

Approved: February 14, 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 February 7, 2000 in Room 231-N of the Capitol.

All members were present except:

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

Conferees appearing before the committee: George Barbee, Kansas Association of Financial Services  
Kevin Glendenning, Deputy Commissioner of Consumer  
Credit  
Peggy Hanna, Office of State Treasurer  
Lynn Nelson, State Bank Commissioner  
Sonja Allen, General Counsel for Office of State Bank  
Commissioner  
Gregg Lewis, Community Bankers Association

Others attending: (See Attached)

**Action on SB 458 - Licensure of Insurance Agents**

Senator Clark moved that the bill be reported favorably. Motion was seconded by Senator Brownlee. Motion carried.

**Hearing on SB 445- Uniform consumer credit code; concerning appraised value and appraisals**

George Barbee, representing Kansas Association of Financial Services, asked for three changes to the UCCC (Attachment 1):

- Under the definition for "appraised value," change "the greater of" to "either" so that a lender is not required to acquire two appraisals.
- Deletions eliminating the requirements to have an appraisal prior to making the loan (first and second mortgages). Lenders of first mortgages are most likely to require an appraisal. Second mortgages or equity loans are often well below the value of the home. This deletion will allow lenders to establish lending policies and guidelines for loan officers to require appraisals where there is a question regarding risk in making the loan. Require that all loan applicants would receive a written notice regarding the availability of consumer credit counseling.
- Makes Kansas' "right of rescission" consistent with federal law which is three days.

Kevin Glendenning, Deputy Commissioner of Consumer Credit, said they supported the first change; were against the change for requiring all loan applicants to receive a written notice regarding the availability of consumer credit counseling because it could become a "blanket disclosure" which would substantially reduce the effectiveness of the disclosure; did not recommend repealing the requirement for county appraisal information; and were neutral in reducing the disclosure period from five to three days (Attachment 2).

Senator Steffes requested Mr. Barbee and Mr. Glendenning work out their differences with the proposed legislation and report their findings to the Committee.

The Hearing on **SB 445** was continued.

**Hearing on SB 487 - State money law, daily cash sheet**

Peggy Hanna, Office of State Treasurer, testified that auditors had suggested the following changes to the archaic statutes regarding the way business is transacted in the Treasurer's Office today (Attachment 3).

## CONTINUATION SHEET

These changes will reflect current day practices using electronic spreadsheets and electronic transfers.

The Hearing on **SB 487** was closed.

### **Hearing on SB 498 - Special orders issued by State Bank Commissioner**

Lynn Nelson, State Bank Commissioner, testified that although the bill appears to be a restatement of powers already possessed by the Legislature, the bill does cause them some concern (Attachment 4). The perception on the part of the banks and trust companies may be that they cannot rely on and utilize the provisions of any special order issued by the Bank Commissioner as it could be overturned by the Legislature in a few months. This may lead to banks converting to national charters which can be done quite easily. He proposed an amendment which would allow the commissioner to grant parity for state banks with other depository institutions such as savings and loan associations, savings banks, or credit unions if their deposits are insured by the United States government. They agreed with the proposal to have all special orders published in the Kansas Register.

The Committee voiced concern that the amendment could be a major policy decision by adding credit unions and thrifts to the list of depository institutions for which the Bank Commissioner could use in making decisions regarding special orders. Even though banks may be selling insurance and insurance companies may be doing banking business, members expressed opinions that the proposed legislation may be premature. Sonja Allen said that before special orders are issued, there must be a competitive disadvantage for existing state-chartered banks.

Gregg Lewis, Community Bankers Association, testified that they were in opposition to the proposed bill as it now stands as “a parity issue” or the perception of parity, was at stake(Attachment 5). They would not oppose the bill if the OSBC amendment is approved.

The Hearing on **SB 498** was closed

Senator Feleciano moved that the minutes of February 2 be approved as presented. Motion was seconded by Senator Clark. Motion carried.

The meeting was adjourned at 10:00 a.m.

SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

GUEST LIST

DATE: 2/7/00

NAME	REPRESENTING
George Banbee	KAFS & CBA
Jeggy Hanna	Treasurer's office
Kathy Oker	KBA
Chuck Stone	"
Sue Anderson	Community Bankers Assn.
Gregg Lewis	CBA
Mary Jelle	CBA
Franklin A. Nelson	OSBC
Sonya Allen	OSBC
Judi Stork	OSBC
Kevin Glydening	OSBC
Bill Kemp	KS Gov. Consulting
Matt Goddard	HCBA
Martini Wagner	Lawrence News
Maisha Sue Smith	KMHA

# Kansas Association of Financial Services

George Barbee, Executive Director  
Jayhawk Tower, 700 SW Jackson, Suite 702  
Topeka, KS 66603-3758

785/233-0555

Fax: 785/357-6629

Statement to:  
Senate Committee on Financial Institutions and Insurance  
Senate Bill 445  
Monday, February 7, 2000

Mr. Chairman and members of the Committee, my name is George Barbee, and I am appearing today on behalf of the Kansas Association of Financial Services. KAFS membership is made up of rather large financial service companies, such as Household Finance, Norwest, Associates, American General, and others. These companies make loans under the statutes, rules, and regulations of the Uniform Consumer Credit Code (UCCC). You will recall that the UCCC received considerable attention last year under the 1999 Senate Bill 301.

The amendments of 1999 were many and balanced between consumer protection items, additional regulatory powers, and improvements to lending practices. It is not surprising that some fine-tuning would follow.

