the provisions of K.S.A. 1980 Supp. 12-5201 through 12-5218, inclusive, and any amendments thereto or for borrowing authorized under the provisions of public law 94-499[*], the mortgage subsidy bond tax act of 1980. The state bank commissioner may authorize borrowing in excess of such limitation. Any bank may borrow upon legal investment securities and rediscount and endorse in good faith any of its negotiable notes, without limitation.

* Cite should be public law 96-499. (L. 1981, ch. 51, § 1; April 25.)

9-1108. Voluntary liquidation of banks. Upon the affirmative vote of a majority of the outstanding voting stock, any bank may liquidate by paying in full all of its depositors and creditors. Any bank desiring to liquidate voluntarily shall file notice with the commissioner and immediately surrender its certificate of authority to transact a banking business. The commissioner may examine the bank at any time during the period in which it is being liquidated and may compel the bank to file reports with the commissioner during the time it is being liquidated. Upon the completion of the liquidation the bank shall remove all advertising signs, and the commissioner shall make a final examination to determine that all depositors and creditors have been paid before any distribution is made to stockholders. (L. 1996, ch. 175, § 14; April 25.)

9-1109. Borrowing by liquidating bank or trust company. The board of directors of any bank or trust company in the process of voluntary liquidation may borrow a sum of money not in excess of an amount equal to one hundred percent of its total deposit liabilities and may pledge therefor its assets: *Provided*, That the commissioner first must approve any such transaction including the nature and amount of the security. (L. 1947, ch. 102, § 38; June 30.)

9-1110. Sale of bank assets. Upon the affirmative vote of a majority of the outstanding voting stock any bank for the purpose of liquidation, merger or consolidation may sell all or any part of its assets to any other bank, either state or national, and may receive in payment cash or its equivalent, shares of stock in the purchasing bank, or both. (L. 1996, ch. 175, § 15; April 25.)

→ **9-1111. Branch banking; transactions by remote service units authorized; conditions and restrictions; "remote service unit" defined.** The general business of every bank shall be transacted at the place of business specified in its certificate of authority and at one or more branch banks established and operated as provided in this section. Except for the establishment or operation of a trust branch bank or the relocation of an existing trust branch bank pursuant to K.S.A. 1995 Supp. 9-1135 and amendments thereto, it shall be unlawful for any bank to establish and operate any branch bank or relocate an existing branch bank except as hereinafter provided. Notwithstanding the provisions of this section, any location at which a depository institution, as defined by K.S.A. 9-701 and amendments thereto, receives deposits, renews time deposits, closes loans, services loans or receives payments on loans or other obligations, as agent, for a bank pursuant to subsection (28)[25] of K.S.A. 9-1101 and amendments thereto or other applicable state or federal law, or is authorized to open accounts or receive deposits under subsection (28) of K.S.A. 9-1101, and amendments thereto, shall not be deemed to be a branch bank:

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

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

(c) an application to establish and operate a branch bank or to relocate an existing branch bank shall be in such form and contain such information as the rules and regulations of the state bank commissioner, adopted pursuant to K.S.A. 9-1713, and amendments thereto, shall provide;

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

(e) the application shall include the name selected for the proposed branch bank. The name selected for the proposed branch bank shall not be the name of any other bank or branch bank doing business in the same city or town nor shall the name selected be required to contain the name of the applicant bank. If the name selected for the proposed bank does not contain the name of the applicant bank, the branch bank shall provide in the public lobby of such branch bank, a public notice that it is a branch bank of the applicant bank;

(f) the application shall include an affidavit of publication of notice that applicant bank intends to file an application to establish a branch bank or relocate an existing branch bank. The notice shall be published in a newspaper of general circulation in the county where the applicant bank proposes to locate the branch bank. The notice shall be in the form prescribed by the

state banking board and at a minimum shall contain, the name and address of the applicant bank, the location of the proposed branch, a solicitation for written comments concerning the proposed branch be submitted to the state banking board, and provide for a comment period of not less than 10 days prior to the board's final consideration of the application;

(g) upon receipt of an application meeting the above requirements, if there is any written objection to the application filed with the board, within 60 days after receipt of the application, the state banking board shall hold a hearing in the county in which the applicant bank seeks to establish and operate a branch bank. If there is no written objection filed with the board within the time period specified under subsection (f), the board may hold a hearing on the application in such county. Notice of the time, date and place of such hearing if one is to be held shall be published in a newspaper of general circulation in such county by the bank seeking to establish and operate the branch bank not less than 10 or more than 30 days prior to the date of the hearing, and an affidavit of publication thereof shall be filed with the commissioner. Not less than 10 days or more than 30 days prior to any such date of the hearing, the commissioner shall give notice of the time, date and place of such hearing by registered or certified mail to all banks and national banking associations having their principal places of business or branch banks in the county wherein the applicant bank seeks to locate a branch bank. At any such hearing, all interested persons shall be allowed to present written and oral evidence to the board in support of or in opposition to the application. Upon completion of a transcript of the testimony given at any such hearing, the transcript shall be filed in the office of the commissioner and copies shall be furnished to the members of the state banking board not less than 14 days prior to the meeting of the board at which the application will be considered;

(h) the state banking board shall approve or disapprove the application, within 90 days after consideration of the application and the evidence gathered during the board's investigation. If the board finds that:

- (1) There is or will be at the time the branch bank is opened the need for the same in the community to be served by it;
- (2) there is a reasonable probability of usefulness and success of the proposed branch bank;
- (3) the applicant bank's financial history and condition is sound; and

(4) the proposed branch bank can be established without undue injury to properly conducted existing banks and national banking associations, the application shall be granted, otherwise, the application shall be denied;

(i) any final action of the board approving or disapproving an application shall be subject to review in accordance with the act for judicial review and civil enforcement of agency actions upon the petition of any adversely affected or aggrieved person who appeared and offered evidence at the hearing upon the application;

(j) any branch bank lawfully established and operating on the effective date of this act may continue to be operated by the bank then operating the branch bank and by any successor bank;

(k) branch banks which have been established and are being maintained by a bank at the time of its merger into or consolidation with another bank or at the time its assets are purchased and its liabilities are assumed by another bank may continue to be operated by the surviving, resulting or purchasing and assuming bank. The surviving, resulting or purchasing and assuming bank, with approval of the state bank commissioner, may establish and operate a branch bank or banks at the site or sites of the merged, constituent or liquidated bank or banks;

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

(m) as a condition to the operation and use of any remote service unit in this state, a state bank or national banking association, each hereinafter referred to as a bank, which desires to operate or enable its customers to utilize a remote service unit must agree that such remote service unit will be available for use by customers of any other bank or banks upon the request of such bank or banks to share its use and the agreement of such bank or banks to share all costs, including a reasonable return on capital expenditures incurred in connection with its development, installation and operation. The owner of the remote service unit, whether a bank or any other person, shall make the remote service unit available for use by other banks and their customers on a nondiscriminatory basis, conditioned upon payment of a reasonable proportion of all costs, including a reasonable return on capital expenditures incurred in connection with the development, installation and operation of the remote service unit. Notwithstanding the foregoing provisions of this subsection, a remote service unit located on the property owned or leased by the bank where the principal place of business of a bank, or an attached auxiliary teller facility or branch bank of a bank, is located need not be made available for use by any other bank or banks or customers of any other bank or banks;

(n) for purposes of this section, "remote service unit" means an electronic information processing device, including associated equipment, structures and systems, through or by means of which information relating to financial services rendered to the public is stored and transmitted, whether instantaneously or otherwise, to a bank and which, for activation and account access, is dependent upon the use of a machine-readable instrument in the possession and control of the holder of an account with a bank. The term shall include "online" computer terminals and "offline" automated cash dispensing machines and automated

teller machines, but shall not include computer terminals or automated teller machines or automated cash dispensing machines using systems in which account numbers are not machine read and verified. Withdrawals by means of "offline" systems shall not exceed \$300 per transaction and shall be restricted to individual not corporate or commercial accounts. (L. 1997, ch. 180, § 12; May 29.)

* See Special Orders: 1995-5; 1997-2

9-1111a. Repealed.

9-1111b. Applications for branch banks; examinations and investigation fee; disposition and use of fees. A bank making application to the state banking board for approval of a branch bank shall pay to the state bank commissioner a fee, in an amount established by rules and regulations adopted by the commissioner, to defray the expenses of the board, commissioner or other designees in the examination and investigation of the application. The commissioner shall remit all amounts received under this section to the state treasurer who shall deposit the same to a separate special account in the state treasury for each application. The moneys in each such account shall be used only to pay the expenses of the board, commissioner or other designees in the examination and investigation of the application to which it relates and any unused balance shall be transferred to the bank commissioner fee fund. (L. 1992, ch. 62, § 3; July 1.)

9-1111c. Repealed.

9-1111d. Machine readable instruments; unauthorized transactions; liability; definitions. (a) The amount of a depositor's liability for an unauthorized transaction or a series of unauthorized transactions by a machine readable instrument shall not exceed \$50, unless the depositor fails to notify the bank within four business days after learning of the loss or theft of the machine readable instrument, then the depositor's liability shall not exceed \$300.

(b) For purposes of this section:

(1) "Unauthorized transaction by a machine readable instrument" means an electronic fund transfer from a depositor's account initiated by a person other than the depositor without actual authority to initiate the transfer and from which the depositor receives no benefit. The term does not include any electronic fund transfer: (A) Initiated by a person who was furnished with the access device to the depositor's account by the depositor, unless the depositor has notified the bank involved that transfers by that person are no longer authorized; (B) initiated with fraudulent intent by the depositor or any person acting in concert with the depositor; or (C) that is initiated by the bank or its employees.

(2) "To notify the bank" means a depositor takes such steps as are reasonably necessary to provide the bank with the pertinent information, whether or not any particular officer, employee or agent of the financial institution does in fact receive the information. Notice may be given to the bank, at the depositor's option, in person, by telephone or in writing. Notice in writing is considered given at the time the depositor deposits the notice in the mail or delivers the notice for transmission by any other usual means to the bank. Notice is also considered given when the bank becomes aware of circumstances that lead to the reasonable belief that an unauthorized electronic fund transfer involving the depositor's account has been or may be made. (L. 1994, ch. 58, § 1; July 1.)

9-1112. Unlawful transactions. (a) No bank shall buy, sell or trade tangible property as a business or invest in the stock of another bank or corporation, except as specifically authorized.

