

HOUSE BILL No. 2482

AN ACT relating to banks and banking; concerning the powers and duties of the state banking board and the state bank commissioner; amending K.S.A. 9-812, 9-908, 9-912, 9-1101a, 9-1127b, 9-1127c, 9-1127d and 9-1714 and K.S.A. 2000 Supp. 9-904, 9-1101, 9-1111, 9-1111b, 9-1801, 9-1804 and 74-3004 and repealing the existing sections, also repealing K.S.A. 9-1001 and 9-1806.

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

Section 1. K.S.A. 9-812 is hereby amended to read as follows: 9-812. A bank corporation shall not change its name until such name change has been submitted to and approved by the state ~~banking board~~ *bank commissioner*.

Sec. 2. K.S.A. 2000 Supp. 9-904 is hereby amended to read as follows: 9-904. (a) The capital stock of any bank or trust company may be reduced to the minimum provided by law for a new bank or trust company by resolution adopted by the stockholders representing $\frac{2}{3}$ of the voting stock of such bank or trust company, except that no such reduction shall become effective until the commissioner approves the same.

(b) With prior approval of the state ~~banking board~~ *bank commissioner*, a bank or trust company may reduce its capital stock below the minimum amount allowed by subsection (a) by transferring capital stock to its surplus fund. No such reduction shall be approved unless the state ~~banking board~~ *bank commissioner* finds:

- (1) The proposed reduction is necessary to provide greater operational flexibility to an adequately capitalized, well-managed institution;
- (2) the proposed reduction does not result in or is not in furtherance of a reduction in the institution's capital to an amount below 8% of total deposits for a bank or below \$250,000 for a trust company;
- (3) the proposed reduction is not intended to delay, prevent or be in lieu of capital stock impairment or a stockholder's assessment pursuant to K.S.A. 9-906 and amendments thereto; and
- (4) the proposed reduction poses no significant risk to the financial stability, safety or soundness of the institution.

(c) After the commissioner ~~or state banking board~~ has approved such reduction a certificate signed by the president and cashier of the bank or trust company setting forth the result of such reduction of its capital stock, the names of its stockholders and the amount of stock held by each, shall be filed with the secretary of state and a duplicate shall be filed with the commissioner.

(d) Whenever the capital stock of any bank or trust company shall be reduced as herein provided, every stockholder, owner or holder of any stock certificate shall surrender the same for cancellation and shall be entitled to receive a new certificate for such person's proportion of the new stock. No dividends shall be paid to any such stockholder until the old certificate is surrendered.

Sec. 3. K.S.A. 9-908 is hereby amended to read as follows: 9-908. Any bank or trust company may issue preferred stock of one or more classes in such amounts as shall be approved by the state ~~banking board~~ *bank commissioner*. The holders of $\frac{2}{3}$ in amount of the common stock of such bank or trust company must approve such issuance at a meeting held for that purpose and for which notice by registered mail must be given to each stockholder by mailing such notice at least five days in advance of the date of the meeting. No issue of preferred stock shall be valid until the par value of all stock so issued shall be paid in. With the approval of the *state banking board* the common stock may be reduced below the requirements contained in K.S.A. 9-901a, and amendments thereto. No preferred stock shall be retired unless the common stock shall be increased in an amount equal to the amount of the preferred stock retired. All preferred stock shall be retired consistent with safety to the depositors.

Sec. 4. K.S.A. 9-912 is hereby amended to read as follows: 9-912. Any losses sustained by a bank or trust company in excess of its undivided profits may be charged to its surplus fund. Any bank or trust company, after receiving approval from the commissioner, may declare a stock dividend from its surplus fund, but no such dividend shall reduce the surplus fund to an amount less than 30% of the resulting total capital and any bank or trust company may reduce its surplus with permission of the state ~~banking board~~ *bank commissioner*.

