

Approved: _____

Date

3-13-01

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Chairperson Sandy Praeger at 9:30 a.m. on March 6, 2001 in Room 234-N of the Capitol.

All members were present except:

Committee staff present: Dr. Bill Wolff, Kansas Legislative Research Department
Ken Wilke, Office of the Revisor of Statutes
JoAnn Bunten, Committee Secretary

Conferees appearing before the committee:

Sonya Allen, General Counsel, Office of the State Bank Commissioner
Kathleen Olsen, Kansas Bankers Association

Others attending: See attached list.

Hearing on HB 2146 - Providing products and services a national bank may provide

Sonya Allen, General Counsel, Office of the State Bank Commissioner, testified before the Committee in support of **HB 2146** which would authorize state banks to form "financial subsidiaries" and engage in the broad array of activities that are authorized for financial subsidiaries by the Gramm-Leach-Bliley Act as outlined in her written testimony. (Attachment 1)

There were no opponents to the bill.

Hearing on HB 2147 - Unlawful transactions; holding property

Kathleen Olsen, Kansas Bankers Association, testified before the Committee in support of **HB 2147** which would amend K.S.A. 9-112 to lengthen the period of time from six months to one year in which a bank has to sell repossessed personal property such as manufactured homes. She noted that manufactured homes are bought and sold as personal residences, and it is virtually impossible for a person to prepare a home for sale, put it on the market and have the sale closed in six months. (Attachment 2)

There were no opponents to the bill.

Hearing on HB 2148 - Certification of trusts

Kathleen Olsen, Kansas Bankers Association, testified before the Committee in support of **HB 2148** which would allow a trustee voluntarily, or upon the request of the person with whom he or she is dealing, to sign a "Certification of Trust" in lieu of a copy of the trust instrument, to establish the existence and verify the terms of a trust. Ms. Olsen noted that the bill would accomplish two very important things: (1) it would provide an alternative to trustees who do not wish to copy the full trust; and (2) its use would provide protection to third parties dealing with a trustee. (Attachment 3)

There were no opponents to the bill.

Hearing on HB 2149 - Bank Commissioner, sharing certain information

Sonya Allen, General Counsel, Office of the State Bank Commissioner, expressed her support for **HB 2149** which would allow the bank commissioner to share information, when appropriate, with other functional regulators and to likewise receive information as noted in her written testimony. (Attachment 4)

There were no opponents to the bill.

CONTINUATION SHEET

Discussion and action on HB 2146, HB 2147, HB 2148, and HB 2149

During Committee discussion staff noted that the statute in **HB 2146** is also being amended in **HB 2482**, and the Committee may want to make both amendments to that statute in **HB 2482** when the bill is worked so that the legislature would not have to reconcile separate amendments at a later date.

Staff also brought the Committee's attention to a need for a technical amendment in **HB 2149**, by adding a comma after the word "agreement" on page 2, line 13.

Senator Teichman made a motion that the Committee amend **HB 2149** by adding a comma after the word "agreement" on page 2, line 13, seconded by Senator Salmans. The motion carried.

Senator Teichman made a motion that the Committee recommend **HB 2147, HB 2148 and HB 2149 as amended** favorable for passage, seconded by Senator Allen. The motion carried.

Senator Corbin voted "No" on **HB 2147**.

Approval of Minutes

Senator Salmans made a motion to approve the Committee minutes of February 27, 28 and March 1, seconded by Senator Brungardt. The motion carried.

Adjournment

The meeting was adjourned at 10:30 a.m. The next meeting of the Committee is scheduled for March 7, 2001.

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
Deputy Commissioner
Consumer and Mortgage Lending

OFFICE OF THE
STATE BANK COMMISSIONER

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

March 6, 2001

Madame Chair and Members of the Committee:

My name is Sonya Allen. I am the general counsel for the Office of the State Bank Commissioner. I am here today to request your favorable consideration of HB 2146. The bill would add a new subsection to K.S.A. 9-1101 to authorize state banks to form "financial subsidiaries," and engage in the broad array of activities that are authorized for financial subsidiaries by the Gramm-Leach Bliley Act, Pub. L. 106-102 (GLBA). The GLBA only authorized formation of financial subsidiaries for national banks, and therefore required the individual states to provide such authority for their state-chartered banks. Numerous states have already provided their state banks this authority, either through their wildcard statutes, or through legislative actions. Our border states (Missouri, Oklahoma, Colorado, and Nebraska) have all taken some action to provide parity with respect to financial subsidiary formation.

Last legislative session, we discussed with this committee the introduction of legislation to address the financial subsidiary issue. At the time, GLBA was still very new, and administrative regulations on the federal level, regarding implementation of the financial subsidiary provisions, were in interim rule form. For these reasons, our department received direction from this committee to issue a Special Order, if we deemed it necessary to address the inequality. Our office did issue that order in April of last year.

