Approved: January 24, 2001
Date

MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS.

The meeting was called to order by Chairperson Ray Cox at 3:30 p.m.on January 22, 2001 in Room 527-S of the Capitol.

All members were present except: Representative Jene Vickrey - Excused

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

Conferees appearing before the committee:
Franklin W. Nelson, Bank Commissioner
Judi Stork, Deputy Bank Commissioner
Kevin C. Glendening, Deputy Commissioner - Consumer and Mortgage Lending
Sonya Allen, General Counsel - OSBC
Chuck Stones, Kansas Bankers Association

Others attending: See attached list

Chairman Cox introduced the two new members of the committee, Representative Mary Kauffman, a new legislator, and Representative Doug Gatewood, a returning legislator who is new to the committee. He also welcomed the returning committee members.

Bank Commissioner, **Franklin "W" Nelson**, gave an overview of the Office of the State Bank Commissioner (OSBC). The OSBC regulates 270 state chartered banks, 11 trust companies, 52 trust departments in state banks, 25 money transmitter companies, over 353 mortgage lenders and brokers, 292 licensed supervised lenders with 703 licensed locations, 5 credit service organizations about over 6,000 filers who extend consumer credit. A review examination staff, a legal department with three attorneys, an administrative unit, information tech staff and support staff is maintained in Topeka and there are 7 field offices throughout the state. The OSBC consists of two divisions, the Division of Banks and Trust Companies headed by Deputy Bank Commissioner Judi Stork, and the Division of Consumer and Mortgage Lending, headed by Deputy Bank Commissioner Kevin Glendening. **(Attachment 1)**

Judi Strok, Deputy Bank Commissioner, gave an overview of the Division of Banking. The division has a statutory duty to examine banks and trust companies once every 18 month period. They accomplish this by doing alternating and/or joint examinations with the Federal Reserve Bank and the Federal Deposit Insurance Corporation. The condition of the **C**apital, **A**ssets, **M**anagement, **E**arnings, **L**iquidity, and **S**ensitivity to Market Risk of each bank is assessed. Each component is rated on a scale of one to five, with one being the highest rating. This CAMELS rating is disclosed to the bank. Currently, only 11 of the 270 banks have a three or four rating and are considered to be problem banks. None have a rating of five. The trust side has a similar rating system. Only one of the 11 trusts has a rating of three. There are none with a four or five rating. Judi reported that the Bank Commissioner issued three special orders in the year 2000. They granted state banks the same powers which they could exercise if they were a national bank.
(Also Attachment 1)

Kevin Glendening, Deputy Bank Commissioner, gave an overview of the Division of Consumer and Mortgage Lending. The CML division licenses and regulates the activities of several distinct trades including mortgage brokers and lenders, consumer finance companies, and payday lenders. In the year 2000, his division conducted on-site examinations of 94 companies which resulted in refunds to consumers of approximately $63,000; received 670 consumer inquiries and complaints by way of telephone calls and 100 written consumer complaints; and initiated administrative actions against individuals and companies at an

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

average rate of more than one per week. This resulted in assessed fines of nearly $75,000, and refunds, revised loan contract terms, and other issues benefitting consumers by nearly $300,000. **(also Attachment 1)**

Sonya Allen, General Counsel - OSBC, gave a brief overview of the Gramm-Leach-Bliley Act of 1999 which is commonly referred to as "financial modernization." The GLBA does three fundamental things. 1) It repeals key provisions of the 66-year old Glass Steagall Act to permit commercial banks to affiliate with investment banks. 2) It substantially modifies the 43-year old Bank Holding Company Act of 1956 to permit companies that own commercial banks to engage in any type of financial activity, through a new entity called a "financial holding company." 3) It allows subsidiaries of national banks to engage in a broader range of financial activities that are not permitted for the national banks themselves, through a new entity called a "financial subsidiary." **(Attachment 2)**

Chuck Stones, Kansas Bankers Association, presented some Kansas Bank Facts. He covered a lot of interesting data. A highlight of the presentation was the very touching story of someone (who lived in a very small community that boasted of having a bank) who recently hosted an open house to celebrate their new "indoor plumbing." **(Attachment 3)**

Chuck Stones requested that the committee introduce two proposed bills. The first bill deals with the time limit that a bank has to sell repossessed personal property. It now has 6 months and the proposed bill would allow 1 year. **(Attachment 4)** The second bill has to do with the certification of trust. Many times a bank or business is asked to do something by a trustee. In order to comply with the request, the bank asks for proof that the person is in fact the trustee and has the authority to act on behalf of the trust. The only way to prove it now is to copy a portion of the trust agreement and sometimes it may contain sensitive information. This bill would provide an alternate method by allowing the trustee to fill out a "certification" form. **(Attachment 5)**

Representative Cox said that without objection the bills would be introduce.

Judi Stork requested that two proposed bills be introduced. Both bills relate to GLBA. The OSBC want to take the provisions that they put in the special order last year and codify them in the statute. The second bill is because they need to be able to share information among functional regulators, i.e. the insurance and securities departments. They do not have the authority to do so now.

Representative Cox said that without objection the two bills would be introduce.

Kevin Glendening said he also had a request for a proposed bill relating to additional limitations on payday lending.

Representative Cox said that without objection the bill would be introduced.

The meeting was adjourned at 4:31 p.m.

The next meeting is scheduled for Wednesday, January 24, 2001.

HOUSE FINANCIAL INSTITUTIONS COMMITTEE GUEST LIST

DATE: January 22, 2001

NAME	REPRESENTING
Judi Stork	OSBC
Sonya Allen	OSBC
Kevin Glendening	OSBC
Franklin W. Nelson	OSBC
Julie Numrich	Federico Consulting
Kathy Olsen	KBA
Matthew Goddard	HCBA
George Barbee	CBA
Roger Franzke	KGC

STATE OF KANSAS
BILL GRAVES
GOVERNOR

Franklin W. Nelson
Bank Commissioner

Judi M. Stork
Deputy Bank Commissioner
Commissioner
Mortgage Lending

Sonya L. Allen
General Counsel

Kevin C. Glendening
Deputy
Consumer and

OFFICE OF THE

STATE BANK COMMISSIONER

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS

January 22, 2001

Mr. Chairman and Members of the Committee:

My name is Franklin W. Nelson. I was appointed Bank Commissioner by Governor Graves and have served in that capacity since December 20, 1999. I was in banking for 26 years as a chief executive officer and bank owner.

