

MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

The meeting was called to order by Chairman Ruth Teichman at 9:30 A.M. on February 8, 2005 in Room 234-N of the Capitol.

All members were present.

Committee staff present:

Melissa Calderwood, Kansas Legislative Research Department  
Terri Weber, Kansas Legislative Research Department  
Ken Wilke, Office of Revisor of Statutes  
Sandy Yingling, Committee Secretary

Conferees appearing before the committee:

Doug Wareham, KBA  
Kathy Olsen, KBA  
Renee Murray, CBA  
Judi Stork, OSBC

Others attending:

See attached list.

Madam Chair opened by announcing there are Minutes to be approved at the end of the meeting and that the committee would be hearing **SB 101** and **SB 104**.

Madam Chair opened the hearing on **SB 101**.

**SB 101 - Banks and banking; prohibition of employment of officers or directors who have been removed for cause.**

Judi Stork, Deputy Bank Commissioner, testified in support of **SB 101** drawing specific attention to line 22. (Attachment 1) Senator Wilson asked if there is a period of due process? Ms. Stork stated they would be entitled to a hearing. Ken Wilke stated that there did not appear to be any provision for future reinstatement and questioned if any consideration had been given to reinstatement. Ms. Stork stated they had not. There were no further questions.

Kathy Olsen, Kansas Bankers Association, next testified in support of **SB 101** (Attachment 2). Madam Chair asked if there were any questions, there were none.

Renee Murray, Community Bankers Association, testified by asking the committee to consider modifications to **SB 101** (Attachment 3). Madam Chair asked Ms. Murray for clarification with publication into the public register. Madam Chair asked for questions and Senator Brungardt questioned as to what the purpose of the publication would be. Ms. Olsen responded that if the appeal is turned over in the banker's favor, the person's name could already have been publicized. Senator Schmidt asked if this process applied to other professions? Ms. Olsen answered that she was not sure. Madam Chair thanked Ms. Murray and Ms. Olsen and then called on Judi Stork. Sonya Allen, Office of the State Banking Commission, offered that once the hearing was held the court administrative order would become final under the Administrative Procedure Act which is the final order of the agency. There is an appeal right for every final agency action to the district court and in any final order it says that you have to appeal the final agency action within the 30 days. Chair Teichman asked that if someone should appeal within those 30 days does their name go on any register? Ms. Allen stated no, but the KBA would know whether an appeal was going to be filed with the district court within that 30-day period. Ms. Olsen asked Ms. Allen if after they asked for the hearing and the banking board or whoever the hearing officer is and finally rules on it, then does it get published? Madam Chair stated that the process before the committee is probably the process that is being used by most other agencies and the CBA recommendation would be a change from a practice that has already been established. Senator Schmidt stated it would be the final agency action that is published not waiting for the district court process. Senator Barone asked how much time? Ms. Allen answered 30 days and from there to the district court. There were no more questions. Madam Chair closed the hearing on **SB 101**.

## CONTINUATION SHEET

MINUTES OF THE Senate Financial Institutions and Insurance Committee at 9:30 A.M. on February 8, 2005 in Room 234-N of the Capitol.

Madam Chair opened the hearing on **SB 104.**

**SB 104 - Banks and banking; examination of certain business entities affiliated with banks or trust companies.**

Judi Stork, Deputy Bank Commissioner, testified in support of **SB 104 (Attachment 4)**. This bill amends K.S.A. 9-1702 which is a statute that gives the Commissioner the authority to do two things, one, conduct exams of fiduciary activities of officers and directors. Two, examine the affairs of affiliates to determine the impact that those affiliates would have on the bank and trust company without going to the OSBC Board. Ms. Stork passed out Section (10) of the Federal Deposit Insurance Act (**Attachment 5**) to clarify the language. Ms. Stork also passed out written testimony of Richard D. Rucker, President of Home Bank & Trust Company, in support of **SB 104 (Attachment 6)**.