(b) No bank shall sell, give or purchase any instrument, contract, security or other asset to or from any employee or to or from the bank's parent company or a subsidiary of the bank's parent company without prior approval of the commissioner. Approval of the commissioner need not be obtained for an assignment of third party loans and security for the payment thereof to or from a subsidiary of the bank's parent company.

(c) No bank shall acquire or make a loan on its own shares of stock, or the stock of the bank's parent company or a subsidiary of the bank's parent company except as provided in subsection (d) or except as provided in subsection (26) of K.S.A. 9-1101, and amendments thereto.

(d) A bank may hold or sell any property coming into its ownership in the collection of debts. All such property except legal investments, shall be sold within six months of acquisition, provided a commercially reasonable sale can occur.

(e) If a commercially reasonable sale cannot occur within six months, the bank shall not carry such property as a book asset except that the commissioner may authorize a bank to carry such property as a book asset for a longer period. (L. 1993, ch. 31, § 3; July 1.)

*See Special Orders: 1988-3; 1995-2

(b) Any director who fails to maintain such director's qualifying status, as a result of such director's failure to meet an assessment required by K.S.A. 9-906, and amendments thereto, may continue to serve in such person's capacity as a director, with the prior approval of the state bank commissioner, but only until the capital impairment of such bank or trust company has been resolved or such bank or trust company has been declared insolvent. (L. 1993, ch. 189, § 1; July 1.)

9-1118. Oath of directors and president. Each director shall take and subscribe an oath that such director will administer the affairs of such bank or trust company diligently and honestly and that such director will not knowingly or willfully permit any of the laws relating to banks or trust companies to be violated and each director and the president of a bank or trust company shall swear that such director or president is the owner in good faith of shares of common stock having a par value of at least \$500 of such bank or trust company or in the parent corporation of such bank or trust company standing in such director's or president's name and that the same has not been pledged or assigned, except as authorized by K.S.A. 9-1117, and amendments thereto. A copy of such oath shall be filed with the commissioner. (L. 1989, ch. 48, § 31; July 1.)

9-1119. Certified checks, drafts or orders. No officer or employee of any bank shall certify any check, draft, or order drawn upon such bank unless the maker or drawer of such instrument has moneys or funds equal to the amount of such check, draft or order on deposit with such bank at the time such check, draft or order is certified; but any check, draft or order so certified by any duly authorized officer or employee of ally bank shall be shown immediately upon the books of the bank. (L. 1989, ch. 48, § 32; July 1.)

9-1120. Repealed.

9-1121. Microphotographic reproduction of records and papers; evidence. Any bank or trust company or savings and loan associations may cause any or all records, files, instruments, documents, or papers of any kind at any time in its custody, possession, or files to be reproduced by a nonerasable optical image reproduction provided that additions, deletions or changes to the original document are not permitted by the technology, or a photostatic, microfilm, microcard, miniature photographic or other photographic process. Any reproduction so made shall have the same force and effect as the original thereof, and shall be admitted in evidence before any court or governmental commission, bureau, agency, or department equally with the original, and without the necessity of proving inability to produce the original thereof. (L. 1995, ch. 20, § 1; July 1.)

9-1122. Closing one business day a week; notice. Any bank or trust company may remain closed on any one business day of every week or may make a permanent change in bank hours of business, upon the adoption by its board of directors of a resolution authorizing the same to be done, and the posting of the resolution in a conspicuous place within the bank or trust company premises at least fifteen (15) days in advance of any such closing. Thereafter, the bank or trust company may remain closed on the business day of every week designated in the resolution, or may operate under the changed bank hours designated in the resolution, and the resolution and the posting thereof shall control until the same be repealed or amended by subsequent resolution which shall require the same procedure in order to be effective. If the business day designated in any resolution regarding closing is a legal public holiday, the bank or trust company may close on the business day preceding or following the legal public holiday.

Should a legal public holiday fall on Sunday, any bank or trust company may close on the next preceding or following business day.

(b) Every day on which any bank or trust company shall remain closed pursuant to this act shall be deemed a holiday for all of the purposes of chapter 84 of the Kansas Statutes Annotated, and amendments thereto, and with respect to any banking business of any character. No bank or trust company shall be required to permit access to its safe, deposit vault or vaults on any such day. Where a contract by its terms requires the payment of money or the performance of a condition on any such day by, through, with or at any bank or trust company, then the payment may be made or condition performed on the next business day with the same force and effect as if made or performed in accordance with the terms of the contract. No liability or loss of rights of any kind shall result from the delay.

(c) The posting of the notice provided for in this section shall be notice to everyone of the closing or change in hours of the bank or trust company, and thereafter no liability shall be incurred by the bank or trust company by reason of closing or changing the bank hours pursuant to this act.(L. 1996, ch. 175, § 13; April 25.)

→ **9-1123. Bank service corporations; investments in; definitions.** For the purposes of this act:

(a) The term "bank service corporation" means a corporation organized to perform services authorized by this act, all of

the capital stock of which is owned by one or more state or national banks at least one of which is a state bank subject to examination by the bank commissioner.

(b) The term "invest" includes any advance of funds to a bank service corporation, whether by the purchase of stock, the making of a loan or otherwise, except a payment for rent earned, goods sold and delivered or services rendered prior to the making of such payment.

(c) The term "depository institution" means a state or national bank, savings and loan association, savings bank or credit union. (L. 1989, ch. 48, § 33; July 1.)

9-1124. Same; investment by banks; limitations. No limitation or prohibition otherwise imposed by any provision of state law exclusively relating to banks shall prevent any state bank or banks from investing not more than 10% of the paid-in and unimpaired capital and unimpaired surplus in a bank service corporation. No bank shall invest more than 5% of its total assets in bank service corporations. (L. 1984, ch. 48, § 11; July 1.)

9-1125. Same; unreasonable discrimination in providing services prohibited; exceptions. No bank service corporation shall unreasonably discriminate in the provision of any services authorized under this act to any depository institution that does not own stock in the service corporation on the basis of the fact that the nonstockholding institution is in competition with an institution that owns stock in the bank service corporation, except:

(a) It shall not be considered unreasonable discrimination for a bank service corporation to provide services to a nonstockholding institution only at a price that fully reflects all of the costs of offering those services, including the cost of capital and a reasonable return thereon; and

(b) a bank service corporation may refuse to provide services to a nonstockholding institution if comparable services are available from another source at competitive overall costs or if the providing of services would be beyond the practical capacity of the service corporation. In any action or proceeding to enforce the duty imposed by this section, or for damages for the breach thereof, the burden shall be upon the bank service corporation to show such availability or practical capacity. (L. 1984, ch. 48, § 12; July 1.)

9-1126, 9-1127. Repealed.

9-1127a. Same; services which may be performed for depository institutions. Without regard to the provisions of K.S.A. 9-1127b and 9-1127c, a state bank may invest in a bank service corporation that performs, and a bank service corporation may perform, the following services only for depository institutions:

(a) Check and deposit sorting and posting, computation and posting of interest and other credits and charges;

(b) preparation and mailing of checks, statements, notices and similar items; or

(c) any other clerical, bookkeeping, accounting, statistical or similar functions performed for a depository institution. (L. 1984, ch. 48, § 6; July 1.)

9-1127b. Same; services which may be provided by corporations; restrictions. (a) A bank service corporation may provide to any person any service authorized by this section, except that a bank service corporation shall not take deposits.

(b) Except with the prior approval of the state bank commissioner and the state banking board, a bank service corporation shall not perform the services authorized by this section in any state other than this state and all shareholders of a bank service corporation shall be located in this state.

(c) A bank service corporation in which a state bank is a shareholder shall perform only those services that such state bank shareholder is authorized to perform under the law of this state and shall perform such services only at locations in this state in which such bank shareholder could be authorized to perform such services.

(d) A bank service corporation in which a national bank is a shareholder shall perform only those services that such national bank shareholder is authorized to perform under federal law and shall perform such services only at locations in this state at which such national bank shareholder could be authorized to perform such services.

(e) A bank service corporation that has both national bank and state bank shareholders shall perform only those services that may lawfully be performed by both its national bank shareholder or shareholders under federal law and its state bank shareholder or shareholders under the law of this state and shall perform such services only at locations in this state at which both its state bank and national bank shareholders could be authorized to perform such services.

(f) Notwithstanding the other provisions of this section or any other provision of law, other than the provisions of federal branching law and the branching law of this state regulating the geographic location of banks to the extent that those laws are applicable to an activity authorized by this subsection, a bank service corporation may perform at any geographic location any service, other than deposit taking, that the board of governors of the federal reserve system has determined,

by regulation, to be permissible for a bank holding company under section 4(c)(8) of the federal bank holding company act. (L. 1984, ch. 48, § 7; July 1.)

9-1127c. Same; investments in corporations performing certain services under 9-1127b; approval required. (a) No state bank shall invest in the capital stock of a bank service corporation that performs any service under the authority of subsections (c), (d) or (e) of K.S.A. 9-1127b without the prior approval of the state bank commissioner and the state banking board.

(b) No state bank shall invest in the capital stock of a bank service corporation that performs any service under authority of subsection (f) of K.S.A. 9-1127b and no bank service corporation shall perform any activity under subsection (f) and K.S.A. 9-1127b without the prior approval of the state bank commissioner and the state banking board.

(e) In determining whether to approve or deny any application for prior approval under this section, the state bank commissioner and the state banking board are authorized to consider the financial and managerial resources and future prospects of the bank or banks and bank service corporation involved, including the financial capability of the bank to make a proposed investment under this act, and possible adverse affects such as undue concentration of resources, unfair or decreased competition, conflicts of interest or unsafe or unsound banking practices.

(d) In the event the state bank commissioner and the state banking board fail to act on any application under this section within 90 days of the submission of a complete application to them, the application shall be deemed approved. (L. 1984, ch. 48, § 8; July 1.)

9-1127d. Same; services performed for bank or subsidiary or affiliate; regulation and examination by commissioner; rules and regulations. (a) Whenever a bank, or any subsidiary or affiliate of such bank that is subject to examination by the state bank commissioner, causes to be performed for itself, by contract or otherwise, any services authorized under this act on or off its premises:

(1) Such performance shall be subject to regulation and examination by the state bank commissioner to the same extent as if such services were being performed by the bank itself on its own premises; and

(2) the bank shall notify the state bank commissioner of the existence of the service relationship within 30 days after the making of such service contract or the performance of the service, whichever occurs first.

