

MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS COMMITTEE

The meeting was called to order on January 21, 2004 by Chairman Ray Cox at 3:30 p.m. in Room 527-S of the Capitol.

All members were present except:

Representative Harold Lane- excused  
Representative Nile Dillmore- excused

Committee staff present:

Bruce Kinzie, Revisor's Office  
Bill Wolff Legislative Research Department  
Maggie Breen, Secretary

Conferees appearing before the committee: Ron Gaches - Kansas Association of Financial Services  
Chuck Stones - Kansas Bankers Association

Others attending:

See Attached List.

Representative Cox welcomed the committee and recognized Representative Bob Grant as the new Ranking Minority member this year. He also stated that there was a new member, Representative Harold Lane, who was unable to attend the meeting due to illness.

Representative Cox opened the floor for bill introductions.

**Ron Gaches**, Kansas Association of Financial Services, requested that legislation be introduced to make two amendments to the UCCC which would provide 1) for a \$5 fee to be allowed when funds are withdrawn from accounts via phone service requests. And 2) would allow a financial institution to provide a notice that there will be a fee for a non sufficient fund check on the regular monthly statement rather than requiring that a separate notification be sent out.

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

**Chuck Stones**, Kansas Bankers Association, appeared with a request to have two bills introduced. The first request would clarify that anyone who provides records upon the request of the SRS to aid in their follow-up of a report of adult abuse should not be liable for doing so; and it also would allow the SRS to place a 10-day hold on an account of someone they suspect is the victim of fiduciary abuse or exploitation. (**Attachment 1**)

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

The second request was to change the limit of IRB investments - KSA 9-1101. Current law allows a bank to only invest in investment securities which are evidences of debt up to 15% of a bank's capital. Now that the lending limit for state-chartered banks is 25%, this bill would bring the limit for investing in securities which are evidences of debt (example: industrial revenue bonds) up to 25%. (**Attachment 2**)

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

The meeting adjourned at 3:38 p.m.

The next meeting is scheduled for Wednesday, January 28th.



- **Reporting of Adult Abuse to the SRS – KSA 39-1430, 1432, 1433, 1436.** *This proposal would clarify that anyone who provides records upon the request of the SRS to aid in their follow-up of a report of adult abuse should not be liable for doing so; and it also would allow the SRS to place a 10-day hold on an account of someone they suspect is the victim of fiduciary abuse or exploitation.*

## **KBA Request for Legislation - 2004**

### **Reporting of Adult Abuse to SRS**

**39-1430. Abuse, neglect or exploitation of certain adults; definitions.** As used in this act:

(a) "Adult" means an individual 18 years of age or older alleged to be unable to protect their own interest and who is harmed or threatened with harm through action or inaction by either another individual or through their own action or inaction when (1) such person is residing in such person's own home, the home of a family member or the home of a friend, (2) such person resides in an adult family home as defined in K.S.A. 39-1501 and amendments thereto, or (3) such person is receiving services through a provider of community services and affiliates thereof operated or funded by the department of social and rehabilitation services or the department on aging or a residential facility licensed pursuant to K.S.A. 75-3307b and amendments thereto. Such term shall not include persons to whom K.S.A. 39-1401 *et seq.* and amendments thereto apply.

(b) "Abuse" means any act or failure to act performed intentionally or recklessly that causes or is likely to cause harm to an adult, including:

(1) Infliction of physical or mental injury;

(2) any sexual act with an adult when the adult does not consent or when the other person knows or should know that the adult is incapable of resisting or declining consent to the sexual act due to mental deficiency or disease or due to fear of retribution or hardship;

(3) unreasonable use of a physical restraint, isolation or medication that harms or is likely to harm an adult;

(4) unreasonable use of a physical or chemical restraint, medication or isolation as punishment, for convenience, in conflict with a physician's orders or as a substitute for treatment, except where such conduct or physical restraint is in furtherance of the health and safety of the adult;

(5) a threat or menacing conduct directed toward an adult that results or might reasonably be expected to result in fear or emotional or mental distress to an adult;

(6) fiduciary abuse; or

(7) omission or deprivation by a caretaker or another person of goods or services which are necessary to avoid physical or mental harm or illness.