In Senate Bill 445 there are three suggested changes proposed by the consumer credit industry. The first is found on page 2, line 2, of the bill. The bill defines: "appraised value" means, with respect to any real estate at any time, the greater of:

- (a) the total appraised value of the real estate, as reflected in the most recent records of the tax assessor of the county in which the real estate is located; or
- (b) the fair market value of the real estate, as reflected in the written appraisal of the real estate performed by a Kansas licensed or certified appraiser within the past 12 months.

① The amendment would insert the word "either" in place of the words "the greater of," so that a lender is not required to acquire two appraisals.

② The second amendment is found on page 8, starting at line 21. It deletes the following: "Before making a loan subject to this section, a lender shall obtain the appraised value of the real estate to be encumbered. The appraisal evidencing the appraised value shall be retained by the lender and preserved in accordance with the record keeping requirements set forth in K.S.A. 16a-2-304, and amendments thereto." In line 26 "(3) If, based on the appraisal, the loan to value ratio of the loan exceeds 100% then," and, finally, in line 28 "(a) a free copy of the appraisal," and on line 29 "high loan to value."

These deletions would eliminate the requirement to have an appraisal prior to making the loan. This section is about first or second mortgage loans. In the case of a first mortgage, the lender is most likely to require an appraisal. Second mortgage or equity loans are often well below the value of the home. By deleting this requirement, the lender can establish lending policies and guidelines for loan officers to require appraisals where there is a question regarding risk in making the loan.

Those consumers making a second mortgage loan would already have an appraisal in Kansas. All of us that own our homes receive an appraisal annually.

These deletions would also provide that all loan applicants would receive a written notice regarding the availability of consumer credit counseling. The statute now requires that notice if the loan is over 100% of loan to value.

Senate Financial Institutions & Insurance

**The State Trade Association for Consumer F**  
**Affiliated with The American Financial Ser**  
**Founded, September, 193**

Date 2/7/00

Attachment # 1



The third amendment is found on page 8, lines 35 and 39. It would change the notice referred to on line 29 to be given within three days instead of five days.

In line 39 the notice is often referred to as the "right of rescission." The borrower has the right to change their mind. If they do change their mind, they are allowed some refunds of the application fees paid to the lender. The Kansas five days requirement is not consistent with Federal law, which is three days, in a Federal regulation known as "Reg Z." - 1st mortgages

Mr. Chairman, thank you for the opportunity to request adoption of these amendments. I would be glad to stand for questions if there are any.

*asking not to have to do five days but 3 days on second mortgages.*

# KANSAS

BILL GRAVES  
GOVERNOR



Franklin W. Nelson  
Bank Commissioner

Sonya L. Allen  
General Counsel

Judi M. Stork  
Deputy Bank Commissioner

Kevin C. Glendening  
Assistant Deputy Commissioner

OFFICE OF THE  
STATE BANK COMMISSIONER

Senate Bill 445 / February 7, 2000

Senate Committee on Financial Institutions and Insurance

Mr. Chairman and Members of the Committee:

My name is Kevin Glendening. I am the Assistant Deputy Bank Commissioner and the Acting Deputy Commissioner of Consumer and Mortgage Lending. In that capacity, I am also the Administrator of the Kansas Uniform Consumer Credit Code.

Thank you for the opportunity to provide comment on the amendments contained in Senate Bill 445.

With respect to the proposed amendment on page 2, line 3 relating to appraised value, the issue in question is already addressed in our clean up bill to the UCCC now in the House. The appraisal information described in this section is to be used in connection with the high LTV disclosure added to the law last year. It was the intent to allow the lender to use either county tax assessor records or a certified appraisal for this purpose. However the existing wording implies both documents must be obtained. The amendment clarifies the lender has an option to obtain either one.

*you*

The high loan-to-value disclosure placed in the law (16a-3-207) last year was designed to increase the consumer's awareness of potential pitfalls associated with loans of this nature, and hopefully result in a better informed consumer who may be less susceptible to deceptive lending practices such as equity stripping. The current law places a requirement on the lender to obtain an appraisal of the property and, if the proposed loan exceeds the consumer's equity in that property, provide the consumer the disclosure notice and a copy of the appraisal.

Senate Bill 445, in essence, eliminates the requirement for the lender to identify a value for the property to be mortgaged and provide that information to the consumer. The bill instead creates a blanket disclosure given to all consumers for any mortgage loan. While on the surface such a disclosure might appear advantageous to consumers, in my opinion, it would substantially reduce the effectiveness of the disclosure, and certainly alter its intended purpose. In other words, telling the consumer they simply may want to think about it before getting any mortgage loan is not as compelling as informing them that there may be distinct

*against*

Senate Financial Institutions & Insurance

Date *2/7/00*

Attachment # *2*

disadvantages associated with the specific type of mortgage transaction they are about to enter into. *High loan to value*

It is my understanding this amendment is being sought primarily due to the perception that county appraisal information is difficult to obtain. In response to that concern, over the past couple of weeks we surveyed all 105 counties in Kansas, asking several questions pertaining to the availability of that information. The results of the survey we conducted indicate appraisal information is readily available across the state at minimal cost. Based solely on these results, a lender's assertion that this type of appraisal information is difficult to obtain would seem questionable. The extent to which the current high loan-to-value disclosure may ultimately influence a consumer is unknown. However, given the potential benefits of providing this information to the consumer, and what appears to be the relative ease with which a lender can obtain the necessary appraisal information, I would recommend the Committee not adopt the proposed amendment.