(b) The state bank commissioner and the state banking board are authorized to adopt such rules and regulations as may be necessary to enable them to administer and carry out the purpose of this act and to prevent evasions thereof. (L. 1984, ch. 48, § 9; July 1.)

9-1128. Deposits by banks or trust companies acting as fiduciaries or custodians for fiduciaries of certain securities guaranteed by the United States or agencies thereof; rules and regulations; records of ownership; certifications of deposit. Notwithstanding any other provision of law, any bank or trust company when acting as fiduciary, and any bank or trust company when holding securities as custodian for a fiduciary, is authorized to deposit, or arrange for the deposit, with the federal reserve bank in its district of any securities the principal and interest of which the United States or any department, agency or instrumentality thereof has agreed to pay, or has guaranteed payment, to be credited to one or more accounts on the books of said federal reserve bank in the name of such bank or trust company, to be designated fiduciary or safekeeping accounts, to which account other similar securities may be credited. A bank or trust company so depositing securities with a federal reserve bank shall be subject to such rules and regulations with respect to the making and maintenance of such deposit as, in the case, of a state bank incorporated under the laws of this state, the state bank commissioner, and, in the case of national banking associations, the comptroller of the currency, may from time to time adopt and promulgate. Any such rules and regulations of the state bank commissioner shall be adopted and promulgated in the manner provided by K.S.A. 9-1713, and amendments thereto. The records of such bank or trust company shall at all times show the ownership of the securities held in such account. Ownership of, and other interests in, the securities credited to such account may be transferred by entries on the books of said federal reserve bank without physical delivery of any securities. A bank or trust company acting as custodian for a fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the securities so deposited by such bank or trust company with such federal reserve bank for the account of such fiduciary. A fiduciary shall, on demand by any party to its accounting or on demand by the attorney for such party, certify in writing to such party the securities deposited by such fiduciary with such federal reserve bank for its account as such fiduciary. (L. 1974, ch. 43, § 1; July 1.)

9-1129. Same; application of act. This act shall apply to all banks and trust companies acting as fiduciaries, and as custodians for fiduciaries, on the effective date of this act or which thereafter may so act regardless of the date of the instrument or court order by which they are appointed. (L. 1974, ch. 43, § 2; July 1.)

following the examination provided in subsection (a), of such bank or trust company. Such an exit review shall be conducted when requested by the board of directors or management of the bank or trust company. Minutes shall be kept at all exit review meetings by the bank in any manner the bank determines to be appropriate. (L. 1991, ch. 47, § 1; July 1.)

→ **9-1702. Examination of fiduciaries and affiliated organizations.** If upon the examination of any bank or trust company the state banking board shall deem it necessary, the commissioner hereby is authorized to make or have made by the commissioner's assistant or examiners an examination of the fiduciary affairs of any officer or employee of any bank or trust company which officer or employee is serving in any fiduciary capacity; and upon similar determination by the state banking board the commissioner hereby is authorized to make or have made by the commissioner's assistant or examiners an examination of any investment company or holding company or corporation which is affiliated with any bank or trust company. (L. 1975, ch. 44, § 30; July 1.)

9-1703. Annual assessment, banks, and trust companies and savings and loan associations; examinations; disposition of receipts; bank commissioner fee fund. (a) The expense of every regular examination, together with the expense of administering the banking and savings and loan laws, including salaries, travel expenses, supplies and equipment, shall be paid by the banks and savings and loan associations of the state, and for this purpose the bank commissioner shall, prior to the beginning of each fiscal year, make an estimate of the expenses to be incurred by the department during such fiscal year. From this total amount the commissioner shall deduct the estimated amount of the anticipated annual income to the fund from all sources other than bank and savings and loan association assessments. The commissioner shall allocate and assess the remainder to the banks and savings and loan associations in the state on the basis of their total assets, as reflected in the last March 31 report called for by the federal deposit insurance corporation under the provisions of section 7 of the federal deposit insurance act, 12 USC 1817 and amendments thereto or K.S.A. 17-5610 and amendments thereto, except that the annual assessment will not be less than \$1,000 for any bank or savings and loan association.

(b) The expense of every regular trust examination, together with the expense of administering trust laws, including salaries, travel expenses, supplies and equipment, shall be paid by the trust companies and trust departments of banks of this state, and for this purpose, the bank commissioner, prior to the beginning of each fiscal year, shall make an estimate of the trust expenses to be incurred by the department during such fiscal year. The commissioner shall allocate and assess the trust departments and trust companies in the state on the basis of their total fiduciary assets, as reflected in the last December 31 report filed with the commissioner pursuant to K.S.A. 9-1704 and amendments thereto, except that the annual assessment will not be less than \$1,000 for any active trust department or trust company. A trust department or a trust company which has no fiduciary assets, as reflected in the last preceding year-end report filed with the commissioner, may be granted inactive status by the commissioner and the annual assessment shall not be more than \$100 for an inactive trust department or trust company. No inactive trust department or trust company shall accept fiduciary assets or exercise any part of or all of its trust authority until such time as it has applied for and received prior written approval of the commissioner to reactivate its trust authority.

(c) A statement of each assessment made under the provisions of subsection (a) or (b) shall be sent by the commissioner to each bank, savings and loan association, trust department and trust company on July 1 or the next business day thereafter. If a bank, savings and loan association or trust company exits as a corporate entity with the secretary of state's office as of the close of business June 30, and is authorized by the office of the state bank commissioner to conduct banking, savings and loan or trust business, one-half of the amount so assessed shall be due and payable on or before July 15. If a bank, savings and loan association or trust company exists as a corporate entity with the secretary of state's office as of close of business on December 31, and is authorized to conduct banking, savings and loan or trust business, the remaining one-half of the amount assessed shall be due and payable on or before January 15. Any expenses incurred or services performed on account of any bank, trust department or trust company or other corporation which are outside of the normal expense of an examination required under the provisions of K.S.A. 9-1701, and amendments thereto or K.S.A. 17-5612 and amendments thereto, shall be charged to and paid by the corporation for whom they were incurred or performed. The commissioner may impose a penalty upon any bank, savings and loan association, trust department or trust company which fails to pay its annual assessment. The penalty shall be assessed in the amount of \$50 for each day the assessment is not paid. The counting period for such penalty shall begin February 1 or August 1.

The bank commissioner shall remit all moneys received by or for such commissioner from such examination fees to the state treasurer at least monthly. Upon receipt of each remittance, the state treasurer shall deposit the entire amount in the treasury. Twenty percent of each deposit shall be credited to the state general fund and the balance shall be credited to the bank commissioner fee fund. All expenditures from the bank commissioner fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the bank commissioner or by a person or persons designated by the commissioner.

(d) As used in this section, "savings and loan association" means a Kansas state-chartered savings and loan association.

(e) In the event a bank, savings and loan association or trust company is merged into, consolidated with, or the assets and liabilities of which are purchased and assumed by another bank, savings and loan association or trust company, between the preceding March 31, for bank and savings and loan associations, or the preceding December 31, for trust companies,

(b) All confidential information shall be the property of the state of Kansas and shall not be subject to disclosure except upon the written approval of the state bank commissioner.

(c) The commissioner shall give 10 days prior written notice of intent to disclose confidential information to the affected bank or trust company, except that, such confidential information shall not apply to reports filed pursuant to K.S.A. 9-2014, and amendments thereto.

(d) Any bank or trust company receiving notice as provided in subsection (c), may object to the disclosure of the confidential information and shall be afforded the right to a hearing in accordance with the provisions of the Kansas administrative procedure act.

(e) As used in this section, "information" means, but is not limited to, all documents, oral and written communication and all electronic data.

(f) Any person who violates this section, upon conviction, shall be guilty of a class C misdemeanor. (L. 1990, ch. 62, § 1; July 1.)

→ **9-1713. Adoption of rules and regulations by commissioner; approval of board; mailing.** The state bank commissioner shall adopt such rules and regulations as shall be necessary to carry out the intent and purposes of K.S.A. 9-701 *et seq.*, commonly known as the state banking code. All rules and regulations of general application shall first be submitted by the commissioner to the state banking board for its approval and upon approval shall be filed as provided by article 4 of chapter 77 of the Kansas Statutes Annotated. (L. 1984, ch. 48, § 15; July 1.)

9-1714. Appointment of special deputy bank commissioner, when; appeal to board; hearing, decision. Whenever the state bank commissioner shall determine that the business of any bank or trust company is being conducted in an unlawful or unsound manner, such commissioner may appoint a special deputy bank commissioner who shall immediately take charge of the operation of such bank or trust company for the purpose of correcting any unlawful or unsound condition or operation. Such appointment shall be made in accordance with the provisions of K.S.A. 77-536 and amendments thereto. After appointment, the special deputy bank commissioner shall continue to serve under the direction of the commissioner for such period of time as may be deemed reasonable and necessary by the commissioner, or until relieved by order of the state banking board, and, during such period, such special deputy bank commissioner's salary, which shall be determined by the commissioner, and expenses shall be borne by the bank or trust company under supervision. After such appointment, any such bank [or trust company] shall have the right within 15 days from the date of the notice of such appointment to appeal in writing to the state banking board, and upon such appeal, the state banking board shall fix a date for a hearing, which hearing shall be within 30 days from the date of such appeal and shall be conducted in accordance with the provisions of the Kansas administrative procedure act. The board shall render an order as to the correctness or incorrectness of the commissioner's decision to take over the conduct of such bank or trust company, and the order of such board shall be final and conclusive. (L. 1988, ch. 356, § 40; July 1, 1989.)

9-1715. Authority to engage in activities authorized for national banks; powers of bank commissioner, limitations; report to legislature. (a) The commissioner shall have the power to authorize any or all state banks to engage in any activity in which such banks could engage were they operating as national banks at the time such authority is granted, including but without limitation because of enumeration the power to do any act, and own, possess and carry as assets, property of such character including stocks, bonds, or other debentures which at the time authority is granted, is authorized under federal laws and regulations to be done by national banks notwithstanding any restriction elsewhere contained in the statutes of the state of Kansas. This power shall include the power to authorize any or all Kansas trust companies to engage in any trust related activity in which the trust department of a national bank with trust powers could engage at the time authority is granted. This power shall be in addition to any and all other powers granted to the commissioner.