Sec. 5. K.S.A. 2000 Supp. 9-1101 is hereby amended to read as follows: 9-1101. 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 15% 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~~

~~the state banking board~~ 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 ~~banking board~~ *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, ~~and provided the shares pledged are not a director's qualifying shares per K.S.A. 9-1117, and amendments thereto;~~

(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; ~~and~~

(28) to participate in a school savings deposit program authorized under K.S.A. 2000 Supp. 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).*

Sec. 6. K.S.A. 9-1101a is hereby amended to read as follows: 9-1101a. In accordance with normal business considerations and upon approval of stockholders owning ~~two-thirds~~ $\frac{2}{3}$ of the voting stock of the bank, the bank may issue convertible or nonconvertible capital notes or debentures in such amounts and under such terms and conditions as shall be approved by the state ~~banking board~~; *Provided, bank commissioner, except that the principal amount of capital notes or debentures outstanding at any time shall not exceed an amount equal to ~~one hundred percent (100%)~~ 100% of the bank's paid-in capital stock plus ~~fifty percent (50%)~~ 50% of the amount of its unimpaired surplus fund. Capital notes or debentures which are by their terms expressly subordinated to the prior payment in full of all deposit liabilities of the bank shall be considered as part of the unimpaired capital funds of the bank for purpose of the computation of the bank's loan limit.*

Sec. 7. K.S.A. 2000 Supp. 9-1111 is hereby amended to read as follows: 9-1111. The general business of every bank shall be transacted at the place of business specified in its certificate of authority and at one or more branch banks established and operated as provided in this section. Except for the establishment or operation of a trust branch bank or the relocation of an existing trust branch bank pursuant to K.S.A. 2000 Supp. 9-1135, and amendments thereto, it shall be unlawful for any bank to establish and operate any branch bank or relocate an existing branch bank except as hereinafter provided. Notwithstanding the provisions of this section, any location at which a depository institution, as defined by K.S.A. 9-701, and amendments thereto, receives deposits, renews time deposits, closes loans, services loans or receives payments on loans or other obligations, as agent, for a bank pursuant to subsection (25) of K.S.A. 9-1101, and amendments thereto, or other applicable state or federal law, or is authorized to open accounts or receive deposits under subsection (28) of K.S.A. 9-1101, and amendments thereto, shall not be deemed to be a branch bank:

(a) For the purposes of this section, the term “branch bank” means any office, agency or other place of business located within this state, other than the place of business specified in the bank’s certificate of authority, at which deposits are received, checks paid, money lent or trust authority exercised, if approval has been granted by the state bank commissioner, under K.S.A. 9-1602, and amendments thereto;

~~(b) after first applying for and obtaining the approval of the state banking board, one or more branch banks may be established and operated anywhere within this state by a bank incorporated under the laws of this state~~

(b) establishment of a new branch or relocation of an existing branch for eligible banks:

(1) After first applying for and obtaining the approval of the commissioner, an eligible bank incorporated under the laws of this state, may establish and operate one or more branch banks or relocate an existing branch bank, anywhere within this state;

(2) the application shall include the nature of the banking business to be conducted at the proposed branch bank, the primary geographical area to be served by it, the personnel and office facilities to be provided at the proposed branch bank and other information the commissioner may require;

(3) the application shall include the name selected for the proposed branch bank. The name selected for the proposed branch bank shall not be the name of any other bank or branch bank doing business within a 15 mile radius of the same city or town, nor shall the name selected be required to contain the name of the applicant bank. If the name selected for the proposed branch bank does not contain the name of the applicant bank, the branch bank shall provide in the public lobby of such branch bank, a public notice that it is a branch bank of the applicant bank;

(4) the application shall include proof of publication of notice that the applicant bank intends to file or has filed an application to establish a branch bank or relocate an existing branch bank. The notice shall be published in a newspaper of general circulation in the county where the applicant bank proposes to locate the branch bank. The notice shall be in the form prescribed by the commissioner and at a minimum shall contain the name and address of the applicant bank, the location of the proposed branch and a solicitation for written comments. The notice shall be published on the same day for two consecutive weeks and provide for a comment period of not less than 10 days after the date of the second publication;

(5) upon receipt of the application, and following expiration of the comment period, the commissioner may hold a hearing in the county in which the applicant bank seeks to operate the branch bank. The applicant shall publish notice of the time, date and place of such hearing in a newspaper of general circulation in the county where the applicant bank proposes to locate the branch bank, not less than 10 nor more than 30 days prior to the date of the hearing, and proof of publication shall be filed with the commissioner. At any such hearing, all interested persons shall be allowed to present written and oral evidence to the commissioner, or the commissioner’s designee, in support of or in opposition to the branch

bank. Upon completion of a transcript of the testimony given at any such hearing, the transcript shall be filed in the office of the commissioner;