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In the Commissioner's Special Order 2000-1, we chose to include those powers that we believed were most important for Kansas state-chartered banks to exercise at the time, and left the other powers for further study. HB 2146 includes all of the provisions of our Special Order 2000-1 and a few additional powers that were not included in our Order, but are allowed for national banks by the GLBA .

At the end of my testimony you will find the full list of activities that a financial subsidiary will be able to perform by the passage of HB 2146. Those powers noted with an asterisk are activities already authorized by our Special Order. Those powers noted by a plus sign are additional powers. For your benefit, I have also attached the federal law definition of "financial subsidiary." HB 2146 will provide full parity for state banks to engage in financial subsidiary activities to the same extent as national banks. It is important to note that prior approval from the commissioner is required before any state bank can form or hold an interest in a financial subsidiary. This ensures that we will be able to review each request to determine whether the proposed activity is appropriate, in light of the particular bank's condition.

One of the new powers that was not included in the Special Order and is probably of most significance, is the power to form a financial subsidiary to underwrite, deal in, and make a market in securities. We have had discussions with David Brant, the Securities Commissioner, concerning their oversight of financial subsidiaries engaging in such activities. An important concept from GLBA to remember regarding financial subsidiary activities is the concept of "functional regulation." This means that the regulator with the expertise to supervise and regulate the activity of a financial subsidiary will be the primary regulator of that subsidiary. In other words, if a state bank holds an interest in a financial subsidiary engaging in securities activities, that subsidiary would need to be licensed with the Securities and Exchange Commission and/or the State Securities Commissioner to the same extent as any other company doing that same activity. That same sort of functional licensing and supervision applies to financial subsidiaries engaging in insurance activities: i.e., they will need to be properly licensed with the Kansas Insurance Department. So, while the bank is supervised and regulated by our agency, financial subsidiaries of the bank engaged in securities activities would be regulated by Commissioner David Brant's office, and insurance subsidiaries would be regulated by Commissioner Kathleen Sebelius.

Clearly, there are still numerous areas of GLBA that will continue to be interpreted and refined over time. We believe that HB 2146 is essential for state chartered banks to be able to compete in the new financial services environment created by GLBA, and that the proposed language provides our office with the authority to ensure that these new activities are conducted in a safe and sound manner.

Thank you. I would be happy to answer any questions.

*Lending, exchanging, transferring, investing for others, or safeguarding money or securities.

*Insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability or death, or providing and issuing annuities, and acting as principal, agent, or broker for purposes of the foregoing, in any State.

*Providing financial, investment, or economic advisory services, including advising an investment company (as defined in section 3 of the Investment Company Act of 1940).

*Issuing or selling instruments representing interest in pools of assets permissible for a bank to hold directly.

+Underwriting, dealing in, or making a market in securities.

*Engaging in any activity that the Federal Reserve Board has determined, by order or regulation that is in effect on the date of the enactment of the GLBA, to be so closely related to banking or managing or controlling banks as to be a proper incident thereto (subject to the same terms and conditions contained in such order or regulation, unless modified by the Board)

+Engaging, in the United States, in any activity that

-a bank holding company may engage in outside of the United States; and

-the Board has determined, under regulations prescribed or interpretations issued pursuant to subsection (c) (13) (as in effect on the day before the date of the enactment of the GLBA) to be usual in connection with the transaction of banking or other financial operations abroad.

+Activities the Secretary of the Treasury determines are financial in nature, or incidental to a financial activity.

“(1) AFFILIATE, COMPANY, CONTROL, AND SUBSIDIARY.—The terms ‘affiliate’, ‘company’, ‘control’, and ‘subsidiary’ have the meanings given those terms in section 2 of the Bank Holding Company Act of 1956.

“(2) APPROPRIATE FEDERAL BANKING AGENCY, DEPOSITORY INSTITUTION, INSURED BANK, AND INSURED DEPOSITORY INSTITUTION.—The terms ‘appropriate Federal banking agency’, ‘depository institution’, ‘insured bank’, and ‘insured depository institution’ have the meanings given those terms in section 3 of the Federal Deposit Insurance Act.

“(3) FINANCIAL SUBSIDIARY.—The term ‘financial subsidiary’ means any company that is controlled by 1 or more insured depository institutions other than a subsidiary that—

“(A) engages solely in activities that national banks are permitted to engage in directly and are conducted subject to the same terms and conditions that govern the conduct of such activities by national banks; or

“(B) a national bank is specifically authorized by the express terms of a Federal statute (other than this section), and not by implication or interpretation, to control, such as by section 25 or 25A of the Federal Reserve Act or the Bank Service Company Act.