(b) The commissioner shall exercise the power granted in this subsection (a) by the issuance of a special order if the commissioner deems it reasonably required to preserve and protect the welfare of a particular institution, or if the commissioner deems it reasonably required to preserve the welfare of all state banks or trust companies and to promote competitive equality of state and national banks. Such special order shall provide for the effective date thereof and upon and after such date shall be in full force and effect until amended or revoked by the commissioner. Promptly following issuance, the commissioner shall cause a copy of each special order to be mailed to all state banks and trust companies.

(c) The commissioner, at the time of issuing any special order pursuant to this section, shall submit a written report

(d) any acquiring person neglects, fails or refuses to furnish the commissioner all the information required by the commissioner. (L. 1984, ch. 47, § 5; Jan. 1, 1985.)

9-1724. Merger, consolidation or transfer of assets and liabilities; information to be filed with commissioner; investigation; fees. (a) Before any bank can merge, consolidate with or transfer its assets and liabilities under the provisions of article 67 or article 68 of chapter 17 of the Kansas Statutes Annotated, the bank concerned in such merger, consolidation or transfer shall file, or cause to be filed, with the state banking commissioner, certified copies of all proceedings had by its directors and stockholders relating to such merger, consolidation or transfer. The stockholders' proceedings shall show that a majority of the outstanding voting stock was voted in favor of the merger, consolidation or transfer. The stockholders' proceedings shall also contain a complete copy of the agreement made and entered into by the bank, with reference to such merger, consolidation or transfer. The provisions of this act shall not apply to the merger, consolidation or transfer of assets and liabilities of a bank when the surviving entity is a national banking association or other federally chartered financial institution, except that the bank shall provide written notification to the state bank commissioner of such merger, consolidation or transfer of assets and liabilities at least 10 days prior to its consummation. In addition, not more than 15 days following such a merger, consolidation or transfer of assets and liabilities, the bank shall surrender its state certificate of authority or charter and shall certify in writing that the proper instruments as required by the Kansas general corporation code have been filed in accordance with K.S.A. 17-6003, and amendments thereto.

Upon the filing of the stockholders and directors' proceedings, the commissioner shall make an investigation of each party to the merger, consolidation or transfer to determine whether:

- (1) The interests of the depositors, creditors and stockholders of the bank are protected;
- (2) the merger, consolidation or transfer is in the public interest; and
- (3) the merger, consolidation or transfer is made for legitimate purposes.

The commissioner's consent to or rejection of such merger, consolidation or transfer shall be based upon such investigation. No merger, consolidation or transfer shall be made without the consent of the commissioner. At the time of filing the request for merger, consolidation or transfer, a fee shall be paid to the commissioner in an amount established by rules and regulations adopted by the commissioner.

Notice of the merger, consolidation or transfer shall be published at least once each week for three consecutive weeks before or after the merger, consolidation or transfer is to become effective, at the discretion of the commissioner, in a newspaper of general circulation published in each city or county in which the bank is located and a certified copy of the notice shall be filed with the commissioner.

(b) As used in this section, "bank" means a state bank or trust company incorporated under the laws of Kansas. (L. 1995, ch. 19, § 2; July 1.)

*See Special Orders: 1992-1; 1995-5

Article 18.-BANKING CODE; SUPERVISION; BOARD

➔ **9-1801. Application for incorporation or for certificate of authority to be filed with the board; acceptance and approval of application for incorporation and authority to do business by commissioner, when.** (a) No bank or trust company hereafter shall be organized or incorporated under the laws of this state, nor shall any such institution transact either a banking business or a trust business in this state, until the application for its incorporation and application for authority to do business has been submitted to and approved by the board. The board shall approve or disapprove the organization and establishment of any such institution in the city or town in which the same is sought to be located. The form for making any such application shall be prescribed by the board and any application made to the board shall contain such information as it shall require. The board shall not approve any such application until it first investigates and examines such application and the applicants.

(b) If upon the dissolution, insolvency or appointment of a receiver of any bank, trust company, national bank association, savings and loan association, savings bank or credit union, it is the opinion of the commissioner that by reason of the loss of services in the community, an emergency exists which may result in serious inconvenience or losses to the depositors or the public interest in the community, the commissioner may accept and approve an application for incorporation and application for authority to do business from applicants for the organization and establishment of a successor bank or trust company, subject to confirmation and subsequent approval by the board. Upon approval of an application for the organization and establishment of any such successor bank or trust company, the commissioner shall no later than the next regular meeting of the board submit such application to the board for its confirmation and approval. (L. 1994, ch. 51, § 6; April 7.)

→ **9-1802. Investigation and examination; approval or disapproval of application; two or more applications to serve same territory.** Upon the filing of any such application with the state banking board, such board shall make, or cause to be made, a careful examination and investigation concerning: (a) The financial standing, general business experience and character of the organizers and incorporators; (b) the character, qualifications and experience of the officers of the proposed bank or trust company; (c) the public need for the proposed bank or trust company in the community wherein it is proposed to locate the same and whether existing banks or trust companies are meeting such need; (d) the prospects for success of the proposed bank or trust company. If the board shall determine any of such matters unfavorably to the applicants, the application shall be disapproved, but if not, then the application shall be approved. The board shall not make membership in any federal government agency a condition precedent to the granting of any application for incorporation and authority to do business.

In the event two or more applications for incorporation and authority to do business seeking to serve the same general territory are pending before the board, and the board determines all of such matters favorably in two or more such applications, the board may approve the application of the proposed bank or trust company which it determines will best serve the needs of the territory sought to be served. If one or more such applications seeking to serve a territory are pending before the board, and the board has determined all of such matters favorably in one or more of such applications, and there also is pending before the board an application of an existing bank or trust company to change its place of business to serve the same territory which the board determines should be approved, and the board determines that there is public need for only one bank or trust company to serve the territory, the board may approve the application of the existing bank or trust company to change its place of business and disapprove the application or applications for incorporation and authority to do business. (L. 1989, ch. 48, § 47; July 1.)

→ **9-1803. Expenses of examination and investigation; payment; use and disposition of moneys received.** All expenses incurred in making any examination and investigation under K.S.A. 9-1802, and amendments thereto, shall be paid by the applicants, who shall pay to the commissioner a fee in an amount established by rules and regulations adopted by the commissioner to defray all such expenses. The commissioner shall remit all amounts received under this section to the state treasurer who shall deposit the same to a separate special account in the state treasury for each application. The moneys in each such account shall be used only to pay the expenses of the examination and investigation to which it relates and any unused balance shall be transferred to the bank commissioner fee fund. Any members of the board who make such an examination or investigation shall be paid the sum of \$35 per them for the time they actually are engaged in performing their duties as members of such board, and in addition thereto, shall be paid all their actual and necessary expenses incurred in the performance of such duties from such funds. (L. 1992, ch. 62, § 6; July 1.)

→ **9-1804. Place of business; change of; application, investigation and approval; expenses of examination and investigation; payment; use and disposition of moneys received.** No bank or trust company incorporated under the laws of this state shall change its place of business, from one city or town to another or from one location to another within the same city or town, without the prior approval of the state banking board. Any such bank or trust company desiring to change its place of business shall file written application with the board in such form and containing such information as the board shall require. The board shall examine and investigate the application, and shall inquire into the public necessity for such bank or trust company in the community wherein it is proposed to locate the same, and shall approve or disapprove the application. The expenses of such examination and investigation shall be paid by the bank or trust company which shall deposit with the commissioner a fee in an amount established by rules and regulations adopted by the commissioner. Any members of the board who make such an examination or investigation shall be paid the sum of \$35 per them for the time they actually are engaged in performing their duties as members of such board, and in addition shall be paid all their actual and necessary expenses incurred in the performance of such duties from such funds. The commissioner shall remit all amounts received under this section to the state treasurer who shall deposit the same to a separate special account in the state treasury for each application. The moneys in each such account shall be used only to pay the expenses of the examination and investigation to which it relates, and any unused portion of such deposit shall be transferred to the bank commissioner fee fund. (L. 1992, ch. 62, § 7; July 1.)

*See Special Order 1995-5

→ **9-1805. Removal of officer or director; hearing; judicial review.** (a) If the board finds in accordance with this section that any officer or director of any bank or trust company has been dishonest, reckless or incompetent in performing duties as such officer or director or willfully or continuously fails to observe any legally made order of the commissioner or board, the board may remove such officer or director.

(b) Prior to removing such officer or director, the board shall conduct a hearing in accordance with the provisions of the Kansas administrative procedure act.

(c) The board may recess or continue any hearing from time to time. If upon the conclusion of such hearing the board determines that the officer or director has been dishonest, reckless or incompetent in performing duties as such an officer or director, or has willfully or continuously failed to comply with any legally made order of the commissioner or board, the board may order the officer's or director's office forfeited and vacated. The board shall mail a copy of its order to the bank or trust company which such officer or director was serving. During the time from and after any legally made order by the commissioner and upheld by the board, or order made by the board, and not complied with by any officer or director the board may place a special deputy in the bank up to and until the final disposition of the order by compliance or final disposition by order of the district court.

(d) Any action of the board pursuant to this section is subject to review in accordance with the act for judicial review and civil enforcement of agency actions. If on review the court upholds an order of the board removing an officer or director or if review of such an order is not sought within the time allowed by law, the office of the officer or director shall be forfeited and vacated by law and such office shall then be filled in accordance with existing statutes and bylaws by another person or persons. (L. 1988, ch. 356, § 43; July 1, 1989.)

→ **9-1806. Maximum interest rate established by board; notice and hearing.** The state recognizes that a bank may pay an excessive rate of interest on deposits and that a continuation thereof will result in all impairment of its capital stock and a loss to its depositors. Hence, it is declared to be the policy of this state that all depositors and creditors of a bank should be protected therefrom and for that purpose the board shall have authority to prescribe the maximum rate of interest to be paid by any bank on its deposits, which maximum rate shall be established in the following manner.

The board in a notice signed by the commissioner, shall notify such bank that it believes that such bank is paying an excessive rate of interest on its deposits and that a hearing thereon will be held before the board at its next regular meeting which shall not be less than 20 days from the day such notice is given. The board may recess or continue any hearing from time to time. If upon the conclusion of such hearing the board determines that the rate of interest paid by such bank on its deposits will result in an impairment of its capital stock, the board may prescribe the maximum rate of interest to be paid by such bank upon its deposits. Any order so made shall not impair the validity of existing contracts.

Hearings under this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act. (L. 1989, ch. 48, § 49; July 1.)