Finally, in regard to the proposed amendment to lower the disclosure period from five to three days, I believe that it is certainly to the consumer's advantage to have more rather than less time to consider the ramifications of the loan. However, I also understand the lender's perspective and desire for uniformity in disclosure requirements. Arguably, the three day time period would provide more uniformity by matching the existing three day right of rescission period provided under federal Reg. Z, Truth in Lending. Therefore, while I am not necessarily advocating this change, I also do not oppose it. *neutral*

Thank you Mr. Chairman and members of the Committee.

## Property Appraisals in Kansas Counties

County	Internet Availability ?	Able to Fax?	Time needed for response	Fee for obtaining appraisal?	Daily Limit on Number of appraisals?
1. Allen	No	Yes	Same day	Not if reasonable # of requests	No
2. Anderson	No	Yes	1 hour-1 day	No	No
3. Atchison	No	Yes	1 day	.50 copy	No
4. Barber	No	Yes	Immediately	\$2 to fax	No
5. Barton	No	Yes	20 minutes	\$2	No
6. Bourbon	No	Yes	Same day	\$3 fax, .25 page	No
7. Brown	No	Yes	Immediately	Fax \$1, copy .10	No
8. Butler	No	Yes	1 day	No	No
9. Chase	No	Yes	1-2 days	\$1 page	No
10. Chautauqua	No	Yes	1 day	No	No
11. Cherokee	No	Yes	5-10 min.	Fax	No
12. Cheyenne	Yes, but not current	Yes	Same day	Fax \$1, copy .10	No
13. Clark	No	Yes	Immediately	Fax \$3.50	No
14. Clay	No	Yes	1 day	Yes	No
15. Cloud	No	Yes	Same day	Yes	No
16. Coffey	No	Yes	0-3 days	Fax \$2 1 <sup>st</sup> page, \$1 page after	No
17. Comanche	No	Yes	0-1 hour	.25	No
18. Cowley	No	Yes	0-1 hour	\$1+long distance	No
19. Crawford	No	Yes	0-2 hours	No	Yes; 20-30
20. Decatur	No	Yes	Same day	Yes	No
21. Dickinson	No	Yes	1 hour	Fax .75	No
22. Doniphan	No	Yes	15-30 min	Fax + .50	No
23. Douglas	No	Yes	20 min +	.50 copy + fax	No
24. Edwards	No	Yes	Same day	Fax \$1 page	No
25. Elk	No	Yes	Same day	Yes	No
26. Ellis	No	Yes	5-10 minutes	.25 local or \$1 long distance	No
27. Ellsworth	No	Yes	1 day	Fax \$1 page	No
28. Finney	No	Yes	Varies	.25 copy, fax \$3	No
29. Ford	No	Yes	Same day	Fax \$1 page	No
30. Franklin	No	Yes	Immediately	Fax \$1	No
31. Geary	No	Yes	Next day	Yes	No
32. Gove	No	Yes	Same day	Fax \$1, postage	No
33. Graham	No	Yes	0-2 hours	Yes	No
34. Grant	No	Yes	Immediately	Fax \$2+	No
35. Gray	No	Yes	30 minutes	Fax \$1	No
36. Greeley	No	Yes	Same day	Fax + paper \$1.50	No
37. Greenwood	No	Yes	1 day	.25 - \$1	No
38. Hamilton	No	Yes	Same day	\$2 fax, .25 copy	No
39. Harper	No	Yes	1 day	\$3 parcel	No

40. Harvey	No	Yes	Same day	Fax \$1	No
41. Haskell	No	Yes	Immediate	Fax \$2+	No
42. Hodgeman	No	Yes	Same day	Yes	No
43. Jackson	No	Yes	1 day	Fax + copy, possibly labor if many requests	No
44. Jefferson	No, e-mail yes	Yes	Same day	Yes	No
45. Jewell	No	Yes	1-2 hours	\$1	No
46. Johnson	Yes <a href="http://www.jocoks.com/appraiser">www.jocoks.com/appraiser</a>			Prefer that the internet be used	
47. Kearny	No	Yes	Varies	Yes	No
48. Kingman	No	Yes	1-3 days	Yes	No
49. Kiowa	No	Yes	2-3 hours	Fax \$1 page, .25 copy	No
50. Labette	Yes	Yes	1-24 hours	Yes, unless it is the property of the requester	No
51. Lane	No	Yes	1-2 days	No	No
52. Leavenworth	No	Yes	30 minutes	\$1 page	No
53. Lincoln	No	Yes	Immediately	No	No
54. Linn	No	Yes	3 days	Fax \$1, .25 copy	No
55. Logan	No	Yes	0-2 hours	Yes	No
56. Lyon	No	Yes	1-3 days	Yes	No
57. Marion	No	Yes	Same day	Fax \$2 or postage	No
58. Marshall	No	Yes	0-3 days	Fax \$3, .50 ICS	No
59. McPherson	No	Yes	Same day	\$1 file	Yes-10 per day (est.)
60. Meade	No	Yes	1 day	No	No
61. Miami	No	Yes	Same Day	Fax \$2, copy .25	No
62. Mitchell	No	Yes	0-3 days	Yes	No
63. Montgomery	No	Yes	3 days	\$2 fax	No
64. Morris	No	Yes	Same day	Fax \$1, .50/page	No
65. Morton	No	Yes	0-30 minutes	Not if local or a lender	No
66. Nemaha	No	Yes	1-3 days	Yes	No
67. Neosho	No	Yes	1 day	\$1	No
68. Ness	No	Yes	1-4 hours	Fax or copy fee	No
69. Norton	No	Yes	Same day	Yes	No
70. Osage	No	Yes	0-1 hour	Fax \$1.50	No
71. Osborne	No	Yes	1-2 hours	Fax \$2, ICS \$1	No
72. Ottawa	No	Yes	0-1 day	Fax \$5	No
73. Pawnee	No	Yes	0-1 day	Fax \$1	No
74. Phillips	No	Yes	Same day	Yes	No
75. Pottawotamie	No	Yes	0-few hours	Fax \$1.25 Mail .75-\$1	No
76. Pratt	No	Yes	Same day	ICS \$1, fax \$1	No
77. Rawlins	No	Yes	0-15 minute	Fax \$1 page	No