(6) if the commissioner determines a public hearing is not warranted, the commissioner shall approve or disapprove the application within 15 days after receipt of a complete application but not prior to the end of the comment period. If a public hearing is held, the commissioner shall approve or disapprove the application within 60 days after consideration of the complete application and the evidence gathered during the commissioner's investigation. The period for consideration of the application may be extended if the commissioner determines the application presents a significant supervisory concern. If the commissioner finds that:

(A) There is a reasonable probability of usefulness and success of the proposed branch bank; and

(B) the applicant bank's financial history and condition is sound, the new branch or relocation shall be granted, otherwise, it shall be denied;

(7) within 15 days after any final action of the commissioner approving or disapproving an application, the applicant, or any adversely affected or aggrieved person who provided written comments during the specified comment period, may request a hearing with the state banking board. Upon receipt of a timely request, the board shall conduct a hearing in accordance with the provisions of the Kansas administrative procedure act. Any decision of the state banking board is subject to review in accordance with the act for judicial review and civil enforcement of agency actions;

(c) establishment of a new branch or relocation of an existing branch for banks which do not meet the definition of "eligible bank":

(1) After first applying for and obtaining the approval of the state banking board, a bank incorporated under the laws of this state, which does not meet the definition of "eligible bank," may establish and operate one or more branch banks, or relocate an existing branch bank, anywhere within this state;

~~(2)~~ (2) an application under paragraph (1) of this subsection, to establish and operate a branch bank or to relocate an existing branch bank shall be in such form and contain such information as the rules and regulations of the state bank commissioner, adopted pursuant to K.S.A. 9-1713, and amendments thereto, shall provide;

~~(3)~~ (3) the application shall include estimates of the annual income and expenses of the proposed branch bank, the annual volume of business to be transacted by it, the nature of the banking business to be conducted at the proposed branch bank, the primary geographical area to be served by it and the personnel and office facilities to be provided at the proposed branch bank;

~~(4)~~ (4) the application shall include the name selected for the proposed branch bank. The name selected for the proposed branch bank shall not be the name of any other bank or branch bank doing business ~~in~~ within a 15 mile radius of the same city or town, nor shall the name selected be required to contain the name of the applicant bank. If the name selected for the proposed bank does not contain the name of the applicant bank, the branch bank shall provide in the public lobby of such branch bank, a public notice that it is a branch bank of the applicant bank;

~~(5)~~ (5) the application shall include ~~an affidavit~~ proof of publication of notice that applicant bank intends to file an application to establish a branch bank or relocate an existing branch bank. The notice shall be published in a newspaper of general circulation in the county where the applicant bank proposes to locate the branch bank. The notice shall be in the form prescribed by the state banking board and at a minimum shall contain, the name and address of the applicant bank, the location of the proposed branch; and a solicitation for written comments concerning the proposed branch be submitted to the state banking board, and provide for a comment period of not less than 10 days prior to the board's final consideration of the application. The notice shall be published on the same day for two consecutive weeks and provide for a comment period of not less than 10 days after the date of the second publication;

~~(6)~~ (6) upon receipt of an application meeting the above requirements, if there is any written objection to the application filed with the board and following the expiration of the comment period, within 60 days after receipt of the application, the state banking board shall may hold a hearing in the county in which the applicant bank seeks to establish and

operate a branch bank. ~~If there is no written objection filed with the board within the time period specified under subsection (f), the board may hold a hearing on the application in such county.~~ Notice of the time, date and place of such hearing if one is to be held shall be published in a newspaper of general circulation in such county ~~by the bank seeking to establish and operate the county where the applicant bank proposes to locate~~ the branch bank not less than 10 or more than 30 days prior to the date of the hearing, and ~~an affidavit proof of publication thereof shall be filed with the commissioner.~~ ~~Not less than 10 days or more than 30 days prior to any such date of the hearing, the commissioner shall give notice of the time, date and place of such hearing by registered or certified mail to all banks and national banking associations having their principal places of business or branch banks in the county wherein the applicant bank seeks to locate a branch bank.~~ At any such hearing, all interested persons shall be allowed to present written and oral evidence to the board in support of or in opposition to the application. Upon completion of a transcript of the testimony given at any such hearing, the transcript shall be filed in the office of the commissioner and copies shall be furnished to the members of the state banking board not less than ~~14~~ 10 days prior to the meeting of the board at which the application will be considered;