I am pleased to be here today to speak before this committee concerning the Office of the State Bank Commissioner (OSBC). Over the years, our agency has enjoyed a good working relationship with this committee and I look forward to being of service to you, Mr. Chairman, and to each member of this committee. If my staff or I may be of assistance to you or your constituents, please do not hesitate to contact us. Let us be a resource to you. We may not have all of the answers that you seek, but we shall strive diligently to provide you with meaningful and accurate information. Attached to my testimony is a list of key agency personnel, including our telephone number and e-mail addresses.

House Financial Institutions
1-22-01
Attachment 1

This agency was first formed 110 years ago, in 1891, to oversee the numerous private banks then in existence in Kansas. Today, the OSBC regulates **270** state-chartered banks, **11** trust companies, **52** trust departments in state banks, **25** money transmitter companies, over **353** mortgage lenders and brokers, **292** licensed supervised lenders with **703** licensed locations, **5** credit service organizations, and over **6000** filers who extend consumer credit. We have seven field offices located throughout the state, with our largest offices in Overland Park, Wichita, and Topeka, and our smallest in Dodge City. All examination staff, including trust and consumer credit examiners, work out of these field offices. In Topeka, we maintain a review examination staff, a legal department with three attorneys, an administrative unit, information tech staff, and a support staff.

As most of you are aware, the consolidation of the Office of the Consumer Credit Commissioner into the Office of the State Bank Commissioner occurred approximately 18 months ago, on July 1, 1999. This consolidation was a common sense approach to regulation of two similar industries. The consolidation resulted in the separation of duties into two divisions within the OSBC. They are the Division of Banks and Trust Companies, headed up by Deputy Bank Commissioner Judi Stork; and the Division of Consumer and Mortgage Lending, headed up by Deputy Commissioner Kevin Glendening. In a moment, I will ask each Deputy Commissioner to give a short informative presentation regarding their respective division. Also, our General Counsel, Sonya Allen, will give you an informative overview of a complicated subject, that being the Gramm-Leach-Bliley Act, also now known by the acronym GLBA - pronounced "glubba".

Right now, I would like to spend a little time talking about my goals as Commissioner and the future direction of this agency.

I see the future role of the Office of the State Bank Commissioner as multi-faceted. First, I see our role as an advocate for consumers, to ensure they are protected from unsafe or unscrupulous practices by financial service providers. We regularly examine state-chartered banks to ensure they remain a safe place for consumers to

deposit their money. We also have taken major steps to implement improved supervision over mortgage brokers and lenders, and suppliers of consumer credit, by enforcing the laws governing those transactions. We intend to expand our supervision and enforcement role in the consumer area as we acquire additional resources.

Second, our role is as an educator of consumers of financial services. We accomplish this through one-on-one consumer assistance, grants to consumer education groups, and the availability of a toll-free consumer hotline. We are also an educator of the entities we regulate. Through the examination process, part of our objective is to promote a better understanding of, and compliance with, applicable laws and regulations.

Third, our role is to ensure the viability of the state banking system in Kansas. I firmly believe we need to ensure the state bank charter is the charter of choice for new banking groups who enter the marketplace.

In order to understand the importance of the state charter, I would like to provide you with a brief overview of the dual banking system. It is described as a "dual system" because of its two parallel systems of bank chartering, regulation, and supervision. Both the federal government and individual states issue bank charters and examine those banks for the benefit of their citizens. States have been regulating banks since before the creation of an independent United States. When Congress created the national bank charter in 1863, it created the Office of the Comptroller of the Currency, commonly known as the OCC, to issue charters and regulate the new national banks. State bank supervisors issue charters and are the primary regulators of state banks. The Federal Deposit Insurance Corporation (FDIC) insures deposits in both state and national banks. State banks also receive federal supervisory oversight from either the FDIC or the Federal Reserve System. The existence of state and national charters provides a creative tension that exists nowhere else in the world of bank supervision. The choice of charters encourages innovation in bank powers and in regulatory techniques, and acts as a check and balance on bank regulators. Maintaining state-chartered banks means Kansas maintains control of the practices of these banks, and the Kansas Legislature can tailor laws to suit what is best for Kansas citizens. You will find our 2001

legislative initiatives include proposals for some minor enhancements of the state bank charter, which will grant additional parity for Kansas state chartered banks.

I believe it is essential to the viability of the state charter in this state for the OSBC and the legislature to explore more efficient methods for Kansas to address the rapid and continuing change in the financial services' world. I believe OSBC's regulatory efforts and future legislative efforts must go beyond a "reactive response" to the ever-changing financial services environment in our state and national economy. What I mean by "reactive response" is an ongoing situation whereby, as financial services innovation occurs, Kansas only reacts and responds after the fact by saying, "me too." I continue to advocate a conservative and studied approach as to the best way to address change and innovation. However, I firmly believe that we should enhance the state bank charter and embrace creative tools that allow state chartered banks to help grow the Kansas economy and generate jobs, products, and services.

I look forward to working with all of you throughout this session and the coming years.

At this time I would like to introduce Judi Stork, Deputy Bank Commissioner; who will continue this presentation with an overview of the Division of Banking.

DIVISION OF BANKS AND TRUST COMPANIES

The Division of Banking has the statutory duty to examine banks and trust companies once every 18-month period. We accomplish compliance with this statute by doing alternating and/or joint examinations with the Federal Reserve Bank and the Federal Deposit Insurance Corporation. We have 56 employees within this division - 47 of those individuals are field examiners. These examiners review all aspects of our institutions and provide a written report to our office. The report is reviewed by staff and forwarded to the Commissioner for final review and signature. The report is then provided to the bank or trust company. A rating is assigned to each of our banks and trust companies. We assess the condition of

Capital, Assets, Management, Earnings, Liquidity, and Sensitivity to Market Risk of each bank. We then rate each component on a scale of one to five, with a one rating being the best and a five being the worst. The CAMELS rating is disclosed to each bank in their examination report.

To give you a better idea about the past and current condition of banks in Kansas, please note the chart below.

