

MINUTES OF THE FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE

The meeting was called to order by Chairperson Senator Ruth Teichman at 9:30 a.m. on 03-19-03 in Room 234-N of the Capitol.

All members were present except:

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

Conferees appearing before the committee: Chuck Stones, Ks. Banking Assoc.
Sonya Allen, General Counsel, Office of the State Bank
Commissioner

Others attending: See attached list

Senator Teichman called on Dr. Wolfe to review **HB 2224**. He related that it amends **KSA 9-1101**. That is the basic statute in the Kansas Banking Code that authorizes banks to do certain things. It's their power section. Generally it has been understood that if it is not in this statute, they can't do it, and that's why you see all those enumerated items there through page 7. On page 7 adding a new paragraph 30 to authorize banks to purchase or hold annuities for the sole purpose of funding an employees deferred compensation and benefit plan.

Chuck Stones, Kansas Banking Association, explained why this bill is necessary. (See attachment 2)

Sonya Allen, General Counsel for the Office of the State Bank Commissioner, explained that **HB 2224** would amend the powers section of the State Banking Code, KSA 9-1101 and allow a state bank to invest in an annuity to fund a deferred compensation plan for its employees. (See attachment 1)

She also offered an amendment to **HB 2224**. The amendment is being proposed to address an issue that has recently arisen. When agencies want to adopt administrative regulations, part of the process of adoption is review of the regulation by the Attorney General's office. One of our regulations K>A>R> 17-11-18, sets out certain things a bank must do prior to making a loan. I have been able to determine that a regulation in substantially this same form that has been in existence since at least 1937. While the Attorney General's office is not questioning the wisdom of imposing such requirements, they have determined and communicated to our agency in a letter dated March 6, 2003, that our agency lacks the statutory authority to impose any of the requirements in the regulation. We believe that the amendment clarifies the power of the commissioner to implement regulations, and states the general purpose for such regulations. (See attachment 3)

Dr. Wolfe explained what this amendment is doing.

Senator Buhler moved to accept the amendment, seconded by Senator Salmans. Senator Steineger moved to pass out the bill favorably, seconded by Senator Buhler. Bill passed out favorably.

Minutes approved
Meeting adjourned.

**SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE
GUEST LIST**

DATE: _____

NAME	REPRESENTING
Chuck Stokes	KBA
Sonya Allen	OSBC

STATE OF KANSAS
KATHLEEN SEBELIUS
GOVERNOR

Judi M. Stork
Acting 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 19, 2003

Madame Chairman and Members of the Committee:

My name is Sonya Allen. I am the General Counsel for the Office of the State Bank Commissioner. HB 2224 would amend the powers section of the State Banking Code, K.S.A. 9-1101, and allow a state bank to invest in an annuity to fund a deferred compensation plan for its employees. Banks can currently purchase a life insurance policy to fund such a plan. The issue of an annuity has arisen because a bank that had an insurance policy in place was encouraged by the insurance company who sold them the plan to convert it to an annuity. The bank did convert the policy, but did not consider the lack of any legal authority to hold the investment. Hence, the request for legislation.

If HB 2224 is enacted, the Office of the State Bank Commissioner will enact regulations to govern the scope of this new authority. While we are still in the process of considering the content of any regulations, at this time, we believe the regulations should focus on limiting the dollar amount invested in the annuity based on a percentage of the bank's capital, and requiring the bank to show that it has evaluated the issuer of the annuity to ensure adequate credit quality.

I am also here to offer an amendment to HB 2224. The amendment is being proposed to address an issue that has recently arisen. As you are aware, when agencies want to adopt administrative regulations, part of the process of adoption is review of the regulation by the Attorney General's office. I understand that Attorney General Kline has implemented a new review process for his staff. One of our regulations, K.A.R. 17-11-18, sets out certain things a bank must do prior to, or in connection with, making a loan. Those things include such requirements as obtaining current financial information on the borrower, making sure the borrower has insurance on the property, and obtaining some sort of title security (title insurance, a title policy, etc.). I have been able to determine that a regulation in substantially this same form has been in existence since at least 1937. These are very basic underwriting practices that our agency believes should be followed by all banks. While the Attorney General's office's is not questioning the wisdom of imposing such requirements, they have determined, and communicated to our agency in a letter dated March 6, 2003, that our agency lacks the statutory authority to impose any of the requirements in the regulation. I have sought the assistance of Camille Nohe, Assistant Attorney General, as well as Dr. Bill Wolff, of legislative research, to determine what we need to do to ensure that our agency does have the requisite statutory authority, and this amendment is a result of our discussions. We believe the amendment clarifies the power of the commissioner to implement regulations, and more specifically, states the general purpose for such regulations, which is the safe and sound operation of the entities we regulate.

Finally, as we have a regulatory change pending that we would like to be able to move forward with prior to July 1, 2003, we would request the bill be further amended to become effective upon publication in the Kansas Register.

I would be happy to answer any questions you have concerning HB 2224 or our proposed amendment. Thank you.

Senate FI & I Committee

Meeting Date: 3-19-03

Attachment No.: 1



March 19, 2003

To: Senate Committee on Financial Institutions & Insurance

From: Kathleen Taylor Olsen, Kansas Bankers Association

Re: HB 2224

Madam Chair and Members of the Committee:

Thank you for the opportunity to appear before you today in support of **HB 2224**. This bill would amend K.S.A. 9-1101, the bank powers section of the banking code.