~~(h)~~ (7) the state banking board shall approve or disapprove the application; within 90 days after consideration of the application and the evidence gathered during the board's investigation. If the board finds that:

~~(1)~~ There is or will be at the time the branch bank is opened the need for the same in the community to be served by it;

~~(2)~~ (A) There is a reasonable probability of usefulness and success of the proposed branch bank; and

~~(3)~~ (B) the applicant bank's financial history and condition is sound; and

~~(4)~~ the proposed branch bank can be established without undue injury to properly conducted existing banks and national banking associations, the application shall be granted, otherwise, the application shall be denied;

~~(i)~~ (8) any final action of the board approving or disapproving an application shall be subject to review in accordance with the act for judicial review and civil enforcement of agency actions upon the petition of *the applicant or* any adversely affected or aggrieved person who ~~appeared and offered evidence at the hearing upon the application~~ *provided written comments during the specified comment period;*

~~(j)~~ (d) any branch bank lawfully established and operating on the effective date of this act may continue to be operated by the bank then operating the branch bank and by any successor bank;

~~(k)~~ (e) branch banks which have been established and are being maintained by a bank at the time of its merger into or consolidation with another bank or at the time its assets are purchased and its liabilities are assumed by another bank may continue to be operated by the surviving, resulting or purchasing and assuming bank. The surviving, resulting or purchasing and assuming bank, with approval of the state bank commissioner, may establish and operate a branch bank or banks at the site or sites of the merged, constituent or liquidated bank or banks;

~~(l)~~ (f) any state bank or national banking association ~~having its principal office and main banking house in this state~~ may provide and engage in banking transactions by means of remote service units wherever located, which remote service units shall not be considered to be branch banks ~~authorized herein~~. Any banking transaction effected by use of a remote service unit shall be deemed to be transacted at a bank and not at a remote service unit;

~~(m)~~ (g) as a condition to the operation and use of any remote service unit in this state, a state bank or national banking association, each hereinafter referred to as a bank, which desires to operate or enable its customers to utilize a remote service unit must agree that such remote service unit will be available for use by customers of any other bank or banks upon the request of such bank or banks to share its use and the agreement of such bank or banks to share all costs, including a reasonable return on capital expenditures incurred in connection with its development, installation and operation. The owner of the remote service unit, whether a bank or any other person, shall make the remote service unit available for use by other banks and their customers on a nondiscriminatory basis,

conditioned upon payment of a reasonable proportion of all costs, including a reasonable return on capital expenditures incurred in connection with the development, installation and operation of the remote service unit. Notwithstanding the foregoing provisions of this subsection, a remote service unit located on the property owned or leased by the bank where the principal place of business of a bank, or an attached auxiliary teller facility or branch bank of a bank, is located need not be made available for use by any other bank or banks or customers of any other bank or banks;

~~(h)~~ (h) for purposes of this section, “remote service unit” means an electronic information processing device, including associated equipment, structures and systems, through or by means of which information relating to financial services rendered to the public is stored and transmitted, whether instantaneously or otherwise, to a bank and which, for activation and account access, is dependent upon the use of a machine-readable instrument in the possession and control of the holder of an account with a bank. The term shall include “online” computer terminals and “offline” automated cash dispensing machines and automated teller machines, but shall not include computer terminals or automated teller machines or automated cash dispensing machines using systems in which account numbers are not machine read and verified. Withdrawals by means of “offline” systems shall not exceed \$300 per transaction and shall be restricted to individual not corporate or commercial accounts;

(i) for purposes of this section, “eligible bank” means a state bank that meets the following criteria:

(1) Received a composite rating of 1 or 2 under the uniform financial institutions rating system as a result of its most recent federal or state examination;

(2) meets the following three criteria for a well capitalized bank:

(A) Has a total risk based capital ratio of 10% or greater;

(B) has a tier one risk based capital ratio of 6% or greater; and

(C) has a leverage ratio of 5% or greater; and

(3) is not subject to a cease and desist order, consent order, prompt corrective action directive, written agreement, memorandum of understanding or other administrative agreement with its primary federal regulator or the office of the state bank commissioner.