OSBC State Bank Examination Data Sheet - Year Ends

Year Ending	Not Rated	1	2	3	4	5	Total / 3-4-5
12-86	0	65	213	95	59	12	444 / 166
12-87	0	69	202	92	56	16	435 / 164
12-88	0	76	194	106	40	8	424 / 154
12-89	0	71	214	87	30	5	407 / 122
12-90	0	72	199	81	40	2	394 / 123
12-91	0	62	219	69	25	4	379 / 98
12-92	0	68	214	64	18	1	365 / 83
12-93	0	97	197	47	5	4	350 / 56
12-94	0	121	181	24	9	1	336 / 34
12-95	0	138	158	17	2	0	316 / 19
12-96	0	144	134	14	1	0	293 / 15
12-97	0	171	111	5	1	0	288 / 6
12-98	2	167	108	3	1	0	281/ 4
12-99	2	154	117	4	2	0	279 / 6
12-00	2	146	111	7	4	0	270 / 11
1/12/01	2	146	111	7	4	0	270 / 11

You can see from the chart that we consider only eleven of our banks to be problem institutions. This number is substantially lower that in 1986 when approximately 37% of our banks were on the problem bank list.

On the trust side, we use a similar rating system. The ratings for year-end 2000 are as follows:

Week Period	Not Rated	1	2	3	4	5	Total Active Departments
12-31-2000	2	7	1	1	0	0	11

Again, you can see the condition of the trust companies is considered favorable.

ur office also reviews and approves various banking and trust company applications. We have a nine-member banking board - six bankers, three public interest members - which meet monthly in our office. They review and approve new charters, branches, name changes, relocations, etc. The commissioner approves mergers, acquisitions, trust powers, etc.

I would like to touch briefly upon the special orders that were issued, pursuant to K.S.A. 9-1715, during the year 2000. As many of you know, the Bank Commissioner has the authority under this statute to grant powers to state banks, which they could exercise if they were a national bank. This power can be granted to the state bank if the state bank is at a competitive disadvantage to the national bank. During 2000, the commissioner issued three special orders.

Special 2000-1: Financial Subsidiaries

On November 12, 1999, President Clinton signed into law the Gramm-Leach-Bliley Act (P.L. 106-102), updating U.S. financial services laws and breaking down the barriers between commercial banks, securities firms, and insurance companies. A key provision in this Federal law granted national banks the authority to form or hold an interest in "financial subsidiaries." This provision became effective on March 11, 2000. The authority to form financial subsidiaries provided national banks with new opportunities to engage in a broader array of financial services and to affiliate with nonbank entities like securities firms and insurance companies. Numerous state-chartered banks contacted this office inquiring about the issuance of a Special Order to grant parity between state and national banks with regard to financial subsidiary formation. Current Kansas statutes did not allow state banks to form financial subsidiaries.

Based on these facts, it was determined that Special Order 2000-1 should be issued, allowing state banks to form or hold an interest in financial subsidiaries to engage in certain specified activities. Any bank desiring to form or hold an interest in a financial subsidiary must provide certain information to the Commissioner and receive prior approval to engage in the activity.

ecial Order 2000-2: Investment in Obligations of Government Sponsored Enterprises

Federal law authorizes national banks to invest in obligations of government sponsored enterprises without limitation. Many state-chartered banks were operating under the assumption that there was no limit in Kansas law on such investments. Upon further review of Kansas statutes and various Attorney General's Opinions, it was discovered that current Kansas statutes do not clearly allow state banks to make such investments without limitation.

It was determined that Special Order 2000-2 should be issued in order to ensure parity and promote competitive equality between Kansas state and national banks. The Order provides authority for state banks to invest without limit in obligations of the government sponsored enterprises set out in the Order.

Special Order 2000-3: Minority Investment in a Bulk Mailing Operation (Bank-Specific Order)

Federal law authorizes national banks to make a minority investment in an entity that engages in activities a national bank could engage in directly, provided certain safety and soundness criteria are met. A Kansas bank requested permission to acquire a minority interest in stock of a Kansas corporation engaged in postal substation activities. The bank planned to use this company to perform bulk mailing services on behalf of bank customers and also to provide those services to non-bank customers.

Upon review, it was determined that the circumstances warranted the issuance of Special Order 2000-3, which allows the bank to own a minority interest in a corporation that performs bulk mailing services.

Thank you for the opportunity to share these comments. I do have two bill introductions today. I am also happy to answer any questions you may have.

At this time I would like to introduce Kevin Glendening, the Deputy Commissioner for the Consumer and Mortgage Lending Division.

DIVISION OF CONSUMER AND MORTGAGE LENDING

HISTORY

In July 1999, the Office of the Consumer Credit Commissioner was merged into the OSBC. The legislation created the present structure of the OSBC with a Bank Commissioner, a Deputy Commissioner for the banking division, and a Deputy Commissioner for the newly created consumer and mortgage lending (CML) division, who also serves as the Administrator of the Kansas Uniform Consumer Credit Code (UCCC).

WORK OF THE DIVISION

The CML division licenses and regulates the activities of several distinct trades including mortgage brokers and lenders, consumer finance companies, and payday lenders. Through the administration of the UCCC, we also impact a much broader range of businesses that engage in consumer credit transactions in this state. The nature of both consumer lending and mortgage lending have substantially changed over the past decade or so. Some factors that have contributed to that change include the acceptance by capital markets of more relaxed underwriting standards spawning the so called subprime market; growth in home equity lending for debt consolidation purposes; and, the proliferation of companies beyond traditional banks offering credit products to consumers.

At the time of the merger in 1999, the enforcement powers associated with the consumer and mortgage lending areas were also strengthened to combat predatory lending activities. Those enforcement tools include criminal penalties and monetary fines; the ability to issue subpoenas for witnesses and records to investigate violations of the UCCC; and, to appoint a special prosecutor at the request of either the Attorney General or a county or district attorney to prosecute or assist in the prosecution of those violations.

As you might imagine, with the large number of companies who in one form or another fall under the oversight of CML division, we have our work cut out for us. In calendar year 2000, we conducted on-site examinations of 94 companies which resulted in refunds to consumers of approximately $63,000; we received 670 consumer inquiries and complaints by

ay of telephone calls and 100 written consumer complaints; and, we initiated administrative actions against individuals and companies at an average rate of more than one per week. These actions resulted in assessed fines of nearly $75,000, and refunds, revised loan contract terms, and other issues benefiting those consumers by nearly $300,000.

GOALS AND OBJECTIVES

First and foremost, our goal is to protect consumers from unfair and deceptive practices used by some lenders and other suppliers of consumer credit. We want to facilitate consumers in making more informed choices about credit. In addition, we seek to encourage the development of fair and economically sound credit practices which foster competition and allow consumers to obtain credit at reasonable cost.