Senator Wilson replied there is no huge problem other than routine when the Office of the Bank Commission goes into doing their examinations. They ask the bank for financial information, but to request information from their holding company they have to get approval from the OSBC Board. Ms. Stork stated that they utilized the Bank Holding Company Act definition. Senator Wilson asked what if the Bank Holding Company is getting into insurance business and that insurance business owns something else, would this bill allow the OSBC to examine them? Ms. Stork answered no, it has to be a direct subsidiary of the holding company. Madam Chair asked Ms. Stork to give an example of a grandparent organization. Ms. Stork answered that it would be like ABC holding company that has XYZ parent company and the parent company owns the holding company which owns the bank. Senator Barnett asked what problem would this solve? Ms. Stork replied there is no huge problem other than routine when the Office of the State Bank Commission goes in to do their examinations. They asked the bank for financial information, but to examine information from their holding company they must get approval from the OSBC Board. This is routine and SB 104 is basically to clean up the language. Chair Teichman explained that this is giving the state banks the same authority that already applies to the national banks.

Doug Wareham, KBA, testified in opposition of **SB 104. (Attachment 7)**. Mr. Wareham explained they oppose the bill as it is currently drafted and offered an amendment. (**Attachment 8**) Their opposition lies with removing the oversight roll of the OSBC Board. Chair Teichman asked how do you reconcile the fact that your national banks do not have to do this and your state banks do? Mr. Wareham stated they would prefer that there be some oversight board where the state could have the same recourse as the national level and that the KBA supports the current law. Senator Barone stated this is a continuous situation and asked what the time line was that the approval is given and absent that approval, is not the bank free to go on and do what they want to do? Mr. Wareham stated there are other ways for that approval to be sought. Senator Barone asked if the bank commissioner approved the schedule of examinations in advance? Mr. Wareham stated that he did not know. Senator Brownlee stated that if the banking board is able to respond as rapidly as Mr. Wareham is suggesting, do they have the ability to have a conference, called? Madam Chair asked Sonya Allen to answer the question. Ms. Allen stated yes, they do meet by conference call but they are subject to the Kansas Open Meetings Act. Senator Barnett asked if other agencies also have to receive permission to investigate? Ken Wilke answered without research he would not know the answer. Senator Schmidt answered in the case of the pharmacy, the answer is no. Senator Brungardt offered an answer to Senator Barnett's question which was, no they do not.

**Seeing no further questions Madam Chair closed the hearing on SB 104.**

Madam Chair opened continued discussion on **SB 57.**

**SB 57 - Consumer protection; exemption for occasional sale of certain repossessed collateral. There was no other discussion.**

**Senator Wilson moved to pass SB 57 out favorably, Senator Wysong seconded. The motion carried.**

Madam Chair asked for approval of January 25 and 26<sup>th</sup> Minutes. Senator Brownlee pointed out a typo needing correction in the January 26 minutes.

CONTINUATION SHEET

MINUTES OF THE Senate Financial Institutions and Insurance Committee at 9:30 A.M. on February 8, 2005 in Room 234-N of the Capitol.

Senator Brungardt moved to approve the Minutes as amended, Senator Brownlee seconded. The motion carried.

Meeting was adjourned at 10:30 a.m.

**FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE GUEST LIST**

**DATE:** February 8, 2005

NAME	REPRESENTING
Doug Wareham	Kansas Bankers Assn.
Kathy Olsen	Kansas Bankers Assn.
<del>Amber</del>	KID
Renee Murray	CBA
Katie Donayes	Fedeico Consulting
Clancy Norris	Off. St. Banking Comm.
Sonya Allen	"
Kevin Glendening	" "
Judi Stork	OSBC
Bill Henry	KS Credit Union Assn.
Alex Kotyantz	PIA
Amy Salisbury	DOB
Natalie Haas	Security Benefit
Matthew Goddard	HCBA
Pamie Ann Lower	KS Govt Consulting



# KANSAS

KATHLEEN SEBELIUS, GOVERNOR

OFFICE OF THE STATE BANK COMMISSIONER  
CLARENCE W. NORRIS, *Bank Commissioner*

February 8, 2004

## SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

Madame Chairman and Members of the Committee:

I am Judi Stork, the Deputy Bank Commissioner for the Office of the State Bank Commissioner. I am here today to testify in support of **Senate Bill 101**. This bill amends K.S.A. 9-1805, which is the statute that currently allows the state banking board to remove an officer or director from a bank or trust company. The main purpose of this bill, found beginning on line 22 of the bill, is to give the banking board the additional authority to prohibit officers or directors who have been removed from their position from serving in another state bank or trust company in Kansas. The thought behind the amendment is if the person's actions are serious enough to remove them from one institution, they should be kept from working at another institution.