→ **9-1807. Cease and desist orders; institution of proceedings by commissioner; hearing by board; issuance; temporary orders of commissioner.** If the state bank commissioner shall determine that any bank or trust company is engaging or has engaged, or the commissioner has reasonable cause to believe that the bank or trust company is about to engage, in an unsafe or unsound practice in conducting the business of such bank or trust company, or if the commissioner shall determine that any bank or trust company is violating or has violated, or the commissioner has reasonable cause to believe that the bank or trust company is about to violate a law, rule, regulation or order of the commissioner or state banking board, the commissioner may issue and serve upon the bank or trust company a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged unsafe or unsound practice or practices or the alleged violation or violations, and shall state the time and place at which a hearing will be held by the board to determine whether an order to cease and desist therefrom should be issued by the board against the bank or trust company. Such hearing shall be fixed for a date not earlier than thirty (30) days nor later than sixty (60) days after service of such notice.

Unless the bank or trust company shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the cease and desist order. In the event of such consent, or if upon the record made at any such hearing, the board shall find that any unsafe or unsound practice or violation specified in the notice of charges has been established, the board may issue and serve upon the bank or trust company an order to cease and desist from any such practice or violation. Such order may, by provisions which may be mandatory or otherwise, require the bank or trust company and its directors, officers, employees and agents to cease and desist from the same, and, further, to take affirmative action to correct the conditions resulting from any such practice or violation. A cease and desist order shall become effective at the time specified therein, and shall remain effective and enforceable as provided therein, except to such extent as it is stayed, modified, terminated or set aside by action of the board.

Whenever the commissioner shall determine that the unsafe or unsound practice or practices or the violation or violations specified in the notice of charges served upon the bank or trust company, or the continuation thereof, is likely to cause insolvency or substantial dissipation of assets or earnings of the bank or trust company, or is likely to otherwise seriously prejudice the interests of its depositors, the commissioner may issue a temporary order requiring the bank or trust company to cease and desist from any such practice or practices or violation or violations. Such order shall be effective upon service thereof upon the bank or trust company, and shall remain effective and enforceable pending the completion of the proceedings pursuant to such notice and until such time as the board shall dismiss the charges specified in such notice, or if a cease and desist order is issued against the bank or trust company, until the effective date of any such order. (L. 1975, ch. 44, § 1; July 1.)

➤ **9-1808. Definition of bankers' bank; approval of application for organization.** (a) As used in this section, "bankers' bank" means a state bank which is owned exclusively, except to the extent directors' qualifying shares are required by law, by other state banks, federally chartered banks or a one bank holding company and is organized to engage exclusively in providing services for other state banks or federally chartered banks and their officers, directors and employees.

(b) The state banking board may approve the application for the organization of a state bankers' bank under the provisions of K.S.A. 9-1801 *et seq.*, and amendments thereto. (L. 1988, ch. 56, § 1; July 1.)

Article 19.—BANKING CODE; DISSOLUTION; INSOLVENCY

9-1901. Dissolution by district court; procedure. Any corporation transacting business under this act may be dissolved by the district court of the county in which its place of business is located, in the following manner: A verified petition shall be filed in the office of the clerk of said court, signed by the president or a majority of the board of directors, setting forth that stockholders representing two-thirds in amount of the stock of such association have adopted a resolution favoring such dissolution, and directing proceedings to be instituted for that purpose, a copy of which resolution shall set forth that all claims and demands against such association have been paid and discharged; and thereupon a notice shall be published for the time and in the manner prescribed by the law for service by publication. Such notice shall state the name of the court in which the petition has been filed, the substance and purpose thereof, and that unless objections are filed thereto on or before a time to be stated, which shall not be less than forty-one days from the first publication, the relief prayed for will be granted.

A copy of such notice shall be sent to the bank commissioner within ten days after the first publication thereof, and the commissioner shall, within thirty days thereafter, make a thorough examination of the affairs of such bank, and file a certified copy of the report with said petition. Any creditor or stockholder may, on or before the time fixed by the notice, and afterwards, if permitted by the court, file written objections to the dissolution of such corporation. The petition and objections thereto, if any, shall stand for hearing the same as a civil action; and if upon the hearing thereof the court shall be satisfied that the petition is true, and that there is no valid objection to the dissolution of such corporation, it shall render judgment dissolving the same. (L. 1947, ch. 102, § 109; June 30.)

9-1902. Definition of insolvency. A bank or trust company shall be deemed to be insolvent when (1) the actual cash market value of its assets is insufficient to pay its creditor liabilities except that for this purpose unconditional evidence of indebtedness of the United States of America may be valued, at the discretion of the commissioner, at par or cost whichever is the lesser; (2) when it is unable to meet the demands of its creditors in the usual and customary manner; (3) when it shall fail to make good its reserve as required by this act. (L. 1980, ch. 49, § 2; July 1.)

9-1902a. Undercapitalized, when. A bank or trust company is critically undercapitalized when the ratio of its capital to total assets is equal to or less than 2.0%. For the purposes of this section, capital shall be the sum total of the institution's common stock, surplus, undivided profits, capital reserves, noncumulative perpetual preferred stock and outstanding cumulative perpetual preferred stock (including related surplus). (L. 1993, ch. 7, § 1; March 18.)

9-1903. Undercapitalized and insolvent banks and trust companies; commissioner to take charge, when. If it shall appear upon the examination of any bank or trust company or from any report made to the commissioner that any bank or trust company is critically undercapitalized, the commissioner may take charge of such bank or trust company and all of its property and assets. If from such examination or reports it shall appear

as stockholders in such trust company, but the person pledging such stock shall be considered as holding same, and shall be liable as stockholder accordingly. Any executor, administrator, conservator or trustee holding trust company stock shall be liable in like manner as the testator or intestate or the conservatee or person interested in such trust fund would have been if such person had been living and competent to act and hold the same stock in such person's own name. (L. 1989, ch. 48, § 4; July 1.)

9-2105. Fiduciary or pledger to represent stock; right to vote. Every executor, administrator, conservator or trustee holding shares of stock may vote as a shareholder and every person who shall pledge such person's stock, nevertheless, may represent the same at all meetings and may vote accordingly as a shareholder. (L. 1989, ch. 48, § 5; July 1.)

→ **9-2106. Name of trust company.** No trust company shall take the name of any other trust company incorporated in the state of Kansas, or a name so near like another as to be easily confused with it. No trust company shall change its name until such name change has been submitted to and approved by the state banking board. The bank commissioner shall have power to refuse authority to any trust company violating this provision. (L. 1989, ch. 48, § 6; July 1.)

9-2107. Allowing for the contracting for trust services; definitions; notice filing; authority of commissioner; fees; examination; branches. (a) As used in this section:

(1) "Contracting trustee" means any trust company, as defined in K.S.A. 9-701, and amendments thereto, any bank that has been granted trust authority by the state bank commissioner under K.S.A. 9-1602, and amendments thereto, or any national bank chartered to do business in Kansas that has been granted trust authority by the comptroller of the currency under 12 USC 92a, or any bank, regardless of where located, that has been granted trust authority and which is controlled, as defined in K.S.A. 9-1612 and amendments thereto by the same bank holding company as any trust company, state bank or national bank chartered to do business in Kansas, which accepts or succeeds to any fiduciary responsibility as provided in this section;

(2) "originating trustee" means any trust company, bank, national banking association, savings and loan association or savings bank which has trust powers and its principal place of business is in this state and which places or transfers any fiduciary responsibility to a contracting trustee as provided in this section;

(3) "financial institution" means any bank, national banking association, savings and loan association or savings bank which has its principal place of business in this state but which does not have trust powers.

(b) Any contracting trustee and any originating trustee may enter into an agreement by which the contracting trustee, without any further authorization of any kind, succeeds to and is substituted for the originating trustee as to all fiduciary powers, rights, duties, privileges and liabilities with respect to all accounts for which the originating trustee serves in any fiduciary capacity, except as may be provided otherwise in the agreement. Notwithstanding the provisions of this section, no contracting trustee as defined in K.S.A. 9-2107(a)(1) and amendments thereto, having its home office outside the state of Kansas shall enter into an agreement except with an originating trustee which is commonly controlled as defined in K.S.A. 9-1612 and amendments thereto by the same bank holding company.

(c) Unless the agreement expressly provides otherwise, upon the effective date of the substitution:

(1) The contracting trustee shall be deemed to be named as the fiduciary in all writings, including, without limitation, trust agreements, wills and court orders, which pertain to the affected fiduciary accounts;

(2) the originating trustee is absolved from all fiduciary duties and obligations arising under such writings and shall discontinue the exercise of any fiduciary duties with respect to such writings, except that the originating trustee is not absolved or discharged from any duty to account required by K.S.A. 59-1709, and amendments thereto, or any other applicable statute, rule of law, rules and regulations or court order, nor shall the originating trustee be absolved from any breach of fiduciary duty or obligation occurring prior to the effective date of the agreement.

(d) The agreement may authorize the contracting trustee:

(1) To establish a trust service desk at any office of the originating trustee at which the contracting trustee may conduct any trust business and any business incidental thereto and which the contracting trustee may otherwise conduct at its principal place of business; and

(2) to engage the originating trustee as the agent of the contracting trustee, on a disclosed basis to customers, for the purposes of providing administrative, advertising and safekeeping services incident to the fiduciary services provided by the contracting trustee.

(e) Any contracting trustee may enter into an agreement with a financial institution providing that the contracting trustee may establish a trust service desk as authorized by subsection (d) in the offices of such financial institution and which provides such financial institution, on a disclosed basis to customers, may act as the agent of contracting trustee for purposes

Chapter 74-STATE BOARDS, COMMISSIONS AND AUTHORITIES

Article 30.-STATE BANKING BOARD

→ **74-3004. State banking board; qualifications; appointment, senate confirmation, residence requirements; terms; vacancies.** (a) There is hereby created a state banking board which shall be composed of nine members. Six members of the board shall be bankers with not less than five years' actual banking experience in a state bank in this state and three shall represent the public interest in the regulation, operation and control of state banks and trust companies. All members shall be selected from the state at large. No nonbanker member shall concurrently serve as an officer or director in any state or national bank or trust company wherever located. One of the nine members shall be elected annually as chairperson of the board. The board shall be appointed by the governor. Persons appointed to the board shall be subject to confirmation by the senate as provided in K.S.A. 75-4315b, and amendments thereto. Except as provided by K.S.A. 1995 Supp. 46-2601, no person appointed to the board shall exercise any power, duty or function as a member of the board until confirmed by the senate. No more than five members of the board shall be from the same political party. Subject to the provisions of K.S.A. 1995 Supp. 75-4315c, and amendments thereto, of the six banker members, the governor shall appoint one from each Kansas congressional district as presently constituted and the remainder from the state at large. Appointment of nonbanker members shall be made with due consideration for achieving representation of the various geographic sectors of the state.