To achieve these goals, three objectives are extremely important: First, equal and aggressive enforcement of the laws through examinations of licensed companies, and actively responding to predatory or unethical business practices brought to our attention by consumer inquiries and complaints. Second, sponsoring consumer education initiatives that stress fundamentals of personal debt management, wise use of credit, and the importance of being an informed consumer in evaluating credit choices. Third, educating both credit providers and consumers on restrictions and consumer rights embodied in our state's consumer and mortgage lending laws.

Over the past year, we've made some progress in meeting those objectives. We are working with several nonprofit consumer counseling groups in the state to develop free seminars and informational materials targeted to those consumers who desperately need education in the credit fundamentals I just spoke about. Also, as I mentioned, we are taking a strong position, to the extent staff limitations permit, in enforcing the laws against those companies and individuals who attempt to ignore them. Having said that, it is also clear that a great deal of work remains to be done. A key factor to achieving these goals and objectives is adequate staffing of the CML division. As the Commissioner pointed out in his comments, we hope to address that issue with the legislature later this session.

At this time, I would like to introduce Sonya Allen. Sonya Allen is the General Counsel for the department.

GRAMM-LEACH-BLILEY ACT

Thank you for the opportunity to appear before you today. I have been given the formidable task of explaining hundreds of pages of complex federal legislation in five minutes or less. This legislation is called the Gramm-Leach-Bliley Act of 1999, and is commonly referred to as "financial modernization." Attached to our testimony you will find a very brief overview that was prepared to touch on the highlights of the Act, and to explain some key terms needed to understand it. There are numerous other summaries prepared by various organizations, individuals, and groups that we can make available to you, if you so desire. I believe that Dr. Wolff of the Legislative Research Department prepared a summary of the Act last year.

One resource that is available online was prepared by the Conference of State Bank Supervisors, of which we are a member. CSBS has the Act and a summary on its web site, at http://www.csbs.org/legreg/html.

Right now, I'd like to walk you through the attached summary and touch on some of the key points.

Mr. Chairman, that concludes our testimony. I will turn this presentation over to the Commissioner for questions.

OFFICE OF THE STATE BANK COMMISSIONER
700 Jackson, Suite 300
Topeka, Kansas 66603
785-296-2266
785-296-0168 FAX

Franklin W. Nelson
Bank Commissioner
franklin.nelson@state.ks.us

Judi M. Stork
Deputy Bank Commissioner
judi.stork@state.ks.us

Kevin C. Glendening
Deputy Commissioner- Consumer and Mortgage Lending
kevin.glendening@state.ks.us

Sonya Allen
General Counsel
sonya.allen@state.ks.us

Jenna Hall
Consumer Relations Officer
jenna.hall@state.ks.us

Financial Modernization Overview: The Gramm-Leach-Bliley Act of 1999
Summary of Key Bank-related Provisions

The Gramm-Leach-Bliley Act, Pub. L. No. 106-102, 113 Stat. 1338, (GLBA) was signed by the President and enacted into law on November 12, 1999. The GLBA does three fundamental things:

1. It repeals key provisions of the 66-year old Glass Steagall Act to permit commercial banks to affiliate with investment banks.
2. It substantially modifies the 43-year old Bank Holding Company Act of 1956 to permit companies that own commercial banks to engage in any type of financial activity, through a new entity called a "financial holding company".
3. It allows subsidiaries of national banks to engage in a broader range of financial activities that are not permitted for the national banks themselves, through a new entity called a "financial subsidiary".

Some of the key concepts and provisions in the GLBA include the following:

I. Financial Holding Companies.

A financial holding company ("FHC") is simply a bank holding company that has elected to become a "financial holding company" pursuant to the GLBA. To be an FHC, the bank holding company must satisfy and continue to satisfy new regulatory requirements. FHCs are supervised by the Federal Reserve. A bank holding company may elect to become a financial holding company in order to engage in the broad new range of financial activities permitted under GLBA.

GLBA authorizes an FHC and its affiliates (meaning FHC subs that are not banks) to engage in activities that are:
Financial in nature;
Incidental to such financial activity; or
Nonfinancial, but complementary to financial activities.

Laundry list of activities that are "financial in nature" include:
Lending, exchanging, transferring, investing for others, or safeguarding money or securities;
All insurance underwriting and sales (brokerage) activities;
Investment or economic advisory services;
Securitizations;
All securities underwriting and dealing activities;
All "closely related to banking" activities previously approved for bank holding companies by the Federal Reserve Board under section 4(c) (8) of the Bank Holding Company Act;
Certain products offered overseas, such as travel agency services;
Merchant banking/equity investment activities.

Activities that are "incidental to financial activities":
The Federal Reserve Board, in consultation with the Treasury Department, is authorized to allow banking organizations to engage in other financial activities that are not in the enumerated "financial in nature" list, if they deem the activity to be "incidental to" a financial activity. In making this determination, they are to consider:
•Changes or reasonable expected changes in the marketplace in which the banking organization competes or the technology for delivering financial services; and
•Whether the proposed activity is necessary or appropriate to allow an FHC to:
→Compete effectively with any company seeking to provide financial services;
→Efficiently deliver information and services that are financial in nature through the use of technology, including applications involving systems for data transmission or financial transactions; and
→Offer customers any available or emerging technological means for using financial services or for the document imaging of data.

House Financial Institutions
1-22-01
Attachment 2

"Complementary" Nonfinancial Activities:
The Federal Reserve Board has authority to allow FHCs to engage in certain nonfinancial activities if they determine that the activity:
•Is complementary to a financial activity; and
•Does not pose a substantial risk to the safety or soundness of depository institutions or the financial system generally.

II. Financial Subsidiaries.

A financial subsidiary is a new type of subsidiary authorized for national banks by GLBA. Financial subsidiaries can engage in most of the nonbanking activities that are deemed to be "financial in nature" or "incidental to a financial activity". These subsidiaries must be controlled by one or more depository institutions. "Control" is primarily defined as owning 25% or more of the shares of the company. Some of the activities that a financial subsidiary cannot engage in include underwriting of insurance, engaging in real estate development, or engaging in merchant banking (venture capital-type) activities. A national bank seeking to have a financial subsidiary, and each of its depository institution affiliates, must meet certain safety and soundness standards. In addition, the total assets of all of a national bank's financial subsidiaries must not exceed 45% of the parent bank's total assets or $50 billion, whichever is less. Equity investments in financial subsidiaries, including retained earnings, must be deducted from the parent bank's capital.