I ask for your support of this bill.

Attachment 1  
2/8/05  
FI+I



February 8, 2005

To: Senate Committee on Financial Institutions and Insurance

From: Kathleen Taylor Olsen, Kansas Bankers Association

**Re: SB 101: Removal of Officers and Directors for Cause**

Madam Chair and Members of the Committee:

Thank you for the opportunity to appear before you today in support of **SB 101**, which amends K.S.A. 9-1805, the provision in the banking code which currently allows the state banking board to remove an officer or director from any state bank or trust company upon a finding of dishonesty, recklessness or incompetence in performing duties entrusted to such officer or director.

The KBA supports the Office of the State Bank Commissioner's efforts to empower the state banking board to not just remove such officer or director from employment at that particular state bank or trust company, but to also prohibit the further participation in any other state bank or trust company in Kansas.

Experience has shown that the Commissioner's office has not acted with haste in the past when making a recommendation of removal of an officer or director. We support the notion that if there is enough evidence to support removal of a person from the bank so that the state banking board agrees and approves the case for removal, the members of the state banking board would not want to see that person employed or serving as a director in another state chartered institution over which they have responsibility to ensure its safety and soundness for the people of Kansas.

Thank you and we hope that the Committee will act favorably on **SB 101**.

*Attachment 2  
2/8/05  
FI & I*

# CBA



Community Bankers  
Association of Kansas

*Directed By The Members We Serve*

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Date: February 8, 2005

To: Senate Financial Institutions & Insurance Committee Members

From: Renee Murray, Community Bankers Association (CBA)

Re: SB101

Madam Chair, and Members of the Committee, I am Renee Murray with the Community Bankers Association. Thank you for allowing me to offer testimony on Senate Bill No. 101. On behalf of the CBA, we would like the committee to take into consideration a modification to the amendments of SB101. Lines 39 through 43 states that the officer's or director's name who has been removed from office will be published in the Kansas register. We would ask that names not be published into the register until 30 days after the final action of the appeal process has taken place.

*Attachment 3  
2/8/05  
FI+I*

SENATE BILL No. 101

Pv

By Committee on Financial Institutions and Insurance

1-25

9 AN ACT concerning banks and trust companies; relating to employment  
10 of an officer or director who has been removed for cause; amending  
11 K.S.A. 9-1805 and repealing the existing section.

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

14 Section 1. K.S.A. 9-1805 is hereby amended to read as follows: 9-  
15 1805. (a) If the board finds in accordance with this section that any *cur-*  
16 *rent or former* officer or director of any bank or trust company has been  
17 dishonest, reckless or incompetent in performing duties as such officer  
18 or director or willfully or continuously fails to observe any legally made  
19 order of the commissioner or board, the board may ~~remove such officer~~  
20 ~~or director~~ *take one or more of the following actions:*

- 21 (1) *Remove such officer or director; and*
- 22 (2) *prohibit such officer's or director's further participation in any*  
23 *manner in the conduct of the affairs of any state bank or trust company*  
24 *in Kansas.*

25 (b) *Prior to removing such officer or director, or prohibiting such*  
26 *officer's or director's participation in the conduct of the affairs of any*  
27 *state bank or trust company in Kansas, the board shall conduct a hearing*  
28 *in accordance with the provisions of the Kansas administrative procedure*  
29 *act.*

30 (c) *The board may recess or continue any hearing from time to time.*  
31 *If upon the conclusion of such hearing the board determines that the*  
32 *officer or director has been dishonest, reckless or incompetent in per-*  
33 *forming duties as such an officer or director, or has willfully or continu-*  
34 *ously failed to comply with any legally made order of the commissioner*  
35 *or board, the board may order the officer's or director's office forfeited*  
36 *and vacated and prohibit such officer's or director's further participation*  
37 *in the conduct of the affairs of any state bank or trust company in Kansas.*  
38 *The board shall mail a copy of its removal order to the bank or trust*  
39 *company which such officer or director was serving. If the order prohibits*  
40 *such officer's or director's further participation in the conduct of the af-*  
41 *airs of any state bank or trust company in Kansas, such order shall be*  
42 *published in the Kansas register within 30 days after ~~such order becomes~~*  
43 ~~*final*~~

