Approved: January 25, 2000
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 20, 2000 in Room 529-S of the Capitol.

All members were present except: Senator David Corbin, Excused

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

Conferees appearing before the committee: Jim Maag, Kansas Bankers Association
Kathleen Sebelius, Kansas Insurance Department
Judy Stork, Deputy Bank Commissioner

Others attending: See attached list

Dr. Bill Wolff, Legislative Research, presented a brief summary on the Gramm-Lead-Bliley Act as passed by the federal government (Attachment 1). The following points were highlighted in his presentation and the ensuing discussion:

- Repeals the depression-era Glass-Stegall Act which kept banking and securities activities separate.
- Allows Bank Holding Companies to continue their business activities as usual, current law allows those things "closely related to banking."
- Allows creating of new entities: financial holding companies (FHC) permitted to conduct activities which the Federal Reserve Board (FRB) and the Treasury Department (TD) deem "financial in nature" and/or "are complimentary to a financial activity."
- Allows national banks through an operating subsidiary to do some of the things allowed to an FHC, especially if the bank meets certain criteria as set by the OCC and is granted their permission to engage in such activities as underwriting insurance, issuing of certain types of annuities, engage in real estate development or do merchant banking. Special order 1996-4 would appear to be sufficient authority for Kansas state banks through operating subsidiaries to do what national banks are authorized to do with a few exceptions. The wild card provision could address such issues.
- Generally prohibits national banks from selling or underwriting title insurance unless they were already involved in the business on November 12, 1999, or if state banks in the same state are authorized to sell title insurance. The question is whether this would apply to state banks as well under Special Order 1990-2.
- Continues making the business of insurance subject to state regulation, e.g. agents and underwriters must be licensed under state law.
- If states have in place anti-affiliation laws, they are pre-empted for national and state depository institutions.
- State securities regulators will continue to require securities registration and broker/dealer licensing, investigate fraud, and bring enforcement actions as necessary.
- FTC and AG are to receive certain information from federal banking agencies in order to enforce anti-trust laws.
- After May 4, 1999, commercial firms are prohibited from chartering new savings and loan holding companies.

- The act deals with public and nonpublic personal information and directs that financial institutions have an obligation to protect their customer's privacy.

- Allows community financial institutions (those with less than $500 million in average daily assets) to become members in the Federal Home Loan Banks.

- Other provisions include ATM fee notification to customers; Community Reinvestment Act which states that agreement between financial institutions and third parties associated with the CRA must be disclosed to the public; requirement that various agencies complete studies and report findings to Congress.

- Under rules and regulations, generally the operative word is "functional." Institutions will be regulated by function rather than structure.

- Although the bill became effective on November 12, 1999, there are at least a dozen other dates running through December 2004 for implementation.

Judy Stork, Deputy Director of the Office of the State Bank Commissioner, reported that three to five banks have inquired about selling title insurance. In order to grant such requests, legislation would have to be passed in Kansas to be in compliance. Kansas requires 80% of ownership by a bank in a subsidiary while the national banks require only 50% ownership. Kansas banks can sell insurance only in towns of less than 5,000 population. In response to questions regarding the appropriateness of using the "wild card" option rather than legislation, Ms. Stork reiterated her position that even though the option has been used sparingly in the past, it is absolutely necessary in order for Kansas-chartered banks to remain on a level playing field with the national banks.

The meeting adjourned at 10:00 a.m. The next meeting is scheduled for January 24, 2000.

SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE
GUEST LIST
DATE: 1-20-2000

NAME	REPRESENTING
Stan Parsons	KGC,
Rick Friedstrom	KAIFA
Anne Spiess	Peterson Public Affairs Group
Pat Morris	KAIA
Kevin Davis	Am. Family Ins.
Marc Hamann	Div. of the Budget
Kathy Olsen	KS Bankers Assn.
Chuck Stones	"
Jim Maag	"
John Federico	KCUA
Nicole Bassio	KID
Becky Sanders	KID
Kevin BARone	Hein/Weir
Judi Stork	OSBC
Sonya Allen	OSBC
Matt Goddard	HCBA
George Barbee	Barbee & Assoc's
Linda McCarrell	KS Ins Dept.
Bill Sneed	Am Vectors
[illegible] GRANT	KCCI
Kathleen Selelius	KID
Tom Bruno	MGA
Jim Maag	KBIA
Larrie Ann Lower	KS Govt Consulting
Lee WRIGHT	FARMERS
Adam MOORE	Intern for Sen. Praeger
David Hanson	KS Ins. Assns.

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January 20, 2000

To: Senate Committee on Financial Institutions and Insurance

From: William G. Wolff, Associate Director

Re: Gramm-Leach-Bliley Act

GRAMM-LEACH-BLILEY ACT (P.L. 106-102): A Brief Summary

- Repeals the depression-era Glass-Stegall Act which kept banking and securities activities separate.

- Allows Bank Holding Companies to continue their business activities as usual, that is they may do things "closely related to banking" (current law).

- Allows for the creation of new entities, Financial Holding Companies (FHC), and permits them to conduct activities which the Federal Reserve Board (FRB) and the Treasury Department deem "financial in nature." Dropped from the bill were provisions that would have allowed a "basket" of nonbank activities to be performed as well. Instead, the Act authorizes the FRB and Treasury to permit an FHC to engage in activities that are "complimentary to a financial activity."

  - Permissible activities for FHCs would include, among a list of items in the bill and in addition to those things related to banking, insurance underwriting and agency, investment advice, and securities underwriting and dealing. (This is significant new authority because the FRB may expand the list to include incidental activities taking into account changes in the financial services marketplace, technology for delivering services, and whether the service is necessary to compete effectively).

  - To conduct the expanded activities through an FHC, the BHC must declare its intention to do so to the FRB, certify that all the depository institutions within the BHC are well capitalized and well managed, and have a "satisfactory" Community Reinvestment Act (CRA) rating.

- Allows national banks through an operating subsidiary to do some of the things allowed to an FHC, but not underwriting insurance, issue certain types of annuities, engage in real estate development, or do merchant banking. The bank must have the permission of the OCC to engage in these FHC type activities, meet certain safety and soundness requirements and hold

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a satisfactory CRA rating. (State banks could do these activities if authorized by state law or Special Order/Wildcard. Special Order 1996-4 would appear to be sufficient authority for Kansas state banks through operating subsidiaries to do what national banks are authorized to do, except the language of the Order is "activities which are a part of or incidental to the business of banking." Would these additional activities be incidental to banking or of a "financial nature" or "complimentary to a financial activity?" Additionally, there are probably some more technical issues to be sorted out between the provisions of the federal act and the Kansas Special Order. If so, a new Special Order that addresses all those concerns could be issued.

- National banks are generally prohibited from selling or underwriting title insurance unless they were already involved in the business on November 12, 1999, or if state banks in the same state as the national bank are authorized to sell title insurance. Special Order 1990-2 authorized state banks to act as insurance agents to the same extent national banks are permitted. Under the Act as noted, national banks now are expressly prohibited from such activity and, further, the Act specifically provides that "A State law (Special Order/Wildcard statute) which authorizes State banks to engage in any activities . . . a national bank may engage shall not be treated as a statute which authorizes State banks to sell title insurance as agent." The question now for state banks is whether they would have authority to sell title insurance?

- Continues the McCarran-Ferguson Act that makes the business of insurance subject to state regulation, *e.g.*, agents and underwriters must be licensed under state law (federal banking agencies are required to promulgate consumer protection regulations for insurance sales by banks or their subsidiaries by November 12, 2000—these are basically disclosure type regulations, *e.g.*, products not insured, conspicuous notice, set standards for physical separate locations).