III. Unitary Thrift Holding Companies.

While GLBA substantially expands the ability of a bank to affiliate with any financial company, it also confirms the longstanding prohibition on a bank affiliating with a commercial company. Prior to GLBA, there was a type of vehicle called a "unitary thrift holding company", which allowed a commercial company to acquire a thrift institution. The Act contains a retroactive effective date on and after which such acquisitions are no longer allowed, which is May 4, 1999. Any commercial holding companies which were unitary thrift holding companies on May 4, 1999, were "grandfathered" under the Act.

IV. Federal Home Loan Bank System Reforms.

In general, GLBA made it easier to join the Federal Home Loan Bank System, (FHLB) by waiving the membership requirement that 10% of a bank's assets be invested in residential mortgage loans for institutions with $500 million or less in assets, and increased the borrowing capacity of depository institutions who are members of the FHLB by espanding the types of eligible collateral for FHLB advances. These changes will be extremely beneficial to small community banks.

V. Privacy.

The GLBA privacy provisions expand a customer's ability to protect the privacy of information provided to any kind of financial entity, including banks, securities firms, insurance companies, thrifts and credit unions. The Act attempts to strike a balance between personal privacy protections, and the legitimate needs of financial institutions to share information, especially among affiliates. The privacy provisions are complex, but four main requirements are imposed on a financial institution. A financial institution must:
•Establish and disclose annually its privacy policy (tell customers what you do with their nonpublic personal information)
•Afford customers the right to "opt out" of disclosures to non-affiliated third parties, subject to a number of exceptions. (A customer has no ability to opt-out of disclosures to affiliates).
•Not disclose account information to third-party marketers.
•Abide by regulatory standards to protect confidentiality of consumer information.

Attached to this summary is additional detailed information prepared by the American Bankers Association on the privacy provisions of GLBA.

VI. Community Reinvestment Act.

The GLBA requires that certain CRA requirements be met if companies and banks want to utilize the new powers in the Act. To become a financial holding company, all of the subsidiary depository institutions must have, and continue to have a "satisfactory" CRA rating. If any subsidiary falls below the "satisfactory" level, there is an opportunity to cure the deficiencies. If the deficiencies are not cured within the allotted time, the FHC is prohibited from making new acquisitions or commencing new activities pursuant to the new powers granted under GLBA. Also included in this CRA section of GLBA were some regulatory relief measures for smaller community banks and thrifts, which included longer periods between CRA examinations. Finally, the Act included new requirements for public disclosure of CRA agreements between banking organizations and community groups or other private parties.

Sources:

"Financial Modernization: The Gramm-Leach-Bliley Act Summary"; American Bankers Association, November 12, 1999

"New Opportunities for Community Banks, Financial Modernization- The Gramm-Leach-Bliley Act, An ABA Workbook"; American Bankers Association, January 2000

"The Gramm-Leach-Bliley Financial Modernization Act of 1999: A Guide for the State System"; Conference of State Bank Supervisors, 1999

© 1 nerican Bankers Association. Al. .ights Reserved

APPENDIX D

DETAILED SUMMARY OF PRIVACY PROVISIONS

This appendix describes in more detail the Act's requirements regarding (A) the disclosure of nonpublic personal information of financial institution consumers; and (B) the prohibition on fraudulent access to such information.

A. Disclosure of Nonpublic Personal Information

As described below, a financial institution is subject to four new requirements regarding the nonpublic personal information of a consumer. For these purposes, a "consumer" means an individual who obtains financial products or services from a financial institution primarily for personal, family, or household purposes; it does not include any corporate entity or any individual or corporate business customer. "Nonpublic personal information" generally means personally identifiable financial information obtained by any means, other than publicly available information.

1. Annual Disclosure of Privacy Policy

The Act's first privacy obligation for financial institutions is the requirement to establish and disclose a privacy policy.

General requirement. A financial institution must clearly and conspicuously disclose to each of its consumers its policies and practices for the protection and disclosure of nonpublic personal information.

Contents of disclosure.[31] Among other things, the disclosure must include the categories of information that are collected and the financial institution's policy and practices regarding—

- Disclosure of nonpublic personal information to ***both*** nonaffiliated third parties ***and affiliates.***
- Disclosure of nonpublic personal information of persons who are no longer customers.
- Protection of the confidentiality and security of nonpublic personal information.

Timing and form of disclosure. The disclosure must be made at the beginning of a financial institution's relationship with the consumer, and at least once each year thereafter as long as the relationship with the consumer continues. The disclosure must be in writing, electronic form, or other form prescribed by implementing regulations.

---

[31] The Act's provisions regarding the contents of the disclosure are both redundant and confusing. This confusion will likely be resolved by the implementing regulations.

2-4

2. Customer "Opt-Out" of Disclosures to Third Parties

The Act's second basic privacy obligation for financial institutions is the requirement that a consumer be afforded the right to prevent the disclosure of nonpublic personal information to a nonaffiliated third party—commonly referred to as the right to "opt out."

General requirement. A financial institution may not disclose nonpublic personal information to a "nonaffiliated third party" unless—

- The financial institution clearly and conspicuously discloses to the consumer that such information may be disclosed to the third party;
- The consumer is given the opportunity to direct that the information not be disclosed to the third party (the right to "opt out"); and
- The consumer is given an explanation of how to exercise the opt-out.

The financial institution does *not* have to provide the right to opt out when the information is provided to an *affiliate,* as opposed to a nonaffiliated third party. In addition, "nonaffiliated third party" is defined as an entity that is not under common control with the financial institution; a "joint employee" is not a nonaffiliated third party. As a result, the opt-out need not be provided if the financial institution provides the information to its employee who happens also to be an employee of a nonaffiliated third party.

Timing and form of disclosure. The consumer must be given the right to opt out *before* nonpublic personal information is initially disclosed to a nonaffiliated third party. And as with the privacy policy disclosure, the opt-out disclosure must be in writing, electronic form, or other form prescribed by implementing regulations.