*the conclusion of any appeals process.*





# KANSAS

KATHLEEN SEBELIUS, GOVERNOR

OFFICE OF THE STATE BANK COMMISSIONER  
CLARENCE W. NORRIS, *Bank Commissioner*

February 8, 2004

## SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

Madame Chairman and Members of the Committee:

I am Judi Stork, the Deputy Bank Commissioner for the Office of the State Bank Commissioner. I am here today to testify in support of **Senate Bill 104**. This bill amends K.S.A. 9-1702, the statute that grants the commissioner authority to conduct examinations of fiduciary activities of officers and directors of banks or trust companies, if those officers or directors are acting in some individual fiduciary capacity that could have an affect on the safety and soundness of the bank or trust company at which they are employed. The statute also allows the commissioner to examine the affairs of affiliates (holding companies, investment companies, etc.) of banks or trust companies to determine the impact those affiliates may have on the bank or trust company itself. The current law requires that the commissioner seek the approval of the banking board before conducting such investigations. As the number of affiliates has grown over the years, and more and more banks have holding companies, we believe that the ability to examine these affiliates should be more routine, and within the full control of the commissioner. The commissioner needs the ability to see the whole picture; to see how the holding company and the affiliates affect the bank. Without that routine ability at each examination to obtain basic holding company and/or affiliate information, it makes it difficult for us to thoroughly assess how those affiliates affect a bank's condition. We view this as a modernization of the law, recognizing that affiliate activities can have an affect on the bank. Removing the requirement that prior approval of the banking board be sought, and giving such authority directly to the commissioner, will give the agency parity with many other state banking departments, 36 in fact, who have such authority, as well as federal regulators, who have full authority to examine affiliates of banks to determine their affect on the safety and soundness of the institution. The language we used in the affiliate amendment, found on lines 29 to 31, was taken from the Federal Deposit Insurance Act. The state banking board, which is comprised of six bankers and three public members, has reviewed the amendments and they are supportive of the changes.

I ask for your support of this bill.

*Attachment 4  
2/8/05  
FI+I*

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**Section (10) of the Federal Deposit Insurance Act**

(b) EXAMINATIONS.--

(1) APPOINTMENT OF EXAMINERS AND CLAIMS AGENTS.--The Board of Directors shall appoint examiners and claims agents.

(2) REGULAR EXAMINATIONS.--Any examiner appointed under paragraph (1) shall have power, on behalf of the Corporation, to examine--

(A) any insured State nonmember bank (except a District bank) or insured State branch of any foreign bank;

(B) any depository institution which files an application with the Corporation to become an insured depository institution; and

(C) any insured depository institution in default, whenever the Board of Directors determines an examination of any such depository institution is necessary.

(3) Special examination of any insured depository institution.--In addition to the examinations authorized under paragraph (2), any examiner appointed under paragraph (1) shall have power, on behalf of the Corporation, to make any special examination of any insured depository institution whenever the Board of Directors determines a special examination of any such depository institution is necessary to determine the condition of such depository institution for insurance purposes.

→ (4) EXAMINATION OF AFFILIATES.--

(A) ***IN GENERAL.--In making any examination under paragraph (2) or (3), any examiner appointed under paragraph (1) shall have power, on behalf of the Corporation, to make such examinations of the affairs of any affiliate of any depository institution as may be necessary to disclose fully--***

***(i) the relationship between such depository institution and any such affiliate; and***

***(ii) the effect of such relationship on the depository institution.***

(B) Commitment by foreign banks to allow examinations of affiliates.--No branch or depository institution subsidiary of a foreign bank may become an insured depository institution unless such foreign bank submits a written binding commitment to the Board of Directors to permit any examination of any affiliate of such branch or depository institution subsidiary pursuant to subparagraph (A) to the extent determined by the Board of Directors to be necessary to carry out the purposes of this Act.