(b) Except as provided by subsection (c), terms of members of the board shall be for three years. Each member shall serve until a successor is appointed and confirmed. No person shall serve more than two terms as a member of the board. In the event of a vacancy on the board, the governor shall appoint a new member of the same qualification to fill the unexpired term.

(c) The terms of members who are serving on the board on the effective date of this act shall expire on March 15, of the year in which such member's term would have expired under the provisions of this section prior to amendment by this act. Thereafter, members shall be appointed for terms of three years and until their successors are appointed and confirmed. (L. 1995, ch. 241, § 11; July 1.)

74-3005. Compensation and expenses; secretary; records. Members of the state banking board attending meetings of such board, or attending a subcommittee meeting thereof authorized by such board, shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223. The commissioner shall act as secretary for said board and shall keep a permanent record of all meetings and proceedings of said board in his office. (L. 1974, ch. 348, § 61; July 1.)

74-3006. Meetings; quorum; access to records; advisory.

(a) The board shall meet once each month, on dates it agrees upon, and shall meet at other times as the board deems necessary or when called by the chairperson or any three members of the board. Six members of the board shall constitute a quorum, and a majority vote of the board shall be necessary to carry any question. No action of the board shall be taken except in a formal meeting and after a favorable vote of a majority of the entire board. The members of the board during business hours shall have free access to all of the records in the office of the commissioner. The board shall act in an advisory capacity in all matters pertaining to the conduct and welfare of the banking department and the administration of the banking laws of this state except as otherwise specifically provided by law.

(b) The board, in accordance with K.S.A. 75-4319 and amendments thereto, may recess for a closed or executive meeting to discuss information deemed confidential by virtue of K.S.A. 9-1712 and amendments thereto. (L. 1995, ch. 75, § 1; July 1.)

74-3007. Abolition of savings and loan board; transfer of powers, duties and functions to state banking board. The savings and loan board created by K.S.A. 74-3113 and amendments thereto is hereby abolished. All of the powers, duties and functions of the existing savings and loan board are hereby transferred to and imposed upon the state banking board established by K.S.A. 74-3004 and amendments thereto. (L. 1993, ch. 16, § 2; June 18.)

74-3008. State banking board successor to all powers, duties and functions of savings and loan board. (a) The state banking board shall be the successor in every way to the powers, duties and functions of the savings and loan board in which the same were vested prior to the effective date of this act. Every act performed in the exercise of such powers,

duties and functions by or under the authority of the state banking board shall be deemed to have the same force and effect as if performed by the savings and loan board in which such powers, duties and functions were vested prior to the effective date of this act.

(b) Whenever the savings and loan board, or words of like effect, is referred to or designated by a statute, contract or other document, such reference or designation shall be deemed to apply to the state banking board.

(c) All orders and directives of the savings and loan board in existence on the effective date of this act shall continue to be effective and shall be deemed to be orders and directives of the state banking board until revised, amended or nullified pursuant to law.

(d) On and after the effective date of this act, whenever any statute, contract or other document concerns the power or authority of the savings and loan board, the state banking board shall succeed to such power or authority. (L. 1993, ch. 16, § 4; June 18.)

74-3104 to 74-3115. Repealed.

Chapter 75-STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

Article 13.-STATE BANK COMMISSIONER

75-1304. State bank commissioner; appointment; term; qualifications. The governor shall appoint, subject to confirmation by the senate as provided in K.S.A. 75-4315b, a state bank commissioner whose term of office shall be four years and who shall serve until a successor is appointed and qualified. No person shall be eligible for appointment as commissioner unless the person has had five years actual banking experience as an executive officer in a state bank in this state. If a vacancy occurs in the office of the commissioner prior to the expiration of a term, the vacancy shall be filled for the unexpired term by appointment by the governor. (L. 1982, ch. 347, § 50; July 1.)

75-1305. Oaths. The commissioner, his or her assistant and examiners, before entering upon the discharge of their duties shall take and subscribe the usual oath of office. (L. 1967, ch. 434, § 52; July 1.)

75-1306. Office of state bank commissioner. It shall be the duty of the secretary of administration to provide the commissioner with suitable office space at Topeka. (L. 1978, ch. 330, § 11; July 1.)

75-1308. Record of fees and expenses; disposition of moneys received; bank commissioner fee fund. The commissioner shall keep a record of all fees collected by him or her, together with a record of all expenses incurred in making the examinations of all banks and trust companies. The bank commissioner shall remit all moneys received by or for him or her from such fees to the state treasurer at least monthly. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury. Twenty percent (20%) of each such deposit shall be credited to the state general fund and the balance shall be credited to the bank commissioner fee fund. All expenditures from the bank commissioner fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the bank commissioner or by a person or persons designated by him or her. (L. 1973, ch. 50, § 1; July 1.)

75-1309. Abolition of savings and loan department and office of savings and loan commissioner; transfer of powers, duties and functions to office of state bank commissioner. The savings and loan department and the office of savings and loan commissioner created by K.S.A. 74-3104 and amendments thereto are hereby abolished on the effective date of this act. On the effective date of this act, all of the powers, duties and functions of the existing savings and loan department and the existing savings and loan commissioner are hereby transferred to and conferred upon the office of state bank commissioner created by K.S.A. 75-1304 and amendments thereto. (L. 1993, ch. 16, § 1; June 18.)

75-1310. State bank commissioner successor to all powers, duties and functions of savings and loan commissioner. (a) The state bank commissioner shall be the successor in every way to the powers, duties and functions of the savings and loan commissioner in which the same were vested prior to the effective date of this act. Every act performed in the exercise of such powers, duties and functions by or under the authority of the state bank commissioner shall be deemed to have the same force and effect as if performed by the savings and loan commissioner in which such powers, duties and functions

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Article 16.-CHARTER APPLICATIONS

17-16-1. Application; filing. (a) An application for a certificate of authority and any supplemental information shall be filed by submitting an original and nine copies to the office of the state bank commissioner.

(b) The application shall be filed at least 14 calendar days before the board's regular meeting date in order to be included on the agenda for that meeting. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1801; effective, E-77-18, March 19, 1976; effective, E-78-12, April 27, 1977; effective May 1, 1978; amended Jan. 27, 1992; amended August 9, 1996.)

17-16-2. Application; contents. Each application for a certificate of authority shall contain the following information:(a) the name and address of the proposed bank or trust company;

(b) the names and addresses of the officers, organizers and incorporators of the proposed bank or trust company, along with a detailed financial statement of each. The financial information shall be less than 90 days old and certified by the owners;

(c) a statement of the character, qualifications and experience of the proposed officers, directors and incorporators, including the number and type of any criminal convictions;

(d) a statement of fact by the applicant to support a finding of public need for the proposed bank or trust company in the community where it will be located;

(e) a list of the names and addresses of each state bank, national bank, savings and loan association, credit union or trust company, and their branches, located within a radius of 25 miles of the site of the proposed bank or trust company. If the proposed bank or trust company is to be located in a metropolitan area with a population of 100,000 or more, as defined by the office of the state bank commissioner, the listing required by this subsection may, at the discretion of the commissioner, be limited to a 5 mile radius of the site of the proposed bank or trust company; and

(f) an affidavit of publication of notice that the applicant intends to file an application for a certificate of authority. The notice shall:

(1) be published in a newspaper of general circulation in the city where the proposed bank or trust company is to be located, or if there is no such official newspaper, in an official newspaper for the county in which the city is located;

(2) be in the form prescribed by the board;

(3) be published on the same day for two consecutive weeks, with the second publication appearing at least 14 calendar days before any action taken by the board; and

(4) contain a statement that any interested party may submit, in writing, comments in support of or opposition to the application. Any comment letter of support or opposition shall be filed with the office of the state bank commissioner not later than 10 calendar days after the second publication. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1801 and K.S.A. 9-1802; effective, E-77-18, March 19, 1976; effective, E-78-12, April 27, 1977; effective May 1, 1978; amended Jan. 27, 1992; amended August 9, 1996.)

17-16-3. (Authorized by K.S.A. 9-1713; effective, E-77-18, March 19, 1976; effective, E-78-12, April 27, 1977; effective, May 1, 1978; amended Jan. 27, 1992; revoked August 9, 1996.)

17-16-4. Comment letters; notification of the applicant. The applicant shall be notified of the receipt of any comment letters and furnished a copy of those letters. The applicant may provide a written response to the board regarding any comment letters within 10 calendar days following the date the applicant was furnished copies of the comment letters. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1801; effective, E-77-18, March 19, 1976; effective, E-78-12, April 27, 1977; effective May 1, 1978; amended August 9, 1996.)

17-16-5 to 17-16-6. (Authorized by K.S.A. 9-1713; effective, E-77-18, March 19, 1976; effective, E-78-12, April 27, 1977; effective May 1, 1978; amended Jan. 27, 1992; revoked August 9, 1996.)

17-16-7. (Authorized by K.S.A. 9-1713; effective, E-77-18, March 19, 1976; effective, E-78-12, April 27, 1977; effective May 1, 1978; revoked August 9, 1996.)

17-16-8. (Authorized by K.S.A. 9-1713; implementing K.S.A. 9-1802; effective, E-77-18, March 19, 1976; effective, E-78-12, April 27, 1977; effective May 1, 1978; amended Jan. 27, 1992; amended April 19, 1993; revoked August 9, 1996.)

17-16-9. Application; consideration by the board. (a) After considering the application, including any comment letters and the applicant's response to comment letters, the board shall determine whether to approve or deny the application.

(b) The state banking board shall not be required to make any determination unless the board has had at least 10 calendar days to consider any comment letters or the applicant's response to such letters. (Authorized by K.S.A. 9-1713; implementing K.S.A. 9-1802; effective, E-77-18, March 19, 1976; effective, E-78-12, April 27, 1977; effective May 1, 1978; amended Jan. 27, 1992; amended August 9, 1996.)