Sec. 8. K.S.A. 2000 Supp. 9-1111b is hereby amended to read as follows: 9-1111b. A bank making application to the state banking board or the commissioner for approval of a branch bank shall pay to the ~~state bank~~ commissioner a fee, in an amount established by rules and regulations adopted by the commissioner, to defray the expenses of the board, commissioner or other designees in the examination and investigation of the application. The commissioner shall remit all amounts received under this section to the state treasurer who shall deposit the same to a separate special account in the state treasury for each application. The moneys in each such account shall be used only to pay the expenses of the board, commissioner or other designees in the examination and investigation of the application to which it relates and any unused balance shall be transferred to the bank commissioner fee fund.

Sec. 9. K.S.A. 9-1127b is hereby amended to read as follows: 9-1127b. (a) A bank service corporation may provide to any person any service authorized by this section, except that a bank service corporation shall not take deposits.

(b) Except with the prior approval of the state bank commissioner ~~and the state banking board~~, a bank service corporation shall not perform the services authorized by this section in any state other than this state and all shareholders of a bank service corporation shall be located in this state.

(c) A bank service corporation in which a state bank is a shareholder shall perform only those services that such state bank shareholder is authorized to perform under the law of this state and shall perform such services only at locations in this state in which such bank shareholder could be authorized to perform such services.

(d) A bank service corporation in which a national bank is a shareholder shall perform only those services that such national bank shareholder is authorized to perform under federal law and shall perform such

services only at locations in this state at which such national bank shareholder could be authorized to perform such services.

(e) A bank service corporation that has both national bank and state bank shareholders shall perform only those services that may lawfully be performed by both its national bank shareholder or shareholders under federal law and its state bank shareholder or shareholders under the law of this state and shall perform such services only at locations in this state at which both its state bank and national bank shareholders could be authorized to perform such services.

(f) Notwithstanding the other provisions of this section or any other provision of law, other than the provisions of federal branching law and the branching law of this state regulating the geographic location of banks to the extent that those laws are applicable to an activity authorized by this subsection, a bank service corporation may perform at any geographic location any service, other than deposit taking, that the board of governors of the federal reserve system has determined, by regulation, to be permissible for a bank holding company under section 4(c)(8) of the federal bank holding company act.

Sec. 10. K.S.A. 9-1127c is hereby amended to read as follows: 9-1127c. (a) No state bank shall invest in the capital stock of a bank service corporation that performs any service under the authority of subsections (c), (d) or (e) of K.S.A. 9-1127b, *and amendments thereto*, without the prior approval of the state bank commissioner ~~and the state banking board~~.

(b) No state bank shall invest in the capital stock of a bank service corporation that performs any service under authority of subsection (f) of K.S.A. 9-1127b, *and amendments thereto*, and no bank service corporation shall perform any activity under subsection (f) and K.S.A. 9-1127b, *and amendments thereto*, without the prior approval of the state bank commissioner ~~and the state banking board~~.

(c) In determining whether to approve or deny any application for prior approval under this section, the state bank commissioner ~~and the state banking board are~~ *is* authorized to consider the financial and managerial resources and future prospects of the bank or banks and bank service corporation involved, including the financial capability of the bank to make a proposed investment under this act, and possible adverse affects such as undue concentration of resources, unfair or decreased competition, conflicts of interest or unsafe or unsound banking practices.

(d) In the event the state bank commissioner ~~and the state banking board fail~~ *fails* to act on any application under this section within 90 days of the submission of a complete application to them, the application shall be deemed approved.

Sec. 11. K.S.A. 9-1127d is hereby amended to read as follows: 9-1127d. (a) Whenever a bank, or any subsidiary or affiliate of such bank that is subject to examination by the state bank commissioner, causes to be performed for itself, by contract or otherwise, any services authorized under this act on or off its premises:

(1) Such performance shall be subject to regulation and examination by the state bank commissioner to the same extent as if such services were being performed by the bank itself on its own premises; and

(2) the bank shall notify the state bank commissioner of the existence of the service relationship within 30 days after the making of such service contract or the performance of the service, whichever occurs first.

(b) The state bank commissioner ~~and, with the approval of the state banking board are,~~ *is* authorized to adopt such rules and regulations as may be necessary ~~to enable them~~ to administer and carry out the purpose of this act and to prevent evasions thereof.