(5) EXAMINATION OF INSURED STATE BRANCHES.--The Board of Directors shall--

(A) coordinate examinations of insured State branches of foreign banks with examinations conducted by the Board of Governors of the Federal Reserve System under section 7(c)(1) of the International Banking Act of 1978; and

(B) to the extent possible, participate in any simultaneous examination of the United States operations of a foreign bank requested by the Board under such section.

(6) POWER AND DUTY OF EXAMINERS.--Each examiner appointed under paragraph (1) shall--

(A) have power to make a thorough examination of any insured depository institution or affiliate under paragraph (2), (3), (4) or (5); and  
{{10-31-94 p.1172}}

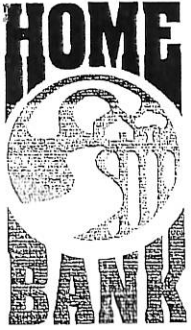
(B) shall make a full and detailed report of condition of any insured depository institution or affiliate examined to the Corporation.

(7) POWER OF CLAIM AGENTS.--Each claim agent appointed under paragraph (1) shall have power to investigate and examine all claims for insured deposits.

[Codified to 12 U.S.C. 1820(b)]

[Source: Section 2[10(b)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 882), effective September 21, 1950, as amended by section 203 of title II of the Act of October 16, 1966 (Pub. L. No. 89--695; 80 Stat. 1053), effective October 16, 1966; section 6(c)(16) of the Act of September 17, 1978 (Pub. L. No. 95--369; 92 Stat. 619), effective September 17, 1978; section 305(a) of title III of the Act of November 10, 1978 (Pub. L. No. 95--630; 92 Stat. 3677), effective March 10, 1979; section 113(i) of title I of the Act of October 15, 1982 (Pub. L. No. 97--320; 96

Attachment 5  
2-8-05  
FI+I



### SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

February 8, 2005

Madame Chairperson and Members of the Committee:

My name is Richard D. Rucker. I'm currently the President/Chairman of Home Bank & Trust Co. of Eureka, and have been in banking for thirty-five (35) years. I have served on the State Banking Board for five years and was the Chairman of the Banking Board in 2004. I would like to express my support for Senate Bill 104.

Staff has discussed this proposed legislation with the State Banking Board and all Board Members listened to Staff and provided input on this issue. It is my opinion this legislation would enhance Staff's ability in being able to discuss with the State Bank Board Members the Soundness and Safety of a Bank and its Parent Holding Company, under it's supervision.

Pertaining to certain issues, which relate to Soundness and Safety of a Bank, on several occasions Holding Company questions are brought up by the Board Members, which cannot, under the current State Regulation be answered immediately by Staff. Yes, the Federal Reserve, which regulates Holding Companies and the FDIC share information with Staff or can, pertaining to the Holding Company entity, if Bank Commission Staff, have concerns, about a State Bank. At the same time Staff must go to those Regulators to seek answers to those questions or review data supplied by those Regulators. When received, this data could be out of date or after a Bank Board Meeting, thus reducing the efficiency of the Board and Staff coming to a decision in a timely manner.

Most One Bank Holding Companies don't have numerous subsidiaries and thus only one set of books. It should be fairly easy to review and get on with finishing their examination of the Bank. Also, as we know our State Bank Commission Staff is highly qualified to do this and in my opinion it would take minimal time on the examining Bank's Management involvement, in each of the above two entities, to accommodate this process.

217 N. Main  
Eureka, KS  
67045  
620-583-5516



101 S. Main  
Eureka, KS  
67045  
620-583-7570



108 N. Kansas  
Severy, KS  
67137  
620-736-2244



741 N. 4th  
Clearwater, KS  
67026  
620-584-5000



10421 W. Central  
Wichita, KS  
67212  
316-773-6000

www.homebank-trust.com

*Attachment 6  
2/8/05  
FI+I*

It's important to realize that on occasions a Bank Holding Company might borrow funds to pass down to the bank to enable it to grow more rapidly or to increase capital due to losses, involving the banks loan portfolio. Also, in most cases the dividends from the Bank to the Holding Company enable the Holding Company to service debt. At times you will have a Holding Company invest in fixed assets by means of building a banking facility and having a lease arrangement with the Bank to enable the Bank to increase it's locations. This type of transaction can circumvent being accountable to the Bank Commission, in regards to Bank Fixed Asset Limitations, per Banking Regulation. These are just a few reasons, why I feel the Bank Commission should be able to review the Bank Holding Company financial records.