78. Reno	No	Yes	Same day	Fax + copy fee	No
79. Republic	No	Yes	Same day	Yes	No
80. Rice	No	Yes	2-3 hours	Fax \$4-5, mail \$1 page + postage	No
81. Riley	No	Yes	Same day	Fax .50	No
82. Rooks	No	Yes	Varies	Fax \$1 page	No
83. Rush	No	Yes	Varies	Varies	No
84. Russel	No	Yes	0-1 hour	Fax/ copy fee	No
85. Saline	No	Yes	Up to 3 days	Copy fee .25 & .15 \$5 ½ hour, \$10 hr	No
86. Scott	No	Yes	Same day	.25 page	No
87. Sedgwick	Yes, www.sedgwickcounty.org	Yes	0-2 days	\$15 hour, if staff must take time from other duties ICS \$1,	No
88. Seward	No	Yes	1 hr-3 days	\$1 page	No
89. Shawnee	No	Yes	0-4 hours	Fax \$1.50 page	No
90. Sheridan	No	Yes	0-2 days	Fax .50, postage	No
91. Sherman	No	Yes	5-15 minute	\$1 page+.50 fax	No
92. Smith	No	Yes	0-1 hour	Copy fee	No
93. Stafford	No	Yes	Few minutes	.50	No
94. Stanton	No	Yes	Immediately	\$2 for 1 <sup>st</sup> page, .25 page after	No
95. Stevens	No	Yes	Immediately	\$2 for 1 <sup>st</sup> page, .25 after	No
96. Sumner	No	Yes	Same day	Yes	No
97. Thomas	No	Yes	1 day	Yes	No
98. Trego	No	Yes	0-2 hours	Yes	No
99. Wabaunsee	No	Yes	0-1 days	Yes	No
100. Wallace	No	Yes	1 day	No	No
101. Washington	No	Yes	Varies	\$1 fax +.25 page	No
102. Wichita	No	Yes	Immediately	\$5	No
103. Wilson	No	Yes	0-4 hours	Yes	No
104. Woodson	No	Yes	Immediately	.50 for ICS	No
105. Wyandotte	No	Yes	Same day	\$1	No



STATE OF KANSAS

## Tim Shallenburger

TREASURER

900 SW JACKSON ST. SUITE 201  
TOPEKA, KANSAS 66612-1235

TELEPHONE  
(785) 296-3171

February 7, 2000

Senator Don Steffes Chairman and members of the  
Senate Financial Institutions and Insurance Committee

RE: SB 487

Thank you for the opportunity to speak in support of SB 487 in which we are asking for minor technical changes to two statutes that have not been amended since 1967. These changes would more accurately reflect the way business is transacted in the Treasurer's office today. A recent performance audit brought the issue with K.S.A. 75-4204 to light and the auditor has suggested that we make the change.

Section one amends K.S.A. 75-4203 to eliminate the need for the Director of Accounts and Reports to prepare a form that the Treasurer's office uses to report the daily cash balances. Also it changes the statutory name from "Daily Deposit Form" to "Daily Cash Sheet" - a title which more accurately describes the information printed on the form. Today that form is an electronic spreadsheet that is created and printed by the Treasurer's office. Attached is a copy of the Daily Cash Sheet for January 31, 2000.

In section two the change to K.S.A. 75-4204 eliminates the requirement for the Treasurer to have the Director of Accounts and Reports sign off on transfers between state treasurer-controlled accounts. Since these transfers are all accomplished through electronic means, we are asking that the law be changed to reflect current day practices. In addition, since these types of transactions do not effect the total amount in the state treasury, this statutory change would in no way effect the requirement for all transfers out of the State Treasury to have the Director of Accounts and Reports approval.

Thank you for your attention to this request.

Senate Financial Institutions & Insurance

Date 2/7/00

Attachment # 3

## OFFICE OF THE STATE TREASURER - DAILY CASH SHEET

Date: January 31, 2000

To: The Director of Accounts and Reports

From: Tim Shallenburger, State Treasurer

RECEIPTS

Total Receipts	<u>\$142,409,990.94</u>
Returned ACH Credits	<u>292.00</u>
Recovered Forged Cks	<u>0.00</u>
Total	<u>\$142,410,282.94</u>

DISBURSEMENTS

Prev day Unproc Warr	<u>\$16,542,678.30</u>
Warrants Clrg Today	<u>48,345,129.69</u>
Warrants Processed Today	<u>64,887,807.99</u>
Total Unprocessed Warrants	<u>(\$0.00)</u>

Electronic Payments	<u>\$33,840,637.53</u>
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TOTAL BANK BALANCESOperating Account

Carryover	<u>\$855,157.68</u>
Operating Cash	<u>357,440.28</u>
Today's Transit	<u>65,336,483.05</u>
Total Operating Balance	<u>66,549,081.01</u>

Escrow Agent Account	<u>17,508,437.86</u>
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Unemployment Account Balances

Benefit Account	<u>66,977.93</u>
Clearing Account	<u>535,989.36</u>
#1 Clearing Overflow Acct	<u>0.00</u>
#2 Clearing Overflow Acct	<u>0.00</u>

Total Bank Balances	<u>\$84,660,486.16</u>
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DAILY ANALYSISInvestments