Limits on re-disclosure of information. A nonaffiliated third party that receives nonpublic personal information from a financial institution may not re-disclose that information to any other nonaffiliated third party, unless it would have been lawful for the financial institution to make that disclosure in the first instance. The Federal Trade Commission ("FTC") is provided the authority to enforce the privacy restrictions in the Act that apply to non-financial institutions, which includes the re-disclosure restrictions that apply to a nonaffiliated third party that is not a financial institution.

Exceptions. There are many important exceptions to the opt-out requirement, the most significant of which are listed in Attachment 1 attached to this Appendix. For example, the opt-out does not apply where a financial institution discloses information to a nonaffiliated third party to market the financial institution's own products. The opt-out also does not apply where the disclosure is made to market financial products or services offered pursuant to joint agreements between two or more financial institutions. Community banks, in particular, should be able to take advantage of this "joint agreement" exception when partnering with other financial companies to sell securities or insurance.

Other exceptions to the opt-out requirement are intended to address situations, among others, where: it would not be practical to provide the opt-out (*e.g.*, where the sharing is done to produce a consolidated customer statement from affiliated companies); an opt-out would not be expected by the consumer (*e.g.*, where the sharing is necessary to complete a transaction or service the customer's account); or the information sharing would serve an equally important public policy as protecting the customer's privacy (*e.g.*, to comply with a regulatory investigation). As a group, these exceptions address fundamental concerns that had been raised by the financial services industry concerning the practical problems associated with an opt-out.

3. Prohibition on Disclosure of Account Information

The Act's third privacy requirement for financial institutions is a prohibition: A financial institution may not disclose an account number "or similar form of access number or access code" for a credit card account, deposit account, or transaction account of a consumer to any nonaffiliated party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer. There is only one statutory exception to the prohibition, which applies to disclosures to a credit bureau. However, additional exceptions may be established by regulation.[32]

This prohibition does not apply to disclosures to an affiliate. As a result, the Act does not prevent the use of an account number either in a financial institution's own marketing, or in the marketing of the financial institution's products by an affiliate.

4. Regulatory Standards to Protect Security and Confidentiality

The Act's fourth privacy requirement for financial institutions derives from a vague provision that "it is the policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information." Although this provision is worded quite broadly, its actual effect is unclear because it is stated merely as a "policy of the Congress" and appears not to impose any specific restrictions.

A related provision does, however, require each financial institution regulator, "in furtherance of the policy," to establish appropriate "standards" relating to safeguards to (1) ensure the security and confidentiality of customer records; (2) protect against any anticipated threats to the security of such records; and (3) to protect against unauthorized access to such records that could result in substantial harm or inconvenience to the customer. These proposed standards seem directed toward the physical security and integrity of customer records, which appears to be considerably narrower than the subject matter of the "Congressional policy" that it purports to implement. Moreover, the use of the term "standards," rather than "rules or regulations," suggests that the regulatory agencies are to provide generalized guidance rather than detailed regulatory prescriptions.

5. Rulemaking and Enforcement

The Act requires the federal banking agencies, the National Credit Union Administration, the SEC, the Treasury Department, and the FTC *each* to prescribe regulations to implement the new privacy obligations for the institutions or persons under their respective jurisdictions. (As noted previously, the FTC will have jurisdiction over any institution or person that is subject to the privacy provisions but is not otherwise regulated as a "financial institution.") While these agencies are supposed to consult with one another to assure as much similarity in the regulations as possible, they may in fact issue quite different versions of such regulations—which would mean that quite different privacy rules could apply to different subsidiaries (*e.g.*, bank, insurance, and securities subsidiaries) owned by a single FHC. The agencies listed above, along with state insurance regulators, are to enforce the statute and implementing regulations.

---

[32] The Act's legislative history indicates that, in granting regulatory exceptions, the regulators may consider it consistent with the purposes of the privacy provisions to permit the disclosure of customer account numbers in an encrypted form where the disclosure is expressly authorized by the customer and is necessary to service a transaction expressly authorized by the customer.

6. FCRA Rulemaking Authority

The Act eliminates the prohibition on the FTC and the federal banking agencies from issuing regulations under the FCRA, and in fact directs the federal banking agencies to jointly prescribe "such regulations as are necessary to carry out the purposes of the [FCRA]" (with the Federal Reserve prescribing regulations for bank holding companies). The Act also removes restrictions on the federal banking agencies' conducting examinations regarding FCRA compliance. Finally, the Act states that, with the exception of the provisions just mentioned, none of its new privacy provisions is intended to change the manner in which the FCRA applies to financial institutions. This means that FCRA requirements that had applied before the enactment of the Act, such as the disclosures required when a consumer's credit application information is shared with an affiliate, will continue to apply as before.

7. Relation Between Federal and State Laws

The Act generally provides that the new federal privacy provisions will preempt only those state laws that are inconsistent with the federal laws. The exception is that such preemption will not apply if the state law provides *greater* privacy protection than the federal law, as determined by the FTC.

B. Fraudulent Access to Financial Information

The final privacy provision in the Act applies not to financial institutions, but to any person who fraudulently obtains or causes the disclosure of customer information from a financial institution by fraudulent or deceptive means. The Act makes such fraudulent access a federal crime, punishable by up to five years' imprisonment. The Act also provides the FTC and financial regulatory agencies with administrative enforcement power. This provision in the Act is aimed squarely at the abusive practice of "pretext calling," in which someone misrepresents the identity of the person requesting the information or otherwise misleads an institution or customer into making an unwitting disclosure of customer information. Although the prohibition applies directly to the conduct of the persons who seek fraudulent access, the Act directs the financial regulatory agencies to revise existing regulations and guidelines to ensure that financial institutions under their jurisdiction have policies, procedures, and controls in place to prevent, deter, and detect fraudulent access to customer information.

APPENDIX D—ATTACHMENT 1

DISCLOSURES NOT SUBJECT TO "OPT-OUT" REQUIREMENT

A financial institution may make the following types of disclosures of nonpublic personal information of a consumer to a nonaffiliated third party ***without*** providing the consumer the right to "opt out" of the disclosure:

- **Marketing certain financial products.** Disclosures to perform services on behalf of the financial institution, *including—*
  - ➢ Marketing of the financial institution's own products or services, and
  - ➢ Marketing of financial products or services offered pursuant to joint agreements between two or more financial institutions.