“(4) ELIGIBLE DEBT.—The term ‘eligible debt’ means unsecured long-term debt that—

“(A) is not supported by any form of credit enhancement, including a guarantee or standby letter of credit; and

“(B) is not held in whole or in any significant part by any affiliate, officer, director, principal shareholder, or employee of the bank or any other person acting on behalf of or with funds from the bank or an affiliate of the bank.

“(5) WELL CAPITALIZED.—The term ‘well capitalized’ has the meaning given the term in section 38 of the Federal Deposit Insurance Act.

“(6) WELL MANAGED.—The term ‘well managed’ means—

“(A) in the case of a depository institution that has been examined, unless otherwise determined in writing by the appropriate Federal banking agency—

“(i) the achievement of a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating under an equivalent rating system) in connection with the most recent examination or subsequent review of the depository institution; and

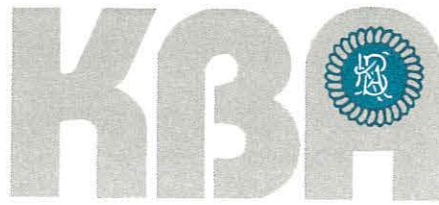
“(ii) at least a rating of 2 for management, if such rating is given; or

“(B) in the case of any depository institution that has not been examined, the existence and use of managerial resources that the appropriate Federal banking agency determines are satisfactory.”.

(b) SECTIONS 23A AND 23B OF THE FEDERAL RESERVE ACT.—

(1) LIMITING THE EXPOSURE OF A BANK TO A FINANCIAL SUBSIDIARY TO THE AMOUNT OF PERMISSIBLE EXPOSURE TO AN AFFILIATE.—Section 23A of the Federal Reserve Act (12 U.S.C. 371c) is amended—

(A) by redesignating subsection (e) as subsection (f); and



March 6, 2001

TO: Senate Committee on Financial Institutions and Insurance

FROM: Kathleen Taylor Olsen, Kansas Bankers Association

Re: HB 2147: Holding Period for Personal Property

Madam Chair and Members of the Committee:

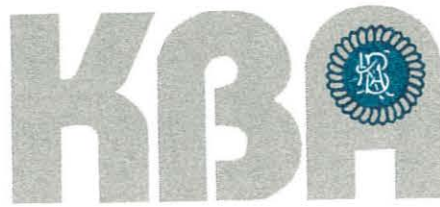
Thank you for the opportunity to appear before you today in favor of **HB 2147**. This bill would amend KSA 9-1112, to lengthen the period of time in which a bank has to sell repossessed personal property.

Currently, the law provides that a bank must sell personal property coming into its possession in the collection of a debt within six months. We have discovered that there are instances where because of the nature of the property, it is very difficult and unwise to attempt such a turn around of the property.

For example, manufactured homes are considered to be personal property. Manufactured homes are also bought and sold as personal residences. It is virtually impossible for a person to prepare a home for sale, put it on the market and have the sale closed in six months. In addition, with those time constraints, chances are the seller will not have obtained the best price for the home. Bankers are required by the Uniform Commercial Code to conduct a commercially reasonable foreclosure sale. In determining whether a sale was "commercially reasonable", the actual price received at the sale is a factor and courts will frown at a sale which yields an unusually low price.

Under current law, bankers who have a hard time getting property sold within six months do have the ability to seek additional time from the State Bank Commissioner under subsection (e). It is our understanding that such extensions were routinely granted, which helped lead us to believe there would be no objection to lengthening the period of time by six months, thereby saving banks and the Commissioner the cost and effort of having to apply for the extension.

We hope you will agree that there is a need to change the law and that you will look upon **HB 2147** favorably.



March 6, 2001

TO: Senate Committee on Financial Institutions and Insurance

FROM: Kathleen Taylor Olsen, Kansas Bankers Association

RE: **HB 2148: Certification of Trust**

Madam Chair and Members of the Committee:

Thank you for the opportunity to appear before you today in support of **HB 2148**.

This bill would allow a trust voluntarily, or upon the request of the person with whom he or she is dealing, to sign a "Certification of Trust" in lieu of a copy of the trust instrument, to establish the existence and verify the terms of a trust.

Financial institutions and other businesses are often faced with a dilemma when dealing with trustees of a trust: what is the proper way to verify that a person is in fact, the trustee of a trust and that he or she has authority to act on behalf of the trust. Many trustees are reluctant to copy the full 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 accomplish two very important things: 1) it would provide an alternative to trustees who do not wish to copy the full trust; and 2) it's use would provide protection to third parties dealing with a trustee.

Any trustee may voluntarily use the "Certification" in lieu of a copy of the trust when dealing with a third party. The Certification is an affidavit that must be signed and acknowledged by an acting trustee. In it, the trustee certifies that there is a valid trust for which he or she is an acting trustee, and that he or she is authorized to exercise the powers necessary to complete the requested transaction with the third party.