Competitive CDs	<u>125,809,000.00</u>
Dealer Repo Agreements	<u>310,400,000.00</u>
Benefit Repo Agreement	<u>1,700,000.00</u>
Kansas Bank Repos	<u>0.00</u>
Reverse Repos	<u>0.00</u>
Mortgage-backed Securities	<u>0.00</u>
U.S. Treasury Securities	<u>0.00</u>
U.S. Agency Securities	<u>539,126,771.97</u>
Municipal Bonds	<u>0.00</u>
Commercial Paper	<u>901,003,874.28</u>
Loan Refund HB3168	<u>36,581,393.81</u>
AIP - CDs	<u>0.00</u>
AIP-Mtg-backed Securities	<u>0.00</u>
AIP-U.S. Treasury Securities	<u>0.00</u>
AIP-U.S. Agency Securities	<u>0.00</u>
AIP-Municipal Bonds	<u>0.00</u>
Kansas Venture Capital, Inc.	<u>0.00</u>
Public Water Supply Loan Fd	<u>5,000,000.00</u>
Internal Loans	<u>12,234,942.22</u>
Total Investments	<u>1,931,855,982.28</u>

Receivables

Fire Marshall Fee Fund	<u>2,843,545.56</u>
Ad Valorem-Ed Bldg Fund	<u>0.00</u>
Ad Valorem-Inst Bldg Fund	<u>0.00</u>
Total Unprocessed Warrants	<u>(0.00)</u>
Cash Items	<u>19,986.15</u>
Total Receivables	<u>2,863,531.71</u>

Other

Unemployment Trust	<u>476,391,000.00</u>
Total Bank Balances	<u>84,660,486.16</u>

By  Cashier\$2,495,771,000.15

Date 2/7/00

Attachment # 4

STATE OF KANSAS  
BILL GRAVES  
GOVERNOR

Franklin W. Nelson  
Bank Commissioner

Judi M. Stork  
Deputy Bank Commissioner



Sonya L. Allen  
General Counsel

Kevin C. Glendening  
Acting Deputy Commissioner  
Consumer and Mortgage Lending

OFFICE OF THE  
STATE BANK COMMISSIONER

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

February 7, 2000

Mr. Chairman and Members of the Committee:

My name is Franklin W. Nelson. I am the Bank Commissioner for the State of Kansas. I am here today to discuss Senate Bill 498.

First, let me comment that our office finds no provisions of the proposed changes to be cumbersome. The publication requirement in subsection (b) of the bill can be made part of our normal procedures for issuing a special order. The changes noted in subsection (f) appear to be a re-statement of powers already possessed by the legislature. I would be remiss however, if I did not tell you that subsection (f) does cause me some concern. The ability to enact legislation to change the provisions of a special order is clearly a power the legislature already possesses. I am concerned there will be a perception on the part of the banks and trust companies we regulate, that their ability to rely on and utilize the provisions of any special order will be lessened by the changes proposed. Banks can, and do, convert to and from a national charter quite easily. If a bank wishes to pursue a power that is authorized for a national bank and is concerned as to whether a state bank will possess that power on an ongoing basis, conversion to a national charter is an option for them. And, if the banks convert to national charters, this legislative body will have essentially no control or direction over them.

I would like to introduce an amendment to Senate Bill 498. Attached to my testimony is a copy of our proposed amendment. The changes can be found beginning on line 18 of the bill. Generally, our amendment would allow the commissioner to grant parity for state banks with *other* depository institutions, not just national banks. In this age of financial modernization and numerous changes in the delivery of financial services, state and national banks are just two of the players. Thrifts, credit unions, and branches of state banks from other states also are competitors of Kansas state-chartered banks. Let me give you a couple of examples. In Larned, Kansas there are three financial institutions. There is the First State Bank and Trust Company, the First National Bank & Trust Company, and a branch of Commercial Federal Savings, a thrift in Omaha, Nebraska. Our Kansas state-chartered bank in this community must compete with both of the other financial institutions; a national bank, and a federal thrift from Nebraska. If a situation arose where the Kansas state-chartered bank would be at a competitive disadvantage, the change we are proposing would allow the commissioner to ensure parity with both of the other financial institutions. Another similar example would be if a state bank from Missouri has a branch in Kansas that competes directly with a Kansas state-chartered institution. If the branch of the Missouri bank has powers beyond that of the Kansas state-chartered bank, a competitive disadvantage may exist and parity could be granted with a special order. According to the 1998 CSBS Profile of State Chartered Banking, 20 states have statutes that grant parity not only with national banks, but also with other financial entities.

*Amendment to SB 498  
Attachment # 2/7/00*

We think by offering this amendment we are being progressive in our thinking about the future delivery of financial services in Kansas. The state banks in Kansas are no longer just competing with their national bank counterparts. They are also competing with credit unions, thrifts, and branches of out of state financial service providers. In order to keep the state bank charter a viable option, competitive equality with all types of institutions must be ensured. It is important to keep a vital state charter for the good of the citizens of our state. Without a state-chartered bank, this legislature would have minimal control over the activities of banks in Kansas, which would not be good for our citizens. Also, keeping state chartered banks viable ensures increased competition for national banks, thrifts and credit unions, which holds costs down and also stimulates innovation, both of which are good for the people of Kansas. Your positive action on this amendment is requested.

Thank you and I would be happy to stand for questions.



SENATE BILL No. 498

By Committee on Financial Institutions and Insurance

1-27

10 AN ACT concerning banks and banking; relating to special orders issued  
11 by the bank commissioner; amending K.S.A. 1999 Supp. 9-1715 and  
12 repealing the existing section.