Sec. 12. K.S.A. 9-1714 is hereby amended to read as follows: 9-1714. Whenever the state bank commissioner shall determine that the business of any bank or trust company is being conducted in an unlawful or unsound manner, such commissioner may appoint a special deputy bank commissioner who shall immediately take charge of the operation of such bank or trust company for the purpose of correcting any unlawful or unsound condition or operation. Such appointment shall be made in accordance with the provisions of K.S.A. 77-536, and amendments thereto. After appointment, the special deputy bank commissioner shall continue to serve under the direction of the commissioner for such period of time

as may be deemed reasonable and necessary by the commissioner, ~~or until relieved by order of the state banking board,~~ and, during such period, such special deputy bank commissioner's salary, which shall be determined by the commissioner, and expenses shall be borne by the bank or trust company under supervision. After such appointment, any such bank *or trust company* shall have the right within 15 days from the date of the notice of such appointment to appeal in writing to the state banking board, and upon such appeal, the state banking board shall fix a date for a hearing, which hearing shall be within 30 days from the date of such appeal and shall be conducted in accordance with the provisions of the Kansas administrative procedure act. The board shall render an order as to the correctness or incorrectness of the commissioner's decision to take over the conduct of such bank or trust company, and the order of such board shall be final and conclusive.

Sec. 13. K.S.A. 2000 Supp. 9-1801 is hereby amended to read as follows: 9-1801. (a) No bank or trust company hereafter shall be organized or incorporated under the laws of this state, nor shall any such institution transact either a banking business or a trust business in this state, until the application for its incorporation and application for authority to do business has been submitted to and approved by the board. The board shall approve or disapprove the organization and establishment of any such institution in the city or town in which the same is sought to be located. The form for making any such application shall be prescribed by the board and any application made to the board shall contain such information as it shall require. The board shall not approve any such application until it first investigates and examines such application and the applicants.

(b) If upon the dissolution, insolvency or appointment of a receiver of any bank, trust company, national bank association, savings and loan association, savings bank or credit union, it is the opinion of the commissioner that by reason of the loss of services in the community, an emergency exists which may result in serious inconvenience or losses to the depositors or the public interest in the community, the commissioner may accept and approve an application for incorporation and application for authority to do business from applicants for the organization and establishment of a successor bank or trust company, ~~subject to confirmation and subsequent approval by the board. Upon approval of an application for the organization and establishment of any such successor bank or trust company, the commissioner shall no later than the next regular meeting of the board submit such application to the board for its confirmation and approval.~~

Sec. 14. K.S.A. 2000 Supp. 9-1804 is hereby amended to read as follows: 9-1804. (a) No bank or trust company incorporated under the laws of this state shall change its place of business, from one city or town to another or from one location to another within the same city or town, without the prior approval of the state banking board. Any such bank or trust company desiring to change its place of business shall file written application with the ~~board~~ *office of the state bank commissioner* in such form and containing such information as the board *and the commissioner* shall require. *Notice of the proposed relocation shall be published in a newspaper of general circulation in the county where the main bank or trust company is currently located and in the county to which the bank or trust company proposes to relocate. The notice shall be in the form prescribed by the commissioner and at a minimum shall contain the name and address of the applicant bank or trust company, the address of the proposed new location and a solicitation for written comments. The notice shall be published on the same day for two consecutive weeks and provide for a comment period of not less than 10 calendar days after the date of the second publication. The applicant shall provide proof of publication to the commissioner.*

(b) *If the applicant is an eligible bank or an eligible trust company, the commissioner shall examine and investigate the application. If the commissioner determines:*

- (1) *There is a reasonable probability of usefulness and success of the bank or trust company in the proposed location; and*
- (2) *the applicant bank's or trust company's financial history and con-*

dition is sound, the application shall be approved, otherwise, it shall be denied.

(c) Within 15 days after any final action of the commissioner approving or disapproving an application, the applicant, or any adversely affected or aggrieved person who provided written comments during the specified comment period, may request a hearing with the state banking board. Upon receipt of a timely request, the board shall conduct a hearing in accordance with the provisions of the Kansas administrative procedure act. Any decision of the state banking board is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

(d) If a bank does not meet the definition of an eligible bank or a trust company does not meet the definition of an eligible trust company, the state banking board shall examine and investigate the application, ~~and shall inquire into the public necessity for such bank or trust company in the community wherein it is proposed to locate the same, and shall approve or disapprove the application.~~ If the board determines:

(1) There is a reasonable probability of usefulness and success of the bank or trust company in the proposed location; and

(2) the applicant bank's or trust company's financial history and condition is sound, the application shall be approved, otherwise, it shall be denied.