**(c) "Account" means a deposit account that is held by an adult covered by this act, and includes time, demand, savings, and negotiable order of withdrawal accounts.**

(e) "Neglect" means the failure or omission by one's self, caretaker or another person to provide goods or services which are reasonably necessary to ensure safety and well-being and to avoid physical or mental harm or illness.

(d) "Exploitation" means misappropriation of an adult's property or intentionally taking unfair advantage of an adult's physical or financial resources for another individual's personal or financial advantage by the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense by a caretaker or another person.

(e) "Fiduciary abuse" means a situation in which any person who is the caretaker of, or who stands in a position of trust to, an adult, takes, secretes, or appropriates their money or property, to any use or purpose not in the due and lawful execution of such person's trust.

(f) "In need of protective services" means that an adult is unable to provide for or obtain services which are necessary to maintain physical or mental health or both.

(g) "Services which are necessary to maintain physical or mental health or both" include, but are not limited to, the provision of medical care for physical and mental health needs, the relocation of an adult to a facility or institution able to offer such care, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from maltreatment the result of which includes, but is not limited to, malnutrition, deprivation of necessities or physical punishment and transportation necessary to secure any of the above stated needs, except that this term shall not include taking such person into custody without consent except as provided in this act.

(h) "Protective services" means services provided by the state or other governmental agency or by private organizations or individuals which are necessary to prevent abuse, neglect or exploitation. Such protective services shall include, but shall not be limited to, evaluation of the need for services, assistance in obtaining appropriate social services, and assistance in securing medical and legal services.

(i) "Caretaker" means a person who has assumed the responsibility for an adult's care or financial management or both.

(j) "Secretary" means the secretary of social and rehabilitation services.

(k) "Report" means a description or accounting of an incident or incidents of abuse, neglect or exploitation under this act and for the purposes of this act shall not include any written assessment or findings.

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(f) "Law enforcement" means the public office which is vested by law with the duty to maintain public order, make arrests for crimes, investigate criminal acts and file criminal charges, whether that duty extends to all crimes or is limited to specific crimes.

(m) "Involved adult" means the adult who is the subject of a report of abuse, neglect or exploitation under this act.

No person shall be considered to be abused, neglected or exploited or in need of protective services for the sole reason that such person relies upon spiritual means through prayer alone for treatment in accordance with the tenets and practices of a recognized church or religious denomination in lieu of medical treatment.

**39-1432. Same; immunity from liability of certain persons; employer prohibited from imposing sanctions on employee making report; attorney fees awarded, when.** (a) Anyone participating in the making of any report pursuant to this act, or in any follow-up activity to ***the report including providing records upon request of the department of social and rehabilitation services***, or investigation of such report or who testifies in any administrative or judicial proceeding arising from such report shall not be subject to any civil or criminal liability on account of such report, investigation or testimony, unless such person acted in bad faith or with malicious purpose.

(b) No employer shall terminate the employment of, prevent or impair the practice or occupation of or impose any other sanction on any employee solely for the reason that such employee made or caused to be made a report, or cooperated with an investigation, under this act. A court, in addition to other damages and remedies, may assess reasonable attorney fees against an employer who has been found to have violated the provisions of this subsection.

**39-1436. Same; access to relevant records; confidentiality requirements.** (a) ***After receiving a written request for information and a written notice that an investigation is being conducted by the department of social and rehabilitation services***, any person or agency which maintains records relating to the involved adult which are relevant to any investigation conducted by the department of social and rehabilitation services under this act shall provide, upon ~~the written consent of~~ ***sending written notice to*** the involved adult or the involved adult's guardian, the department of social and rehabilitation services with the necessary records to assist in investigations. Any such information shall be subject to the confidentiality requirements of K.S.A. 39-1434 and amendments thereto.