13

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

15 Section 1. K.S.A. 1999 Supp. 9-1715 is hereby amended to read as  
16 follows: 9-1715. (a) The commissioner shall have the power to authorize  
17 any or all state banks to engage in any activity in which such banks could  
18 engage were they operating as ~~national banks~~ any insured depository institution at the  
time such authority

19 is granted, including but without limitation because of enumeration the  
20 power to do any act, and own, possess and carry as assets, property of  
21 such character including stocks, bonds or other debentures which, at the  
22 time authority is granted, is authorized under federal applicable laws and regulations  
23 to be done by ~~national banks~~ an insured depository institution notwithstanding any  
restriction elsewhere

24 contained in the statutes of the state of Kansas. This power shall include  
25 the power to authorize any or all Kansas trust companies to engage in  
26 any trust related activity in which the ~~trust department of a national bank~~ an insured  
depository institution

27 with trust powers could engage at the time authority is granted. This  
28 power shall be in addition to any and all other powers granted to the  
29 commissioner.

30 (b) The commissioner shall exercise the power granted in subsection  
31 (a) by the issuance of a special order if the commissioner deems it rea-  
32 sonably required to preserve and protect the welfare of a particular in-  
33 stitution, or if the commissioner deems it reasonably required to preserve  
34 the welfare of all state banks or trust companies and to promote com-  
35 petitive equality of state banks and national banks other insured depository institutions.

*Except as provided in sub-*

36 *section (f)*, such special order shall provide for the effective date thereof  
37 and upon and after such date shall be in full force and effect until  
38 amended or revoked by the commissioner. Promptly following issuance,  
39 the commissioner shall cause a copy of each special order to be mailed  
40 to all state banks and trust companies *and shall be published in the Kansas*  
41 *register*.

42 (c) The commissioner, at the time of issuing any special order pur-  
43 suant to this section, shall prepare a written report, which shall include a

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1 description of the special order and a copy of the special order, and submit  
2 the written report to:

- 3 (1) The president and the minority leader of the senate;  
4 (2) the chairperson and ranking minority member of the senate stand-

5 ing committee on financial institutions and insurance;

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

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

10 (5) the governor.

11 (d) Within two weeks of the beginning of each legislative session, the  
12 commissioner shall submit to the chair of the senate standing committee  
13 on financial institutions and insurance, and the chair of the house standing  
14 committee on financial institutions, a written summary of each special  
15 order issued during the preceding year. Upon request of the chair of the  
16 senate standing committee on financial institutions and insurance or the  
17 chair of the house standing committee on financial institutions, the com-  
18 missioner, or the commissioner's designee, shall appear before the com-  
19 mittee to discuss any special order issued during the preceding year. If  
20 the committee desires information concerning the economic impact of  
21 any special order, the committee chair or ranking minority member may  
22 request assistance from the division of budget.

23 (e) The issuance of special orders under this section shall not be sub-  
24 ject to the provisions of article 4 of chapter 77 of the Kansas Statutes  
25 Annotated.

26 (f) *Any special order issued pursuant to this section may be modified*  
27 *or revoked by the legislature's enactment of legislation*

28 . (g) As used in this statute, "insured depository institution" means a bank, a savings and  
loan association, a savings bank, or a credit union organized under the laws of the united states,  
this state, or any other state, whose deposits are insured by the united states government.

Sec. 2. K.S.A. 1999 Supp. 9-1715 is hereby repealed.

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

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of record of this state or other states, or of the United States;

(3) Take, accept and hold, by the order, judgment or decree of any court of this state, or of any other state, or of the United States, or by gift, grant, assignment, transfer, devise or bequest of any person or corporation, any real or personal property in trust, and to execute and perform any and all the legal and lawful trusts in regard to the same upon the terms, conditions, limitations and restrictions which may be declared, imposed, established or agreed upon in and by the order, judgment, decree, gift, grant, assignment, transfer, devise or bequest;

(4) Buy, invest in and sell all kinds of stocks or other investment securities;

(5) Execute, as principal or surety, any bond or bonds required by law to be given in any proceeding, in law or equity, in any of the courts of this state or other states, or of the United States;

(6) Act as trustee, personal representative, or conservator or in any other like fiduciary capacity;

(7) Act as attorney in fact or agent of any person or corporation, foreign or domestic, in the management and control of real or personal property, the sale or conveyance of same, the investment of money, and for any other lawful purpose.

4. In addition to the powers and authorities granted in this section, the director of finance may, from time to time, with the approval of the state banking board, issue orders granting such other powers and authorities as have been granted to financial institutions subject to the supervision of the federal government and which are necessary to enable banks and trust companies to compete. The powers and authorities contained in such orders may include the power to establish branches to the same extent that federal law permits national banks to establish branches in this state. The orders shall be promulgated as provided in section 361.105, RSMo, and shall not be inconsistent with the constitution and the laws of this state.

(RSMo 1939 § 7949, A. 1949 H.B. 2085, A.L. 1963 p. 449, A.L. 1965 p. 560, A.L. 1967 p. 445, A.L. 1977 S.B. 420, A.L. 1983 S.B. 44 & 45, A.L. 1986 H.B. 1207, A.L. 1990 H.B. 1456, A.L. 1991 H.B. 206, A.L. 1992 S.B. 688, A.L. 1995 S.B. 215)

Prior revisions: 1929 § 5354; 1919 § 11737; 1909 § 1094

CROSS REFERENCES: Multinational banks, securities and obligations of, investment in, when, RSMo 409.950 Savings accounts in insured savings and loan associations, investment in authorized, RSMo 369.194



Missouri General Assembly □

Alaska

Sec. ~~06.01.020~~. General powers of department.