Article 17.-FINANCIAL FUTURES CONTRACTS

17-17-1. Limitation on engaging in futures. A bank's authority to engage in financial futures contracts, pursuant to K.S.A. 1995 Supp. 9-1101 shall be limited to using the contracts as a hedge. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective, T-85-20, July 2, 1984; effective May 1, 1985; amended August 9, 1996.)

17-17-2. Definitions. As used in this article:

(a) "contract" means a financial futures contract; and

(b) "hedging" means a purchase or sale made as protection against a known risk and not primarily for income or profit. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective, T-85-20, July 2, 1984; amended, T-85-32, Dec. 19, 1984; effective May 1, 1985; amended August 9, 1996.)

17-17-3. Adoption of policy by bank. (a) The board of directors shall establish a written policy to engage in financial futures contracts. Policy objectives and limitations shall be specific enough to outline permissible contract strategies and their relationship to other banking activities.

(b) Record keeping systems shall be sufficiently detailed to permit internal auditors and examiners to determine whether operating personnel have acted in accordance with authorized objectives. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective, T-85-20, July 2, 1984; effective May 1, 1985; amended August 9, 1996.)

17-17-4. Notice to commissioner. A bank shall notify the commissioner of the bank's intention to engage in financial futures contracts before commencement of the activity. The bank shall include the following information in the notice: (a) a copy of the written policy of the bank, established by the board of directors, pursuant to K.A.R. 17-17-3;

(b) the background and experience of all persons authorized to buy and sell contracts;

(c) the trading limits to be imposed upon all persons authorized to buy and sell contracts;

(d) the conditions, if any, which permit deviations from trading limits;

(e) the bank personnel responsible for authorizing any deviations in trading limits;

(f) the procedures developed to prevent unauthorized trading;

(g) copies of forms, in blank, which inform management of the daily contract activity; and

(h) copies of internal record keeping forms, in blank, which reflect the bank's daily contract activity with regard to:

(1) the maturity of each outstanding contract and the type and value of the corresponding cash transaction;

(2) the maturity date of each contract;

(3) the current market price and value of each contract;

(4) the outstanding gross futures position;

(5) the open position;

(6) the amount of money held in margin accounts;

(7) any maturity gaps existing between the maturity date of the contract and the completion dates of the corresponding cash transaction;

(8) the profit or loss for each corresponding cash and futures transaction;

(9) the aggregate profit or loss for all relevant cash and futures transactions; and

(10) the type and amount of each expected cash transaction that did not materialize. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective, T-85-20; July 2, 1984; effective May 1, 1985; amended August 9, 1996.)

17-17-5. Monthly review of contracts. The board of directors, a duly authorized committee or the bank's internal auditors shall review financial futures contract positions on a monthly basis to ascertain conformance with the bank's written policy. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective, T-85-20, July 2, 1984; effective May 1, 1985; amended August 9, 1996.)

17-17-6. Maintenance of ledger accounts or registers. (a) Each bank engaging in financial futures contracts shall maintain general ledger memorandum accounts or commitment registers to adequately identify and control all commitments

➔ **Article 19.-BANK SUBSIDIARIES ENGAGED IN SECURITIES ACTIVITIES**

17-19-1. Organization; application approval. (a) Prior to its organization to engage in securities activities in this state, each bank subsidiary shall make application to and obtain approval from the state bank commissioner and the state banking board. Each application shall contain all required information as prescribed by the commissioner and the state banking board.

(b) Upon filing an application to form a bank subsidiary to engage in securities activities, the following criteria shall be considered by the commissioner and the state banking board prior to granting authority:

- (1) the financial standing, general business experience and character of the organizers and incorporators;
- (2) the character, qualifications and experience of the officers of the proposed bank subsidiary;
- (3) the public need for the proposed bank subsidiary;
- (4) the prospects for success of the proposed bank subsidiary; and
- (5) any other factors the commissioner or the state banking board deems relevant to the applicant.

(c) Each expense incurred in making any examination and investigation of an application to form a bank subsidiary to engage in securities activities shall be paid by the applicant, who shall pay \$1,000 to the commissioner to defray such expense. The commissioner may require an additional payment not to exceed \$4,000 at any time deemed necessary. Any unused portion of such payment shall be refunded.

(d) Any application may be denied or authority revoked for any bank to own, hold or otherwise operate a bank subsidiary engaged in securities activities upon finding any violation of the state banking department regulations.

(e) Each bank subject to revocation of authority to own, hold or otherwise operate a bank subsidiary engaged in securities activities shall be afforded the right to a hearing pursuant to the Kansas administrative procedure act. (Authorized by and implementing K.S.A. 1988 Supp. 9-1101, effective Nov. 20, 1989.)

17-19-2. Registration and licensing; violations; examination. (a) Prior to engaging in securities activities, each bank subsidiary shall comply with registration and licensing requirements of the appropriate federal and state securities regulatory agencies. Each bank subsidiary shall maintain on file with the Kansas banking department copies of all required registration documents, together with copies of each license or registration documents issued to the bank subsidiary by each regulatory agency.

(b) Any application may be denied or authority revoked for any bank to own, hold or otherwise operate a bank subsidiary engaged in securities activities upon notification of any, violation of federal or state securities laws or regulations.

(c) Any denial of an application or revocation of authority for a bank to own, hold or otherwise operate a bank subsidiary engaged in securities activities shall be made by the commissioner, subject to confirmation by the state banking board.

(d) Each bank subsidiary found to be in violation of any federal or state securities law or regulation shall notify, the commissioner of each violation within 10 days of such finding. Each notice shall include all material facts surrounding such violation including:

- (1) identification of parties involved;
- (2) date of violation;
- (3) nature of violation; and
- (4) penalties assessed.

(e) The expense, including salaries, travel expenses, supplies and equipment, of each examination of a bank subsidiary deemed necessary by the bank commissioner after receiving notification as required by subsection (d) of this regulation shall be paid by the bank. (Authorized by and implementing K.S.A. 1988 Supp. 9-1101; effective Nov. 20, 1989.)

17-19-3. Wholly-owned subsidiary; leasing; employees; office location. (a) Each bank subsidiary engaged in securities activities shall be a wholly-owned subsidiary of the parent bank.

(b) Any parent bank may lease or sell office space to its subsidiary engaged in securities activities; provided the lease or sale is of a bona fide nature and represents a fair market value in the community market place. Office space leased or sold by a parent bank to its subsidiary engaged in securities activities shall be separate and distinct from the office space of the parent bank.

(c) Each bank subsidiary engaged in securities activities may employ parent bank employees provided those employees are fairly compensated by the bank subsidiary.

(d) Each bank subsidiary engaged in securities activities shall locate no office outside the state of Kansas unless the prior approval of the bank commissioner and the state banking board is obtained. (Authorized by and implementing K.S.A. 1988 Supp. 9-1101, effective Nov. 20, 1989.)

17-19-4. Capital; lending limit. The aggregate of unsecured loans and capital investments to each bank subsidiary by each parent bank shall not exceed 15 percent of the total amount of capital stock paid in and unimpaired and the unimpaired surplus fund of the parent bank. (Authorized by and implementing K.S.A. 1988 Supp. 9-1101; effective Nov. 20, 1989.)

Article 21.-BANK HOLDING COMPANIES; APPLICATION FOR THE ACQUISITION OF A KANSAS BANK OR BANK HOLDING COMPANY

17-21-1. Definitions. For purposes of this article, the terms used shall have the meanings attributed to them by K.S.A. 1995 Supp. 9-519 and K.S.A. 1995 Supp. 9-701. (Authorized by K.S.A. 1995 Supp. 9-539; implementing K.S.A. 1995 Supp. 9-532; effective Aug. 10, 1992; amended April 19, 1993; amended August 9, 1996.)

17-21-2. Application. (a) With the approval of the commissioner, any bank holding company may acquire control of one or more Kansas banks or Kansas bank holding companies.

(b) A bank holding company shall be deemed to be acquiring control of a Kansas bank or Kansas bank holding company if, as a result of the proposed acquisition:

(1) the company, directly or indirectly or acting through one or more persons, will own, control or have the power to vote 25 percent or more of any class of voting securities of a Kansas bank or Kansas bank holding company;

(2) the company will control in any manner the election of a majority of the directors or trustees of a Kansas bank or Kansas bank holding company; or

(3) the commissioner determines that the company directly or indirectly will exercise a controlling influence over management or policies of a Kansas bank or Kansas bank holding company.

(c) Each request for approval to acquire control of a Kansas bank or Kansas bank holding company shall be made by filing an application in the form required by the commissioner.

(1) A separate application and fee shall be filed for each bank or bank holding company to be acquired.

(2) The applicant holding company shall bear any additional costs of the application. (Authorized by K.S.A. 1995 Supp. 9-539; implementing K.S.A. 1995 Supp. 9-532; effective Aug. 10, 1992; amended April 19, 1993; amended August 9, 1996.)

17-21-3. Contents of application. (a) Each applicant shall respond accurately and fully to all questions contained in the application form provided by the commissioner.

(b) Upon submitting an application, each applicant shall provide the commissioner with the following additional information:

(1) a statement by the applicant demonstrating that the proposed acquisition is in the interest of the public and of the depositors and creditors of the bank to be acquired or any bank subsidiaries of the bank holding company to be acquired;

(2) a copy of all cease and desist orders, memorandums of understanding or other formal or informal actions taken by any federal or state regulator, under which the applicant or any of the applicant's subsidiaries or affiliates has operated within the 18 months preceding the application;

(3) a copy of the most recent regulatory examination of any bank or trust company subsidiary or affiliate of the applicant if a composite rating of "3", "4", or "5" was received;

(4) a copy of the most recent report of examination of the bank holding company prepared by the federal reserve bank or the applicant's state regulator. If the commissioner is not satisfied that the information provided gives adequate assurance that the bank or banks to be acquired will be operated safely and soundly, the commissioner may conduct an examination of the applicant or any of its subsidiaries or affiliates for the purpose of augmenting such information. The applicant shall bear the cost of any examination;

(5) all information required by K.S.A. 1995 Supp. 9-1722; and

(6) an analysis demonstrating that the acquisition will not cause the applicant to exceed limitations imposed by K.S.A. 1995 Supp. 9-520(a) regarding concentrations of deposits. (Authorized by K.S.A. 1995 Supp. 9-539; implementing K.S.A. 1995 Supp. 9-533; effective Aug. 10, 1992; amended August 9, 1996.)