(b) The department of social and rehabilitation services shall have access to all relevant records in accordance with the provisions of subsection (a).

**39-1433. Same; duties of department of social and rehabilitation services; personal visit; investigation and evaluation; findings referred to appropriate regulating authority, when; information provided to certain persons.** (a) The department of social and rehabilitation services upon receiving a report that an adult is being, or has been abused, neglected, or exploited or is in need of protective services, shall:

(1) When a criminal act has occurred or has appeared to have occurred, immediately notify the appropriate law enforcement agency;

(2) make a personal visit with the involved adult:

(A) Within 24 hours when the information from the reporter indicates imminent danger to the health or welfare of the involved adult;

(B) within three working days for all reports of suspected abuse, when the information from the reporter indicates no imminent danger;

(C) within five working days for all reports of neglect or exploitation when the information from the reporter indicates no imminent danger.

(3) Complete, within 30 working days of receiving a report, a thorough investigation and evaluation to determine the situation relative to the condition of the involved adult and what action and services, if any, are required. The evaluation shall include, but not be limited to, consultation with those individuals having knowledge of the facts of the particular case. If the alleged perpetrator is licensed, registered or otherwise regulated by a state agency, such state agency also shall be notified immediately.

(4) Prepare, upon completion of the investigation of each case, a written assessment which shall include an analysis of whether there is or has been abuse, neglect or exploitation, recommended action, a determination of whether protective services are needed, and any follow-up.

(b) The secretary of social and rehabilitation services shall forward any finding of abuse, neglect or exploitation alleged to have been committed by a provider of services licensed, registered or otherwise authorized to provide services in this state to the appropriate state authority which regulates such provider. The appropriate state regulatory authority may consider the finding in any disciplinary action taken with respect to the provider of services under the jurisdiction of such authority.

(c) The department of social and rehabilitation services shall inform the complainant, upon request of the complainant, that an investigation has been made and if the allegations of abuse, neglect or exploitation have been substantiated, that corrective measures will be taken.

(d) The department of social and rehabilitation services may inform the chief administrative officer of community facilities licensed pursuant to K.S.A. 75-3307b and amendments thereto of confirmed findings of resident abuse, neglect or exploitation.

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*(5) With regard to a report that indicates that an adult is the victim of fiduciary abuse or exploitation, the department of social and rehabilitation services may place a hold on any account of the adult for a period of 10 days by giving written notice of the hold to the bank, savings and loan association, credit union or other financial institution in which the account is located.*



- **Changing the Limit of IRB Investments – KSA 9-1101.** *Current law allows a bank to only invest in investment securities which are evidences of debt up to 15% of a bank's capital. Now that the lending limit for state-chartered banks is 25%, this bill would bring the limit for investing in securities which are evidences of debt (example: industrial revenue bonds) to 25%.*

## **KBA Request for Legislation - 2004**

### **Changing Limit of IRB Investment**

**9-1101. General powers; maximum interest rates on deposit accounts; investments.** Any bank hereby is authorized to exercise by its board of directors or duly authorized officers or agents, subject to law, all such powers, including incidental powers, as shall be necessary to carry on the business of banking, and:

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

(2) to buy and sell exchange, gold, silver, foreign coin, bullion, commercial paper, bills of exchange, notes and bonds;

(3) to buy and sell bonds, securities, or other evidences of indebtedness of the United States of America or those fully guaranteed, directly or indirectly, by it, and general obligation bonds of the state of Kansas or any municipality or quasi-municipality thereof, and of other states, and of municipalities or quasi-municipalities in other states of the United States of America. No bank shall invest an amount in excess of 15% of its capital stock paid in and unimpaired and the unimpaired surplus fund of such bank in bonds, securities or other evidences of indebtedness of any municipality or quasi-municipality of any other state or states of the United States of America: (a) If and when the direct and overlapping indebtedness of such municipality or quasi-municipality is in excess of 10% of its assessed valuation, excluding therefrom all valuations on intangibles and homestead exemption valuation; (b) or if any bond, security, or evidence of indebtedness of any such municipality or quasi-municipality has been in default in the payment of principal or interest within 10 years prior to the time that any bank acquires any such bonds, security or evidence of indebtedness;