(a) Notwithstanding other provisions of this title, the department may by regulation authorize financial institutions, except licensees subject to AS 06.20 or AS 06.40, to exercise any of the powers conferred upon, or to be subject to any of the limitations imposed upon, a federally chartered financial institution doing business in this state with deposits insured by an agency of the federal government, if the department finds that the exercise of the power or imposition of the limitation both

(1) serves the public convenience and advantage; and

(2) equalizes and maintains the quality of competition between state financial institutions and federally chartered financial institutions.

(b) The authority granted to the commissioner by this section may not be limited by law unless that law expressly refers to this section.

4-6

Georgia



7-1-61 G

\*\*\* CODE SECTION \*\*\* 10/15/99

7-1-61.

(a) The department shall have the authority to promulgate rules and regulations to effectuate the objectives or provisions of this chapter. Without limiting the generality of the foregoing, the department is expressly authorized to make rules and regulations, consistent with this chapter, relating to organization, operations, and powers of financial institutions to:

(1) Enable financial institutions existing under the laws of this state to compete fairly with financial institutions and others providing financial services in this state existing under the laws of the United States, other states, or foreign governments; or

(2) Protect financial institutions jeopardized by new economic or technological conditions.

(b) In the exercise of the discretion permitted by this Code section, the commissioner shall consider:

(1) The ability of financial institutions to exercise any additional powers in a safe and sound manner;

(2) The authority of national banks operating pursuant to federal law, regulation, or authoritative pronouncement;

(3) The powers of other entities providing financial services in this state; and

(4) Any specific limitations on bank operations or powers contained in this chapter.

(c) Rules and regulations promulgated by the department may provide for controls, registration, or restrictions reasonably necessary to:

(1) Prevent unfair or deceptive business practices which are prohibited under Code Section 10-1-393;

(2) Prevent deceptive or misleading business practices by financial services providers which may occur by way of alternate delivery systems for the provision of financial products and services such as the Internet or other telecommunication capabilities; or

(3) Prevent or control unfair or deceptive business practices which would operate to the detriment of any competing business or enterprise or to persons utilizing the services of any financial institution, its subsidiary, or affiliate.

(d) All rules and regulations shall be promulgated in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," including the requirements for hearing as stated in that chapter. Regulations issued under this or other provisions of this chapter may make appropriate distinctions between types of financial institutions and may be amended, modified, or repealed from time to

4-7



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**TITLE 9-B: FINANCIAL INSTITUTIONS**

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- PART 4: POWERS AND DUTIES OF FINANCIAL INSTITUTIONS
  - CHAPTER 41: GENERAL POWERS
    - § 416. Powers of federally chartered institutions

*Maine*

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**§ 416. Powers of federally chartered institutions**

Notwithstanding any other provisions of law, a financial institution has the power to engage in any activity that financial institutions chartered by or otherwise subject to the jurisdiction of the Federal Government may be authorized to engage in by federal legislation or regulations issued pursuant to such legislation. In the event any law of this State is preempted or declared invalid pursuant to applicable federal law, by a court of competent jurisdiction or by the responsible federal chartering authority with respect to any power that may be exercised by a financial institution chartered by or otherwise subject to the jurisdiction of the Federal Government, that law is invalid with respect to financial institutions authorized to do business in this State. The superintendent may adopt rules to ensure that such powers are exercised in a safe and sound manner with adequate consumer protections. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. [1997, c. 207, §1 (amd).]

## Section History:

1975, c. 500, § 1 (NEW).

1997, c. 207, § 1 (AMD).

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(32) To exercise all incidental powers as shall be necessary to carry on the business of banking. In order to implement the provisions of this subdivision, the commissioner may promulgate rules pursuant to section 19, or issue declaratory rulings in accordance with the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, or issue orders on applications by 1 or more banks to exercise powers not specifically authorized by this act. It is intended that this subdivision shall vest in the commissioner the discretion and authority to authorize banks to exercise the powers appropriate and necessary to compete with other depository financial institutions and other providers of financial services. In the exercise of the discretion permitted by this subdivision the commissioner shall consider the ability of banks to exercise any additional power in a safe and sound manner, the authority of national banks operating pursuant to federal law or regulation, the powers of other competing entities providing financial services in the banks' service area, and any specific limitations on bank powers contained in this act or in any other state law. On a quarterly basis, the commissioner shall give notice to all banks of rules promulgated or declaratory rulings or determinations issued pursuant to this subdivision.

## Section 1121.05

General Assembly: 121.

Bill Number: Amended Sub. House Bill 538

Effective Date: 01/01/97

(A) Notwithstanding any provisions of the Revised Code, except as provided in division (E) of this section, the superintendent of financial institutions may, by rule, grant banks doing business under authority granted by the superintendent any right, power, privilege, or benefit possessed, by virtue of statute, rule, regulation, interpretation, or judicial decision, by any of the following:

- (1) Banks doing business under authority granted by the comptroller of the currency or the bank regulatory authority of any other state of the United States;
- (2) Savings associations doing business under authority granted by the superintendent of financial institutions, office of thrift supervision, or the savings and loan association regulatory authority of any other state of the United States;
- (3) Savings banks doing business under authority granted by the superintendent of financial institutions or the savings bank regulatory authority of any other state of the United States;
- (4) Credit unions doing business under authority granted by the superintendent of financial institutions, the national credit union administration, or the credit union regulatory authority of any other state of the United States;
- (5) Any other banks, savings associations, or credit unions with a principal place of business in the United States doing business under authority granted under laws of the United States;
- (6) Any other persons having an office or other place of business in this state and engaging in the business of lending money, or buying or selling bullion, bills of exchange, notes, bonds, stocks, or other evidences of indebtedness with a view to profit;
- (7) Small business investment companies licensed under the "Small Business Investment Company Act of 1958," 72 Stat. 689, 15 U.S.C. 661, as amended;
- (8) Persons chartered under the "Farm Credit Act of 1933," 48 Stat. 257, 12 U.S.C. 1131(d), as amended.