17-21-4. Filing of application.(a) Within 14 calendar days of the date any agreement to purchase a bank or bank holding company is entered into, a notice of intent to submit an application pursuant to K.S.A. 1995 Supp. 9-532 shall be filed with the commissioner.

(b) The application shall be filed within 90 calendar days after an agreement has been entered into. At the discretion of

the commissioner, failure to file an application within 90 calendar days may be grounds for rejection of the application. (Authorized by K.S.A. 1995 Supp. 9-539; implementing K.S.A. 1995 Supp. 9-532; effective Aug. 10, 1992; amended August 9, 1996.)

17-21-5. When complete. An application filed pursuant to K.S.A. 9-532 shall be complete when: (a) the materials described in K.S.A. 1995 Supp. 9-533, K.S.A. 1995 Supp. 9-536 and K.A.R. 17-21-3 have been filed with the commissioner; and

(b) the board of governors of the federal reserve system or the appropriate federal reserve bank acting on delegated authority, and the commissioner have determined that no further information shall be required to complete the application. (Authorized by K.S.A. 1995 Supp. 9-539; implementing K.S.A. 1995 Supp. 9-532, and K.S.A. 1995 Supp. 9-533; effective Aug. 10, 1992; amended August 9, 1996.)

17-21-6. Concurrent jurisdiction. (a) Examinations of the applicant, its subsidiaries and its affiliates may be conducted by the commissioner. The applicant shall bear the cost of any examination.

(b) The applicant's state and federal regulators may be provided with copies of reports of examinations and other information compiled by the commissioner. (Authorized by K.S.A. 1995 Supp. 9-539; implementing K.S.A. 1995 Supp. 9-537; effective Aug. 10, 1992; amended August 9, 1996.)

17-21-7. (Authorized by K.S.A. 9-1713; implementing K.S.A. 9-524; effective Aug. 10, 1992; revoked August 9, 1996.)

17-21-8. Application; request for additional information. An application filed pursuant to K.S.A. 1995 Supp. 9-532 may be returned by the commissioner if the applicant does not respond in writing within 20 calendar days of a written request by the commissioner for additional information. If the commissioner returns the application, the application shall be deemed withdrawn and the applicant shall forfeit the filing fee. (Authorized by K.S.A. 1995 Supp. 9-539; implementing K.S.A. 1995 Supp. 9-532 and K.S.A. 1995 Supp. 9-533; effective Aug. 10, 1992; amended August 9, 1996.)

→ **Article 22.-APPLICATION FEES**

17-22-1. Application fees. (a) At the time of filing of any application described below, the applicant shall remit to the office of the state bank commissioner the following nonrefundable fee:

(1)	Bank or trust company charter	4500
(2)	New branch (bank or trust)	2000
(3)	Existing branch relocation	1500
(4)	Main office relocation	1500
(5)	Merger, consolidation, or transfer of assets and liabilities	2500
(6)	Change of control	2500
(7)	Interstate bank acquisition	5000
(8)	Conversion to state charter	2000
(9)	Bank service corporation	2000
(10)	Fiduciary powers	2000
(11)	Money order license	100/plus \$10 per agent
(12)	Change of name	250
(13)	Revenue bond pledgibility	500
(14)	Letter of good standing	50
(15)	Trust Service Office	2000
(16)	Contracting trustee agreement	1000
(17)	Appeals pursuant to K.S.A. 9-2108(i), K.S.A. 9-2107(l), or Sec 4(j) of 1994 substitute for Senate Bill No. 540	1000

(b) Any additional cost associated with any examination or investigation shall be paid by the applicant if the state bank commissioner determines that an on-site examination of the financial institutions or trust companies which are parties to the application is necessary. (Authorized by K.S.A. 9-1713; implementing K.S.A. 9-1803; K.S.A. 9-1111b, K.S.A. 9-1111,

K.S.A. 9-1804, K.S.A. 9-1724, K.S.A. 9-1722, K.S.A. 9-532, K.S.A. 9-808, K.S.A. 9-1127e, K.S.A. 9-1601, K.S.A. 9-509, K.S.A. 9-812, K.S.A. 9-1402, K.S.A. 9-1115, K.S.A. 9-2107, and 1994 Substitute for Senate Bill No. 540; effective Oct. 19, 1992; amended Aug. 16, 1993; amended Oct. 31, 1994.)

Article 23.-TRUST SUPERVISION

17-23-1. Definitions. For the purposes of this part, the following definitions shall apply. (a) "Account" means the trust, estate or other fiduciary relationship which has been established with a bank or trust company.

(b) "Bank" means a corporation as defined in K.S.A. 9-701(a).

(c) "Cash management vehicle" means any checking, savings or money market account that is used to accumulate cash for payments to or for beneficiaries, or is used to accumulate cash for the purpose of making investments.

(d) "Collective investment fund" means funds held by a bank or trust company as fiduciary and invested collectively:

(1) in a common trust fund maintained by the bank or trust company exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank or trust company in its capacity as trustee, executor, administrator, conservator, or custodian under the uniform transfers to minors act, K.S.A. 38-1701 et. seq., and amendments thereto; or

(2) in a fund consisting solely of assets of retirement, pension, profit sharing, stock bonus or other trusts which are exempt from federal income taxation under the internal revenue code.

(e) "Conservator" means an individual or a corporation who is appointed by the court to act on behalf of a conservatee and who is possessed of some or all of the powers and duties set out in K.S.A. 59-3019 and amendments thereto.

(f) "Custodian under a uniform transfers to minors act" means an account established pursuant to the uniform transfers to minors act, K.S.A. 38-1701 et seq.

(g) "Customer" means any person or account, including any agency, trust, estate, guardianship, committee, or other fiduciary account for which a bank or trust company effects or participates in effecting the purchase or sale of securities, but shall not include a broker, dealer, dealer bank or issuer of the securities which are subject to the transactions.

(h) "Fiduciary" means a bank or trust company undertaking to act alone or jointly with others primarily for the benefit of another in all matters connected with its undertaking, and includes a trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, managing agent and any other similar capacity.

(i) "Fiduciary powers" means the power to act in any fiduciary capacity conveyed by the Kansas uniform powers act.

(j) "Fiduciary records" means all matters which are written, transcribed, recorded, received or otherwise come into possession of a bank or trust company and are necessary to preserve information concerning the acts and events relevant to the fiduciary activities of the bank or trust company.

(k) "Investment authority" means the responsibility conferred by action of law or a provision of an appropriate governing instrument to make, select or change investments, review investment decisions made by others, or to provide investment advice or counsel to others.

(l) "Managing agent" means the fiduciary relationship assumed by a bank or trust company upon the creation of an account which names the bank or trust company as agent and confers investment discretion upon the bank or trust company.

(m) "Periodic plan," including any dividend reinvestment plan, automatic investment plan and employee stock purchase plan, means any written authorization for a bank acting as agent to purchase or sell for a customer a specific security or securities, in either specific amounts, calculated in security units or dollars, or to the extent of dividends and funds available, at specific time intervals and setting forth the commission or charges to be paid by the customer in connection therewith or the manner of calculating them.

(n) "Security" means any interest or instrument commonly known as a "security," whether in the nature of debt or equity, including any stock, bond, note, debenture, evidence of indebtedness or any participation in or right to subscribe to or purchase any of the foregoing. The term "security" does not include:

(1) a deposit or share account in a federally or state insured depository institution;

(2) a loan participation;

(3) a letter of credit or other form of bank indebtedness incurred in the ordinary course of business;

(4) currency;

(5) any note, draft, bill of exchange, or bankers acceptance which has a maturity at the time of issuance of not more than nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited;

(6) units of a collective investment fund;

By Committee on Financial Institutions and Insurance

AN ACT concerning banks and trust companies; relating to the powers of the bank commissioner; amending K.S.A. 1998 Supp. 9-1715 and repealing the existing section.

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

Section 1. K.S.A. 1998 Supp. 9-1715 is hereby amended to read as follows: 9-1715. (a) The commissioner shall have the power to authorize any or all state banks to engage in any activity in which such banks could engage were they operating as national banks at the time such authority is granted, including but without limitation because of enumeration the power to do any act, and own, possess and carry as assets, property of such character including stocks, bonds or other debentures which, at the time authority is granted, is authorized under federal laws and regulations to be done by national banks notwithstanding any restriction elsewhere contained in the statutes of the state of Kansas. This power shall include the power to authorize any or all Kansas trust companies to engage in any trust related activity in which the trust department of a national bank with trust powers could engage at the time authority is granted. This power shall be in addition to any and all other powers granted to the commissioner.

(b) The commissioner shall exercise the power granted in subsection (a) by the issuance of a special order if the commissioner deems it reasonably required to preserve and protect the welfare of a particular institution, or if the commissioner deems it reasonably required to preserve the welfare of all state banks or trust companies and to promote competitive equality of state and national banks. Such special order shall provide for the effective date thereof and upon and after such date shall be in full force and effect until amended or revoked by the commissioner. Promptly following issuance, the commissioner shall cause a copy of each special order to be mailed to all state banks and trust companies.

(c) ~~The commissioner, at the time of issuing any special order pursuant to this section, shall submit a written report to the president and the minority leader of the senate and to the~~

~~speaker--and-the-minority-leader-of-the-house-of-representatives.~~

The commissioner, at the time of issuing any special order pursuant to this section, shall prepare a written report, which shall include a description of the special order and a copy of the special order, and submit the written report to:

(1) The president and the minority leader of the senate;

(2) the chairperson and ranking minority member of the senate standing committee on financial institutions and insurance;

(3) the speaker and the minority leader of the house of representatives; and

(4) the chairperson and ranking minority member of the house of representatives standing committee on financial institutions.

(d) Within two weeks of the beginning of each legislative session, the commissioner shall submit to the chair of the senate standing committee on financial institutions and insurance, and the chair of the house standing committee on financial institutions, a written summary of each special order issued during the preceding year. Upon request of the chair of the senate standing committee on financial institutions and insurance or the chair of the house standing committee on financial institutions, the commissioner, or the commissioner's designee, shall appear before the committee to discuss any special order issued during the preceding year. If the committee desires information concerning the economic impact of any special order, the committee chair or ranking minority member may request assistance from the division of budget.

~~(d)~~ (e) The issuance of special orders under this section shall not be subject to the provisions of article 4 of chapter 77 of the Kansas Statutes Annotated.

Sec. 2. K.S.A. 1998 Supp. 9-1715 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.