We need to remember in many Community Banks management is also involved in ownership and has the ability to receive compensation and to manage expense and income in both entities. I don't believe I'm aware of any abuse in these areas, while I have served on the Banking Board, but at the same time it could happen. An ounce of prevention is worth a pound of cure and I believe Senate Bill 104 provides that prevention.

Who knows, maybe in the future the Federal Reserve will accept the State Banking Department's Examination of the Holding Company, thus reducing that additional needed examine, for State Banks. We do know all Regulators are looking for more efficient and cost effective ways of examining Banks and their related Parent Companies, this might help move us closer towards that common goal.

Respectfully,



Richard D. Rucker  
President/Chairman  
Home Bank & Trust Co.  
PO Box 620  
Eureka, Kansas 67045

b-2



Date: February 8, 2005  
To: Senate Financial Institutions & Insurance Committee  
From: Doug Wareham, Vice President-Government Affairs  
Re: Senate Bill 104

Madam Chairman and members of the Committee, I am Doug Wareham appearing on behalf of the Kansas Bankers Association (KBA). KBA's membership includes 360 Kansas banks, which operate more than 1,300 banking facilities in 440 towns and cities across the state. KBA appreciates the opportunity to appear on S.B. 104. We are opposed to this bill as it is currently drafted.

As we reviewed S.B. 104, we believe it enacts two changes to the Kansas Banking Code. First, it removes the State Banking Board's role of approving the examination of a banks affiliated business entities. Second, it expands the scope of affiliated businesses, which can be included in an examination by the State Bank Commissioner. Our concern with S.B. 104 lies with the removal of the State Banking Board's role in authorizing the examination of affiliated business entities.

KBA has a long-standing policy supporting the oversight role played by the State Banking Board. In concert with that policy, KBA opposes the elimination of the banking board's preauthorization role that S.B. 104 proposes to strike. In questioning Kansas' bankers, including members of our State Affairs Committee and Board of Directors it is my understanding that many banks willingly provide information regarding their affiliated businesses when information is requested by bank examiners. While we realize the consideration of these matters by the State Banking Board might seem trivial to some, we believe the preauthorization role is reasonable and provides a buffer between the banker and bank examiner, should their relationship ever become contentious.

Attached to my testimony is an amendment that will re-establish the role of the Board in authorizing this activity. We respectfully ask this committee to adopt this amendment if you choose to advance S.B. 104.

Once again, thank you for the opportunity to appear on this issue and I would be happy to stand for questions.

*Attachment 7  
FI+I  
2/8/05*

*Kansas Bankers Association  
Proposed Amendments to SB 104*

*Session of 2005*

**SENATE BILL No. 104**

AN ACT concerning banks; relating to examination of certain affiliated business entities; amending K.S.A. 9-1702 and repealing the existing section.

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

Section 1. K.S.A. 9-1702 is hereby amended to read as follows: 9-

1702. If upon the examination of any bank or trust company the state banking board shall deem it necessary, the commissioner *or the*

*commissioner's designee* is hereby is authorized ~~to make or have made by the commissioner's assistant or examiners~~

~~an examination of (a) The commissioner or the commissioner's~~

~~designee is hereby authorized to examine:~~ (a) the fiduciary affairs of any officer

or employee of any bank or trust company ~~which when such officer or~~

employee is serving in any fiduciary capacity; ~~and upon similar determination~~

~~by the state banking board the that may affect the safety and~~

~~soundness of such bank or trust company; and~~

(b) ~~The commissioner or the commissioner's designee is hereby is~~

~~authorized to make or have made by the commissioner's assistant or examiners~~

~~an examination of examine~~ any investment company ~~or~~, holding

company ~~or corporation, corporation or any other form of business entity~~

which is affiliated with any bank or trust company *to fully ascertain:*

(1) *The relationship between such bank or trust company and any such affiliate; and*

(2) *the effect of such relationship on the bank or trust company.*

Sec. 2. K.S.A. 9-1702 is hereby repealed.

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

*Attachment 8  
FI + TJ  
2/8/05*