    - States have three years in which to establish uniform insurance licensing laws and reciprocity laws governing the sale of insurance across state lines—the NAIC will determine whether state laws meet requirements. If a majority of the states have not adopted these standards by November 12, 2002, the National Association of Registered Agents and Brokers (NARAB) is created to provide a uniform multi-state system of licensing and continuing education for insurance companies and agents. The NARAB would be a nonprofit, nongovernmental corporation under the supervision of the NAIC.

    - Redomestication of mutual insurers—allows mutual insurance companies to relocate and convert to mutual holding companies. This provision applies in states that do not have procedures for such conversions already in place. Kansas has such procedures in place; the question for review I suppose is whether the Kansas law would interfere with the ability of a mutual insurer to relocate and convert or treats a redomesticated company differently from domestic companies. If so, the Kansas law would be preempted. Approval of the board of directors and policyholders of the company and the state regulator is required for completion of the relocation and conversion.

- If states have in place anti-affiliation laws, they are preempted for national and state depository institutions. (I know of no such laws in Kansas.)

- State securities regulators will continue to require securities registration and broker/dealer licensing, investigate fraud, and bring enforcement actions as necessary. Banks and FHCs that trade stocks will be included in the definitions of broker and dealer under the Securities and Exchange Act. The SEC and the FRB are to consult on rules and regulations for the activities of these entities.

- The Federal Trade Commission (FTC) and the Attorney General are to receive certain information from federal banking agencies in order to enforce anti-trust laws.

- Savings and Loans: After May 4, 1999, commercial firms are prohibited from chartering new savings and loan holding companies. Applications pending and those in existence were grandfathered as of that date. Existing savings and loan holding companies cannot be sold to a commercial firm.

- Privacy: The act deals with public and nonpublic personal information and directs that financial institutions have an obligation to protect their customer's privacy. The federal banking agencies, the Secretary of the Treasury, the NCUA, the SEC, and the FTC, in consultation with the state insurance regulators are to establish "consistent and comparable regulations" to carry out the purposes of this title.

- Federal Home Loan Bank (FHLB): Allows "community financial institutions"—those with less than $500 million in average daily assets—to become members in the FHLB. As members, these institutions are eligible to receive long-term advances for the purposes of residential housing finance and for small businesses, small farms, and small agri-businesses. Loans made to community financial institutions can be used as collateral for advances from the FHLB.

- Other Provisions:

  - ATM fees. ATM customers must be given notice that a fee will be charged for the use of an ATM. The notice must appear on the machine itself and on the screen, at a point where the customer can cancel the transaction without being assessed a fee.

  - Community Reinvestment Act. Agreements between financial institutions and third parties associated with the CRA must be disclosed to the public. Also, the financial institutions must report to their regulators annually on any payments, loans, or fees that are paid or made under the terms of any such agreement.

  - Studies—the act is shot through with requirements that various federal agencies complete studies and report findings to the Congress:

- GAO to report on the effectiveness of CRA, feasibility of requiring all ATM fees to be disclosed,
- GAO to report on the effectiveness of the privacy provision in preventing the fraudulent gathering of confidential customer information,
- FTC and Attorney General to report annually on enforcement of the privacy provisions,
- FRB and the Treasury to study certain issues related to "too big to fail,"
- Treasury to study credit available to farmers and small businesses, and
- FRB and the Treasury to report jointly on the activities of financial holding companies.

- Rules and regulations—generally the operative word in this regard is "functional." That is institutions will be regulated by function rather than structure, *i.e.*, insurance by state regulators, securities by state and federal securities regulators, banks by state and federal bank regulators. However, in reality, there are numerous overlapping authorities and the bill directs the regulators to "consult" or to "defer." As noted, in some instances as many as six to eight different and competing interests may be involved in the promulgation of rules and regulations. In other instances, one agency shares authority with another and cannot act without the approval of the other, *i.e.*, the FRB and the Treasury. On a more clarifying note, the Act does require all rules and regulations promulgated by banking regulatory agencies be written in plain language!

- Effective dates—the bill became effective on November 12, 1999. However, there are at least a dozen other dates running through December 2004, when various parts of the Act take effect or certain implementing tasks are to be completed.