Specifically, we are adding a new subsection (30), which appears on the last page (page 7) of the bill. The new language would allow a state-chartered bank to purchase an annuity for the sole purpose of funding an employee deferred compensation or benefit plan. Any such purchase would be subject to the limitations prescribed by rules and regulations that will be adopted by the State Bank Commissioner.

The KBA brings this bill to you at the request of one of our members. As is typical of many banks, this bank held a life insurance policy on an officer of the bank. When the bank president retired, the bank's board of directors was advised to exchange (using the Section 1031 tax-free exchange as provided by the Internal Revenue Code) the cash value of the life insurance policy for an annuity. The monthly retirement payments to the retired president were to be paid from the annuity – so that the annuity's value would decline as payments were made until the balance was zero.

This was wonderful advice, except that such an investment (i.e., in an annuity) is not currently authorized by K.S.A. 9-1101. Upon this discovery, we have been working with the State Banking Department to come up with language that would allow a state-chartered bank to invest in an annuity – but only for the very limited purpose of funding an employee deferred compensation or an employee benefit plan. It is not our intention to, and we would ask your assistance in making sure that we do not, promote annuities in general as an appropriate investment for state-chartered banks.

In conclusion, we believe that, with the requirement that such an investment will be for the sole purpose of funding employee deferred compensation or benefit plans, and with the limitations that will be placed on such an investment by the State Bank Commissioner, state-chartered banks should be allowed to make this type of investment if it makes good tax sense for their situation. Thank you and we would ask that you act favorably on **HB 2224**.

HOUSE BILL No. 2224

By Committee on Financial Institutions

2-6

9 AN ACT relating to banking; concerning certain powers; amending
10 K.S.A. 9-1101 and repealing the existing section;

and 9-1713

11
12 *Be it enacted by the Legislature of the State of Kansas:*

sections

13 Section 1. K.S.A. 9-1101 is hereby amended to read as follows: 9-
14 1101. Any bank hereby is authorized to exercise by its board of directors
15 or duly authorized officers or agents, subject to law, all such powers,
16 including incidental powers, as shall be necessary to carry on the business
17 of banking, and:

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

23 (2) to buy and sell exchange, gold, silver, foreign coin, bullion, com-
24 mercial paper, bills of exchange, notes and bonds;

25 (3) to buy and sell bonds, securities, or other evidences of indebt-
26 edness of the United States of America or those fully guaranteed, directly
27 or indirectly, by it, and general obligation bonds of the state of Kansas or
28 any municipality or quasi-municipality thereof, and of other states, and
29 of municipalities or quasi-municipalities in other states of the United
30 States of America. No bank shall invest an amount in excess of 15% of its
31 capital stock paid in and unimpaired and the unimpaired surplus fund of
32 such bank in bonds, securities or other evidences of indebtedness of any
33 municipality or quasi-municipality of any other state or states of the
34 United States of America: (a) If and when the direct and overlapping
35 indebtedness of such municipality or quasi-municipality is in excess of
36 10% of its assessed valuation, excluding therefrom all valuations on in-
37 tangibles and homestead exemption valuation; (b) or if any bond, security,
38 or evidence of indebtedness of any such municipality or quasi-municipi-
39 pality has been in default in the payment of principal or interest within
40 10 years prior to the time that any bank acquires any such bonds, security
41 or evidence of indebtedness;

42 (4) to make all types of loans, including loans on real estate, subject
43 to the loan limitations contained in this act. Every real estate loan shall

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ATTACHMENT 3

1 limitations prescribed by the comptroller of the currency as interpreted
2 by rules and regulations which shall be adopted by the state bank com-
3 missioner as provided by K.S.A. 9-1713 and amendments thereto;

4 (28) to participate in a school savings deposit program authorized
5 under K.S.A. 9-1138, *and amendments thereto*; *and*

6 (29) with prior approval of the commissioner, to offer through one
7 or more financial subsidiaries any products or services which a national
8 bank may offer through its financial subsidiaries, subject to safety and
9 soundness requirements imposed by the commissioner. As used in this
10 paragraph, "financial subsidiary" shall have the same meaning given to
11 such term under the Gramm-Leach Bliley act of 1999 (P.L. 106-102);
12 *and*

13 (30) *to purchase or hold an annuity for the sole purpose of funding*
14 *an employee deferred compensation and benefit plan subject to the limi-*
15 *tations prescribed by rules and regulations which shall be adopted by the*
16 *state bank commissioner as provided by K.S.A. 9-1713, and amendments*
17 *thereto.*

3 18 Sec. 3. K.S.A. 9-1101 ~~is~~ hereby repealed.

4 19 Sec. 4. This act shall take effect and be in force from and after its
20 publication in the ~~statute book~~

Kansas register

and 9-1713 are

Section 2. K.S.A. 9-1713 is hereby amended to read as follows:

~~9-1713. Adoption of rules and regulations; approval of board.~~ Except as otherwise provided by law, the [state bank] commissioner shall adopt such rules and regulations as shall be necessary to [carry out the intent and purposes] of K.S.A. 9-542, and amendments thereto, commonly known as the state banking code. All rules and regulations of general application shall first be submitted by the commissioner to the state banking board for its approval and upon approval shall be filed as provided by article 4 of chapter 77 of the Kansas Statutes Annotated.

History: L. 1965, ch. 81, § 1; L. 1984, ch. 48, § 15; L. 2000, ch. 106, § 3; Apr. 27.

in order to promote safe and sound practices for entities regulated by the state bank commissioner,

implement the provisions

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