(4) to make all types of loans, including loans on real estate, subject to the loan limitations contained in this act. Every real estate loan shall be secured by a mortgage or other instrument constituting a lien, or the full equivalent thereof, upon the real estate securing the loan, according to any lawful or well recognized practice, which is best suited to the transaction. The mortgage may secure future advances. The lien of such mortgage shall attach upon its execution and have priority from time of recording as to all advances made thereunder until such mortgage is released of record. The lien of such mortgage shall not exceed at any one time the maximum amount stated in the mortgage;

(5) to discount and negotiate bills of exchange, negotiable notes and notes not negotiable;

(6) to buy and sell investment securities which are evidences of indebtedness. The buying and selling of investment securities shall be limited to buying and selling without recourse marketable obligations evidencing indebtedness of any person, copartnership, association, corporation, or state or federal agency, including revenue bonds issued pursuant to K.S.A. 76-6a15, and amendments thereto, or the state armory board in the form of bonds, notes or debentures or both, commonly known as investment securities, under such further definition of the term "investment securities" as prescribed by the board, but the total amount of such investment securities of any one obligor or maker held by such bank shall at no time exceed ~~45%~~ **25%** of the capital stock paid in and unimpaired and the unimpaired surplus fund of such bank except that this limit shall not apply to obligations of the United States government or any agency thereof. If the obligor is a state agency including any agency issuing revenue bonds pursuant to K.S.A. 76-6a15, and amendments thereto, or the state armory board, the total amount of such investment securities shall at no time exceed 25% of the capital stock paid in and unimpaired and the unimpaired surplus fund of such bank;

(7) to subscribe to, buy and own such stock of the federal national mortgage association as required by title 3, section 303 of the federal act known as the national housing act as amended by section 201 of public law No. 560, of the United States (68 Stat. 613-615), known as the housing act of 1954, or amendments thereto;

(8) to subscribe to, buy and own stock in one or more small business investment companies in Kansas as otherwise authorized by federal law, except that in no event shall any bank acquire shares in any small business investment company if, upon the making of that acquisition the aggregate amount of shares in small business investment companies then held by the bank would exceed 5% of its capital and surplus. Nothing in this act contained shall prohibit any bank from holding and disposing of such real estate and other property as it may acquire in the collection of its assets;

(9) to subscribe to, buy and own stock in any agricultural credit corporation or livestock loan company, or its affiliate, organized pursuant to the provisions of the laws of the United States providing for the information and operation of agricultural credit corporations and livestock loan companies, in an amount not exceeding either the undivided profits or 10% of the capital stock and surplus and undivided profits from such bank, whichever is greater;

(10) to subscribe to, buy and own stock in minbanc capital corporation, a company formed for the purpose of providing capital to minority-owned banks. No bank's investment in such stock shall exceed 2% of its capital and surplus;

(11) to buy, hold, and sell any type of investment securities not enumerated in this section with approval of the commissioner and upon such conditions and under such regulations as are prescribed by the state banking board;

(12) to act as escrow agent;

(13) to subscribe to, acquire, hold and dispose of stock of a corporation having as its purpose the acquisition, holding and disposition of loans secured by real estate mortgages, and to acquire, hold and dispose of the debentures and capital notes of such corporation. No bank's investment in such stock, debentures and capital notes shall

exceed 2% of its capital stock, surplus and undivided profits and such investment shall be carried on the books of the bank as directed by the commissioner;

(14) to purchase and sell securities and stock without recourse solely upon the order, and for the account, of customers;