(B) The superintendent shall adopt rules authorized by division (A) of this section in accordance with section 111.15 of the Revised Code. Chapter 119 of the Revised Code does not apply to rules adopted under the authority of this section.

(C) A rule adopted by the superintendent pursuant to the authority of this section becomes effective on the later of the following dates:

- (1) The date the superintendent issues the rule;

Rhode Island

# TITLE 19

## Financial institutions

### CHAPTER 19-3

#### Powers and Operations

##### SECTION 19-3-1

**§ 19-3-1 Law generally applicable to financial institutions.** – Every financial institution shall have the powers, rights, and privileges, and be subject to all the duties, restrictions, and liabilities, conferred and imposed upon it by this title, and in addition shall have all the powers, rights and privileges, and be subject to all the duties, restrictions, and liabilities, set forth in chapters 1, 1.1, 4 to 6, and 9 of title 7, only as is not inconsistent with the provisions of this title, notwithstanding anything to the contrary in the institution's agreement to form. Every financial institution shall have the power to exercise, by its board of directors or board of trustees or duly authorized officers or agents, all incidental powers necessary to carry on the business of banking including but not limited to the power:

- (1) To receive money on deposit and pay interest thereon;
- (2) To receive, upon deposit and for safekeeping, property of every description, upon terms prescribed by the financial institution and to construct, own, lease, and maintain safe deposit vaults, with suitable boxes and places for the reception and deposit of the property, and lease the use of places and boxes to individuals and corporations, upon any terms that the financial institution may prescribe. The financial institution shall in no case incur any liability on account of the deposit of any property so made with it, or by reason of the leasing of any place of deposit, other than liability the financial institution expressly assumes by the terms of the contract or receipt under which it has accepted the deposit or let the place of deposit;
- (3) To act as a depository of public money or a financial agent under any law, rule, or regulation;
- (4) To issue capital debentures with the approval of the director or the director's designee;
- (5) To make loans and mortgages and collect interest from them as may be agreed upon;
- (6) To invest in any bonds, obligations, or property, real, personal, or mixed, as it may deem prudent, subject to any duties, restrictions, or limitations imposed by this title;
- (7) To exercise any power authorized for insured-deposit-taking institutions duly organized under the laws of the United States which are members of the federal deposit insurance corporation;
- (8) To exercise additional powers, not inconsistent with the carrying on of a banking business, with the approval of the director or the director's designee.



*Directed By The Members We Serve*

## **Senate Committee on Financial Institutions & Insurance**

### **Regarding SB 498 – Special orders authorized by the Bank Commissioner**

February 7, 2000  
Kansas Legislature

Presented by  
Gregg Lewis  
Community Bankers Association of Kansas

Mr. Chairman and members of the committee, thank you for the opportunity to appear, before you to comment on SB 498. I am Gregg Lewis, Chairman and CEO, First Option Bank, Osawatomie. I am the Chairman of the State Legislative Committee of the Community Bankers Association of Kansas.

The Community Bankers Association believes the Bank Commissioner's authority to grant state banks the ability to engage in the same types of activities of national banks is a necessary and important power if the dual banking system is to be preserved and if Kansas state-chartered banks are to remain competitive. Wild card authority for state-chartered banks is not a new concept. In fact, 45 states already authorize this type of decision making for their Commissioners of Finance or Bank Commissioners.

As you will recall, the subject of this bill was discussed at length during the 1999 Session and as a result of those discussions, a bill was passed which enhanced the method by which the Legislature is informed of Special Orders issued by the Bank Commissioner. As an organization, the CBA supported the bill at that time.

However, now we find this issue is again under discussion. We question the need for further adjustments to this basic statute.

We hope there is no misconception that the Bank Commissioner uses this statute to somehow skirt the law or to usher in new powers without precedent. A review of the current statute would reveal that the Kansas Bank Commissioner's authority to grant special orders is used to provide for competitive equality between state and national banks. This parity is accomplished by giving the Bank Commissioner the opportunity to assess whether a competitive disadvantage exists.

There are two parts to this bill. Number one, the bill requires that the Special Order must be published in the Kansas Register. Number two, the bill states that any Special Order issued may be modified or revoked by the legislature's enactment of legislation.

(over)



As far as publication in the Kansas Register, certainly there is no objection to this requirement. However, as far as the statement that any special order may be modified or revoked by the legislature seems to be overkill since the legislature already has the authority and the power to do that now. Therefore, we question whether the bill is necessary.

The ability to issue Special Orders provides flexibility and expediency to the competitive process. A state law, which enables state-chartered institutions to remain competitive with national banks, is one of the main reasons we have a large number of state charters in Kansas. If you hamper this competitive ability, by the statutory threat of revoking Special Orders at the next legislative session, soon those state charters will find it more competitively expedient to convert to national charters and the legislature loses its oversight ability altogether.

Therefore, we strongly recommend retaining the current law. This law as presently written, already provides the following: adequate notice to the Legislature of any Special Order written and complete oversight, with authority to revoke special orders issued by the Bank Commissioner if deemed necessary.

Chairman Steffes and committee, thank you again for the opportunity to address our thoughts on this bill.