These exceptions apply only if the financial institution fully discloses to the consumer the providing of the information to the third party, and the third party agrees by contract to maintain the confidentiality of the information. *Community banks, in particular, should be able to take advantage of the "joint agreement" exception when partnering with other financial companies to sell securities or insurance.*

- **Necessary for transaction.** Disclosures that are "necessary to effect, administer, or enforce a transaction"—
  - ➢ In connection with servicing or processing a financial product or service requested or authorized by the consumer.
  - ➢ In connection with maintaining or servicing the customer's account with the financial institution, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity.
  - ➢ In connection with a proposed or actual securitization, secondary market sale (including sales of servicing rights), or similar transaction related to a transaction of the consumer.
  - ➢ Requested or authorized by the consumer.

For purposes of these exceptions, "necessary to effect, administer, or enforce" is defined broadly to include disclosures that are required or are the "usual, appropriate, or acceptable method" to—

- ➢ Carry out a transaction, record or service or maintain the consumer's account, or administer benefits or claims related to a consumer transaction;
- ➢ Provide the consumer with a confirmation or other record of a transaction or information on the value of a financial service or product;
- ➢ Accrue bonuses associated with a transaction;
- ➢ Enforce the rights of the financial institution in carrying out a financial transaction;
- ➢ Engage in a range of activities related to providing insurance or reinsurance; or
- ➢ Provide authorization, settlement, billing, processing, clearing, transferring, reconciling, or collection of amounts charged, debited, or otherwise paid using a check, debit or credit card, or other payment means.

- **Consent.** Disclosures made with the consent or at the direction of the consumer.
- **Customer protection.** Disclosures to protect the confidentiality or security of the customer's information.
- **Antifraud.** Disclosures to protect against fraud, unauthorized transactions, etc.
- **Dispute resolution.** Disclosures for "required institutional risk control," or for resolving customer disputes or inquiries.
- **Beneficial or fiduciary interests.** Disclosures to persons holding a legal or beneficial interest relating to the consumer, or to persons acting in a fiduciary or representative capacity on behalf of the consumer.
- **Rating agencies.** Disclosures to provide information to rating agencies, insurance rate advisory organizations, guaranty funds or agencies, and persons assessing compliance with industry standards.
- **Attorneys, accountants, and auditors.** Disclosures to any of these service providers.
- **Law enforcement.** Disclosures to law enforcement agencies, other agencies, or self-regulatory organizations if specifically permitted or required under other provisions of law.
- **Public safety investigation.** Disclosure for an investigation involving public safety.
- **Credit bureaus.** Disclosures to a consumer reporting agency in accordance with the FCRA, or from a consumer report reported by a consumer reporting agency.
- **Sale or merger.** Disclosures made in connection with a proposed or actual sale or merger of all or a portion of a business, if the disclosure of the nonpublic personal information concerns solely consumers of such business or unit.
- **Legal requirements, judicial process, or regulatory compliance.** Disclosures to comply with federal, state, or local law; comply with regulatory investigations; respond to judicial process; or comply with examination or related requirements.
- **Regulatory exceptions.** In addition to these statutory exceptions, additional exceptions may be provided by regulation to permit other types of disclosures without the opt-out.

KANSAS BANK FACTS

(Based on 6/30/00 data)

- Kansas has 375 chartered banks of which 270 are state charters and 105 are national charters. Kansas ranks 5th in the nation behind Texas, Illinois, Minnesota, and Iowa in the number of chartered banks.
- There is at least one chartered bank in 102 of the 105 Kansas counties. Only Wichita, Wallace, and Edwards counties are without a chartered bank. 17 other counties have only one chartered bank while Johnson County has the most with 21 charters.
- Kansas law has allowed multi-bank holding companies since 1985. There are currently 23 multi-bank holding companies in Kansas, which control 56 Kansas banks and 21 out-of-state banks.
- Interstate banking began in Kansas in 1992. Bank holding companies from three states own 10 Kansas chartered banks. Kansas holding companies control banks in Oklahoma, Missouri, Nebraska, Nevada, Texas, New Mexico, Arizona and Colorado.
- Interstate branching began in Kansas in 1997. There are currently nine out-of-state banks operating 160 branches in Kansas while four Kansas banks have a total of 13 out-of-state branches.
- There are banking facilities in 439 Kansas towns and cities. Over 70% of all chartered banks in Kansas are located in towns of less than 5,000 population. 20% of all chartered banks are located in towns of less than 500. There are chartered banks in 37 Kansas towns where the population is less than 250. The smallest town in the state with a chartered bank is Aliceville (pop. 37).
- There are 1,116 banking facilities (home offices and branches) throughout Kansas. Johnson County has the most facilities with 143 while Sedgwick County has 118. There are 20 counties that have three or fewer facilities.

- Out-of-town branching was allowed in Kansas on a limited basis starting in 1986 and statewide branching has been possible since 1990. There are 464 out-of-town branch offices operated by 180 banks and 162 Kansas towns have only branch facilities of an out-of-town bank. Over 40% of all Kansas banks do not have any in-town or out-of-town branch offices.

- Kansas's chartered banks have total assets of $36.27 billion. The largest chartered bank in Kansas is Firstar Bank of Overland Park with $4.25 billion in assets and the TriCentury Bank of Simpson is the smallest with $2.10 million in assets.

- While the average asset size of Kansas banks is $96.7 million the median asset size is $39.4 million. 25% of all Kansas banks have less than $20 million in assets while 58% have less than $50 million in assets. Only 19% of all Kansas banks have more than $100 million in assets.

- Total deposits for Kansas banks currently stands at $29.82 billion. The ten largest banks in Kansas hold 35% of the total deposits in the state.

- Tier I capital (core capital) for all Kansas banks stands at $3.50 billion which is 9.64 % of total assets - well above the national average (8.51) for Tier I capital.

- Loan volume for Kansas banks totals $23.19 billion with a loan to deposit ratio of 77.8% - an historic high. The largest segment of loans was non-farm real estate (44.8%) followed by commercial and industrial loans (20.9 %), and agricultural production and farm real estate loans (16.8%). The statewide ROA average for Kansas banks as of 6/30/00 was 1.28.

- Kansas banks employ over 13,500 people. Nearly one-third of all Kansas banks have fewer than 10 employees and 56% of the banks employ fewer than 20 people.