(15) to subscribe to, acquire, hold and dispose of any class of stock, debentures and capital notes of MABSCO agricultural services, inc. or any similar corporation having as its purpose the acquisition, holding and disposition of agricultural loans originated by Kansas banks. No bank's investment in such stock, debentures and capital notes shall exceed 2% of its capital stock, surplus and undivided profits. Such investment shall be carried on the books of the bank as directed by the commissioner;

(16) to buy, hold and sell mortgages, stock, obligations and other securities which are issued or guaranteed by the federal home loan mortgage corporation under sections 305 and 306 of the federal act known as the federal home loan mortgage corporation act (P.L. 91-351);

(17) to buy, hold and sell obligations or other instruments or securities, including stock, issued or guaranteed by the student loan marketing association created by (P.L. 92-318) of the United States;

(18) to engage in financial future contracts on United States government and agency securities subject to such rules and regulations as the state bank commissioner may prescribe pursuant to K.S.A. 9-1713, and amendments thereto, to promote safe and sound banking practices;

(19) to subscribe to, buy and own stock in a state or federally chartered bankers' bank or a one bank holding company which owns or controls such a bankers' bank, except no bank's investment in such stock shall exceed 10% of its capital stock, surplus and undivided profits;

(20) subject to such rules and regulations as the state bank commissioner may adopt pursuant to K.S.A. 9-1713, and amendments thereto, to promote safe and sound banking practices, upon recorded prior approval by the board of directors of the initial investment in a specific company and pursuant to an investment policy approved by the board of directors which specifically provides for such investments to buy, hold and sell shares of an open-end investment company registered with the federal securities and exchange commission under the federal investment company act of 1940 and the federal securities act of 1933 and of a privately offered company sponsored by an affiliated commercial bank, the shares of which are purchased and sold at par and the assets of which consist solely of securities which may be purchased by the bank for its own account. Such shares may be purchased without limit if the assets of the company consist solely of and are limited to obligations that are eligible for purchase by the bank without limit. If the assets of the company include securities which may be purchased by the bank subject to limitation, such shares may be purchased subject to the limitation applicable to purchase by the bank of such securities;

(21) subject to the prior approval of the state bank commissioner and subject to such rules and regulations as are adopted by the state bank commissioner pursuant to

K.S.A. 9-1713, and amendments thereto, to promote safe and sound banking practices, a bank may establish a subsidiary which engages in the following securities activities: (a) selling or distributing stocks, bonds, debentures, notes, mutual funds and other securities, (b) issuing and underwriting municipal bonds, (c) organizing, sponsoring and operating mutual funds, (d) acting as a securities broker-dealer;

(22) to subscribe to, acquire, hold and dispose of stock of any class of the federal agricultural mortgage corporation, a corporation having as its purpose the acquisition, holding and disposition of loans secured by agricultural real estate mortgages. No bank's investment in such corporation shall exceed 5% of its capital stock, surplus and undivided profits and such investment shall be carried on the books of the bank as directed by the commissioner;

(23) to subscribe to, buy and own stock in an insurance company incorporated prior to 1910, under the laws of Kansas, with corporate headquarters in this state, which only provides insurance to financial institutions. The investment in such stock shall not exceed 2% of the bank's capital stock, surplus and undivided profits;

(24) to purchase and hold an interest in life insurance policies on the life of its executive officers and directors, and to purchase life insurance policies for the sole purpose of providing employee deferred compensation and benefit plans subject to the limitations listed herein. If the bank has the authority to direct the investments of the cash surrender value of the policy, those investments shall be limited solely to assets which may be directly purchased by the bank for its own account. The limitations set forth in paragraphs (a) and (b) of this subsection do not apply to any such life insurance policies in place before July 1, 1993. Funding for the payment of employee compensation and benefit plans as well as the benefits derived may be made or split in a joint manner between the bank, employee or bank holding company as in "split dollar" or other insurance plans:

(a) Life insurance purchased and held on the life of executive officers and directors are subject to the following limitations:

(i) The cash surrender value of any life insurance policy on an executive officer or director underwritten by any one life insurance company cannot at any time exceed 15% of the bank's capital stock, surplus, undivided profits, loan loss reserve, capital notes and debentures and reserve for contingency, unless the bank has obtained the prior approval of the state bank commissioner;

(ii) the cash surrender value of life insurance policies on executive officers or directors, in the aggregate from all companies, cannot at any time exceed 25% of the bank's capital stock, surplus, undivided profits, loan loss reserve, capital notes and debentures and reserve for contingency, unless the bank has obtained the prior approval of the state bank commissioner;

(iii) the authority to hold life insurance on any executive officer ceases if the executive officer is no longer employed by the bank or no longer meets the definition of an executive officer;

(iv) the authority to hold life insurance on a director ceases when that director is no longer a member of the board of directors;

(v) the bank's board of directors must approve and document the purchase of any life insurance, including the reasonableness of such purchase; and

(vi) except as part of a reasonable compensation or benefit plan, a bank is not authorized to purchase life insurance as an estate management device for the benefit of officers, directors or employees who are also controlling shareholders of the bank.

(b) Life insurance purchased for the sole purpose of providing deferred compensation and benefit plans are subject to the following limitations:

(i) The bank may purchase individual or group policies for the sole purpose of providing deferred compensation agreements entered into with its officers and employees;

(ii) the bank may purchase policies on directors to fund a deferred directors fees program;

(iii) the board of directors must approve and document such deferred plans including the reasonableness of the plans;

(iv) the bank is not authorized to hold the policies unless specifically approved by the state bank commissioner if no liability exists under the deferred compensation plans;

(v) the cash surrender value of any life insurance policy purchased for the sole purpose of providing deferred compensation and benefit plans, underwritten by any one life insurance company, cannot exceed at any time, 15% of the bank's capital stock, surplus, undivided profits, loan loss reserve, capital notes and debentures and reserve for contingency, unless the bank has obtained the prior approval of the state bank commissioner; and

(vi) the cash surrender value of life insurance policies purchased for the sole purpose of providing deferred compensation and benefit plans, in the aggregate from all companies, cannot at any time exceed 25% of the bank's capital stock, surplus, undivided profits, loan loss reserve, capital notes and debentures and reserve for contingency, unless the bank has obtained the prior approval of the state bank commissioner;

(25) subject to such rules and regulations as the state bank commissioner may adopt pursuant to K.S.A. 9-1713 and amendments thereto to promote safe and sound banking practices, to act as an agent and receive deposits, renew time deposits, close loans, service loans, and receive payments on loans and other obligations for any company which is a subsidiary, as defined in subsection (d) of K.S.A. 9-519 and amendments thereto of the bank holding company which owns the bank. Nothing in this subsection shall authorize a bank to conduct activities as an agent which the bank or the subsidiary would be prohibited from conducting as a principal under any applicable federal or state law. Any bank which enters or terminates any agreement pursuant to this subsection shall within 30 days of the effective date of the agreement or termination

provide written notification to the commissioner which details all parties involved and services to be performed or terminated;

(26) to make loans to the bank's stockholders or the stockholders of the bank's controlling bank holding company on the security of the shares of the bank or shares of the bank's controlling bank holding company, with the limitation that this may occur only if the bank would have extended credit to such stockholder on exactly the same terms without the shares pledged as collateral;

(27) to make investments in and loans to community development corporations (CDCs) and community development projects (CD projects) as defined in K.S.A. 9-701 and amendments thereto, subject to the limitations prescribed by the comptroller of the currency as interpreted by rules and regulations which shall be adopted by the state bank commissioner as provided by K.S.A. 9-1713 and amendments thereto;

(28) to participate in a school savings deposit program authorized under K.S.A. 9-1138; and

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