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. A third party may assume without having to inquire, that the representations contained in the Certification of Trust are correct.

Because there is **no requirement** that a Certification be used, a third party's failure to demand a Certification or his or her refusal to accept and rely solely on a Certification is not improper and does not by itself, indicate whether a third party did or did not act in good faith.

We believe that having this legal option for those trustees not wishing to copy the full trust instrument will make it easier for a trustee to do business with third parties, while at the same time, it will lessen the risk taken by those doing business with trustees.

CERTIFICATION OF TRUST

STATE OF NEBRASKA)
)SS:
COUNTY OF _____)

The undersigned, constituting all of the trustees of the (Insert name of trust)

("Trust,") being first duly sworn, depose and say:

1. **EXISTENCE OF TRUST.** The trust is in existence and consists of:
 (choose one)
 An intervivos trust¹ which was executed on (Insert date of intervivos trust)
 or
 A testamentary trust², with the date of death of the decedent being
 (insert date of death of decedent.)

2. **IDENTITY OF GRANTOR, SETTLOR OR TESTATOR.** The:
 (choose one)
 Grantor³
 Settlor³
 Testator⁴
 of the trust is (Insert name of person who created trust)

3. **CURRENTLY ACTING TRUSTEE(S).** (Insert name of trustee(s)) is/are
 the currently acting trustee(s) of the trust.

4. **POWERS OF TRUSTEE.** Following or attached to this CERTIFICATION OF
 TRUST is a list of the powers of the trustee of the trust:

¹ An intervivos trust is a trust created by an individual during his or her lifetime pursuant to a trust agreement.
² A testamentary trust is a trust established pursuant to the terms of an individuals Last Will and Testament.
³ A grantor/settlor is the individual who creates an intervivos trust.
⁴ A testator is a person who has executed a Last Will and Testament.

5. **RESTRICTIONS IMPOSED UPON TRUSTEE.** Following or attached to this CERTIFICATION OF TRUST is a list of the restrictions imposed upon the trustee of the trust in dealing with the assets of the trust:

6. A. **NAME OF SUCCESSOR TRUSTEE(S).** (Insert name of trustee(s))
is/are the successor trustee(s) of the trust.

B. **METHOD OF CHOOSING SUCCESSOR TRUSTEE(S).** Successor trustee(s) of trust are chosen as follows:

(Have the trustee(s) choose either option (a) or (b) in completing this portion of the CERTIFICATION OF TRUST)

7. **REVOCABILITY/IRREVOCABILITY OF TRUST.** The trust is:

(choose one)

Revocable

Irrevocable

and (Insert name(s) of any person with the power to revoke the trust)

holds the power to revoke said trust.

8. **EXERCISE OF POWERS BY TRUSTEE(S).**

(choose one)

All of the currently acting trustees must

Less than all of the currently acting trustees may

act to exercise identified powers of the trustee.

9. **IDENTIFYING NUMBER.** The tax identification number of the trust is:

(choose one)

Social Security Number: _____

Employer Identification Number: _____

13. ACKNOWLEDGMENT. The trust has not been revoked or amended to make any representations in this CERTIFICATION OF TRUST incorrect and the trustee(s) signing this document is/are the corporate trustee or one or more of the acting trustees.

_____, Trustee

_____, Trustee

SUBSCRIBED AND SWORN to before me on _____.

(SEAL)

Notary Public
My commission expires on _____

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
*Deputy Commissioner
Consumer and Mortgage Lending*

OFFICE OF THE
STATE BANK COMMISSIONER

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

March 6, 2001

Madame Chair and Members of the Committee:

My name is Sonya Allen. I am the general counsel for the Office of the State Bank Commissioner. I am here today to request favorable consideration of HB 2149. The bill amends K.S.A. 9-1303, which is the statute that provides for the sharing of confidential information between our agency and other entities.

I just spent time talking with you about the provisions of the Gramm-Leach-Bliley Act and the idea of functional regulation. As you will remember, when a bank has a financial subsidiary that is engaged in an activity, the agency who supervises and licenses the activity within the subsidiary is their primary regulator, not the banking department. For example, if the financial subsidiary is for insurance purposes, then the insurance commissioner is the primary regulator of that subsidiary. Because the bank and the subsidiary are so interrelated, their financial conditions are very much interrelated as well. For this reason, the bank commissioner's office needs to have the ability to share information, when appropriate, with other functional regulators and to likewise receive information. By adopting this amendment, we will have that ability. For the most part, this sharing of information will be with the insurance and securities commissioners. The information that is shared will primarily concern the financial condition of either the subsidiary or the bank, and the strength that each entity lends to the other.

Thank you for this opportunity to appear before you. I would be happy to answer any questions.

Senate Financial Inst. & Insurance

Date: 3-6-01

Attachment No. 4