Kansas Bankers Association

800 SW Jackson, Suite 1500

Topeka, KS 66612

785-232-3444 Fax - 785-232-3484 kbacs@ink.org

January 22, 2001

TO: House Committee on Financial Institutions

FROM: Chuck Stones, SVP

RE: Introduction of Bill: Holding Period for Personal Property

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today to request introduction of a bill that would lengthen the period of time in which a bank has to sell repossessed personal property.

The bill would amend K.S.A. 9-1112(d) and (e). Current law provides that a bank must sell personal property coming into its possession in the collection of a debt within six months. While that may seem like an adequate period of time, there are some instances where because of the nature of the property, it is unwise to attempt such a turn around.

For example, manufactured homes are considered to be personal property. Manufactured homes are also considered to be personal residences. Imagine trying to prepare your home for sale, putting it on the market and having the sale closed in six months.

We hope you will agree that there is a need to change the law and we respectfully request introduction of the attached proposed bill.

Chapter 9.--BANKS AND BANKING; TRUST COMPANIES
Article 11.--BANKING CODE; POWERS

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~~ *one year* of acquisition, provided a commercially reasonable sale can occur.

(e) If a commercially reasonable sale cannot occur within ~~six months~~ *one year*, 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.

History: L. 1947, ch. 102, § 41; L. 1975, ch. 44, § 18; L. 1981, ch. 52, § 1; L. 1985, ch. 56, § 3; L. 1988, ch. 61, § 3; L. 1990, ch. 59, § 1; L. 1993, ch. 31, § 3; July 1.

Kansas Bankers Association

800 SW Jackson, Suite 1500
Topeka, KS 66612
785-232-3444 Fax - 785-232-3484 kbacs@ink.org

January 22, 2001

TO: House Committee on Financial Institutions

FROM: Chuck Stones, Kansas Bankers Association

Re: Introduction of Bill: Certification of Trust

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today to request the introduction of this bill. We are proposing to add a new section to the law that would provide a method whereby a trustee may voluntarily give a certification of trust to any person in lieu of a copy of the trust instrument, to establish the existence and verify the terms of a trust.

There are many instances when a bank is asked to perform a service requested by a trustee. Typically, the bank will ask the trustee to verify that he or she is in fact, the trustee and that the trustee has the authority to act on behalf of the trust. Many trustees are reluctant to copy the trust instrument as it may contain sensitive information. Some trustees are willing to copy the front and back page of the trust, which may or may not evidence the status of the trustee.

This bill would provide an alternate method for those trustees who do not wish to copy the trust. It would allow the trustee to fill out a "certification" in which the trustee certifies that he or she is in fact, the trustee and is authorized to complete the requested transaction on behalf of the trust.

The certification of a trust also benefits the person who relies on the fact that the trustee is authorized to complete the requested transaction. Once a certification of trust is given to a third party, that third party may rely on its contents without fear of liability should the trustee's representations in the certification be incorrect.

This is purely a voluntary provision – a trustee does not have to issue a certification of trust, and the third party does not have to accept it. Having a legal option for those trustees not wishing to copy the trust will make it easier for a trustee to do business, and will lessen the risk taken by those doing business with trustees.

Certification of Trust

New Section 1. (1) A trustee may present a certification of trust to any person in lieu of a copy of any trust instrument to establish the existence or terms of the trust. The trustee may present the certification of trust voluntarily or at the request of the person with whom he or she is dealing. Notwithstanding any provision of the Kansas Uniform Trustees' Powers Act to the contrary, no person is required to accept and rely solely on a certification of trust in lieu of a copy of, or excerpts from, the trust instrument itself.

(2) A certification of trust shall be in the form of an affidavit and signed and acknowledged by a corporate trustee, or one or more acting trustees of the trust.

New Section 2. (1) A certification of trust may confirm the following facts or contain the following information:

(a) The existence of a trust and, for an inter vivos trust, the date of execution or, for a testamentary trust, the date of death of the decedent;

(b) The identity of the grantor, settlor, or testator and each currently acting trustee;

(c) The powers of the trustee and any restrictions imposed upon the trustee in dealing with the assets of the trust;

(d) The name or method of choosing successor trustees;

(e) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke it;

(f) If there is more than one trustee, whether all of the currently acting trustees must, or if less than all, may, act to exercise identified powers of the trustee;

(g) The identifying number of the trust and whether it is a social security number or an employer identification number;

(h) The name of each beneficiary and the relationship to the grantor, settlor, or testator;

(i) The state or other jurisdiction under which the trust was established; and

(j) The form in which title to the assets of the trust was established; and

(k) The form in which title to the assets of the trust is to be taken.

(2) The certification of trust shall contain a statement that the trust has not been revoked or amended to make any representations contained in the certification of trust incorrect and that the signatures are those of all the acting trustees.

New Section 3. A certification of trust need not contain the dispositive provisions of the trust, but the person to whom the certification of trust is presented may require copies of, or excerpts from, any trust instrument which designates the trustee or confers upon the trustee power to act in the pending transaction.

New Section 4. A person who acts in reliance upon a certification of trust without any knowledge that the representations contained in the certification of trust are incorrect is not liable to any person for such actions. A person who does not know that the representations contained in the certification of trust are incorrect may assume without inquiry the existence of the representations contained in the certification of trust. Knowledge may not be inferred solely from the fact that a copy of all or part of a trust instrument is held by the person relying upon the certification of trust.

New Section 5. A person's failure to demand a certification of trust, or his or her refusal to accept and rely solely obn a certification of trust, shall not be considered an improper act, and no inference as to whether he or she has acted in good faith shall be drawn from the failure to demand, or the refusal to accept and rely upon, a certification of trust. This section creates no implication that a person is liable for acting in reliance upon a certification of trust under circumstances in which the requirements of Sections 1 to 6 are not satisfied.

New Section 6. Sections 1 to 5 of this act apply to all trusts whether established pursuant to Kansas law or established pursuant to the law of another state or jurisdiction.

Chapter 9.--BANKS AND BANKING; TRUST COMPANIES
Article 11.--BANKING CODE; POWERS

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~~ *one year* of acquisition, provided a commercially reasonable sale can occur.

(e) If a commercially reasonable sale cannot occur within ~~six months~~ *one year*, 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.

History: L. 1947, ch. 102, § 41; L. 1975, ch. 44, § 18; L. 1981, ch. 52, § 1; L. 1985, ch. 56, § 3; L. 1988, ch. 61, § 3; L. 1990, ch. 59, § 1; L. 1993, ch. 31, § 3; July 1.