(e) Any final action of the board approving or disapproving an application shall be subject to review in accordance with the act for judicial review and civil enforcement of agency actions upon the petition of the applicant, or any adversely affected or aggrieved person who provided written comments during the specified comment period.

(f) The expenses of such examination and investigation shall be paid by the bank or trust company which shall deposit with the commissioner a fee in an amount established by rules and regulations adopted by the commissioner. ~~Any members of the board who make such an examination or investigation shall be paid the sum of \$35 per diem for the time they actually are engaged in performing their duties as members of such board, and in addition shall be paid all their actual and necessary expenses incurred in the performance of such duties from such funds.~~ The commissioner shall remit all amounts received under this section to the state treasurer who shall deposit the same to a separate special account in the state treasury for each application. The moneys in each such account shall be used only to pay the expenses of the examination and investigation to which it relates, and any unused portion of such deposit shall be transferred to the bank commissioner fee fund.

(g) For purposes of this section:

(1) "Eligible bank" means a state bank that meets the following criteria:

(A) Received a composite rating of 1 or 2 under the uniform financial institutions rating system as a result of its most recent federal or state examination;

(B) meets the following three criteria for a well capitalized bank:

(i) Has a total risk based capital ratio of 10% or greater;

(ii) has a tier one risk based capital ratio of 6% or greater; and

(iii) has a leverage ratio of 5% or greater; and

(C) is not subject to a cease and desist order, consent order, prompt corrective action directive, written agreement, memorandum of understanding or other administrative agreement with its primary federal regulator or the office of the state bank commissioner; and

(2) "eligible trust company" means a state chartered trust company that meets the following criteria:

(A) Received a composite rating of 1 or 2 under the uniform interagency trust rating system as a result of its most recent state examination; and

(B) is not subject to a cease and desist order, consent order, written agreement, memorandum of understanding or other administrative agreement with the office of the state bank commissioner.

Sec. 15. K.S.A. 2000 Supp. 74-3004 is hereby amended to read as follows: 74-3004. (a) There is hereby created a state banking board which shall be composed of nine members. Six members of the board shall be bankers with not less than five years' actual banking experience in a state

bank in this state and three shall represent the public interest in the regulation, operation and control of state banks and trust companies. All members *representing the public interest* shall be selected from the state at large. No nonbanker member shall concurrently serve as an officer or director in any state or national bank or trust company wherever located. One of the nine members shall be elected annually as chairperson of the board. The board shall be appointed by the governor. Persons appointed to the board shall be subject to confirmation by the senate as provided in K.S.A. 75-4315b, and amendments thereto. Except as provided by K.S.A. 46-2601, *and amendments thereto*, no person appointed to the board shall exercise any power, duty or function as a member of the board until confirmed by the senate. No more than five members of the board shall be from the same political party. Subject to the provisions of K.S.A. 75-4315c, and amendments thereto, of the six banker members, the governor shall appoint one from each Kansas congressional district as presently constituted and the remainder from the state at large. Appointment of nonbanker members shall be made with due consideration for achieving representation of the various geographic sectors of the state.

(b) Except as provided by subsection (c), terms of members of the board shall be for three years. Each member shall serve until a successor is appointed and confirmed. No person shall serve more than two terms as a member of the board. In the event of a vacancy on the board, the governor shall appoint a new member of the same qualification to fill the unexpired term.

(c) The terms of members who are serving on the board on the effective date of this act shall expire on March 15, of the year in which such member's term would have expired under the provisions of this section prior to amendment by this act. Thereafter, members shall be appointed for terms of three years and until their successors are appointed and confirmed.

Sec. 16. K.S.A. 9-812, 9-908, 9-912, 9-1001, 9-1101a, 9-1127b, 9-1127c, 9-1127d, 9-1714 and 9-1806 and K.S.A. 2000 Supp. 9-904, 9-1101, 9-1111, 9-1111b, 9-1801, 9-1804 and 74-3004 are hereby repealed.

Sec. 17. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.